



ANNEXURE A

OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

Gregory Hooper & Anor v OS MCAP Pty Ltd & Anor (NSD2409/2025)

IMPORTANT

This opt out notice relates to a class action in the Federal Court of Australia brought against OS MCAP Pty Ltd and OS ACPM Pty Ltd. You have been identified as a potential class member in the class action.

You should read this notice carefully as it may affect your legal rights. If there is anything in this notice that you do not understand you should seek legal advice.

You have two options arising from this notice:

- 1. OPT OUT of the class action and NOT participate in a settlement or judgment; or**
- 2. DO NOTHING and remain a part of the class action (if you are a class member).**

If you decide to opt out of the class action you must provide the Court with your opt out notice before 30 October 2026.

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Mr Gregory Hooper and Mr James Sharkie (**the Applicants**) against OS MCAP Pty Ltd and OS ACPM Pty Ltd (**the Respondents**). The action arises out of allegations that the Respondents contravened section 114 of the *Fair Work Act 2009* (Cth) (**Fair Work Act**) by requiring employees on continuous shift rosters or fly-in fly-out (**FIFO**) arrangements to work on public holidays in the period 23 December 2019 to 31 March 2023, without making a reasonable request or informing them of their right to refuse such work if the refusal was reasonable.

The class action is being funded by the **Mining and Energy Union**.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a potential class member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should visit the website <https://publicholidayaction.com.au>, inquire at



classaction@meu.org.au (a service provided by the Mining and Energy Union as the funder of the class action) or consider seeking independent legal advice.

2. What is a class action?

A class action is an action that is brought by a person (an ‘applicant’) on his or her own behalf and on behalf of a class of people (known as ‘class members’) against another person (a ‘respondent’) where the applicant and the class members have similar claims against the respondent. More than one applicant can also make claims against more than one respondent.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the applicant is responsible for the costs.

Class members are bound by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action class members *will not* be able to pursue the same claims and *may not* be able to pursue similar or related claims against the respondent in other proceedings. Class members should note that:

- (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the applicant and class members. Unless those decisions are successfully appealed, they bind the applicant, class members and the respondent. Importantly, if there are other proceedings between a class member and the respondent, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- (b) in a *settlement* of a class action, where the settlement provides for compensation to class members it is likely to extinguish *all* rights to compensation which a class member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against either of the Respondents which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

3. What is this class action?

This class action is brought by the Applicants, Mr Hooper and Mr Sharkie, on their own behalf and on behalf of all persons who are “class members” as defined in the proceeding.

The Applicants allege in their statement of claim that from 23 December 2019 to 31 March 2023 the Respondents contravened section 114 of the Fair Work Act by requiring employees to work on public holidays without making a reasonable request or informing them of their right to refuse such work if the refusal was reasonable.

The Applicants allege that, because of these contraventions, class members have suffered loss and damage, including the loss of their entitlement to be absent on public holidays, the loss of



the opportunity to refuse work on reasonable grounds, and out-of-pocket expenses such as childcare costs incurred because they were required to work.

The Respondents are defending the class action on a number of grounds. The Respondents say they made requests for the Applicants and class members to work on public holidays, those requests were reasonable and the Applicants and class members did not suffer any loss or damage. The Respondents are also arguing that section 114 of the Fair Work Act is not capable of being contravened and have asked the Full Court of the Federal Court of Australia to determine that issue. In *CFMMEU v OS MCAP Pty Ltd (No 2)* [2023] FCAFC 51, the Full Court held that section 114 of the Fair Work Act had been contravened.

4. What is ‘Opt Out’?

The applicant in a class action does not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. An explanation of how class members can opt out is found below in the section headed “How you can opt out of the proceeding”.

5. Are you a class member?

You are a class member if you:

- (a) were employed by either of the Respondents at any time between 23 December 2019 and 31 March 2023 (**Employment Period**);
- (b) during the Employment Period:
 - i. worked for either of the Respondents on a public holiday;
 - ii. were required by either of the Respondents to work on each public holiday you worked; and
 - iii. worked a continuous shift roster or as a FIFO employee;
- (c) were at all material times working in or in connection with:
 - i. the mining industry, as defined in clause 4.2 of the *Mining Industry Award 2020*; or
 - ii. the black coal mining industry, as defined in clause 4.2 of the *Black Coal Mining Industry Award 2020*.

If you are unsure whether you are a class member, you should visit the website <https://publicholidayaction.com.au>, inquire at classaction@meu.org.au (a service provided by the Mining and Energy Union as the funder of the class action) or seek your own legal advice without delay.

6. Will you be liable for legal costs if you remain a class member?



You will **not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. However:

- (a) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action, but which are not able to be recovered from the Respondents;
- (b) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer; and
- (c) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Applicants' lawyers or other lawyers to do that work for you. A copy of the terms on which the Applicants' lawyers are acting in the class action may be requested, on a confidential basis, from classaction@meu.org.au.

7. Will I be liable to pay any other costs if I remain a class member?

The class action is being litigation funded by the Mining and Energy Union whether or not each class member is a member of the union. The union has agreed, subject to the terms of its agreement with the Applicants, to pay the costs of the proceeding as it progresses in relation to the first instance trial which shall include the hearing and determination of the separate question as referred to the Full Court of the Federal Court and appeals which may arise from determination of that question. This includes payment of legal fees and disbursements in the class action (including barrister and expert fees) up to the first instance trial of common issues, and any other costs which the union may reasonably pay for the prosecution of the class action. It also includes payment of the legal fees and disbursements in respect of the Respondents' application to the Full Court of the Federal Court of Australia to determine whether section 114 of the Fair Work Act is capable of being contravened, together with any appeals in respect of that application.

The Applicants have entered a litigation funding agreement directly with the Mining and Energy Union. This means that if the class action results in an award of compensation or penalties, or a negotiated settlement sum payable to class members, the Mining and Energy Union may be entitled to receive out of the share of the settlement or judgment amount, in certain priority order, from the Applicants:

- (a) reimbursement of the amounts paid by the union for legal fees, disbursements, and other class action costs; and
- (b) a funding commission, being a percentage of any amount the Applicants and/or class members recover or receive in the class action.



Any amounts that the Mining and Energy Union seeks to deduct from compensation payable to class members must be approved by the Court. Under the agreement with the Mining and Energy Union, the Applicants have agreed that:

- if the class action results in the Applicants and/or class members receiving an amount (including by way of compensation), the union may apply to the Court for an order to share the costs of the class action equitably among all persons who have benefited from the class action; and
- The Mining and Energy Union may also, in its absolute discretion, pay back to some or all of the Group members some or all of any Commission to which it may be entitled, after approval by the Court.

The Mining and Energy Union is entitled to terminate the litigation funding agreement on 60 days' notice if it determines that it is commercially reasonable to do so. It is important to note that if such a termination occurs, class members will not be required to pay any of the legal fees or disbursements, or other class action costs, out of their own pocket.

Class members will never be required to pay any of the legal fees, disbursements, and funding commission, or other class action costs out of their own pocket (including if the Mining and Energy Union obtains an order of the kind referred to above). Rather, any amounts will be deducted from any judgment or settlement amount in the class action.

8. What will happen if you choose to remain a class member?

Unless you opt out, you will be bound by any settlement or judgment of the class action. That includes any determination by the Full Court of the Federal Court of Australia or the High Court of Australia on the application brought by the Respondents (in respect of whether section 114 of the Fair Work Act is capable of being contravened).

If the class action is successful you may be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and class members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against the Respondents in other legal proceedings.

9. What class members need to do

(a) How you can remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the class members (including the question of whether section 114 of the Fair Work Act can be contravened).

(b) How you can opt out of the class action?



If you do not wish to remain a class member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondents, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondents, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing a "Opt Out Notice" in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address or email address (nswreg@fedcourt.gov.au) on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 4pm 30 October 2026**, otherwise it will not be effective.

You should submit the Opt Out Notice if:

- (a) you qualify as a class member and you wish to opt out of the class action; or
- (b) you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed "Are you a class member" above.

Each class member seeking to opt out should fill out a separate form.

10. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the application, the statement of claim, and the defence, may be obtained by:

- (a) downloading them from <https://publicholidayaction.com.au>;
- (b) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (c) inspecting them on the Federal Court website at <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions#nsw>.

Please consider the above matters carefully. If there is anything of which you are unsure, you should visit the website <https://publicholidayaction.com.au>, inquire at classaction@meu.org.au (a service provided by the Mining and Energy Union as the funder of the class action) or seek your own legal advice. You should not delay in making your decision.



Form 21
Rule 9.34

OPT OUT NOTICE

No. 2409 of 2025

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

Gregory Hooper and another
Applicants

OS MCAP Pty Ltd and another
Respondents

By email (preferred method): nswreg@fedcourt.gov.au

OR

By post to:

The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building
184 Phillip Street, Queens Square
Sydney NSW 2000

[***Name of group member***], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [***Name of group member***] is opting out of the representative proceeding.

Date: [***eg 19 June 20..***]



Signed by [*Name*]

[*Insert capacity eg group member / Lawyer for the group member*]