

**FEDERAL CIRCUIT COURT OF AUSTRALIA**

*MONDAL v TRANSCLEAN FACILITIES PTY LTD & ANOR (No.2)*

[2020] FCCA 2944

**Catchwords:**

INDUSTRIAL LAW – Application in a case for leave to join six additional parties as respondents to proceedings under the *Fair Work Act 2009* (Cth) – whether necessary – other factors relevant to exercise of discretion – application in a case dismissed – time extended for applicant to file amended statement of claim.

**Legislation:**

*Federal Circuit Court Rules 2001* (Cth), r.11.02

*Federal Court Rules 2011* (Cth), r.16.02

*Fair Work Act 2009* (Cth), ss.550, 570

**Cases cited:**

*Mondal v Transclean Facilities Pty Ltd & Anor* [2020] FCCA 1334

*Lukies v SZV Counselling Pty Ltd* [2018] FCCA 1431

*Andrade v Goodyear & Dunlop Tyres (Aust) Pty Ltd* [2018] FCCA 634

*Fewin Pty Ltd v Burke* [2016] FCA 503

*Aon Risk Service Australia Limited v Australia National University* [2009] HCA 27

**Applicant:**

SUBRATA KUMAR MONDAL

**First Respondent:**

TRANSCLEAN FACILITIES PTY LTD  
(ACN 141 630 355)

**Second Respondent:**

SHAYAN DATTA

**File Number:**

MLG 744 of 2019

**Judgment of:**

Judge O'Sullivan

**Hearing date:**

22 October 2020 (by telephone)

**Date of Last Submission:**

22 October 2020

**Delivered at:**

Melbourne (by telephone)

Delivered on: 30 October 2020

**REPRESENTATION**

Counsel for the Applicant: Mr Rangi

Solicitors for the Applicant: Rangi Lawyers

Counsel for the First Respondent: Mr Catlin

Solicitors for the First Respondent: Stephen Peter Byrne

Counsel for the Second Respondent: No appearance

Solicitors for the Second Respondent: Neesham White Gentle

## **ORDERS**

- (1) The application in a case filed 2 July 2020 be dismissed.
- (2) Any application for costs (along with written submissions of no more than 3 pages) be filed and served within 7 days and any response thereto (along with written submissions of no more than 3 pages) be filed and served 7 days thereafter.
- (3) Time be extended for a further 21 days from today's date for the applicant to comply with order (2) of the orders of 28 May 2020 (to file and serve an amended statement of claim which must be certified by Counsel).
- (4) The proceedings be adjourned for further directions on 12 March 2021.

## **AND THE COURT NOTES**

- A. Any application for costs made pursuant to order (2) of these orders will be considered on the papers unless requested otherwise in submissions.

**FEDERAL CIRCUIT COURT  
OF AUSTRALIA  
AT MELBOURNE**

**MLG 744 of 2019**

**SUBRATAKUMAR MONDAL**

Applicant

And

**TRANSCLEAN FACILITIES PTY LTD**

**(ACN 141 630 355)**

First Respondent

**SHAYAN DATTA**

Second Respondent

**REASONS FOR JUDGMENT**

**Introduction**

1. By application in a case filed on 2 July 2020, Subrata Kumar Mondal (“the applicant”) applied for leave to join six additional parties to proceedings (about events between 2011 and 2017) that were first commenced in March 2019.
2. The background to the proceedings appears in an earlier interlocutory judgment published as *Mondal v Transclean Facilities Pty Ltd & Anor* [2020] FCCA 1334 (“the earlier reasons”). Notwithstanding the orders made in the earlier reasons, and from the respondents’ point of view rather than attending to the deficiencies identified in the pleadings as they then stood, on 1 July 2020 the applicant’s solicitor e-filed a 93 page ‘amended’ statement of claim running to 359 paragraphs which named (without leave having been granted) an additional six respondents as parties to these proceedings.
3. The present application in a case is the result of that attempt.

## Background

4. In the earlier reasons delivered on 28 May 2020 the litigation history was set out at paragraphs [6] to [35] and for the sake of brevity it will not be repeated. These reasons should be read in conjunction with the earlier reasons.
5. The ‘*amended*’ statement of claim filed on 1 July 2020 was for the reasons referred to earlier defective (and still suffered from a number of vices, some of which had been referred to in the earlier reasons, and others which were colourfully described in the existing first respondent’s submissions to which it will be necessary to return to later in these reasons).
6. The applicant’s solicitor then filed the application in a case on 2 July 2020 which the Registry made returnable before the Court at a directions hearing on 20 August 2020.
7. On that day, and to try and bring some order to these proceedings, the following orders were made:

*“1. The document purporting to be an amended statement of claim filed by the applicant on 1 July 2020, without leave of the Court, be removed from the electronic Court file.*

*2. The applicant’s application in a case filed 2 July 2020 be listed for hearing via telephone on 22 October 2020 commencing at 10:30am.*

*3. On or before 4:00pm on 3 September 2020, the first respondent file and serve any response to the application in a case filed on 2 July 2020, any affidavit in support and an outline of submissions.*

*4. On or before 4:00pm on 17 September 2020, the second respondent file and serve any response to the application in a case filed on 2 July 2020, any affidavit in support and an outline of submission.*

*5. On or before 4:00pm on 1 October 2020, the applicant file and serve any submissions in reply.*

*6. The applicant serve the proposed further respondents referred to in the application in a case with a copy of these orders within 14 days.*

7. *The proposed further respondents file and serve any response, any affidavit in support and an outline of submissions to the application in case filed 2 July 2020, 7 days prior to the adjourned date.*

...”

### **The ‘amended’ statement of claim**

8. In order to put the application in a case in proper context (and given the issues raised with the applicant’s pleadings to date in the earlier reasons) it is unfortunately necessary to refer to the ‘amended’ statement of claim (“ASOC”) referred to in paragraph 7.
9. The ASOC is attached to these reasons as Appendix A and is included only so that the criticisms of it made by the first respondent can be properly understood and the applicant’s reasons as to why it is now necessary to pursue the joinder application at this stage of the proceedings are seen in context.

### **The application in a case**

10. The orders sought in the application in a case were:
  - “ 1. *The First Respondent be changed to Sixth Respondent;*
  2. *The Second Respondent be changed to Seventh Respondent;*
  3. *The Applicant be permitted to join the following persons as defendants to the proceedings:*
    - a. *CHRISTOS MITZIA as First Respondent*
    - b. *GEORGE KATSAKIS as Second Respondent*
    - c. *STAVROS NIKOLAIDIS as Third Respondent*
    - d. *MARIA TSAKOPOULOS as Fourth Respondent*
    - e. *IOANNIS MORTIS as Fifth Respondent*
    - f. *GEORGE HARITOS as Eighth Respondent*”
11. The application in a case filed 2 July 2020 was supported by an affidavit of Mr Rangi (“the applicant’s solicitor”) also filed on 2 July 2020.

### **Evidence in relation to joinder application**

12. The affidavit filed in support of the application in a case by the applicant’s solicitor was, omitting formalities:

“ ...

2. *I am the solicitor for the Applicant in these proceedings and I prepared the original Statement of Claim. Later on statement of claim prepared by Mr James Hooper of counsel was filed on 12 December 2019. While, the Applicant suggested that the directors of the six companies (now deregistered) and the director of Transclean Services Pty Ltd should be impleaded [sic] as parties, the pleading was restricted to two respondents due to financial constraints of the Applicant.*

3. *On 28 May 2020, the Honourable Court struck out the statement of claim dated 12 December 2019, pointing to various deficiencies including proper pleading of provisions such as section 550 of Fair Work Act 2009, failure to plead some of the very obvious contraventions etc. The Court permitted the Applicant to file amended statement of claim on or before 30 June 2020.*

4. *While redrafting the statement of claim, I realised that though joining new parties will complicate the proceedings, the directors of Six entities and the director of Transclean Services Pty Ltd are necessary parties and the dispute cannot be resolved completely without joining all of them in the proceedings.*

5. *The First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and the Eighth Respondent as mentioned in the title of the amended statement of claim are the parties whom the Applicant wants to join in the proceedings.*

6. *As could be seen from the amended statement of claim, joining of the parties will assist the honourable court in resolving the dispute completely.*

7. *Hence [sic], the interest of justice, I am seeking leave to join the directors of Six Entities and the director of Transclean Services Pty Ltd to be joined as party to the proceedings.”*

### **Submissions opposing joinder application**

13. Pursuant to the orders made on 20 August 2020 the existing first respondent’s submissions (which were only) filed on 7 September 2020 (and also said to be on behalf of the proposed eighth respondent) were:

*“1. The Court kindly and thoughtfully warned the Applicant to get counsel back on 15 November 2019...Mr Rangi properly (and hopefully mindful of his duty to his client and the court), did retain counsel and substantially improved his pleadings notwithstanding that they retained fatal flaws and deficiencies. Now Mr Rangi has resumed his previous methodology of pleading himself and produced a pleading monstrosity. The Applicant should not be able to exploit the privilege of endless cost-free*

interlocutory hearings to continually impose the burden of his incompetence on the Respondents and the Court. He now seeks leave to impose that burden on an additional six individual Respondents. He should not be allowed to do so.

2. The Applicant obtained leave to file an amended statement of claim dealing with the defects noted by the Court in [2020] FCCA 1334. The questions for the Court on this application should not simply be confined to the application for joinder, but also to whether the Applicant has complied with the Court's implicit direction in [2020] FCCA 1334 that he cure the defects such as maintaining statute barred claims. **If the Court considers joinder solely, and as a discrete and confined issue on the present application, the First Respondent foreshadows it will bring a further application to strike out of (sic) the claim on the previous grounds: Orders 13.07 and 13.10 and re-assert the false and abusive pleading the Applicant makes regarding his independent contracting status.**

3. The Applicant (sic) submits that the appropriate course at this stage is to deal with the continued defects in the pleading on the current application by ordering the pleadings be fixed.

Brief interlocutory history

4. This is already set out in [2020] FCCA 1334.

5. Transclean has previously pleaded that the current SOC had five categories of fatal flaw or deficiency:

- a. any losses up to 12 December 2013, are statute barred;
- b. the claims of accessorial liability are confused, tenuous, do not benefit from any reverse onuses or deeming provisions under the Act and should not be allowed to proceed;
- c. the hours claimed to have been worked are factually impossible;
- d. the Applicant was a genuine sub-contractor by reason of, inter alia, employing people himself, having multiple ABNs, being in partnership with his wife;
- e. the Applicant is refusing to disclose where he worked and what he did and simply claims to be paid under an award.

6. The Applicant filed an amended statement of claim purportedly in compliance with the orders of this court made 28 May 2020.

7. The Court granted leave to the Applicant to file an amended statement of claim. It did so having noted that the Applicant in amending its claim had omitted some allegations from earlier in the proceedings<sup>2</sup> and then made other claims that were clearly statute barred: at [12]. The statute barred claims were part of the court's reasons for striking out the previous statement of claim: at [47, 48].

Argument

8. The new claim should not be allowed to proceed in defiance of clear Court orders made previously the Applicant cure the defects



*of statute barred claims. Perhaps there are no express orders to remove statute barred claims. The First Respondent submits such orders are implicit. Certainly, the Applicant is simply ignoring the Court on this question.*

*9. The First Respondent has previously pressed for the pleading to be struck out on the basis that it is frivolous or vexatious or otherwise an abuse of the Court. Insofar as it is still an abuse of the Court the Applicant seeks to double down by burdening another six individuals with the claim. The burden on those individuals is a proper consideration for the court in exercising its discretion.*

*10. The attempted filing was one day out of time. The First Respondent makes no point about that. However, in belatedly making an application to join 6 new Respondents, the Applicant again adds months to the litigation process. The First Respondent refers to the conception of prejudice from delay refined by Aon's case.*

[98] ... what is a "just resolution" is to be understood in light of the purposes and objectives stated. Speed and efficiency, in the sense of minimum delay and expense, are seen as essential to a just resolution of proceedings. This should not detract from a proper opportunity being given to the parties to plead their case, but it suggests that limits may be placed upon re-pleading, when delay and cost are taken into account. The Rule's reference to the need to minimise costs implies that an order for costs may not always provide sufficient compensation and therefore achieve a just resolution. It cannot therefore be said that a just resolution requires that a party be permitted to raise any arguable case at any point in the proceedings, on payment of costs.

[11] Thus, while it is true that the power to amend may be used to avoid the multiplicity of proceedings, the exercise of that power requires consideration of other matters. Such considerations include the nature of the amendment sought, the degree of delay that it will entail and the other prejudice that might flow to the other parties, the court and other litigants.

*11. Also, aptly:*

When forbearance and liberality are extended to a delinquent the burden of inconvenience and lost opportunities for preparation tends to fall heavily and without adequate repair on parties who have not been delinquent. A relative disadvantage is imposed on those who proceed methodically and in due time; their interest in procedural justice should claim at least as much consideration as the interests of the applicant for a late amendment who does not have to look far for the creator of his difficulty.

12. *The Applicant has continued to maintain statute barred claims. The reasons why he should not be allowed to do so have been stated previously and do not need to be repeated. However, it must also be noted that in so far as they now require individuals to engage expensive legal representation and undergo the stress of litigation, the court should not regard them automatically as necessary incidents of the litigation.*

*Principles determining joinder*

13. *Rule 11 of the Federal Circuit Court rules is permissive requiring only that the court be satisfied that the joinder be necessary for the complete and final determination of all matters in dispute: 11.01. Further parties can be joined without their consent: 11.03.*

14. *Transclean submits that such rules are naturally conditioned by the requirement that they be applied in accordance with the objects set out in 1.04 of the rules that any litigation be prosecuted in a manner that avoids undue delay, expense and technicality.*

15. *In that regard it is notable that the Applicant alleges that the wrong committed by the First Respondent commenced in 2011. He sat on his rights until March 2019 when he finally filed this claim.*

16. *The prejudice to the new Respondents is easily conceived. Statutory requirements to preserve records only go back six years. Their memories, notes and other information which might assist them in their defence is also likely to diminish substantially if not disappear.*

17. *It would appear that the court has pre-indicated a requirement of at least notice to the new proposed Respondents by requiring that the application for joinder be served on them. Transclean would seek that that previous order be complied with. The stated reasons for delay in the joinder are nonsense*

18. *The affidavit of 1 July 2020 filed in support of the application contains the statement that the directors of the six companies were not pleaded earlier “due to financial constraints”: [2]. Mr Rangi also says that at the point of re-drafting (which re-draft?), he realised that adding six new Respondents would “complicate the proceedings”: [4]. Both assertions mask what has obviously happened, which is incompetence in the various stages of pleading<sup>5</sup>. The Applicant should have made a forensic decision early that he was obliged by his client’s failure to act promptly on the alleged breaches of the Act to not allow complex and ageing heads of claim accumulate because it would make any subsequent proceeding onerously difficult and complex.*

19. *The First Respondent submits that in so far as the court is to have regard to some particular reason in exercising a discretion to indulge the Applicant, no real reason has been given.*

*What will this proceeding be like ?*

20. *Currently there are three sets of lawyers. The Applicant seems to propose a proceeding with as many as six more.”*

**[emphasis added]**

14. Because of the tone of some of the submissions set out in the previous paragraph my associate was instructed to email all parties to advise that unless a response to the application in a case was filed by the existing respondents (consistent with the orders of 20 August 2020) the hearing on 22 October 2020 would be limited to the issue of whether there should be an order for joinder. In response to that email, and on 8 September 2020, the solicitor for the existing second respondent sought to withdraw (and explicitly disclaimed reliance on) the bolded and underlined section of those submissions set out above.
15. The existing second respondent did not file submissions as such but advised the Court on 18 September 2020 that he opposed leave being granted for the same reasons set out in the existing first (and proposed eighth) respondents' submissions referred to above.
16. By the date of the directions hearing on 20 August 2020 the applicant had only served four of the proposed six additional parties with the ASOC. Save for Mr Haritos who was represented by solicitors for the existing first respondent, only Mr Katsakis (of those who) had notice of the applicant's proposal to join him had sent email correspondence to the Court on 18 August 2020 objecting to being joined as a respondent.
17. It was because of the deficiency in the applicant bringing the application in a case to the attention of the proposed (additional) respondents, so that they would have the opportunity to file any submissions on the issue that order 6 of the orders referred to in paragraph 7 above was made. As will become clear presently, notwithstanding that order there is no evidence that the applicant complied with that order either.

## Submissions in support of joinder application

18. In accordance with the orders of 20 August 2020, on 30 September 2020 the applicant filed the following submissions in response to the submissions filed by the existing first and proposed eighth respondent:

*“1. The Applicant lodged an Application in a Case on 1 July 2020, seeking leave to join Christos Mitzia, George Katsakis, Stavros Nikolaidis, Maria Tsakopoulos, Ioannis Mortis and George Haritosh as First, Second, Third, Fourth, Fifth and Eighth Respondent respectively to these proceedings.*

*2. Further, the Applicant seeks leave to redesignate the existing Respondents as Sixth and Seventh Respondent.*

*3. The Applicant supported the said application with an affidavit which referred to and relied on a document named Amended Statement of Claim dated 29 June 2020 (ASOC) (has now been removed from the court records as it was filed prior to grant of leave). The stated ASOC was lodged on 30 June 2020 at 9:39 AM, with the Registry as ‘draft’ along with a letter to the Registrar seeking leave pursuant to Rule 7.01 of the Federal Circuit Court Rules 2001 (FCC Rules). A copy of the said document with seal of registry was served on the Respondents informing them about the delay and about the reasons for the delay.*

***Circumstances of filing of application without seeking leave***

*4. While the Applicant was waiting for a response from the Registrar, despite information about reasons for the delay, the solicitor for the Second Respondent sent an email on 1 July 2020 in terms The 30th June 2020 was the absolute deadline. You are clearly not entitled to an extension of time.*

*5. The Applicant acknowledges the mistake of filing a document without prior leave of the Court and sincerely apologise to the Court for it, but, states that it was filed in good faith after his attempts stated in paragraph 3 above failed. It was an attempt to comply with the timeline of the Orders of the Court.*

***Submissions on behalf of existing Respondents and on behalf of proposed Eighth Respondent***

*6. Pursuant to Order 3 of orders dated 20 August 2020, the existing First Respondent filed submissions on 7 September 2020 (instead of 3 September 2020) and the Second Respondent adopted them (the Respondents Submissions). The Respondents submissions:*

*a. repeats many of the issues already considered by the honourable Court on previous occasions;*

*b. points to the purported defects in the proposed ASOC including in relation to ‘statute barred claim’ and ‘sham contracting claim’;*

- c. complains about the multiplicity of interlocutory steps;*
- d. threatens to lodge another strike out application, in particular relating to the issue of ‘sham contracting claim’;*
- e. objects to amendment of the pleadings at this stage of proceedings;*
- f. objects to joinder of new respondents in the proceedings; and*
- g. seeks orders that the Applicant be ordered to fix his pleadings.*

7. *The Applicant endeavours to address the issues in order of their importance for this stage of proceedings.*

**JOINDER OF ADDITIONAL RESPONDENTS**

8. *The Affidavit affirmed on 1 July 2020 supporting the Application in a Case was relying on the contents of the ASOC. The ASOC in addition to particularising the cause of action against the proposed Respondents, also:*

- a. addressed the issues raised by Transclean in its application for summary dismissal;*
- b. set out the merits of the claim demonstrating not only a prime facie case, but a sufficiently arguable case against the proposed Respondents; and*
- c. set out the justification for joinder of the proposed Respondents as necessary parties on the basis of claim sought against the proposed Respondents arising out of the same transactions or event or series of events that gave rise to the claim for relief against the existing Respondents.*

9. *However, the ASOC is no more on the Court file, hence, the Applicant seeks to be excused for reproducing some parts from the ASOC.*

10. *The Applicant agrees with the Respondents submissions that rules 11.01 & 11.02 of the FCC Rules deals with the issue of joinder of parties.*

11. *In Lewin, the Full Court of the Family Court interpreted the FCC Rules concerning joinder at [15] per Ainslie-Wallace J, ..... any person who is “necessary” to the “complete and final determination” of all matters in dispute in a proceeding must be included in the proceedings. A plain reading of the FCC Rules makes it clear that the term “included” there used means **joined** as a party.*

12. *Referring to rules 11.01 & 11.02 of FCC Rules, Justice Warnick sitting as full court of Family Court in Wayne observed at [19] ... if a cause of action recognisable at law, against a “third person” is particularised, then it is at least highly likely that joinder will be “necessary for the court to completely and finally determine all matters in dispute”.....*

13. *The Applicant submits that pursuant to section 550 of FW Act, all the proposed Respondents have been accessorially liable for all the alleged contraventions. While discussing relationship of section 550 with the joinder issue, Judge Lucev in Lukies<sup>3</sup> at [16] held that ....section 550 of the FW Act does not say who should be a party to an action, or who should be made party to an action, and it certainly does not mandate that every person alleged to be accessorially liable at any stage of proceedings be made party to the proceedings. If otherwise appropriate, a person who is arguably accessorially liable for conduct ought to be joined as a party.*

14. *The Applicant submits that he would have joined the six entities as the Respondents from the beginning, but, faced difficulty as they were deregistered by the proposed first five Respondents. Thus, it was not appropriate to join them as parties. The Applicant acknowledges that he cannot pursue action against those entities due to their deregistration status and hence will not claim any relief against them. However, as discussed below, the contraventions against those entities could still be established and the proposed accessorial claim against the proposed Respondents is likely to succeed.*

***Role of sections 550 & 793 of FW Act and effect of deregistration of companies***

15. *The Applicant alleges that the proposed first five Respondents were directors and secretaries of the companies (now deregistered) and were responsible for the overall direction, management and supervision of those companies in relation to their provision of services, engagement of the Applicant, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment. Further, they were responsible for making decisions regarding operations of those companies, including decisions regarding the employment of the Applicant and Applicant's entitlement. Additionally, they were responsible for ensuring that those companies complied with their legal obligations under the FW Act.*

16. *In relation to Transclean, the Applicant alleges that Transclean provided services to Metro using labor provided by the de-registered companies. The employees of Transclean and in particular proposed First, Fourth, Seventh and Eighth Respondent exercised management and supervisory control over performance of the work. At all relevant time, the Applicant was subject to **direction, supervision and management** of Transclean in relation to where, when and how he performed his duties including start and finish times.*

17. *The Applicant asserts that the conduct of Transclean in relation to all employees including the Applicant was engaged in on behalf of, at the direction of or with consent or agreement of the de-registered companies or their directors (the proposed Respondents). Further, all conduct engaged in by the proposed Respondents and by Transclean, which was engaged in on behalf of deregistered companies was within the scope of the actual or apparent authority of the proposed Respondents and of Transclean.*

18. *The Applicant submits that in view of his assertions in paragraphs 15 to 17 above (which are further elaborated in ASOC) and subsection 793(1)(a) of the FW Act, the conduct of the proposed Respondents and of Transclean is taken to be conduct engaged in by the de-registered companies. Further, pursuant to subsection 793(2) of the FW Act, when engaging in alleged conduct, the state of mind (including the knowledge) of the proposed Respondents and of Transclean, is taken to be the state of mind of the de-registered companies.*

19. *The Applicant submits that **as the conduct of the proposed Respondents and of Transclean is taken to be conduct of the deregistered companies**, the contraventions against the deregistered companies could be established by assessing the conduct of the proposed Respondents and conduct of Transclean. In these circumstances, the deregistration status of the companies and companies being not party to the proceedings, does not affect the process of establishing contraventions against the companies. See *Australian Building & Construction* where pursuant to operation of sections 793 & 550 together, Flick J made declaration 5 on the basis of declaration 2 of holding the employer liable for conduct of its employees. Once contraventions against the deregistered companies is established, there is no hurdle in establishing the accessorial liabilities of the proposed and existing Respondents.*

20. *Further, there are plenty of cases where by combined operation of sections 793 and 550 of the FW Act, the courts found the officer, employee or agent accessorially liable for contraventions despite the corporation itself being deregistered or where corporation was allowed to be removed from the proceedings due to its deregistration status. See *Fair Work Ombudsman v First Group of Companies Pty Ltd (deregistered) & Ors.* [2018] FCCA 1228, *Fair Work Ombudsman v Han Investment Pty Ltd* [2017] FCA 623 in proceedings number WAD 248 of 2016, *Harper v TINGMAK PTY LTD & Ors* [2020] FCCA 626.*

***Liability arising out of proposed First and Fourth Respondent being employees and proposed Eighth Respondent being director of Transclean***

21. *The proposed First and Fourth Respondents in addition to being directors of the deregistered companies, were employees of Transclean. Pursuant to section 793, their conduct is deemed to be conduct of Transclean, thereby making Transclean twice (in both primary and accessorial capacities) liable for the same the contraventions. See Australian Building & Construction Commission v CFMEU [2018] FCA 42 at [55] in particular reference to Hamilton v Whitehead (1988) 166 CLR 121.*

***ASOC addresses concerns of Transclean raised during the course of its summary dismissal application***

22. *The Applicant submits that allowing the joinder of proposed Respondents and allowing the corrected ASOC to be filed, will assist in addressing the issues including the following:*

*a. One of the main grounds for the strike out and summary dismissal application by Transclean was that the first five of the proposed Respondents should have been the parties to the proceedings<sup>5</sup>.*

*b. Transclean submitted that accessorial claim was confused and tenuous<sup>6</sup> and further submitted that the relationship was not sufficient to establish involvement of Applicant with six entities<sup>7</sup>.*

*c. Another major issue raised by Transclean was creating doubts about the working hours<sup>8</sup> claimed to have been worked by the Applicant. The Applicant submits that proposed Respondents paid for those hours; hence, they will be in better position to answer those concerns.*

***Response to submissions concerning joinder issues***

23. *Paragraphs 13 to 19 of submissions (filed on behalf of Transclean and proposed Eighth Respondent and adopted by the existing Second Respondent) deals with the issue of joinder and seems to make two substantive contentions:*

*a. the proposed Respondents would be disadvantaged due to passage of time; and*

*b. that the proposed Respondents should have been served with notice. Passage of time*

24. *The Applicant submits that he has restricted and calculated the relief going 6 years prior from date of filing of his application.*

25. *The Applicant further submits that the Eighth Respondent being officer of the existing First Respondent has been aware of the proceedings from the very beginning, hence, he is not likely to suffer any prejudice due to the purported delay.*

***Notice to the proposed Respondents***

26. *On the issue of notice, the Applicant submits that:*



*a. he served the notice on the proposed Eighth Respondent on 7 July 2020, but did not file affidavit of service as notice of address was filed on his behalf;*

*b. the affidavits of service filed by the Applicant affirms that documents were served on the proposed Second, Fourth and Fifth Respondents in accordance with rules; and*

*c. the proposed First Respondent had a fake address in the past, and no one answered the door at the last known addresses of proposed First and Third Respondents.*

*27. Pursuant to Court Orders, despite strict COVID restrictions, the Applicant had again tried to serve all the proposed Respondents by delivering copies of Orders in the letter boxes of their properties.*

*28. The Applicant refers to paragraphs 42 & 43 of Lukies<sup>9</sup> where the court referred to the observations of Full Court of Family Court in Lewin<sup>10</sup> that.. it was not necessary that notice be given of any amended application to join a party to proceedings under the FCC rules.*

***Response to other issues raised in the submissions:***

***Non engagement of Counsel by the Applicant***

*29. Paragraph 1 of the submissions is disparaging and indicate arrogance, which does not assist the honourable court in deciding of the issue at hand. Additionally, it is based on misconceived notion that a litigant cannot pursue his claim unless he has financial capacity to pay fees of a counsel. It wrongly assumes that a solicitor is duty bound to engage a counsel irrespective of the instructions of his client. The Applicant respectfully submits that involvement of his solicitor on his behalf will assist the honourable court where the Applicant would be left self-represented if the solicitor withdraws from the proceedings.*

***Issues with proposed ASOC***

*30. The Applicant acknowledges that there were spelling and grammatical errors in the proposed ASOC and apologise for that. If competency is to be assessed from such errors, then the counsel for the Transclean ought to look at his own submission. Further, the Transclean failed to point to any specific defects in the proposed ASOC.*

*31. The size of the proposed ASOC has increased as it tries to address the concerns raised by Transclean in paragraph 3 of its submissions dated 30 April 2020. The proposed ASOC provides further particulars and greater specificity including elaborating on the relationship of various entities, accessorial liabilities, application of section 793, independent contractor claim, details of each contravention separately including quantum of underpayments. Due to proposed joinder of Six additional respondents, the pleadings have multiplied in size, but, close*

scrutiny would reveal that there is high degree of overlap and duplicity between the factual and legal issues.

Objection regarding purported statute bar claim

32. The objection is without basis as the relief sought in the proposed ASOC dates back to 6 six years prior to filing of the claim. The Applicant in reply to summary judgement expressly stated that he would not insist on any claim falling outside the statutory period and justified the contextual importance of such pleadings. Objection regarding pleading sham contracting (independent contractor) claim

33. The basis for the objection is ill-conceived as the honourable Court did not finalise the issue. Furthermore, the recent judgement of the Full Court in *Jemsek* shows that the issues raised by Transclean seeking summary judgement on this issue were superficial and do not go far enough. The full court after accepting that the person was conducting his own business, found that it was not inconsistent with that person being an employee. It is hard to conceive how merely holding ABN ruled out a person from being an employee. See also *ACE Insurance v Trifunovski* [2013] FCA 3.

Complaint about multiplicity of interlocutory proceedings

34. The Applicant states that it was Transclean who filed the Application in a Case seeking summary dismissal of the proceedings, hence, blaming the Applicant for multiplicity has no basis.

Complaint about late filing of proposed ASOC and relevancy of Aon Risk Case

35. As explained in paragraph 3 hereof, the Applicant lodged the proposed ASOC on morning on 30 June 2020 and informed Transclean about the problem. Transclean still chose to raise the issue though it's own 6 pages submissions were late by 4 days. The Applicant submits that Aon Risk deals with amendment of pleadings where due to amendments, the timetable including trial date was to be vacated. Here, the proceedings are being amended pursuant to the Court order and substantial procedural steps are yet to be taken by the parties.

What will be proceedings like?

36. The motive of raising this issue is not clear, but Transclean submissions seem to suggest that a proceeding with Eight Respondents (where at least two are represented by the same lawyer) is unusual feature of the proceedings. Multiplicity of Respondents is direct consequence of business model adopted by Transclean, hence, it ought not raise this issue. Further, it seems that Transclean is now suggesting that the Applicant should divide his claim and file separate claims against each of the

*proposed Respondents, though, Transclean itself insisted on joining the proposed Respondents.*

### **CONCLUSION**

*37. Transclean boasts of being engaged in 'enormous task where it employed employees in excess of 700 at any given time and the first Five proposed Respondents billed in excess of \$900,000 per fortnight.*

*38. In the circumstances where Transclean continue to adopt the same business model of engaging purported sub-contractor entities which are deregistered at regular intervals, there is significant public interest in deterring employers from engaging in conduct of the nature alleged in the ASOC. Withholding relief to the Applicant would reward companies for carrying on business in a manner where protections under FW Act are undermined.*

*39. The Applicant submits that there are serious questions to be tried as to whether the conduct of one or other of the proposed respondents contravened the relevant provisions of FW Act and Regulations. This is not a dispute which only affects the parties, the ASOC raises matters of public importance with implications beyond parties.*

*40. The Applicant submits that in the circumstances submitted above, it is just and proper that the Applicant be allowed to join the proposed Respondents to the proceedings. Any detriment to the existing or the proposed Respondents is outweighed by the public interest involved in protecting the rights of vulnerable employees.*

*41. Further, there is no basis for concluding that the Applicant is not acting in good faith in seeking the joinder of the proposed Respondents. The Applicant requests the Court to use its broad discretion and allow the relief sought.*

#### *Additional relief*

*42. Pursuant to Rule 6.04 of FCC Rules, for further service of the documents filed in these proceedings on the proposed Respondent, the Applicant be permitted to serve the proposed Respondents by post and email and personal service be dispensed with.*

#### *Further Assurance by the Applicant*

*43. If leave to join the proposed Respondents is granted to the Applicant, within 14 days, he will file and serve a corrected version of the ASOC.”*

## Further submissions opposing joinder

19. The applicant had been directed to serve the proposed additional respondents with the orders of 20 August 2020. Notwithstanding that order, the applicant provided no evidence that he had complied.
20. However, there was an affidavit filed prior to the hearing on 22 October 2020 by one of the proposed additional respondents. Whilst his position had been referred to at paragraph 16 above, the affidavit of Mr Katsakis (the proposed (rather than existing) second respondent) was:

“...4. *The Company that I was a Director of Platform Cleaning Services Pty Ltd, appointed a Liquidator on the 18<sup>th</sup> March, 2016 and was placed into Voluntary Liquidation due to the company being unable to meet its expenses.*

5. *The affairs of the company were managed by the Liquidator Mr Raymond Sutcliffe Chartered Accountant, from the 18<sup>th</sup> March, 2016, after this date I had no active involvement in the company from this time onwards, with the exception of assisting the Liquidator with any request for information from time to time.*

6. *All accounting and company records were handed over to the Liquidator at the time of his appointment. I do not have in my possession any records of any description relating to the company anymore.*

7. *The application before the court to join me as a second respondent in my opinion has no proper basis, I say this because Platform Cleaning Services Pty Ltd had no employees on its books, all work was carried out by sub-contractors. The company had been set up this way from its inception and the business model adopted was based on having no employees, only contractors from the beginning.*

8. *The Company was placed into voluntary Liquidation as it was no longer viable financially and due to continued losses.*

9. *While I was in control of the company and subsequently when the company was placed into liquidation, I cannot ever recall being approached by the applicant to discuss the proposition that the applicant was in reality not a contractor and the alternative proposition, that the applicant was really an employee.*

10. *All my obligations as a Director of Platform Cleaning Services Pty Ltd officially ceased as of 18 July 2017, when the company was wound up and deregistered on or about this time.*

11. *While I was in control of the company, I fulfilled my obligations and duties as a Director to the best of my ability.*

12. *The applicant now seeks to join me and in total six additional respondents including myself, I cannot see how this could possibly assist the court, particularly as my involvement with the company ceased over four years ago, as stated and I repeat for the sake of clarity, I no longer have any records or documents whatsoever relating to the company as it has been wound up and any claim the applicant believed they may have had could have been pursued whilst the applicant was engaged as a contractor by the company or at the time the company was placed in liquidation from early in 2016.*

13. *In my opinion, the application before the court has all the signs that the applicant is engaging in a fishing exercise as there is a total lack of factual evidence to support joining me as second respondent in the proposed statement of claim.*

14. *The relationship between Platform Cleaning Services Pty Ltd and the applicant ceased when the company was deregistered and the liquidation of the company was completed in July, 2017. It was open to the applicant during their period as a contractor to Platform Cleaning Services Pty Ltd, to raise any dispute with the company then and they also could have lodged a claim with the Liquidator, but to the best of my knowledge chose not to do so.*

15. *For the above reasons, I object to being made a party to this proceeding, to join me would be highly prejudicial and inequitable to me. Also due to the length of time that has elapsed and based on my recent enquiries that all company records have now been destroyed. I therefore request with all due respect to the court, that the application to join me as a second respondent be dismissed by this honourable court.”*

### **Hearing of application in a case**

21. At the hearing of the application in a case on 22 October 2020 (which took place electronically due to COVID-19) Mr Rangi, Solicitor, appeared on behalf of the applicant and Mr Catlin of Counsel appeared on behalf of the (existing) first (and proposed eighth) respondent.
22. The solicitor for the (existing) second respondent, who had suffered a personal bereavement sought to be excused. Given each of the parties had filed written submissions no one suggested the matter should not proceed in his absence.
23. The applicant’s solicitor told the Court that he had not filed evidence of compliance with order 6 of the orders of 20 August 2020 because of his understanding of order 8 of those orders.

24. When pressed to provide details as to whether there had been compliance with order 6 of those orders the applicant's solicitor referred to paragraphs [26]-[27] of the submissions extracted at paragraph [18] above. However, the applicant's solicitor did concede, to the extent those were said to evidence compliance with the orders there had not been sufficient service (and therefore compliance).
25. Otherwise, those who appeared at the hearing on 22 October 2020 were content for the Court to take into account the affidavit referred to at paragraph [20] above and told the Court that they did not have anything to add beyond relying on the written submissions set out above. At the end of the hearing that day the decision on the application in a case was reserved.
26. Given that it is now necessary to turn to consider the application in a case in light of the material set out above.

### Consideration

27. Rule 11.01 and 11.02 of the *Federal Circuit Court Rules* 2001 ("FCC Rules") expressly deal with the issue of joinder (or inclusion) of parties to proceedings in this Court.
28. Those provisions (and the interpretation of them in appellate decisions of superior courts at that time) were set out in *Lukies v SZV Counselling Pty Ltd* [2018] FCCA 1431. That decision, which was referred to in the applicant's submissions, deals at paragraphs [28] to [56] with those authorities and the approach to the relevant FCC Rules which also for the sake of brevity won't be rehearsed but have been taken into account.
29. Issues germane to the determination of this application were also considered in *Andrade v Goodyear & Dunlop Tyres (Aust) Pty Ltd* [2018] FCCA 634 (see also *Fewin Pty Ltd v Burke* [2016] FCA 503 at [40] to [48] on the approach to the same issue under the *Federal Court Rules* 2011).
30. In this matter the applicant requires leave of the Court to join the proposed additional parties as the application has been made (some considerable time) after the first court date (see Rule 11.02(2) FCC Rules). Whilst the FCC Rules are silent on the factors to be taken into

account a relevant issue in considering whether to grant leave to the applicant to include the proposed additional parties is whether he has a sufficiently arguable case to justify joinder.

31. Moreover, whether or not to grant the leave sought in this case is a matter within the discretion of the Court having regard to all the circumstances of the case.
32. Putting to one side that there has been no explanation for the proposed change in the order of the proposed respondents in the ASOC the stated reason for joining the additional parties appears to be that it is alleged they were officers of a number of corporate entities (most now de-registered) which were somehow involved with the applicant and existing respondents. The high point of the applicant's case for joinder appears to be in submissions filed on 30 September 2020 where it was said the additional parties are "*necessary*" as the claim against them as "*arising out of the same transactions or events or series of events that gave rise to the claim for relief against the existing respondents.*"<sup>1</sup>
33. Tellingly, it is implicitly acknowledged in those submissions that the applicant could have joined the additional parties earlier<sup>2</sup> where it is acknowledged that the applicant (and his solicitor) were aware those corporate entities were de-registered some time ago.<sup>3</sup>
34. The earlier reasons pointed out at least some of the deficiencies in the applicant's pleadings. Given it appears that the applicant now acknowledges that he (and his solicitor) were aware that many of the corporate entities referred to were no longer in existence when the earlier pleadings were filed it is puzzling that he has provided no proper explanation for why the additional parties were not named at that time. This is also the case in relation to the proposed eighth respondent which given his position should have posed no barrier to him being named as a party previously.
35. There was no proper explanation as to what had changed since the pleadings (referred to in the earlier reasons) were filed such that it is

---

<sup>1</sup> see paragraph [8] of applicant's submissions file 30 September 2020.

<sup>2</sup> *Ibid.* see paragraph [14].

<sup>3</sup> *Ibid.*

now required that the named individuals be added as respondents other than an oblique and undeveloped reference to “*financial constraints*”<sup>4</sup>.

36. The ASOC is arguably deficient for the reasons referred to in the first respondent’s submissions. The ASOC is hardly a model pleading and is replete with typographical errors including for example the incorrect spelling of the suburb Bulleen as “*Buleen*”.<sup>5</sup> Furthermore, the ASOC still maintains claims which would be statute barred.<sup>6</sup>
37. The ASOC, at various points, alleges that the applicant was an employee<sup>7</sup> but then also goes on to say (in support of allegations of sham contracting) the applicant provided an ABN.<sup>8</sup> The ASOC appears to suggest that many of the proposed additional parties were (presumably at the same time) acting on behalf of the de-registered companies and for the existing first respondent.<sup>9</sup>
38. The ASOC alleges that these people (as officers of the de-registered companies) when acting in that capacity were also taken to be engaging in conduct on behalf of the (existing) first respondent as they were also employees of the first respondent.<sup>10</sup>
39. For the purpose of these reasons it is not necessary to analyse the ASOC in further detail. Rather the matters set out above (which are not intended to be an exhaustive analysis of the ASOC) are intended to illustrate why on its face (and by virtue of its length) the ASOC is almost incognisable.
40. Aside from the option of pursuing (if leave is granted) a claim for a breach of s.550 of the FW Act against the additional parties there is no other reason offered for why they are necessary. It seems that the applicant (in submissions at least) conflates necessary (for the purposes of the joinder issue) with what would be needed by way of evidence to forensically make out his allegations against the existing first respondent.

---

<sup>4</sup> see affidavit referred to in paragraph [12]

<sup>5</sup> see also for example paras [1(b)], [2(c)], [2(j)], [26] (missing ‘the’), [33] (‘time’ not times), [46(e)] (f.?) etc

<sup>6</sup> see paragraphs [2] to [7], [74], [342], [351] for example.

<sup>7</sup> see for example para [2(d)]

<sup>8</sup> see for example para [67] and following

<sup>9</sup> see for example para [20] and [34] to [37]

<sup>10</sup> See for e.g. para 39



41. Given this it is difficult to see how the presence of the proposed additional parties (leaving to one side the proposed eighth respondent), as parties to the existing proceedings, is necessary to ensure that the issues in those (existing) proceedings are able to be heard and finally determined in the sense referred to in the above authorities.
42. More generally and for the following reasons the circumstances of this matter considered as a whole raise real questions as to whether there should now (and at this stage of the proceedings) be an order joining the additional parties.
43. In *Aon Risk Service Australia Limited v Australian National University* [2009] HCA 27; (2009) 239 CLR 175 (“*Aon*”) which was referred to in the existing first respondent’s submissions it was said at 189:
- “Undue delay can undermine confidence in the rule of law. To that extent its avoidance, based upon a proper regard for the interests of the parties, transcends those interests. Another factor which relates to the interests of the parties but transcends them is the waste of public resources and the inefficiency occasioned by the need to revisit interlocutory processes... because of a late and deliberate tactical change by one party in the direction of its conduct of the litigation.”*
44. It is for this reason that all courts in the modern era, including this one, have adopted rigorous principles of case management to expedite litigation and streamline processes. In *Aon* it was also said at 214-215:
- “It is the extent of the delay and the costs associated with it, together with the prejudice which might reasonably be assumed to follow and that which is shown, which are to be weighed against the grant of permission to a party to alter its case.... There may be cases where it may properly be concluded that a party has had sufficient opportunity to plead their case and that it is too late for a further amendment, having regard to the other party and other litigants awaiting trial dates.*
- ...Invariably the exercise of that discretion will require an explanation to be given where there is delay in applying for amendment.”*
45. *Aon* creates a number of considerations, which are to be applied in assessing whether an application for amendment should be granted. This is what the applicant is asking for and it will (if granted) result in further elongating the interlocutory stage of these proceedings because

the additional parties will need to file material. The considerations include the following:

- a) whether there has been undue delay in making the application;
- b) the extent to which there will be wasted public resources in granting the application;
- c) whether the inefficiency, so occasioned, will require the revisiting of otherwise completed interlocutory processes;
- d) will a trial need to be adjourned;
- e) is there a satisfactory reason for the delay in applying;
- f) whether the point to be raised by the amendment would be raised in any event at trial;
- g) the likelihood of strain and uncertainty being imposed on the litigants concerned;
- h) whether any further delay would undermine confidence in the administration of civil justice generally;
- i) any other prejudice likely to be suffered by the other party; and
- j) the additional costs likely to be incurred.

46. A preponderance of the above factors tells against the orders sought by the applicant. To that end, in this matter there has been considerable unexplained delay (which is not answered simply by saying the former corporate entities are no longer in operation or that there were earlier “*financial constraints*”).

47. The existing respondents argue that the ASOC is an attempt to bring a different case to that previously pleaded. A cursory examination of the ASOC (and the existing pleadings which were annexed to the earlier reasons) supports this contention. Given this point it is important to note that the application for joinder has been made after a number of unsuccessful attempts by the applicant to properly articulate his case.

48. Then there is also the issue of prejudice to the additional parties and the delay (and prejudice) to the existing respondents caused by this application and any order for joinder if it was made. Finally, it is noteworthy that the applicant has sought to make a virtue out of the lack of compliance with the orders made 28 May 2020. It is clear (and with respect regrettable) that Counsel was not engaged to prepare the

ASOC. Henceforth (and because of the matters set out above) it will be necessary for the applicant to have any amended pleadings certified by Counsel.

49. Whether because of this last mentioned omission by the applicant (and his solicitor) or otherwise for the reasons set out above it has not been demonstrated why an order joining those additional parties is necessary at this stage of the proceedings to determine the matter against the existing respondents.

## Conclusion

50. Therefore, and even if the applicant had a sufficiently arguable case against the proposed additional parties the Court is drawn to the conclusion in light of the factors relevant to the exercise of discretion (and given the lamentable history of this matter) that leave to do so should be refused.
51. The timing of the application, the lack of a proper explanation by either the applicant or his solicitor, the prejudice to the other parties involved and case management considerations all tell against it.
52. The defects in the applicant's pleadings have arguably been compounded by the failure to file an amended statement of claim in conformity with the earlier reasons. Instead the applicant sought to file the ASOC naming the additional parties without leave. The document just referred to not only fails to comply with a majority of the provisions of r.16.02 of the *Federal Court Rules* 2011, was not prepared by Counsel but suffers from the problems referred to above and is arguably prolix.
53. Given the history of these proceedings set out in the earlier reasons, the lack of compliance by the applicant with previous orders, along with the lack of a satisfactory and proper explanation for why the joinder application has now been made, leave should be refused. Having regard to all the circumstances the applicant has not persuaded the Court that leave to join the additional parties should be granted. The application is refused and the application in a case dismissed.
54. As set out in the earlier reasons a case is possibly open to the applicant against the existing respondents. I accept the submission of the first

respondent that the Court should insist the orders made in the earlier reasons be complied with. Therefore time will be extended for a further 21 days from the date of these reasons for the applicant to file an amended statement of claim (in conformity with the earlier reasons) but any such document should be certified by Counsel.

55. Finally given the conclusions arrived at in relation to the application in a case, and given the provisions of s.570 of the FW Act, any application for costs should be filed and served within 7 days. The applicant will have 7 days thereafter to file and serve any submissions in reply.
56. To minimise any further costs any application for costs will be determined on the papers unless requested otherwise in those submissions.

---

**I certify that the preceding fifty-six (56) paragraphs are a true copy of the reasons for judgment of Judge O'Sullivan**

Associate:

Date: 30 October 2020

## **APPENDIX A**

### **IN THE FEDERAL CIRCUIT COURT OF AUSTRALIA**

File number: **MLG744/2019**

**REGISTRY: MELBOURNE**

**FAIR WORK DIVISION**

**SUBRATA KUMAR MONDAL**  
Applicant

**CHRISTOS MITZIA**  
First Respondent

**GEORGE KATSAKIS**  
Second Respondent

**STAVROS NIKOLAIDIS**  
Third Respondent

**MARIA TSAKOPOULOS**

Fourth Respondent

**IOANNIS MORTIS**

Fifth Respondent

**TRANSCLEAN FACILITIES PTY LTD (ABN 24 141 630 355)**

Sixth Respondent

**SHAYAN DATTA**

Seventh Respondent

**GEORGE HARITOS**

Eighth Respondent

**Amended Statement of Claim**

**(Filed pursuant to Order 2 of Orders delivered on 28 May 2020)**

---

**Date of document:** 29 June 2020

**Solicitors Code:** CR 110822

**Filed on behalf of the Applicant Law Firm:** Rangilawyers

**Telephone:** 0469 414 110

Rangilawyers

**Ref:** 607/19/Mondal

**Email:** [Rangilawyers@live.com](mailto:Rangilawyers@live.com)

---

## THE APPLICANT

1. The Applicant is and was at all material to this proceeding:
  - a) a natural person capable of suing;
  - b) was employed by the six entities CF & Royal, Platform, SNG69, MMGT and MML (now deregistered) where first five respondents were their respective directors; and c. was also employed by the Sixth Respondent from 1 April 2016 to 30 November 2017 in the position of a supervisor to supervise the employees of MMGT and MML.
  - c) was also employed by the Sixth Respondent from 1 April 2016 to 30 November 2017 in the position of a supervisor to supervise the employees of MMGT and MML.

## THE FIRST RESPONDENT

2. The First Respondent (Christos Mitzia) was at all material times:
  - a) a natural person capable of being sued;
  - b) a director and sole shareholder of CF Services Pty Ltd (unregistered) (CF) from 4 October 2010 to 14 March 2014 which had an oral contract with Sixth Respondent for provision of Cleaning Services to Sixth Respondent;
  - c) had a residential address at all relevant time being 5A Kampman Street, Buleen VIC 3105;
  - d) had been employer of the Applicant between 1 May 2011 to 10 October 2012;
  - e) also a director and sole shareholder of Royal Facilities Services Pty Ltd (unregistered) (**Royal**) from 8 October 2012 to 19 March 2016 which had an oral contract with Sixth Respondent for provision of Cleaning Services to Sixth Respondent;
  - f) had a fictitious residential address at all relevant time being 14 Highview Road, Balwyn North Vic 3104, which was vacant plot of land;
  - g) had been employer of the Applicant between 11 October 2012 to 30 April 2014;
  - h) had been an office bearer and an employee of Sixth Respondent, in-charge of the Northern Area;

- i) responsible for the overall direction, management and supervision of CF & Royal in relation to its provision of services, engagement of the Applicant, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment;
  - j) responsible for making decisions regarding CF's & Royal's operations, including decisions regarding the employment of the Applicant and Applicant's entitlement;
  - k) responsible for ensuring that CF & Royal complied with their legal obligations under the Fair Work Act 2009 (Cth) (**FW Act**); and l. an officer of CF & Royal for the purposes of section 793 of the FW Act.
3. The First Respondent was at all material times the Secretary of CF & Royal.

#### *Particulars*

*Current and historical ASIC searches for CF & Royal may be inspected at the office of the Applicant's solicitor's office by prior appointment.*

4. At all material times, the First Respondent, when engaging in conduct alleged in this Statement of Claim, was an officer of CF & Royal, within the meaning of section 9 of the *Corporations Act 2001* (Cth).
5. All conduct engaged in by the First Respondent alleged in this Statement of Claim was engaged in:
  - a) on behalf of CF & Royal; and b. within the scope of the actual or apparent authority of First Respondent who engaged in the conduct.
6. By reason of paragraphs 2 to 5 above and subsection 793(1)(a) of the FW Act, the conduct of First Respondent, alleged in this Statement of Claim is taken to be conduct engaged in by the CF & Royal.
7. By reason of paragraphs 2 to 6 above and subsection 793(2) of the FW Act, when engaging in conduct alleged in this Statement of Claim, the state of mind (including the knowledge) of First Respondent is taken to be the state of mind of the CF & Royal.

#### **THE SECOND RESPONDENT**

8. The Second Respondent (George Katsakis) was at all material times:

- a) a natural person capable of being sued;
  - b) a director and sole shareholder of Platform Cleaning Services Pty Ltd (unregistered) (Platform) from 31 January 2014 to 25 September 2017 which had an oral contract with Sixth Respondent for provision of Cleaning Services to Sixth Respondent;
  - c) had a residential address at all relevant time being 57 Haddington Crescent, Greenvale VIC 3059;
  - d) had been employer of the Applicant between 1 May 2014 to 30 December 2015;
  - e) responsible for the overall direction, management and supervision of Platform in relation to its provision of services, engagement of the Applicant, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment;
  - f) responsible for making decisions regarding Platform's operations, including decisions regarding the employment of the Applicant and Applicant's entitlement;
  - g) responsible for ensuring that Platform complied with their legal obligations under the FW Act; and
  - h) an officer of Platform for the purposes of section 793 of the FW Act.
9. the Second Respondent was at all material times the Secretary of Platform.

#### ***Particulars***

*Current and historical ASIC searches for Platform may be inspected at the office of the Applicant's solicitor's office by prior appointment.*

10. At all material times each of the Second Respondent, when engaging in conduct alleged in this Statement of Claim, was an officer of Platform, within the meaning of section 9 of the Corporations Act 2001(Cth).
11. All conduct engaged in by the Second Respondent, alleged in this Statement of Claim was engaged in:
  - a) on behalf of the Platform; and



- b) within the scope of the actual or apparent authority of Second Respondent who engaged in the conduct.
12. By reason of paragraphs 8 to 11 above and subsection 793(1)(a) of the FW Act, the conduct of Second Respondent, alleged in this Statement of Claim is taken to be conduct engaged in by Platform.
  13. By reason of paragraphs 8 and 11 above and subsection 793(2) of the FW Act, when engaging in conduct alleged in this Statement of Claim, the state of mind (including the knowledge) of the Second Respondent, is taken to be the state of mind of Platform.

### **THE THIRD RESPONDENT**

14. The Third Respondent (Stavros Nikolaidis) was at all material times:
  - a) a natural person capable of being sued;
  - b) a director and sole shareholder of SNG69 Pty Ltd (unregistered) (SNG69) from 17 May 2010 to 2 January 2014 and for the relevant period from 29 June 2015 to 14 October 2018, which had an oral contract with Sixth Respondent for provision of Cleaning Services to Sixth Respondent;
  - c) during relevant period, had a residential address 5 Willow Avenue, Cheltenham VIC 3192;
  - d) had been employer of the Applicant between 1 January 2016 to 30 May 2016;
  - e) responsible for the overall direction, management and supervision of SNG69 in relation to its provision of services, engagement of the Applicant, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment;
  - f) responsible for making decisions regarding SNG69's operations, including decisions regarding the employment of the Applicant and Applicant's entitlement;
  - g) responsible for ensuring that SNG69 complied with their legal obligations under the FW Act;
  - h) an officer of SNG69 for the purposes of section 793 of the FW Act.

15. The Second Respondent was at all material times the Secretary of SNG69.

***Particulars***

*Current and historical ASIC searches for SNG69 may be inspected at the office of the Applicant's solicitor's office by prior appointment.*

16. At all material times each of the Third Respondent, when engaging in conduct alleged in this Statement of Claim, was an officer of SNG69, within the meaning of section 9 of the Corporations Act 2001(Cth).
17. All conduct engaged in by the Third Respondent, alleged in this Statement of Claim was engaged in:
- a) on behalf of the SNG69; and b. within the scope of the actual or apparent authority of Third Respondent who engaged in the conduct.
18. By reason of paragraphs 14 to 17 above and subsection 793(1)(a) of the FW Act, the conduct of Third Respondent, alleged in this Statement of Claim is taken to be conduct engaged in by SNG69.
19. By reason of paragraphs 14 to 17 above and subsection 793(2) of the FW Act, when engaging in conduct alleged in this Statement of Claim, the state of mind (including the knowledge) of the Third Respondent, is taken to be the state of mind of SNG69.

**THE FOURTH RESPONDENT**

20. The Fourth Respondent (Maria Tsakopoulos) was at all material times:
- a) a natural person capable of being sued;
  - b) a director of MGMT Enterprise Pty Ltd (unregistered) (MMGT) from 22 October 2015 to 20 February 2017 which had an oral contract with Sixth Respondent for provision of Cleaning Services to Sixth Respondent;
  - c) had a residential address at all relevant time being Unit 2, 24 Mcrina Street, Oakleigh East VIC 3166;
  - d) had been employer of the Applicant between 1 June 2016 to 30 July 2016;
  - e) had been an office bearer and employee of Sixth Respondent, in-charge of the CBD from 3 June 2016 to 28 July 2016;

- f) responsible for the overall direction, management and supervision of MMGT in relation to its provision of services, engagement of the Applicant, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment;
- g) responsible for making decisions regarding MMGT's operations, including decisions regarding the employment of the Applicant and Applicant's entitlement;
- h) responsible for ensuring that MMGT complied with their legal obligations under the FW Act;
- i) an officer of MMGT for the purposes of section 793 of the FW Act.

21. The Second Respondent was at all material times the Secretary of MMGT.

#### *Particulars*

*Current and historical ASIC searches for MMGT may be inspected at the office of the Applicant's solicitor's office by prior appointment.*

22. At all material times, the Fourth Respondent, when engaging in conduct alleged in this Statement of Claim, was an officer of MMGT, within the meaning of section 9 of the Corporations Act 2001(Cth).
23. All conduct engaged in by the Fourth Respondent, alleged in this Statement of Claim was engaged in:
- a) on behalf of the MMGT; and
  - b) within the scope of the actual or apparent authority of Fourth Respondent who engaged in the conduct.
24. By reason of paragraphs 20 to 23 above and subsection 793(1)(a) of the FW Act, the conduct of Fourth Respondent, alleged in this Statement of Claim is taken to be conduct engaged in by MMGT.
25. By reason of paragraphs 20 and 23 above and subsection 793(2) of the FW Act, when engaging in conduct alleged in this Statement of Claim, the state of mind (including the knowledge) of each of the Fourth Respondent, is taken to be the state of mind of MMGT.

#### **THE FIFTH RESPONDENT**

26. The Fifth Respondent (Ioannis Mortis) was at all material times:

- a) a natural person capable of being sued;
  - b) a director and sole shareholder of MML Cleaning Services Pty Ltd (unregistered) (MML) from 27 February 2015 to 4 May 2018 which had an oral contract with Sixth Respondent for provision of Cleaning Services to Sixth Respondent;
  - c) had a residential address at all relevant time being 13 Adrienne Crescent, Mt Waverly VIC 3149;
  - d) had been employer of the Applicant between 1 September 2016 to 30 November 2017;
  - e) responsible for the overall direction, management and supervision of MML in relation to its provision of services, engagement of the Applicant, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment;
  - f) responsible for making decisions regarding MML's operations, including decisions regarding the employment of the Applicant and Applicant's entitlement;
  - g) responsible for ensuring that MML complied with their legal obligations under the FW Act;
  - h) an officer of MML for the purposes of section 793 of the FW Act.
27. The Second Respondent was at all material times the Secretary of MML.

### ***Particulars***

*Current and historical ASIC searches for MML may be inspected at the office of the Applicant's solicitor's office by prior appointment.*

28. At all material times, Fifth Respondent, when engaging in conduct alleged in this Statement of Claim, was an officer of MML, within the meaning of section 9 of the Corporations Act 2001(Cth).
29. All conduct engaged in by the Fifth Respondent, alleged in this Statement of Claim was engaged in:
- a) on behalf of the MML; and
  - b) within the scope of the actual or apparent authority of Fifth Respondent who engaged in the conduct.

30. By reason of paragraphs 26 to 29 above and subsection 793(1)(a) of the FW Act, the conduct of Fifth Respondent, alleged in this Statement of Claim is taken to be conduct engaged in by MML.
31. By reason of paragraphs 26 to 29 above and subsection 793(2) of the FW Act, when engaging in conduct alleged in this Statement of Claim, the state of mind (including the knowledge) of each of the Fifth Respondent, is taken to be the state of mind of MML.

### **THE SIXTH RESPONDENT**

32. The Sixth Respondent, Transclean Facilities Pty Ltd (**Transclean**), at all material times:
- a) is and was a company incorporated under the provisions of the *Corporations Act 2001* (Cth);
  - b) is and was capable of being sued in its corporate name;
  - c) is engaged in the business of providing cleaning services, including the provision of cleaning services to railway facilities;
  - d) was engaged in the business of providing cleaning services to Metro Trains Melbourne facilities (Metro); and
  - e) provided cleaning services to Metro using labour provided by:
    - i) employees employed under contracts of services with the Sixth Respondent (**Transclean Employees**); and
    - ii) the CF & Royal, Platform, SNG69, MMTG and MML.

#### ***Particulars***

*During the relevant time, the Sixth Respondent provided cleaning services to Metro Trains Facilities pursuant to a contract.*

- f) employed the Applicant from 1 April 2016 to 30 November 2017;
33. At all the relevant time, the Sixth Respondent, through its employees, and on occasions through the employees of CF & Royal, Platform, SNG69, MMTG and MML, who were managed and/or supervised by the Sixth Respondent:
- a) exercised management and supervisory control over the work performed by the Employees in the provision of the Services;

- b) required the employees including the Applicant to register their hours in attendance register kept by supervisors and/or in time-sheets, while they were in attendance at work at Metro stations;
- c) required the employees including the Applicant to sign their names in the attendance register verifying the number of hours worked;
- d) required preparation of a summary of hours worked each week (based on the handwritten attendance register/time-sheets) and to send them to the Seventh Respondent;

### ***Particulars***

*The original attendance register and the sent emails may be inspected at the office of the Applicant's solicitor by prior appointment.*

### **THE SEVENTH RESPONDENT**

34. The Seventh Respondent, Shayan Datta, is a natural person capable of being sued and was at all material times:
- a) an employee of the Sixth Respondent;
  - b) employed by the Sixth Respondent in the position of Area manager;
  - c) expressly required, as part of job description to make decisions on behalf of the Sixth Respondent, in relation to recruitment of new staff:
    - i) interview and employ new staff;
    - ii) training and induction of new staff;
    - iii) required the employees to provide their ABN as part of the induction; and
    - iv) provide Transclean ID and uniform to each employee.
  - d) met the Applicant in or about 2011, prior to the Applicant commencing work for CF and discussed:
    - i) that the Sixth Respondent had a contract to clean Metro Trains Melbourne Facilities (**Metro Facilities**);
    - ii) discussed that the Sixth Respondent would employ the Applicant to perform work cleaning the Metro Facilities;

- iii) agreed that the Sixth Respondent would employ the Applicant to perform work cleaning the Metro Facilities; and v) despite the agreement referred to above, thereafter directed the Applicant to invoice CF rather than the Sixth Respondent for the work of cleaning the Metro Facilities.
- e) a person who conduct cleaning inspections and to assess the work performed by various employees working under supervision of the Applicant;
- f) expressly required, as part of job description to provide timely and accurate information to the administration to ensure all staff is paid in accordance with the relevant Award and according to duties/hours of work;
- g) a person responsible for ensuring all appropriate actions are taken to implement company policies, procedures and legislative requirements;
- h) a person who signed his own standard contract of employment for the Sixth Respondent, which refers to the Modern Award and to allowances and penalty rates, annual leave etc. payable under the Modern Award;
- i) aware of the duties and shifts performed by the employees (including the Applicant) of the CF & Royal, Platform, SNG69, MMGT and MML;
- j) aware that the Applicant after finishing 38 hours of work with the Sixth Respondent was performing the same duties in the capacity of employee of MMGT and MML;
- k) a person who received the attendance records of all the employees (including for the Applicant) of the CF & Royal, Platform, SNG69, MMGT and MML.

#### ***Particulars***

*A copy of contract of employment of Seventh Respondent describing his duties described above and various email communications from the Seventh Respondent directing the Applicant ensuring the performance of cleaning work in accordance with requirement of Metro may be inspected at the office of the Applicant's solicitor by prior appointment.*

#### **THE EIGHTH RESPONDENT**

35. The Eight Respondent, **George Haritos** was at all material times:

- a) a natural person capable of being sued;
  - b) one of the two directors of the Sixth Respondent;
  - c) responsible for the overall direction, management and supervision of the Sixth Respondent in relation to its provision of Services, engagement of the Employees, negotiation of commercial contracts, and the setting and adjusting of its pay rates and conditions of employment;
  - d) responsible for making decisions regarding the Sixth Respondent's operations, including decisions regarding the employment of the Employees and employee entitlements;
  - e) responsible for ensuring that the Sixth Respondent complied with its legal obligations under the FW Act;
  - f) an officer of the Sixth Respondent, within the meaning of section 9 of the Corporations Act 2001 (Cth); and g. an officer of the Sixth Respondent for the purposes of section 793 of the FW Act.
- 35A.** The Eighth Respondent is and was at all material times the Secretary of the Sixth Respondent.
36. At all material times each of the First Respondent, Fourth Respondent and Seventh Respondent, when engaging in conduct alleged in this Statement of Claim, was an employee of the Sixth Respondent.
37. All conduct engaged in by the First Respondent, Fourth Respondent, Seventh Respondent and Eighth Respondent alleged in this Statement of Claim was engaged in:
- a) on behalf of the Sixth Respondent; and
  - b) within the scope of the actual or apparent authority of the person who engaged in the conduct.
38. By reason of paragraphs 20 and 34 to 37 above and subsection 793(1)(a) of the FW Act, the conduct of each of the Fourth Respondent, Seventh Respondent and Eighth Respondent alleged in this Statement of Claim is taken to be conduct engaged in by the Sixth Respondent.
39. By reason of paragraphs 20 and 34 to 37 above and subsection 793(2) of the FW Act, when engaging in conduct alleged in this Statement of Claim, the state of mind (including the knowledge) of each of the



Fourth Respondent, Seventh Respondent and Eighth Respondent is taken to be the state of mind of the Sixth Respondent.

### EMPLOYMENT OF THE APPLICANT

40. In connection with the provision of the Services to the Sixth Respondent, CF & Royal, Platform, SNG69, MMGT and MML engaged the Applicant during the following periods:

Employer	Period of employment
CF & Royal /First Respondent)	1 May 2011 to 10 October 2012 11 October 2012 to 30 April 2014
Platform /Second Respondent	1 May 2014 to 30 December 2015
SNG69/Third Respondent	1 January 2016 to 30 May 2016
MMGT/Fourth Respondent	1 June 2016 to 30 July 2016
MML/ Fifth Respondent	1 September 2016 to 30 Nov 2017
Transclean/ Sixth Respondent	1 April 2016 to 30 November 2017

41. During the periods from 1 May 2011 to 30 November 2017, the Applicant performed cleaning services such as rubbish collection, sweeping and general cleaning duties for CF & Royal, Platform, SNG69, MMGT and MML at Metro facilities, in connection with the provision of Services by CF & Royal, Platform, SNG69, MMGT and MML to the Sixth Respondent under the Cleaning Services Supplies Contract (Cleaning Duties).
42. From March 2013, in addition to performing Cleaning Duties, the Applicant performed leading hand duties including supervising up to 10 employees for the greater part of each shift (Leading Hand Duties).
43. During the relevant period, the Applicant performed the Cleaning Duties at Metro Facilities, most commonly and including on Saturdays, Sundays, Public Holidays or at Night.

#### **Particulars**

*The hours worked by the Applicant during the relevant time have been determined by reference to the attendance register and time-sheets sent to the Seventh Respondent referred to in paragraphs 33 (b) -33(d) & 34(k) above.*

*Copies of these documents may be inspected at the office of the Applicant's solicitors by prior Appointment.*

## **THE APPLICANT WAS EMPLOYED UNDER A CONTRACT OF EMPLOYMENT**

44. At or about the date of Applicant's first engagement by CF, the Seventh Respondent imparted training and conducted his induction by giving him documents prepared by the Sixth Respondent and named 'induction manual'(Induction manual).

### ***Particulars***

*A copy of induction manual bearing logo and name of Sixth Respondent may be inspected at the office of the Applicant's solicitors by prior Appointment.*

45. At the initial training & induction, the employees were given Uniforms, ID Cards and were required to provide ABN etc. It was such an important and indispensable process that an employee could not work at Metro facilities without induction.
46. At the relevant times that the Applicant performed the duties referred to in paragraphs 41 and 42, the Applicant:
- a) was subject to the requirements contained in the document 'Induction manual';
  - b) was subject to direction, supervision and management, in relation to where, when and how he performed his duties, by CF & Royal, Platform, SNG69, MGMT, MML and the Sixth Respondent;
  - c) was required by CF & Royal, Platform, SNG69, MGMT, MML and the Sixth Respondent, at the commencement and at the end of each shift to get his timings recorded in the attendance register, sign in the register to verify the hours worked, which led to the creation of spread sheets sent to the Seventh Respondent;
  - d) did not supply any capital, equipment or uniform relating to or connected with the performance of the Services;
  - e) wore uniform and identity card supplied by the Sixth Respondent;
  - f) used equipment & consumables cleaning goods supplied by the Sixth Respondent.
47. At all material times, the Applicant attended at the Metro facilities to commence work:

- a) at start times dictated by CF & Royal, Platform, SNG69, MMGT and MML; or
  - b) at start times dictated by the Sixth Respondent.
48. At all material times, the Applicant finished work at Metro facilities at end times directed by the Sixth Respondent.
49. The Sixth Respondent, when it engaged in the conduct referred to in paragraphs 32,33 and 46(b), 46(c), 46(e), 46(f), 47(b) and 48 above, engaged in that conduct:
- a) on behalf of, at the direction, or with consent or agreement of CF & Royal, Platform, SNG69, MMGT and MML; and
  - b) at the direction or with the consent or agreement of First Respondent, Second Respondent, Third Respondent, Fourth Respondent or Fifth Respondent respectively, each of them being an officer of the corresponding company being CF & Royal, Platform, SNG69, MMGT and MML.
50. The giving of direction, consent or agreement referred to in paragraph 49 above was within the scope of the actual or apparent authority of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent.

#### ***Particulars***

*The First Respondent and the Fourth Respondent were also employees of the Sixth Respondent at the relevant time.*

51. By reason of section 793(1)(b) of the FW Act, the conduct of the Sixth Respondent, referred to in paragraphs 32,33 and 46(b), 46(c), 46(e), 46(f), 47(b) and 48 above, is taken to be conduct engaged in by the CF & Royal, Platform, SNG69, MMGT and MML.
52. At all material times, the Applicant personally performed the Cleaning Duties and the Leading Hand Duties for the CF & Royal, Platform, SNG69, MMGT and MML.
53. Due to requirements referred to at paragraphs 45, 46(a) and 46(e) above, the Applicant could not subcontract others to perform Cleaning Duties or Leading Hand Duties.
54. The Applicant could not delegate to others performance of the Cleaning Duties or Leading Hand Duties.

55. At all material times, the Applicant:
- a) did not submit or provide invoices to the CF & Royal, Platform, SNG69, MMGT and MML in relation to the performance of the Cleaning Duties or the Leading Hand Duties;
  - b) was not required by CF & Royal, Platform, SNG69, MMGT and MML to submit or provide invoices to the CF & Royal, Platform, SNG69, MMGT and MML in relation to the performance of the Cleaning Duties or the Leading Hand Duties;
  - c) was directed by the Seventh Respondent to submit the invoices/timesheets to him by email.
56. At all material times, the Applicant did not submit or provide to CF & Royal, Platform, SNG69, MMGT and MML or any other person any details or documents relating to any insurance of any kind including WorkCover insurance.
57. The CF & Royal, Platform, SNG69, MMGT and MML:
- a) paid to the Applicant's nominated bank account, by electronic funds transfer, remuneration in relation to each of the shifts during which the Applicant worked at Metro facilities during the relevant period;
  - b) determined the amount paid to the Applicant for each shift worked in accordance with the hours recorded in the attendance register & timesheets and sent to email of the Seventh Respondent; and
  - c) set the hourly rates of pay without any negotiations with the Applicant.
58. The Applicant did not conduct business in his own right in that the Applicant did not:
- a) tendered for work at the Metro facilities;
  - b) sub-contracted his Cleaning Duties or Leading Hand Duties;
  - c) maintain his own business premises; or
  - d) advertise or otherwise promoted his availability to perform work as contract cleaner.
59. By reason of paragraphs 44 to 58 above, the Applicant during the time referred to in paragraph 40 above, was employed by CF & Royal,

Platform, SNG69, MMGT and MML under a contract of employment, under which CF & Royal, Platform, SNG69, MMGT and MML were the employers of the Applicant.

***Particulars***

*The Applicant relies on the totality of the relationship between the Applicant and CF & Royal, Platform, SNG69, MMGT and MML including the matters referred to in paragraphs 44 to 58 above.*

**LEGISLATION AND APPLICABLE AWARD**

60. At all material times, CF & Royal, Platform, SNG69, MMGT and MML were bound by the FW Act in respect of the employment of the Applicant.

61. Throughout the relevant period, the Cleaning Services Award 2010 (Modern Award) covered and applied to CF & Royal, Platform, SNG69, MMGT and MML in relation to the employment of the Applicant.

***Particulars***

a) *Pursuant to section 49(2) of the FW Act and clause 2.1 of the Modern Award, the Modern Award commenced operation on 1 January 2010.*

b) *Pursuant to section 47(1) and 48(3) of the FW Act, a modern award applies to an employer if the award is expressed to cover the employer, the modern award is in operation and no other provision of the FW Act applies so that the modern award does not apply to the employer.*

c) *The Modern Award covers employers and the Applicant within the “contract cleaning services industry” as defined in clause 4.2 of the Modern Award.*

d) *By reason of matters pleaded at paragraphs 2(b), 8(b), 14(b), 20(b), 26(b) and 41 above, CF & Royal, Platform, SNG69, MMGT and MML employed the Applicant in the contract cleaning service industry.*

e) *By reasons of matters pleaded at paragraphs 41 & 42 above, when the Applicant performed work for CF & Royal, Platform, SNG69, MMGT and MML, he fell within the scope of the*

*classification structure provided in Schedule D to the Modern Award.*

62. Throughout the relevant period, each of CF & Royal, Platform, SNG69, MMGT and MML were required to comply with Modern Award in relation to the terms and conditions of employment of the employees.

***Particulars***

*Pursuant to section 45 of the FW Act a person must not contravene a term of a modern award that applies to the person.*

63. By reason of performing the Cleaning Duties as pleaded in paragraph 41 above, part of the work performed by the Applicant was properly characterised as Cleaning Services Employee Level One as set out in clause D.1 of Schedule D to the Modern Award (**Level One Employee**).
64. By reason of performing the Leading Hand Duties as pleaded in paragraph 42 above in addition to the Cleaning Duties as pleaded in paragraph 41 above, some of the work performed by the Applicant was properly characterized as Cleaning Services Employee Level Two as set out in clause D.2 of Schedule D to the Modern Award.
65. Throughout the relevant period of employment with each of CF & Royal, Platform, SNG69, MMGT and MML, the Applicant:
- a) performed work in excess of 38 hours' work per week;
  - b) worked hours which were intermittent and irregular;
  - c) was employed to work uncertain hours;
  - d) did not receive or accrue any paid leave entitlements; and e. by reason of the above, performed work for CF & Royal, Platform, SNG69, MMGT and MML on a casual basis.
66. The employment of the Applicant with the Sixth Respondent was on permanent full time basis. Throughout, the relevant period of employment with the Sixth Respondent, the Applicant performed work for 38 hours' work per week.

***Particulars***

*The worked hours in excess of 38 hours were paid by Fourth Respondent and the Fifth Respondent, hence, payment of penalty rate was avoided.*

## **ALLEGED SHAM CONTRACTING CONTRAVENTIONS**

### **Representing an employment contract as a contract for services (subsection 357(1) of the FW Act)**

67. During the relevant period, each of CF & Royal, Platform, SNG69, MMGT and MML through their respective officers, employees and agents (the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent) required the Applicant to provide them an Australian Business Number (ABN) in order to be engaged by them.
68. During the relevant period, each of CF & Royal, Platform, SNG69, MMGT and MML through their respective officers, employees and agents (the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent) required the Applicant to prepare invoices (including GST in them) for the hours worked and to send them to the Seventh Respondent for checking their accuracy and for making the payment.
69. The conduct engaged in by the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent as pleaded in paragraphs 67 and 68 above was conduct engaged in by each of them on behalf of CF & Royal, Platform, SNG69, MMGT and MML respectively, as an officer, employee or agent of CF & Royal, Platform, SNG69, MMGT and MML, within the scope of their actual or apparent authority.
70. By reason of subsection 793(1)(a) of the FW Act, the conduct engaged in by the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent as pleaded in paragraph 67 and 68 above, is taken to be conduct engaged in by CF & Royal, Platform, SNG69, MMGT and MML.
71. Further to paragraphs 69 and 70 above:
  - a) the conduct engaged in by the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent as pleaded in paragraphs 67 & 68 above was conduct engaged in by each of them on behalf of CF & Royal, Platform, SNG69, MMGT and

MML, at the direction or with consent or agreement of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent; and

- b) the giving of the direction, consent or agreement referred to in paragraph 71(a) above was within the scope of the actual or apparent authority of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and the Seventh Respondent.

72. By reason of the matters pleaded at paragraphs 67 to 71 above, during the relevant period, CF & Royal, Platform, SNG69, MMGT and MML represented to the Applicant that he 23 was, would be, engaged under a contract for services under which the Applicant performed, or would perform, work as an independent contractor.

73. During the relevant period, contrary to the representations made to the Applicant as pleaded at paragraph 72 above, by reasons of the matter pleaded in paragraphs 44 to 59 above, the Applicant was:

- a) employed pursuant to a contract of employment; and b. at law, engaged as employee pursuant to a contract of employment and not a contract for services.

74. By reason of matters pleaded in paragraphs 67 to 73, each of CF & Royal, Platform, SNG69, MMGT and MML contravened subsection 357(1) of the FW Act, in respect of the Applicant, by representing to him that the contract of employment under which the Applicant would be, employed by CF & Royal, Platform, SNG69, MMGT and MML was a contract for services under which the Applicant performed, or would perform, work as an independent contractor.

## **ALLEGED UNDERPAYMENT CONTRAVENTIONS**

### **Actual Rates of Pay**

75. During 17 March 2013 to 30 April 2014 (**relevant period**), each of CF & Royal, Platform, SNG69 (MMGT & MML paid rates in excess of base hourly rates) paid the Applicant the following hourly rates, in relation to hours of work recorded in attendance register and excel sheets sent to Seventh Respondent:



- a) \$16 per hour for each hour on Monday to Friday;
- b) \$16 per hour for each hour on a Saturday;
- c) \$16 per hour for each hour on a Sunday; and d. \$16 per hour for each hour on a Public Holiday.

(collectively, **Actual Rates of Pay**)

76. The total amount paid by each of CF & Royal, Platform, SNG69, MMGT and MML to the Applicant are set out in column 4 to Annexure 1.

### ***Particulars***

*The amounts paid by Royal have been determined by reference to the bank statements and the Applicant's hours recorded in the attendance register and from the invoices/timesheets sent to Seventh Respondent.*

### **Actual hours worked by the Applicant**

77. The actual hours worked by the Applicant:
- a) were those times during which the Applicant was at Metro Facilities at the direction of each of CF & Royal, Platform, SNG69, MMGT, MML or the Sixth Respondent or the Seventh Respondent or the Eighth Respondent and available to perform work for CF & Royal, Platform, SNG69, MMGT and MML; and
  - b) commenced at the time that the Applicant registered his arrival at work in the attendance register, and ended when the Applicant registered his departure in the attendance register by signing his name (Actual Hours Worked).

### ***Particulars***

- A. *The attendance register records, the times that the Applicant was in attendance for work at the Metro Facilities at the direction of CF & Royal, Platform, SNG69, MMGT, MML or Sixth Respondent or the Seventh Respondent or Eighth Respondent and available to perform work for CF & Royal, Platform, SNG69, MMGT and MML.*
- B. *The Actual Hours Worked by the Applicant during the relevant period have been determined reference to the hours recorded in the attendance register and from the invoices/timesheets sent to the Seventh Respondent.*

**Failure to pay base hourly rate of pay (Clause 16.1 of the Modern Award)****ROYAL**

78. During the relevant period (for Royal/First Respondent), pursuant to clause 16.1 of the Modern Award, Royal was required to pay the Applicant the following minimum hourly rates of pay in respect of each ordinary hours worked on Mondays to Fridays:

79.	17 March 2013 to 30 Jun 2013	7 July 2013 to 30 April 2014
Level One Employee	17.05	17.49
Level Two Employee	17.64	18.09

(collectively, the **Minimum Hourly Rates of Pay**)

80. During the relevant period (for Royal/First Respondent), the Applicant worked the number of ordinary hours set out in column 2 of Annexure 1.

81. During the relevant period, Royal paid the Applicant for each hour recorded in the attendance register for time worked on Mondays to Fridays at the rate set out in paragraph 75(a) above.

***Particulars***

*The total amount paid to the Applicant for each ordinary hour recorded in the attendance register in the relevant period is set out in column 4 of the table at Annexure 1.*

82. By reason of the matters pleaded in paragraphs 78 to 81 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant the Minimum Hourly Rates of Pay payable under clause 16.1 of the Modern Award for each Ordinary hour worked on Mondays to Fridays during the relevant period.

83. By reason of the contravention alleged in paragraph 82 above, Royal underpaid the Applicant a total of \$8488.45.

***Particulars***

*The total underpayment to the Applicant for ordinary hours worked on Mondays to Fridays is set out in column 6 of the table at Annexure 1.*

**PLATFORM**

84. During the relevant period (for Platform/Second Respondent), pursuant to clause 16.1 of the Modern Award, Royal was required to pay the Applicant the following minimum hourly rates of pay in respect of each ordinary hours worked on Mondays to Fridays:

85.		1 May 2014 to 30 Jun 2014	1 July 2014 to 30 June 2015	1 July 15 to 30 Dec 2015
Level One Employee		17.49	18.01	18.46
Level Two Employee		18.09	18.64	19.10

(collectively, the **Minimum Hourly Rates of Pay**)

86. During the relevant period (for Platform/Second Respondent), the Applicant worked the number of ordinary hours set out in column 2 of Annexure 1.
87. During the relevant period, Platform paid the Applicant for each hour recorded in the attendance register for time worked on Mondays to Fridays at the rate set out in paragraph 75(a) above.

***Particulars***

*The total amount paid to the Applicant for each ordinary hour recorded in the attendance register in the relevant period is set out in column 4 of the table at Annexure 1.*

88. By reason of the matters pleaded in paragraphs 84 to 87 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant the Minimum Hourly Rates of Pay payable under clause 16.1 of the Modern Award for each Ordinary hour worked on Mondays to Fridays during the relevant period.
89. By reason of the contravention alleged in paragraph 88 above, Platform underpaid the Applicant a total of \$19,238.64

***Particulars***

*The total underpayment to the Applicant for ordinary hours worked on Mondays to Fridays is set out in column 6 of the table at Annexure 1.*

**SNG69**

90. During the relevant period (for SNG69/Third Respondent), pursuant to clause 16.1 of the Modern Award, SNG69 was required to pay the Applicant the following minimum hourly rates of pay in respect of each ordinary hours worked on Mondays to Fridays:

91.	1 January 2016 to 30 May 2016
Level One Employee	18.46
Level Two Employee	19.10

(collectively, the **Minimum Hourly Rates of Pay**)

92. During the relevant period (for SNG69/Third Respondent), the Applicant worked the number of ordinary hours set out in column 2 of Annexure 1.
93. During the relevant period, SNG69 paid the Applicant for each hour recorded in the attendance register for time worked on Mondays to Fridays at the rate set out in paragraph 75(a) above.

***Particulars***

*The total amount paid to the Applicant for each ordinary hour recorded in the attendance register in the relevant period is set out in column 4 of the table at Annexure 1.*

94. By reason of the matters pleaded in paragraphs 90 to 93 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant the Minimum Hourly Rates of Pay payable under clause 16.1 of the Modern Award for each Ordinary hour worked on Mondays to Fridays during the relevant period.
95. By reason of the contravention alleged in paragraph 94 above, SNG69 underpaid the Applicant a total of \$4,594.00

***Particulars***

*The total underpayment to the Applicant for ordinary hours worked on Mondays to Fridays is set out in column 6 of the table at Annexure 1.*

**MMGT**

96. During the relevant period (for MMGT/Fourth Respondent), pursuant to clause 16.1 of the Modern Award, MMGT was required to pay the Applicant the following minimum hourly rates of pay in respect of each ordinary hours worked on Mondays to Fridays:

97.	1 June 2016 to 30 June 2016	1 July 2016 to 30 July 2016
Level One Employee	18.46	18.91
Level Two Employee	19.10	19.56

(collectively, the **Minimum Hourly Rates of Pay**)

98. During the relevant period (for MMGT/Fourth Respondent), the Applicant worked the number of ordinary hours set out in column 2 of Annexure 1.
99. During the relevant period, MMGT paid the Applicant for each hour recorded in the attendance register for time worked on Mondays to Fridays at the rate set out in paragraph 75(a) above.

**Particulars**

*The total amount paid to the Applicant for each ordinary hour recorded in the attendance register in the relevant period is set out in column 4 of the table at Annexure 1.*

100. By reason of the matters pleaded in paragraphs 96 to 99 above, and MMGT paying marginally above the Minimum Hourly Rates of Pay did not contravene section 45 of FW Act in relation to this aspect.
101. By reason of payment of stated in paragraph 100 above, MMGT overpaid the Applicant a total of \$1,472.78.

**Particulars**

*The total overpayment to the Applicant for ordinary hours worked on Mondays to Fridays is set out in column 6 of the table at Annexure 1*

**MML**

102. During the relevant period (for MML/Fifth Respondent), pursuant to clause 16.1 of the Modern Award, MML was required to pay the Applicant the following minimum hourly rates of pay in respect of each ordinary hours worked on Mondays to Fridays:

103.	1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee	18.91	19.53
Level Two Employee	19.56	20.21

(collectively, the **Minimum Hourly Rates of Pay**)

104. During the relevant period (for MML/Fifth Respondent), the Applicant worked the number of ordinary hours set out in column 2 of Annexure 1.
105. During the relevant period, MML paid the Applicant for each hour recorded in the attendance register for time worked on Mondays to Fridays at the rate set out in paragraph 75(a) above.

***Particulars***

*The total amount paid to the Applicant for each ordinary hour recorded in the attendance register in the relevant period is set out in column 4 of the table at Annexure 1.*

106. By reason of the matters pleaded in paragraphs 102 to 105 above, MML paying marginally above the Minimum Hourly Rates of Pay did not contravene section 45 of FW Act in relation to this aspect.
107. By reason of payment stated in paragraph 106 above, MML overpaid the Applicant a total of \$7,451.46

***Particulars***

*The total overpayment to the Applicant for ordinary hours worked on Mondays to Fridays is set out in column 6 of the table at Annexure 1*

**Failure to pay casual loading (Clause 12.5(a) of the Modern Award)**

108. During the relevant period, pursuant to clause 12.5(a) of the Modern Award, CF & Royal, Platform, SNG69, MMGT and MML were required to pay the Applicant a casual loading of 25% of the Ordinary hourly rate for the classification in which the Applicant was employed, for each Actual Hour Worked by him.

***Particulars***

*The Applicant refers to and repeats the matters pleaded at paragraph 65 above.*

**ROYAL**

109. During the relevant employment period with Royal, the applicable casual loading was:

110.	17 March 2013 to 30 Jun 2013	7 July 2013 to 30 April 2014
Level One Employee	4.2625	4.3725
Level Two Employees	4.41	4.5225

(collectively **Casual Loading Rates**)

111. During the relevant time, the number of Actual Hours Worked by the Applicant for which the Casual Loading Rates were applicable is set out in Column 2 of the table at Annexure-2.
112. During the relevant period, the Actual Rates of Pay paid by Royal to the Applicant were not sufficient to meet his entitlement to the full Casual Loading Rates payable to him for each Actual Hour Worked.

***Particulars***

- A. *The total amount paid to the Applicant in respect of casual loading is set out in Column 4 of the table at Annexure 2.*
- B. *Applicant's entitlement to the Casual Loading Rates during the relevant period is set out in Column 3 of the table at Annexure 2.*
113. By reason of the matters pleaded in paragraphs 108 to 112 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant the Casual Loading Rates payable under Clause 12.5(a) of the Modern Award.
114. By reason of the contravention alleged in paragraph 113 above, Royal underpaid the Applicant a total of \$24,979.90

***Particulars***

*The total underpayments to the Applicant in respect of the Casual Loading Rates is set out in Column 5 of the table at Annexure 2.*

**PLATFORM**

115. During the relevant employment period with Platform, the applicable casual loading was:

116.	1 May 2014 to 30 Jun 2014	1 July 2014 to 30 June 2015	1 July 15 to 30 Dec 2015
Level One Employee	4.3725	4.5025	4.615
Level Two Employee	4.5225	4.66	4.775

(collectively **Casual Loading Rates**)

117. During the relevant time, the number of Actual Hours Worked by the Applicant for which the Casual Loading Rates were applicable is set out in Column 2 of the table at Annexure-2.
118. During the relevant period, the Actual Rates of Pay paid by Platform to the Applicant were not sufficient to meet his entitlement to the full Casual Loading Rates payable to him for each Actual Hour Worked.

***Particulars***

- A. *The total amount paid to the Applicant in respect of casual loading is set out in Column 4 of the table at Annexure 2.*
- B. *Applicant's entitlement to the Casual Loading Rates during the relevant period is set out in Column 3 of the table at Annexure 2.*
119. By reason of the matters pleaded in paragraphs 108 and 115 to 118 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant the Casual Loading Rates payable under Clause 12.5(a) of the Modern Award.
120. By reason of the contravention alleged in paragraph 119 above, Platform underpaid the Applicant a total of \$39,909.56

***Particulars***

*The total underpayments to the Applicant in respect of the Casual Loading Rates is set out in Column 5 of the table at Annexure 2.*

**SNG69**

121. During the relevant employment period with SNG69, the applicable casual loading was:

122.	1 January 2016 to 30 May 2016
Level One Employees	4.615
Level Two Employees	4.775

(collectively **Casual Loading Rates**)

123. During the relevant time, the number of Actual Hours Worked by the Applicant for which the Casual Loading Rates were applicable is set out in Column 2 of the table at Annexure-2.
124. During the relevant period, the Actual Rates of Pay paid by SNG69 to the Applicant were not sufficient to meet his entitlement to the full Casual Loading Rates payable to him for each Actual Hour Worked.

***Particulars***



- A. *The total amount paid to the Applicant in respect of casual loading is set out in Column 4 of the table at Annexure 2.*
- B. *Applicant's entitlement to the Casual Loading Rates during the relevant period is set out in Column 3 of the table at Annexure 2.*
125. By reason of the matters pleaded in paragraphs 108 and 121 to 124 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant the Casual Loading Rates payable under Clause 12.5(a) of the Modern Award.
126. By reason of the contravention alleged in paragraph 125 above, SNG69 underpaid the Applicant a total of \$10,468.20

**Particulars**

*The total underpayments to the Applicant in respect of the Casual Loading Rates is set out in Column 5 of the table at Annexure 2.*

**MMGT**

127. During the relevant employment period with MMGT, the applicable casual loading was:

128.	1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee	4.7275	4.8825
Level Two Employee	4.89	5.0525

(collectively **Casual Loading Rates**)

129. During the relevant time, the number of Actual Hours Worked by the Applicant for which the Casual Loading Rates were applicable is set out in Column 2 of the table at Annexure-2.
130. During the relevant period, the Actual Rates of Pay paid by MMGT to the Applicant were not sufficient to meet his entitlement to the full Casual Loading Rates payable to him for each Actual Hour Worked.

**Particulars**

- A. *The total amount paid to the Applicant in respect of casual loading is set out in Column 4 of the table at Annexure 2.*
- B. *Applicant's entitlement to the Casual Loading Rates during the relevant period is set out in Column 3 of the table at Annexure 2.*
131. By reason of the matters pleaded in paragraphs 108 and 127 to 130 above, MMGT contravened section 45 of the FW Act by failing to pay

the Applicant the Casual Loading Rates payable under Clause 12.5(a) of the Modern Award.

132. By reason of the contravention alleged in paragraph 131 above, MMGT underpaid the Applicant a total of \$ 2,663.70

***Particulars***

*The total underpayments to the Applicant in respect of the Casual Loading Rates is set out in Column 5 of the table at Annexure 2.*

**MML**

133. During the relevant employment period with MML, the applicable casual loading was:

134.	1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee	4.7275	4.8825
Level Two Employee	4.89	5.0525

(collectively **Casual Loading Rates**)

135. During the relevant time, the number of Actual Hours Worked by the Applicant for which the Casual Loading Rates were applicable is set out in Column 2 of the table at Annexure-2.

136. During the relevant period, the Actual Rates of Pay paid by MML to the Applicant were not sufficient to meet his entitlement to the full Casual Loading Rates payable to him for each Actual Hour Worked.

***Particulars***

*A. The total amount paid to the Applicant in respect of casual loading is set out in Column 4 of the table at Annexure 2.*

*B. Applicant's entitlement to the Casual Loading Rates during the relevant period is set out in Column 3 of the table at Annexure 2.*

137. By reason of the matters pleaded in paragraphs 108 and 133 to 136 above, MML contravened section 45 of the FW Act by failing to pay the Applicant the Casual Loading Rates payable under Clause 12.5(a) of the Modern Award.

138. By reason of the contravention alleged in paragraph 137 above, MML underpaid the Applicant a total of \$16,951.94

***Particulars***

*The total underpayments to the Applicant in respect of the Casual Loading Rates is set out in Column 5 of the table at Annexure 2.*

**Failure to pay afternoon and non-permanent night shift penalty rates (Clause 27.1)**

139. Pursuant to clause 27.1 of the Modern Award, an employer was required to pay the Applicant an afternoon and non-permanent night shift penalty of 15% of the ordinary hourly rate for the classification in which the Applicant was employed, for each hour 37 worked by the Applicant during the relevant period which was part of any shift Monday to Friday starting 6.00am or finishing after 6.00pm (**Afternoon/Night Shift Penalty**).

**ROYAL**

140. The amount of Afternoon/Night Shift Penalty to be paid by Royal for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

141.	1 June 2016 to 30 June 2016	1 July 2016 to 30 July 2016
Level One Employee	2.769	2.8365
Level Two Employee	2.865	2.934

(Collectively **Afternoon/Night Shift Penalty Rates**)

142. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Afternoon/Night Shift Penalty was payable is set out in Column 2 of the table at Annexure 3.
143. Throughout the relevant period, Royal did not pay the Applicant any amount towards the Afternoon/Night Shift Penalty Rates.
144. By reason of the matters pleaded in paragraphs 139 to 143 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant the Afternoon/Night Shift Penalty Rates payable under clause 27.1 of the Modern Award.
145. By reason of the contravention alleged at paragraph 144 above, Royal underpaid the Applicant a total of \$4,897.20

**Particulars**

*The total underpayments to the Applicant in respect of the Afternoon/Night Shift Penalty Rates is set out in Column 5 of the table at Annexure 3.*

**PLATFORM**

146. The amount of Afternoon/Night Shift Penalty to be paid by Platform for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

147.	1 May 2014 to 30 Jun 2014	1 July 2014 to 30 June 2015	1 July 15 to 30 Dec 2015
Level One Employee	2.6235	2.7015	2.769
Level Two Employee	2.7135	2.796	2.865

Collectively **Afternoon/Night Shift Penalty Rates**)

148. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Afternoon/Night Shift Penalty was payable is set out in Column 2 of the table at Annexure 3.
149. Throughout the relevant period, Platform did not pay the Applicant any amount towards the Afternoon/Night Shift Penalty Rates.
150. By reason of the matters pleaded in paragraphs 139 and 146 to 149 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant the Afternoon/Night Shift Penalty Rates payable under clause 27.1 of the Modern Award.
151. By reason of the contravention alleged at paragraph 150 above, Platform underpaid the Applicant a total of \$6,908.40

**Particulars**

*The total underpayments to the Applicant in respect of the Afternoon/Night Shift Penalty Rates is set out in Column 5 of the table at Annexure 3.*

**SNG69**

152. The amount of Afternoon/Night Shift Penalty to be paid by SNG69 for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

153.	1 January 2016 to 30 May 2016
------	----------------------------------

Level One Employee	2.769
Level Two Employee	2.865

(Collectively Afternoon/Night Shift Penalty Rates)

154. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Afternoon/Night Shift Penalty was payable is set out in Column 2 of the table at Annexure 3.
155. Throughout the relevant period, Platform did not pay the Applicant any amount towards the Afternoon/Night Shift Penalty Rates.
156. By reason of the matters pleaded in paragraphs 139 and 152 to 155 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant the Afternoon/Night Shift Penalty Rates payable under clause 27.1 of the Modern Award.
157. By reason of the contravention alleged at paragraph 156 above, SNG69 underpaid the Applicant a total of \$2,042.04

#### *Particulars*

*The total underpayments to the Applicant in respect of the Afternoon/Night Shift Penalty Rates is set out in Column 5 of the table at Annexure 3.*

#### **MMGT**

158. The amount of Afternoon/Night Shift Penalty to be paid by MMGT for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

159.	1 June 2016 to 30 June 2016	1 July 2016 to 30 July 2016
Level One Employee	2.769	2.8365
Level Two Employee	2.865	2.934

(Collectively **Afternoon/Night Shift Penalty Rates**)

160. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Afternoon/Night Shift Penalty was payable is set out in Column 2 of the table at Annexure 3.
161. Throughout the relevant period, MMGT did not pay the Applicant any amount towards the Afternoon/Night Shift Penalty Rates.

162. By reason of the matters pleaded in paragraphs 139 and 158 to 161 above, MMGT contravened section 45 of the FW Act by failing to pay the Applicant the Afternoon/Night Shift Penalty Rates payable under clause 27.1 of the Modern Award.
163. By reason of the contravention alleged at paragraph 162 above, MMGT underpaid the Applicant a total of \$694.20.

***Particulars***

*The total underpayments to the Applicant in respect of the Afternoon/Night Shift Penalty Rates is set out in Column 5 of the table at Annexure 3.*

*Rates is set out in Column 5 of the table at Annexure 3.*

**MML**

164. The amount of Afternoon/Night Shift Penalty to be paid by MML for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

165.	1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee	2.8365	2.9295
Level Two Employee	2.934	3.0315

(Collectively **Afternoon/Night Shift Penalty Rates**)

166. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Afternoon/Night Shift Penalty was payable is set out in Column 2 of the table at Annexure 3.
167. Throughout the relevant period, MML did not pay the Applicant any amount towards the Afternoon/Night Shift Penalty Rates.
168. By reason of the matters pleaded in paragraphs 139 and 164 to 167 above, MML contravened section 45 of the FW Act by failing to pay the Applicant the Afternoon/Night Shift Penalty Rates payable under clause 27.1 of the Modern Award.
169. By reason of the contravention alleged at paragraph 168 above, MML underpaid the Applicant a total of \$5,849.64

***Particulars***

*The total underpayments to the Applicant in respect of the Afternoon/Night Shift Penalty Rates is set out in Column 5 of the table at Annexure 3.*

### **Failure to pay Saturday Penalty Rate (Clause 27.2(a) of the Modern Award**

170. Pursuant to clause 27.2(a) of the Modern Award, the employers were required to pay the Applicant a Saturday Penalty rate of time and half of the ordinary hourly rate for the classification in which he was employed, for each hour worked by the Applicant during the relevant period which was not overtime and which was worked between midnight Friday and midnight Saturday (Saturday Penalty).

#### **ROYAL**

171. The amount of Saturday Penalty to be paid by Royal, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

172.	17 March 2013 to 30 Jun 2013	7 July 2013 to 30 April 2014
Level One Employee	25.575	26.235
Level Two Employee	26.46	27.135

(collectively, Saturday Penalty Rates)

173. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Saturday Penalty Rate was payable is set out in Column 2 of table at Annexure 4.

174. During the relevant period, Royal paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Saturday at the rate set out in paragraph 75(b) above.

#### ***Particulars***

*The total amount paid to each employee for hours worked on Saturday is set out in Column 4 of the table at Annexure 4.*

175. By reason of paragraphs 171 to 174 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant the Saturday Penalty Rates payable under clause 27.2(a) of the Modern Award.

176. By reason of contravention alleged in paragraph 175 above, Royal underpaid the Applicant a total of \$6,911.28

#### ***Particulars***

*The total underpayment to Applicant in respect of the Saturday Penalty Rates is set out in Column 5 of the table at Annexure 4.*

#### **PLATFORM**

177. The amount of Saturday Penalty to be paid by Platform, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

178.	1 May 2014 to 30 Jun 2014	1 July 2014 to 30 June 2015	1 July 15 to 30 Dec 2015
Level One Employee	26.235	27.015	27.69
Level Two Employee	27.135	27.96	28.65

(collectively, Saturday Penalty Rates)

179. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Saturday Penalty Rate was payable is set out in Column 2 of table at Annexure 4.
180. During the relevant period, Platform paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Saturday at the rate set out in paragraph 75(b) above.

***Particulars***

*The total amount paid to each employee for hours worked on Saturday is set out in Column 4 of the table at Annexure 4.*

181. By reason of paragraphs 170 and 177 to 180 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant the Saturday Penalty Rates payable under clause 27.2(a) of the Modern Award.
182. By reason of contravention alleged in paragraph 181 above, Platform underpaid the Applicant a total of \$11,031.24

***Particulars***

*The total underpayment to Applicant in respect of the Saturday Penalty Rates is set out in Column 5 of the table at Annexure 4.*

**SNG69**

183. The amount of Saturday Penalty to be paid by SNG69, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

184.	1 January 2016 to 30 May 2016
------	----------------------------------



Level One Employee	27.69
Level Two Employee	28.65

(collectively, Saturday Penalty Rates)

185. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Saturday Penalty Rate was payable is set out in Column 2 of table at Annexure 4.
186. During the relevant period, SNG69 paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Saturday at the rate set out in paragraph 75(b) above.

***Particulars***

*The total amount paid to each employee for hours worked on Saturday is set out in Column 4 of the table at Annexure 4.*

187. By reason of paragraphs 171 and 183 to 186 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant the Saturday Penalty Rates payable under clause 27.2(a) of the Modern Award.
188. By reason of contravention alleged in paragraph 187 above, SNG69 underpaid the Applicant a total of \$2,744.60

***Particulars***

*The total underpayment to Applicant in respect of the Saturday Penalty Rates is set out in Column 5 of the table at Annexure 4.*

**MMGT**

189. The amount of Saturday Penalty to be paid by MMGT, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

190.	1 June 2016 to 30 June 2016	1 July 2016 to 30 July 2016
Level One Employee	27.69	28.365
Level Two Employee	28.65	29.34

(collectively, Saturday Penalty Rates)

191. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Saturday Penalty Rate was payable is set out in Column 2 of table at Annexure 4.

192. During the relevant period, MMGT paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Saturday at the rate set out in paragraph 75(b) above.

***Particulars***

*The total amount paid to each employee for hours worked on Saturday is set out in Column 4 of the table at Annexure 4.*

193. By reason of paragraphs 171 and 189 to 192 above, MMGT contravened section 45 of the FW Act by failing to pay the Applicant the Saturday Penalty Rates payable under clause 27.2(a) of the Modern Award.
194. By reason of contravention alleged in paragraph 193 above, MMGT underpaid the Applicant a total of \$559.60

***Particulars***

*The total underpayment to Applicant in respect of the Saturday Penalty Rates is set out in Column 5 of the table at Annexure 4.*

**MML**

195. The amount of Saturday Penalty to be paid by MML, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

196.		1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee		28.365	29.295
Level Two Employee		29.34	30.315

(collectively, Saturday Penalty Rates)

197. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Saturday Penalty Rate was payable is set out in Column 2 of table at Annexure 4.

198. During the relevant period, MML paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Saturday at the rate set out in paragraph 75(b) above.

***Particulars***

*The total amount paid to each employee for hours worked on Saturday is set out in Column 4 of the table at Annexure 4.*

199. By reason of paragraphs 171 and 195 to 198 above, MML contravened section 45 of the FW Act by failing to pay the Applicant the Saturday Penalty Rates payable under clause 27.2(a) of the Modern Award.
200. By reason of contravention alleged in paragraph 199 above, MML underpaid the Applicant a total of \$4,827.38

***Particulars***

*The total underpayment to Applicant in respect of the Saturday Penalty Rates is set out in Column 5 of the table at Annexure 4.*

**Failure to pay Sunday Penalty Rate (Clause 27.2(b) of the Modern Award**

201. Pursuant to clause 27.2(b) of the Modern Award, the employers were required to pay the Applicant a Sunday Penalty rate of double of the ordinary hourly rate for the classification in which he was employed, for each hour worked by the Applicant during the relevant period which was not overtime and which was worked between midnight Saturday and midnight Sunday (Sunday Penalty).

**ROYAL**

202. The amount of Sunday Penalty to be paid by Royal, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

203.	17 March 2013 to 30 Jun 2013	7 July 2013 to 30 April 2014
Level One Employee	34.10	34.98
Level Two Employee	35.28	36.18

(collectively, **Sunday Penalty Rates**)

204. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Sunday Penalty Rate was payable is set out in Column 2 of table at Annexure 5.

205. During the relevant period, Royal paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Sunday at the rate set out in paragraph 75(c) above.

***Particulars***

*The total amount paid to each employee for hours worked on Sunday is set out in Column 4 of the table at Annexure 5.*

206. By reason of paragraphs 201 to 205 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant the Sunday Penalty Rates payable under clause 27.2(b) of the Modern Award.
207. By reason of contravention alleged in paragraph 206 above, Royal underpaid the Applicant a total of \$12,848.40

***Particulars***

*The total underpayment to Applicant in respect of the Sunday Penalty Rates is set out in Column 5 of the table at Annexure 5.*

**PLATFORM**

208. The amount of Sunday Penalty to be paid by Platform, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

209.	1 May 2014 to 30 Jun 2014	1 July 2014 to 30 June 2015	1 July 15 to 30 Dec 2015
Level One Employee	34.98	36.02	36.92
Level Two Employee	36.18	37.28	38.20

(collectively, **Sunday Penalty Rates**)

210. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Sunday Penalty Rate was payable is set out in Column 2 of table at Annexure 5.
211. During the relevant period, Royal paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Sunday at the rate set out in paragraph 75(c) above.

***Particulars***

*The total amount paid to each employee for hours worked on Sundays is set out in Column 4 of the table at Annexure 5.*

212. By reason of paragraphs 201 to 208 to 211 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant the Sunday Penalty Rates payable under clause 27.2(b) of the Modern Award.
213. By reason of contravention alleged in paragraph 212 above, Platform underpaid the Applicant a total of \$19,922.64

***Particulars***

*The total underpayment to Applicant in respect of the Sunday Penalty Rates is set out in Column 5 of the table at Annexure 5.*

**SNG69**

214. The amount of Sunday Penalty to be paid by SNG69, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

215.	1 January 2016 to 30 May 2016
Level One Employee	36.92
Level Two Employee	38.20

(collectively, **Sunday Penalty Rates**)

216. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Sunday Penalty Rate was payable is set out in Column 2 of table at Annexure 5.
217. During the relevant period, SNG69 paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Sunday at the rate set out in paragraph 75(c) above.

***Particulars***

*The total amount paid to each employee for hours worked on Sundays is set out in Column 4 of the table at Annexure 5.*

218. By reason of paragraphs 201 to 214 to 217 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant the Sunday Penalty Rates payable under clause 27.2(b) of the Modern Award.
219. By reason of contravention alleged in paragraph 218 above, SNG69 underpaid the Applicant a total of \$5,074.80

***Particulars***

*The total underpayment to Applicant in respect of the Sunday Penalty Rates is set out in Column 5 of the table at Annexure 5.*

### **MMGT**

220. The amount of Sunday Penalty to be paid by MMGT, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

221.	1 June 2016 to 30 June 2016	1 July 2016 to 30 July 2016
Level One Employee	36.92	37.82
Level Two Employee	38.20	39.12

(collectively, **Sunday Penalty Rates**)

222. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Sunday Penalty Rate was payable is set out in Column 2 of table at Annexure 5.

223. During the relevant period, MMGT paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Sunday at the rate set out in paragraph 75(c) above.

### **Particulars**

*The total amount paid to each employee for hours worked on Sundays is set out in Column 4 of the table at Annexure 5.*

224. By reason of paragraphs 201 to 220 to 223 above, MMGT contravened section 45 of the FW Act by failing to pay the Applicant the Sunday Penalty Rates payable under clause 27.2(b) of the Modern Award.

225. By reason of contravention alleged in paragraph 224 above, MMGT underpaid the Applicant a total of \$1,332.80

### **Particulars**

*The total underpayment to Applicant in respect of the Sunday Penalty Rates is set out in Column 5 of the table at Annexure 5.*

### **MML**

226. The amount of Sunday Penalty to be paid by MML, for each Actual Hour Worked by the Applicant during the relevant period which qualified for the penalty was:

227.	1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee	37.82	39.06
Level Two Employee	39.12	40.42

(collectively, **Sunday Penalty Rates**)

228. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Sunday Penalty Rate was payable is set out in Column 2 of table at Annexure 5.

229. During the relevant period, MML paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Sunday at the rate set out in paragraph 75(c) above.

***Particulars***

*The total amount paid to each employee for hours worked on Sundays is set out in Column 4 of the table at Annexure 5.*

230. By reason of paragraphs 201 to 226 to 229 above, MML contravened section 45 of the FW Act by failing to pay the Applicant the Sunday Penalty Rates payable under clause 27.2(b) of the Modern Award.

231. By reason of contravention alleged in paragraph 230 above, MML underpaid the Applicant a total of \$10,999.64

***Particulars***

*The total underpayment to Applicant in respect of the Sunday Penalty Rates is set out in Column 5 of the table at Annexure 5.*

**Failure to pay Public Holiday Penalty Rate (Clause 27.3 of the Modern Award)**

232. Pursuant to clause 27.3 of the Modern Award, the employers were required to pay the Applicant a public holiday Penalty rate of double time and half the ordinary hourly rate for the classification in which he was employed, for each hour worked by the Applicant during the relevant period which was not overtime and which was worked on a public holiday, was:

**ROYAL**

233. The amount of Public Holiday Penalty to be paid by Royal, for each Actual Hour Worked by the Applicant during the relevant period which was not overtime and which was worked on a public holiday was:

234.	17 March 2013 to 30 Jun 2013	7 July 2013 to 30 April 2014
Level One Employee	42.625	43.725
Level Two Employee	44.10	45.225

(collectively, **Public Holiday Penalty Rates**).

235. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Public Holiday Penalty Rate was payable is set out in Column 2 of table at Annexure 6.
236. During the relevant period, Royal paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Public Holiday at the rate set out in paragraph 75(d) above.

#### ***Particulars***

*The total amount paid to each employee for hours worked on Public Holidays is set out in Column 4 of the table at Annexure 6.*

237. By reason of paragraphs 232 to 236 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant the Public Holiday Penalty Rates payable under clause 27.3 of the Modern Award.
238. By reason of contravention alleged in paragraph 237 above, Royal underpaid the Applicant a total of \$3,406.08

#### ***Particulars***

*The total underpayment to Applicant in respect of the Public Holidays Penalty Rates is set out in Column 5 of the table at Annexure 6.*

#### **PLATFORM**

239. The amount of Public Holiday Penalty to be paid by Platform, for each Actual Hour Worked by the Applicant during the relevant period which was not overtime and which was worked on a public holiday was:

240.	1 May 2014 to 30 Jun 2014	1 July 2014 to 30 June 2015	1 July 15 to 30 Dec 2015
Level One Employee	43.725	45.025	46.15
Level Two Employee	45.225	46.60	47.75



(collectively, **Public Holiday Penalty Rates**).

241. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Public Holiday Penalty Rate was payable is set out in Column 2 of table at Annexure 6.
242. During the relevant period, Platform paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Public Holidays at the rate set out in paragraph 75(d) above.

***Particulars***

*The total amount paid to each employee for hours worked on Public Holidays is set out in Column 4 of the table at Annexure 6.*

243. By reason of paragraphs 232 and 239 to 242 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant the Public Holiday Penalty Rates payable under clause 27.3 of the Modern Award.
244. By reason of contravention alleged in paragraph 237 above, Platform underpaid the Applicant a total of \$4,706.64

***Particulars***

***The total underpayment to Applicant in respect of the Public Holidays Penalty Rates is set out in Column 5 of the table at Annexure 6.***

**SNG69**

245. The amount of Public Holiday Penalty to be paid by SNG69, for each Actual Hour Worked by the Applicant during the relevant period which was not overtime and which was worked on a public holiday was:

246.	1 January 2016 to 30 May 2016
Level One Employee	46.15
Level Two Employee	47.75

(collectively, Public Holiday Penalty Rates).

247. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Public Holiday Penalty Rate was payable is set out in Column 2 of table at Annexure 6.

248. During the relevant period, SNG69 paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Public Holidays at the rate set out in paragraph 75(d) above.

***Particulars***

*The total amount paid to each employee for hours worked on Public Holidays is set out in Column 4 of the table at Annexure 6.*

249. By reason of paragraphs 232 and 245 to 248 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant the Public Holiday Penalty Rates payable under clause 27.3 of the Modern Award.
250. By reason of contravention alleged in paragraph 249 above, Platform underpaid the Applicant a total of \$1,500.00

***Particulars***

*The total underpayment to Applicant in respect of the Public Holidays Penalty Rates is set out in Column 5 of the table at Annexure 6.*

**MMGT**

251. The amount of Public Holiday Penalty to be paid by MMGT, for each Actual Hour Worked by the Applicant during the relevant period which was not overtime and which was worked on a public holiday was:

252.	1 June 2016 to 30 June 2016	1 July 2016 to 30 July 2016
Level One Employee	46.15	47.275
Level Two Employee	47.75	48.90

(collectively, Public Holiday Penalty Rates).

253. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Public Holiday Penalty Rate was payable is set out in Column 2 of table at Annexure 6.
254. During the relevant period, MMGT paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Public Holidays at the rate set out in paragraph 75(d) above.

***Particulars***

*The total amount paid to each employee for hours worked on Public Holidays is set out in Column 4 of the table at Annexure 6.*

255. By reason of paragraphs 232 and 251 to 254 above, MMGT contravened section 45 of the FW Act by failing to pay the Applicant

the Public Holiday Penalty Rates payable under clause 27.3 of the Modern Award.

256. By reason of contravention alleged in paragraph 255 above, MGMT underpaid the Applicant a total of \$161.40

***Particulars***

*The total underpayment to Applicant in respect of the Public Holidays Penalty Rates is set out in Column 5 of the table at Annexure 6.*

**MML**

257. The amount of Public Holiday Penalty to be paid by MML, for each Actual Hour Worked by the Applicant during the relevant period which was not overtime and which was worked on a public holiday was:

258.	1 September 2016 to 30 June 2017	1 July 2017 to 30 Nov 2017
Level One Employee	47.275	48.825
Level Two Employee	48.90	50.525

(collectively, Public Holiday Penalty Rates).

259. During the relevant period, the number of Actual Hours Worked by the Applicant for which the Public Holiday Penalty Rate was payable is set out in Column 2 of table at Annexure 6.
260. During the relevant period, MML paid the Applicant for each hour recorded in the attendance register/invoice sent to Seventh Respondent on a Public Holidays at the rate set out in paragraph 75(d) above.

***Particulars***

*The total amount paid to each employee for hours worked on Public Holidays is set out in Column 4 of the table at Annexure 6.*

261. By reason of paragraphs 232 and 257 to 260 above, MML contravened section 45 of the FW Act by failing to pay the Applicant the Public Holiday Penalty Rates payable under clause 27.3 of the Modern Award.
262. By reason of contravention alleged in paragraph 261 above, MML underpaid the Applicant a total of \$655.32

***Particulars***

*The total underpayment to Applicant in respect of the Public Holidays Penalty Rates is set out in Column 5 of the table at Annexure 6.*

**Failure to pay overtime rates: Monday to Saturday (Clause 28.2 of the Modern Award)**

263. The Applicant was entitled to the Monday to Saturday Overtime Rates for any hours worked in excess of 7.6 hours on a Monday to Saturday, in circumstances where he worked on Monday to Saturday when he had already worked 5 days in that week.

***Particulars***

*Clause 24.2 of the Modern Award provides that the ordinary hours of work for casual employees will be worked in periods of not more than 7.6 hours per day, on not more than five days, Monday to Saturday.*

*Clause 28.7 of the Modern Award provides that in computing overtime payments each day's work will stand alone.*

264. During the relevant period, the number of Actual Hours Worked by the Applicant for which Monday to Saturday Overtime Rates were payable is set out:

- a) for excess of 2 hours over ordinary hours, in Column 2 of the table Annexure 7; and
- b) for excess beyond 2 hours of ordinary hours, in Column 2 of table Annexure 8.

**ROYAL**

265. Pursuant to clause 28.2 of the Modern Award, the employers were required to pay the Applicant the following overtime rates for overtime hours worked on Monday to Saturday:

266.	17 March 2013 to 30 Jun 2013		7 July 2013 to 30 April 2014	
	First 2 hours	Each hour Thereafter	First 2 hours	Each hour Thereafter
Level One Employee	25.575	34.10	26.235	34.98
Level Two Employee	26.46	35.28	27.135	36.18

(collectively, Monday to Saturday Overtime Rates).

267. During the relevant period, Royal did not pay the Applicant the full amount of the Monday to Saturday Overtime Rates.

***Particulars***

A. *The amount of Monday to Saturday Overtime Rates for first two hours that the Applicant was entitled to be paid is set out in column 3 of the table in Annexure 7.*

B. *The amount paid to the Applicant for hours beyond 2 hours that attracted the Monday to Saturday Overtime Rates is set out in Column 3 of the table in Annexure 8.*

268. By reason of matters pleaded in paragraphs 263, 264, 265 and 267 above, Royal contravened section 45 of the FW Act by failing to pay the Applicant Monday to Saturday Overtime Rates.

269. By reason of contravention alleged in paragraph 268 above, Royal underpaid the Applicant a total of \$5,872.40 (Annex 7) and \$22,245.36 (Annex 8).

#### ***Particulars***

*The total underpayment to Applicant in respect of the Monday to Saturday Overtime Rates is set out in Column 5 of the table at Annexure 7 and Column 5 at Annexure 8.*

#### **PLATFORM**

270. Pursuant to clause 28.2 of the Modern Award, the employers were required to pay the Applicant the following overtime rates for overtime hours worked on Monday to Saturday:

271.	1 May 2014 to 30 Jun 2014		1 July 2014 to 30 June 2015		1 July 2015 to 30 Dec 15	
	First 2 hours	Each hour Thereafter	First 2 hours	Each hour Thereafter	First 2 hours	Each hour Thereafter
Level One Employee	26.235	34.98	27.015	36.02	27.69	36.92
Level Two Employee	27.135	36.18	27.96	37.28	28.65	38.20

(collectively, Monday to Saturday Overtime Rates).

272. During the relevant period, Platform did not pay the Applicant the full amount of the Monday to Saturday Overtime Rates.

#### ***Particulars***

- A. *The amount of Monday to Saturday Overtime Rates for first two hours that the Applicant was entitled to be paid is set out in column 3 of the table in Annexure 7.*
- B. *The amount paid to the Applicant for hours beyond 2 hours that attracted the Monday to Saturday Overtime Rates is set out in Column 3 of the table in Annexure 8.*
273. By reason of matters pleaded in paragraphs 263, 264 and 270 to 272 above, Platform contravened section 45 of the FW Act by failing to pay the Applicant Monday to Saturday Overtime Rates.
274. By reason of contravention alleged in paragraph 273 above, Platform underpaid the Applicant a total of \$9,543.40 (Annex. 7), \$48,173.56 (Annex 8).

***Particulars***

*The total underpayment to Applicant in respect of the Monday to Saturday Overtime Rates is set out in Column 5 of the table at Annexure 7 and Column 5 at Annexure 8.*

**SNG69**

275. Pursuant to clause 28.2 of the Modern Award, the employers were required to pay the Applicant the following overtime rates for overtime hours worked on Monday to Saturday:

276.	1 January 2016 to 30 May 2016	
	First 2 hours	Each hour Thereafter
Level One Employee	27.69	36.92
Level Two Employee	28.65	38.20

collectively, Monday to Saturday Overtime Rates).

277. During the relevant period, SNG69 did not pay the Applicant the full amount of the Monday to Saturday Overtime Rates.

***Particulars***

*The amount of Monday to Saturday Overtime Rates for first two hours that the Applicant was entitled to be paid is set out in column 3 of the table in Annexure 7.*

*The amount paid to the Applicant for hours beyond 2 hours that attracted the Monday to Saturday Overtime Rates is set out in Column 3 of the table in Annexure 8.*

278. By reason of matters pleaded in paragraphs 263, 264 and 275 to 277 above, SNG69 contravened section 45 of the FW Act by failing to pay the Applicant Monday to Saturday Overtime Rates.
279. By reason of contravention alleged in paragraph 278 above, SNG69 underpaid the Applicant a total of \$2,673.00 (Annex-7) and \$12,499.20 (Annex.8).

***Particulars***

*The total underpayment to Applicant in respect of the Monday to Saturday Overtime Rates is set out in Column 5 of the table at Annexure 7 and Column 5 at Annexure 8.*

**MMGT**

280. Pursuant to clause 28.2 of the Modern Award, the employers were required to pay the Applicant the following overtime rates for overtime hours worked on Monday to Saturday:

281.	1 June 2016 to 30 Jun 2016		1 July 2016 to 30 July 2016	
	First 2 hours	Each hour Thereafter	First 2 hours	Each hour Thereafter
Level One Employee	27.69	36.92	28.365	37.82
Level Two Employee	28.65	38.20	29.34	39.12

(collectively, Monday to Saturday Overtime Rates).

282. During the relevant period, MMGT did not pay the Applicant the full amount of the Monday to Saturday Overtime Rates.

***Particulars***

*The amount of Monday to Saturday Overtime Rates for first two hours that the Applicant was entitled to be paid is set out in column 3 of the table in Annexure 7.*

*The amount paid to the Applicant for hours beyond 2 hours that attracted the Monday to Saturday Overtime Rates is set out in Column 3 of the table in Annexure 8.*

283. By reason of matters pleaded in paragraphs 263, 264 and 280 to 282 above, MMGT contravened section 45 of the FW Act by failing to pay the Applicant Monday to Saturday Overtime Rates.

284. By reason of contravention alleged in paragraph 283 above, MMGT underpaid the Applicant a total of \$559.60 (Annex.7) and \$7,740.92 (Annex. 8).

***Particulars***

*The total underpayment to Applicant in respect of the Monday to Saturday Overtime Rates is set out in Column 5 of the table at Annexure 7 and Column 5 at Annexure 8.*

**MML**

285. Pursuant to clause 28.2 of the Modern Award, the employers were required to pay the Applicant the following overtime rates for overtime hours worked on Monday to Saturday:

286.	1 Sept.2016 to 30 Jun 2017		1 July 2017 to 30 Nov 2017	
	First 2 hours	Each hour Thereafter	First 2 hours	Each hour Thereafter
Level One Employee	28.365	37.82	29.295	39.06
Level Two Employee	29.34	39.12	30.315	40.42

(collectively, Monday to Saturday Overtime Rates).

287. During the relevant period, MML did not pay the Applicant the full amount of the Monday to Saturday Overtime Rates.

***Particulars***

- A. *The amount of Monday to Saturday Overtime Rates for first two hours that the Applicant was entitled to be paid is set out in column 3 of the table in Annexure 7.*
- B. *The amount paid to the Applicant for hours beyond 2 hours that attracted the Monday to Saturday Overtime Rates is set out in Column 3 of the table in Annexure 8.*
288. By reason of matters pleaded in paragraphs 263, 264 and 285 to 287 above, MML contravened section 45 of the FW Act by failing to pay the Applicant Monday to Saturday Overtime Rates.
289. By reason of contravention alleged in paragraph 288 above, MML underpaid the Applicant a total of \$5,116.00 (Annex 7) and 48,279.64 (Annex. 8).

***Particulars***



*The total underpayment to Applicant in respect of the Monday to Saturday Overtime Rates is set out in Column 5 of the table at Annexure 7 and Column 5 at Annexure 8.*

#### Total Underpayments

290. By reason of the contraventions alleged in paragraphs 75 to 289 above, CF & Royal, Platform, SNG69, MGMT and MML underpaid the Applicant in total of \$89,649.07, \$159,434.08, \$41,595.84, \$12,240.04 and \$85,228.10 respectively.

#### **Failure to give pay-slips as required by s536(1) of the FW Act**

291. At all material times, the employers were required to by section 536(1) of the FW Act to provide each Employee with a payslip within one working day of payment being made to the Applicant in relation to performance of work.

292. Each of CF & Royal, Platform, SNG69, MGMT and MML failed to give the Applicant any payslips during the relevant period.

293. By reason of the matter pleaded in paragraphs 291 and 292 above, each of CF & Royal, Platform, SNG69, MGMT and MML contravened subsection of 536(1) of the FW Act by failing to provide the Applicant with a payslip within one working day of payment.

#### **ACCESSORIAL LIABILITY OF THE FIRST FIVE RESPONDENTS**

294. The Applicant refers to repeats the matters pleaded at paragraphs 2 &3, 8&9, 14 &15, 20&21, 26 &27 and 34 above in relation to CF & Royal, Platform, SNG69, MGMT and MML respectively.

295. The First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent were each responsible, at all material times, for making decisions on behalf of their respective entities namely CF & Royal, Platform, SNG69, MGMT and MML:

- a) whether works would be engaged as employees or independent contractors;
- b) the terms and conditions which would apply to persons engaged by their respective companies to perform work in relation to the provision of the Services, including the Applicant;
- c) the terms of the 'induction manual', and the requirement that each of the persons including the Applicant engaged by the respective

companies to perform work in relation to the provision of the Services receive that document at the time of induction with the Sixth Respondent;

- d) the requirement that the Seventh Respondent at the time of induction make sure that all persons engaged in by their respective companies to perform Cleaning Duties obtain an ABN in order to be engaged by their respective companies;
- e) the time, method and manner of payment to persons engaged by their respective companies to perform work in relation to the provision of the Services, including the Applicant; and
- f) whether to provide payslips to the persons engaged by their respective companies to perform work in relation to the provision of the Services, including the Applicant.

296. By reason of the matters pleaded in paragraphs 294 and 295 above, each of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent was at all material times responsible for ensuring that their respective company complied with its legal obligation and the FW Act.

297. Each of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent had actual knowledge of making of the representation referred to in paragraphs 67 and 68 above.

#### ***Particulars***

*The First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent personally engaged in the conduct referred to in paragraphs 67 and 68 above, or, alternatively, consented to, agreed to or directed the conduct of Seventh Respondent, referred to in paragraphs 67 and 68 above being engaged in on behalf of CF & Royal, Platform, SNG69, MMTG and MML respectively.*

298. At all the material times each of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent knew the matters set out at paragraphs 44 to 49 and 52 to 58.

299. By reason of the knowledge referred to in paragraph 298 above, at all material times each of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent

and Seventh Respondent knew that each of the employee including the Applicant was an employee of their respective companies and not an independent contractor.

300. At all material times the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent knew that their respective company did not give the employees including the Applicant any payslips in relation to the performance of work.
301. The Seventh Respondent and/or the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent calculated and administered the payments made by CF & Royal, Platform, SNG69, MMGT and MML respectively to the employees including the Applicant referred to in paragraph 57 above.
302. The Seventh Respondent and/or First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent respectively checked the calculations for the payments made by CF & Royal, Platform, SNG69, MMGT and MML, referred to paragraph 57 above, before CF & Royal, Platform, SNG69, MMGT and MML paid the Applicant.
303. At all material times each of the First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and Seventh Respondent knew:
- a) the dates on which the Applicant performed work for their respective company;
  - b) the dates on which the Applicant was paid for work performed; and
  - c) that the Applicant was not paid as per entitlements.
304. By reason of matters pleaded at 294 to 301 and 303, the Seventh Respondent, First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent, by way of their conduct or omissions:
- a) aided, abetted, counselled or procured the contraventions alleged against CF & Royal, Platform, SNG69, MMGT and MML set out at paragraphs 74, 290 and 293 above; and

- b) were directly or indirectly, knowingly concerned in or a party to each of the contraventions alleged against CF & Royal, Platform, SNG69, MMGT and MML in paragraphs 74,290 and 293 above.
305. Pursuant to subsection 550(1) of the FW Act, and by reason of their involvement set out at paragraph 304 above, the Seventh Respondent, First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent and the Fifth Respondent is treated as having himself/herself personally contravened each of the provisions that the CF & Royal, Platform, SNG69, MMGT and MML is alleged to have contravened at paragraphs 74, 290 and 293 above.

### **ACCESSORIAL LIABILITY OF THE SIXTH RESPONDENT**

306. The Applicant refers to and repeats the matters at paragraphs 32,33 and 36 to 39.
307. By reason of paragraphs 2(b), 2(e), 8(b), 14(b), 20(b), 26(b), 32, 33,34, 41, 42, 46 (b), 46(c), 46(d), 46(e), 46(f), 47(b), 48 and 77 at all material times the Sixth Respondent knew that:
- a) the Applicant was engaged by CF & Royal, Platform, SNG69, MMGT and MML to provide the Services to the Sixth Respondent;
  - b) the Applicant was employed under a contract of employment with each of CF & Royal, Platform, SNG69, MMGT and MML;
  - c) the Applicant performed the Cleaning Duties;
  - d) the Applicant was engaged for major portion of his time on refuse collection and/or disposal;
  - e) the Applicant performed the Leading Hand Duties referred to in paragraph 42 above;
  - f) each of the matters set out in paragraphs 65(a), 65(b) and 65(c) above; and
  - g) by reason of paragraph 307(f) above, the Applicant performed work for CF & Royal, Platform, SNG69, MMGT and MML on a casual basis.
308. The Modern Award covered the Sixth Respondent in relation to its employment of Transclean employees.

309. The Modern Award applied to the Sixth Respondent and the Transclean Employees.
310. The Transclean Employees performed the same Cleaning Duties and Leading Hand Duties as the Employees of CF & Royal, Platform, SNG69, MMTG and MML.

***Particulars***

- a. the contract of employment used by the Sixth Respondent for its own employees referred to application of the Modern Award;*
- b. the Applicant during the overlapping period (1 April 2016 to 30 November 2017) of his employment with the Sixth Respondent was being paid in accordance with the entitlements of Modern Award; and*
- c. a copy of such a contract may be inspected at the office of the Applicant's solicitor by prior appointment.*
311. The Sixth Respondent knew each of the matters set out in paragraphs 2(b), 2(e), 8(b), 14(b), 20(b), 26(b), 308, 309 and 310 above.
312. By reason of paragraphs 2(b), 2(e), 8(b), 14(b), 20(b), 26(b), 32(c), 32(d), 32(e), 307 to 311, the Sixth Respondent knew that:
- a) the Modern Award covered CF & Royal, Platform, SNG69, MMTG and MML in relation to the employment of the Employees including the Applicant;
  - b) the Modern Award applied to each of CF & Royal, Platform, SNG69, MMTG and MML and the Employees including the Applicant; and
  - c) throughout the relevant period CF & Royal, Platform, SNG69, MMTG and MML were required to comply with the Modern Award in relation to the terms and conditions of employment of the Employees including the Applicant.
313. By reason of the matters pleaded in paragraphs 307 and 312 above, the Sixth Respondent knew that:
- a) the Level One Employees including the Applicant performed work throughout the relevant period of a kind covered by the Modern Award within the classification of Cleaning Services Employees One as set out in Clause D.1 of Schedule D to the Modern Award;

- b) the Level Two Employees performed work throughout the relevant period of a kind covered by the Modern Award within the classification of Cleaning Services Employee One as set out in clause D.1 of Schedule D to the Modern Award; and
- c) each of CF & Royal, Platform, SNG69, MMGT and MML were required to pay the Employees including the Applicant rates of pay in accordance with the Modern Award for all Actual Hours Worked.

314. The Sixth Respondent knew the Actual Hours of Work performed by each employee including the Applicant.

***Particulars***

- a. *as set out in paragraphs 33(b), 33(c) and 33(d) above, the Sixth Respondent required the Employees of each of CF & Royal, Platform, SNG69, MMGT and MML to record their start time, finish time in attendance register from which a time sheet was prepared and sent to it. A copy of one such time sheet may be inspected at the office of the Applicant's solicitor by prior appointment; and*
- b. *as set out in paragraphs 34(a), 34(b), 34(f) and 34(k) the Seventh Respondent in capacity of employee of Sixth Respondent monitored and received the timings of work by emails. Copy of such emails attached with time sheet may be inspected at the office of the Applicant's solicitor by prior appointment.*

315. As the contract of Sixth Respondent with each of CF & Royal, Platform, SNG69, MMGT and MML was oral, the Applicant is not aware of the rates paid by the Sixth Respondent to them, but the rates paid by the Sixth Respondent were agreed between the Sixth Respondent and CF & Royal, Platform, SNG69, MMGT and MML.

316. Throughout the relevant period, the Eighth Respondent authorized, on behalf of the Sixth Respondent, Subcontractor Work Requests which:

- a) were provided by the Sixth Respondent to the each of CF & Royal, Platform, SNG69, MMGT and MML;
- b) set out the Rates paid by the Sixth Respondent to CF & Royal, Platform, SNG69, MMGT and MML; and
- c) set out the number of hours for which the Sixth Respondent proposed to pay each of CF & Royal, Platform, SNG69, MMGT and MML in relation to the relevant time period.

317. During one conversation of Seventh Respondent with the Applicant, the Seventh Respondent told that the Rates Paid by the Sixth Respondent to each of CF & Royal, Platform, SNG69, MMGT and MML were insufficient to cover the Employees' entitlement under the Modern Award to:
- a) Casual Loading;
  - b) Afternoon/Night Shift Penalty;
  - c) Saturday, Sunday and Public Holiday Rates; or
  - d) Monday to Saturday, Sunday and Public Holiday Overtime Rates.
318. At all material times, the Sixth Respondent knew the matters pleaded in paragraph 317 above.
319. By reason of paragraphs 307, 312, 313 and 315 to 318, throughout the relevant period, the Sixth Respondent knew that each of CF & Royal, Platform, SNG69, MMGT and MML were paying to the Employees including the Applicant rates of pay less than the minimum rates required by the Modern Award in respect of:
- a) all hours of work Monday to Friday between 6.00pm and 6.00am;
  - b) all overtime hours;
  - c) all hours of work (whether overtime or not) on Saturdays, Sundays or public holidays;
  - d) the Casual loading; and
  - e) the Refuse Collection Allowance.
320. The Sixth Respondent continued to engage one after the other CF & Royal, Platform, SNG69, MMGT and MML to provide the Services, using their employees.
321. By reason of matter pleaded in paragraphs 306 to 320 above, throughout the relevant period, the Sixth Respondent, by way of its acts or omissions:
- a) aided, abetted, counselled or procured the contraventions alleged against each of CF & Royal, Platform, SNG69, MMGT and MML set out at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above; and

b) was directly or indirectly, knowingly concerned in or a party to each of the contraventions alleged against each of CF & Royal, Platform, SNG69, MMGT and MML in paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above.

322. Pursuant to subsection 550(1) of the FW Act, and by reason of its involvement set out in paragraphs 320 and 321, the Sixth Respondent is treated as having itself contravened each of the provisions that each of CF & Royal, Platform, SNG69, MMGT and MML is alleged to have contravened at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above.

#### **ACCESSORIAL LIABILITY OF THE SEVENTH AND EIGHTH RESPONDENT**

323. At all material times, each of the Seventh Respondent and Eighth Respondent knew that:

- a) CF & Royal, Platform, SNG69, MMGT and MML engaged individuals to perform Cleaning Duties, in connection with the provision of Services to the Sixth Respondent (**Six Entity Employees**);
- b) each of the Six Entity Employee was under a contract of employment between CF & Royal, Platform, SNG69, MMGT and MML and the Six Entity Employee;
- c) each of the Six Entity Employee worked for hours which were intermittent and irregular and was employed to work uncertain hours; and
- d) by reason of paragraph 323 (c) above, each of the Six Entity Employee performed work for CF & Royal, Platform, SNG69, MMGT and MML on a casual basis.

324. At all material times, each of Seventh Respondent and Eighth Respondent knew:

- a) the matters set out in paragraphs 2(b), 2(e), 8(b), 14(b), 20(b), 26(b), 33 and 304 above;



- b) the Transclean Employees performed the same Cleaning Duties as the Six Entity Employees; and
  - c) the Six Entity Employees were engaged for the major portion of their time on refuse collection and/or disposal.
325. By reason of paragraphs 323 and 324, each of the Seventh Respondent and Eighth Respondent knew that:
- a) the Modern Award covered CF & Royal, Platform, SNG69, MMGT and MML in relation to the employment of the Six Entity Employees;
  - b) the Modern Award applied to CF & Royal, Platform, SNG69, MMGT and MML and the Six Entity Employees;
  - c) throughout the relevant period CF & Royal, Platform, SNG69, MMGT and MML were required to comply with the Modern Award in relation to the terms and conditions of employment of the Six Entity Employees.
326. By reason of matters pleaded in paragraphs 323, 324 and 325, each of the Seventh Respondent and Eighth Respondent knew that:
- a) the Six Entity Employees performed work throughout the relevant period of a kind covered by the Modern Award within the classification of at least Cleaning Services Employee 1 as set out in clause D.1 of Schedule D to the Modern Award;
  - b) each of CF & Royal, Platform, SNG69, MMGT and MML were required to pay the Six Entity Employees rates of pay in accordance with the Modern Award for all Actual Hours Worked.
327. Throughout the relevant period, each of the Seventh Respondent and Eighth Respondent knew the matters set out in paragraph 317 above.
328. By reason of paragraphs 323 to 327 above, throughout the relevant period each of the Seventh Respondent and Eighth Respondent knew that each of CF & Royal, Platform, SNG69, MMGT and MML were paying to the Six Entity Employees hourly rates of pay less than the minimum hourly rates required by the Modern Award, in respect of:
- a) all hours of work Monday to Friday between 6.00pm and 6.00am;
  - b) all overtime hours;

- c) all hours of work (whether overtime or not) on Saturday, Sunday or public holidays;
- d) the Casual Loading; and
- e) the Refuse Collection Allowance.

329. The Seventh Respondent was a recipient of the emails from the Six Entity Employees including from the Applicant regarding their hours worked/ invoices reflecting the rates claimed for hours of work.

**Seventh Respondent's involvement in CF & Royal, Platform, SNG69, MGMT and MML underpayment contraventions**

330. The Seventh Respondent:

- a) interview, employ, induct and train new employees on behalf of CF & Royal, Platform, SNG69, MGMT and MML, referred to at paragraphs 34 above;
- b) managed the processes for checking the accuracy of time-sheets/ invoices on behalf of the Sixth Respondent and CF & Royal, Platform, SNG69, MGMT and MML.

331. The Seventh Respondent, by engaging in the conduct pleaded in paragraph 330 above, caused CF & Royal, Platform, SNG69, MGMT and MML to receive hourly rates of pay which provided insufficient money the CF & Royal, Platform, SNG69, MGMT and MML to pay the Six Entities Employees their legal entitlements under the Modern Award.

332. Throughout the relevant period, the Seventh Respondent did not take any steps to ensure that CF & Royal, Platform, SNG69, MGMT and MML commenced paying hourly rates of pay as required by the Modern Award.

333. The Seventh Respondent allowed the Sixth Respondent, for the entire period of employment of Six Entity Employees to:

- a) continue to engage CF & Royal, Platform, SNG69, MGMT and MML to provide Services, using the Six Entity Employees; and
- b) continue to pay CF & Royal, Platform, SNG69, MGMT and MML in respect of the Services the Rates Paid by the Sixth Respondent as referred to in paragraph 317 above.

334. By reason of matters pleaded in paragraphs 323 to 329 and 330 to 333 above, throughout the relevant period, the Seventh Respondent, by way of his acts of omissions:
- a) aided, abetted, counselled or procured the contraventions alleged against CF & Royal, Platform, SNG69, MMGT and MML set out at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above; and
  - b) was directly or indirectly, knowingly concerned in or a party to each of the contraventions alleged against CF & Royal, Platform, SNG69, MMGT and MML set out at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above.
335. Pursuant to subsection 550(1) of the FW Act, and by reason of his involvement set out in paragraph 334 above, the Seventh Respondent is treated as having himself contravened each of the provisions that CF & Royal, Platform, SNG69, MMGT and MML is alleged to have contravened at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above.

**Eighth Respondent's involvement in underpayment contravention by CF & Royal, Platform, SNG69, MMGT and MML**

336. The Eighth Respondent, by agreeing to the Rates Paid by the Sixth Respondent to CF & Royal, Platform, SNG69, MMGT and MML, caused CF & Royal, Platform, SNG69, MMGT and MML to receive hourly rates of pay which provided insufficient money for each of CF & Royal, Platform, SNG69, MMGT and MML to pay the Six Entity Employees their legal entitlements under the Modern Award.
337. Throughout the relevant period, the Eighth Respondent did not take any steps to ensure that CF & Royal, Platform, SNG69, MMGT and MML commenced paying hourly rates of pay as required by the Modern Award.
338. The Eighth Respondent allowed the Sixth Respondent, throughout the relevant period to:

- a) continue to engage CF & Royal, Platform, SNG69, MMGT and MML to provide the Services, using the Six Entity Employees; and
  - b) continue to pay to CF & Royal, Platform, SNG69, MMGT and MML in respect of the Services the Rates Paid by the Sixth Respondent as referred to in paragraph 317 above.
339. By reason of the matters pleaded in paragraphs 323 to 338 above, throughout the relevant period, the Eighth Respondent, by way of his acts or omissions:
- a) aided, abetted, counselled or procured the contraventions alleged against CF & Royal, Platform, SNG69, MMGT and MML set out at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above; and
  - b) was directly or indirectly, knowingly concerned in or a party to each of the contraventions alleged against CF & Royal, Platform, SNG69, MMGT and MML in paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above.
340. Pursuant to subsection 550(1) of the FW Act, and by reason of his involvement set out in paragraphs 339 & 340 above, the Eighth Respondent is treated as having himself contravened each of the provisions that CF & Royal, Platform, SNG69, MMGT and MML is alleged to have contravened at paragraphs 82, 88, 94, 113, 119, 125, 131, 137, 144, 150, 156, 162, 168, 175, 181, 187, 193, 199, 206, 212, 218, 224, 230, 237, 243, 249, 255, 261, 268, 273, 278, 283 and 288 above.
341. In the alternative, the totality of relationship and nature of control including the factors mentioned herein below indicates that the real employer was Sixth Respondent and the Six Entities were mere payroll companies:
- a) the Sixth, Seventh and Eighth Respondent controlled the hours and hourly rate of each of the Six Entity Employees;
  - b) the Seventh Respondent inducted, trained and recruited the employees on behalf of the Six Entities; and

- c) provided their own identity cards and own uniforms to the purported employees of the Six Entities.

## RELIEF SOUGHT

The Applicant seeks:

342. Declarations that CF & Royal, Platform, SNG69, MMGT and MML contravened:

- a) Subsection 357(1) of the FW Act by representing to the Applicant that the contract of employment under which the Employee was, or would be, employed by each of CF & Royal, Platform, SNG69, MMGT and MML was a contract for services under which the Applicant performed, or would perform, work as an independent contractor;
- b) section 45 of the FW Act by failing to pay the Applicant the minimum hourly rates of pay payable under clause 16.1 of the Modern Award for each ordinary hour worked Monday to Friday which was an Actual Hour Worked during the relevant period;
- c) section 45 of the FW Act by failing to pay the Applicant the Casual Loading payable under clause 12.5(a) of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period;
- d) section 45 of the FW Act by failing to pay the Applicant the Afternoon/Night Shift Penalty payable under clause 27.1 of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period which qualified for the Afternoon/Night Shift Penalty Rates;
- e) section 45 of the FW Act by failing to pay the Applicant the Saturday Penalty Rates payable under clause 27.2(a) of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period which qualified for the Saturday Penalty Rates;
- f) section 45 of the FW Act by failing to pay the Applicant the Sunday Penalty Rates payable under clause 27.2(b) of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period which qualified for the Sunday Penalty Rates;

- g) section 45 of the FW Act by failing to pay the Applicant the Public Holiday Penalty Rates payable under clause 27.3 of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period which qualified for the Public Holiday Penalty Rates;
  - h) section 45 of the FW Act by failing to pay the Applicant the Monday to Saturday Overtime payable under clause 28.2 of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period which qualified for the Monday to Saturday Overtime Penalty Rates;
  - i) section 45 of the FW Act by failing to pay the Applicant the Refuse Collection Allowance payable under clause 17.8 of the Modern Award for each shift worked by the Applicant during the relevant period which qualified for the Refuse Collection Allowance;
  - j) section 45 of the FW Act by failing to pay the Applicant (while working as supervisor Level-2) the Leading Hand Allowance payable under clause 17.6 of the Modern Award for each Actual Hour Worked by the Applicant during the relevant period which qualified for the Leading Hand Allowance;
  - k) subsection 536(1) of the FW Act by failing to provide the Applicant with a payslips within one working day of payment.
343. Declaration that the First Respondent was involved in each of the contraventions by CF/Royal set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
344. Declaration that the Second Respondent was involved in each of the contraventions by Platform set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
345. Declaration that the Third Respondent was involved in each of the contraventions by SNG69 set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
346. Declaration that the Fourth Respondent was involved in each of the contraventions by MMGT set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.

347. Declaration that the Fifth Respondent was involved in each of the contraventions by MML set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
348. Declaration that the Sixth Respondent was involved in each of the contraventions by CF & Royal, Platform, SNG69, MMGT and MML set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
349. Declaration that the Seventh Respondent was involved in each of the contraventions by CF & Royal, Platform, SNG69, MMGT and MML set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
350. Declaration that the Eighth Respondent was involved in each of the contraventions by CF & Royal, Platform, SNG69, MMGT and MML set out in paragraphs 342 above, pursuant to subsection 550(1) of the FW Act.
351. Order pursuant to subsection 545(2)(b) of the FW Act that the First Respondent, Second Respondent, Third Respondent, Fourth Respondent, Fifth Respondent or the Sixth Respondent pay to the Applicant the Total Underpayments as set out in paragraph 290 above, within 28 days of the date of the order.
352. Order pursuant to subsection 547(2) of the FW Act that the First Respondent, Second Respondent, Third Respondent, Fourth Respondent, Fifth Respondent or the Sixth Respondent pay to the Applicant interest at the applicable rate on amounts ordered to be paid pursuant to Order sought in paragraph 350 above.
353. Order that First Respondent, Second Respondent, Third Respondent, Fourth Respondent, Fifth Respondent pay penalties pursuant to subsection 546(1) of the FW Act for the contraventions set out in paragraph 342 above.
354. Order that Sixth Respondent pay penalties pursuant to subsection 546(1) of the FW Act for the contraventions set out in paragraph 348 above.
355. Order that Seventh Respondent pay penalties pursuant to subsection 546(1) of the FW Act for the contraventions set out in paragraph 349 above.

356. Order that Eighth Respondent pay penalties pursuant to subsection 546(1) of the FW Act for the contraventions set out in paragraph 350 above.
357. An order pursuant to subsection 546(3)(c) of the FW Act that requiring the Respondents to pay their respective penalty amounts to the Applicant within 28 days of this Order.
358. An order that the Applicant have liberty to apply on seven days' notice in the event that any of the preceding orders are not complied with.
359. Such further or other relief as may seem fit to this Honourable Court.

Dated 29 June 2020



**ANNEXURE 1 - MINIMUM HOURLY RATES OF PAY**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours worked	Total entitlement as per Award	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	1170.00	20638.80	1912.3.00	1515.80		\$17.05 L-1 17.64 L-2
Royal 1/7/13 to 30/4/14	4385.00	79324.65	72352.00	6972.65	8488.45	\$17.49 L-1 18.09 L-2
Platform 1/5/14 to 30/6/14	400.00	7236.00	6600.00	636.00		\$17.49 L-1 18.09 L-2
Platform 11/7/14 to 30/6/15	5376.00	100208.64	88704.00	11504.64		\$18.01 L-1 18.64 L-2
Platform 11/7/15 to	2730.00	52143.00	45045.00	7098.00	19238.64	\$18.46 L-1 19.10 L-2
SNG69 1/1/16 to	2190.00	41829.00	37235.00	4594.00	4594.00	\$18.46 L-1 \$19.10 L-2
MMGT 1/6/16 to 30/6/16	279.00	5328.90	6138.00	-809.10		\$18.46 L-1 \$19.10 L-2
MMGT 11/7/16 to	272.00	5320.32	5984.00	-663.68	-1472.78	\$18.91 L-1 \$19.56 L-2
MML 1/9/16 to 30/6/17	2041.50	39931.74	44913.00	-4981.26		\$18.91 L-1 \$19.56 L-2
MML 11/7/17 to 30-11-17	1380.00	27889.80	30360.00	-2470.20	-7451.46	\$19.53 L-1 \$20.21 L-2
<b>TOTAL</b>	<b>20223.50</b>	<b>379850.85</b>	<b>356454.00</b>	<b>23396.85</b>	<b>23396.85</b>	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which casual loading	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	1170.00	5159.70	0.00	5159.70		\$4.2625 L1 \$4.41 L2
Royal 1/7/13 to 30/4/14	4385.00	19820.20	0.00	19820.20	24979.90	\$4.3725 L1 \$4.5225 L2
Platform 1/5/14 to 30/6/14	400.00	1808.00	0.00	1808.00		\$4.3725 L1 \$4.5225 L2
Platform 1/7/14 to 30/6/15	5376.00	25052.16	0.00	25052.16		\$4.5025 L1 \$4.66 L2
Platform 1/7/15 to 30/12/15	2730.00	13049.40	0.00	13049.40	39909.56	\$4.615 L1 \$4.78 L2
SNG69 1/1/16 to 30/5/16	2190.00	10468.20	0.00	10468.20	10468.20	\$4.615 L1 \$4.775 L2
MMGT 1/6/16 to 30/6/16	279.00	1333.62	0.00	1333.62		\$4.615 L1 \$4.775 L2
MMGT 1/7/16 to 30/7/16	272.00	1330.08	0.00	1330.08	2663.70	\$4.7275 L1 \$4.89 L2
MML 1/9/16 to 30/6/17	2041.50	9982.94	0.00	9982.94		\$4.7275 L1 \$4.89 L2
MML 1/7/17 to 30-11-17	1380.00	6969.00	0.00	6969.00	16951.94	\$4.8825 L1 \$5.0525 L2

## ANNEXURE 2 – CASUAL LOADING

## ANNEXURE 3 – AFTERNOON SHIFT PENALTY

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which Afternoon/night shift penalty	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	360	1029.60	0.00	1029.60		\$2.769 L1 \$2.865 L2
Royal 1/7/13 to	1320	3867.60	0.00	3867.60	4897.20	\$2.8365 L1 \$2.9340 L2
Platform 1/5/14 to 30/6/14	120	325.20	0.00	325.20		\$2.6235 L1 \$2.7135 L2
Platform 1/7/14 to 30/6/15	1560	4352.40	0.00	4352.40		\$2.7015 L1 \$2.7960 L2
Platform 1/7/15 to 30/12/15	780	2230.80	0.00	2230.80	6908.40	\$2.7690 L1 \$2.8650 L2
SNG69 1/1/16 to	714	2042.04	0.00	2042.04	2042.04	\$2.769 L1 \$2.865 L2
MMGT 1/6/16 to 30/6/16	120	343.20	0.00	343.20		\$2.769 L1 \$2.865 L2
MMGT 1/7/16 to	120	351.60	0.00	351.60	694.80	\$2.8365 L1 \$2.934 L2
MML 1/9/16 to 30/6/17	1134	3322.62	0.00	3322.62		\$2.8365 L1 \$2.9340 L2
MML 1/7/17 to 30-11-17	834	2527.02	0.00	2527.02	5849.64	\$2.9295 L1 \$3.0315 L2
<b>TOTAL</b>	<b>7062</b>	<b>20392.08</b>	<b>0.00</b>	<b>20392.08</b>	<b>20392.08</b>	

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which Saturday penalty	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17 /3/13 to 30/6/13	156	4127.70	2574.00	1553.70		\$25.575 L1 \$26.46 L2
Royal 1/7/13 to 30/4/14	504	13673.52	8316.00	5357.52	6911.28	\$26.235 L1 \$27.135 L2
Platform 1/5/14 to 30/6/14	48	1302.24	792.00	510.24		\$26.235 L1 \$27.135 L2
Platform 1/7/14 to 30/6/15	600	16776.00	9900.00	6876.00		\$27.015 L1 \$27.96 L2
Platform 1/7 /15 to 30/12/15	300	8595 .00	4950.00	3645.00	11031.24	\$27.69 L1 \$28.65 L2
SNG69 1/1/16 to 30/4/16	204	5844.60	3366.00	2478.60		\$27.69 L1 \$28.65 L2
SNG69 1/5/16 to 30/5/16	40	1146.00	880.00	266.00	2744.60	\$27.69 L1 \$28.65 L2
MMGT 1/6/16 to 30/6/16	40	1146.00	880.00	266.00		\$27.69 L1 \$28.65 L2
MMGT 1/7 /16 to 30/7/16	40	1173 .60	880.00	293.60	559.60	\$28.365 L1 \$29.34 L2
MML 1/9/16 to 30/6/17	352	10327.68	7744.00	2583.68		\$28.365 L1 \$29.34 L2
MML 1/7/17 to 30 -11-17	270	8183.70	5940.00	2243.70	4827.38	\$29.295 L1 \$30.315 L2
<b>TOTAL</b>	<b>2554</b>	<b>72296.10</b>	<b>46222.00</b>	<b>26074.10</b>	<b>26074.10</b>	

## ANNEXURE 4 – SATURDAY PENALTY RATES

**ANNEXURE 5 – SUNDAY PENALTY RATES**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which Sunday penalty	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	156	5503.68	2574.00	2929.68		\$34.10 L1 \$35.28 L2
Royal 1/7/13 to 30/4/14	504	18234.72	8316.00	9918.72	12848.40	\$34.98 L1 \$36.18 L2
Platform 1/5/14 to 30/6/14	48	1736.64	792.00	944.64		\$34.98 L1 \$36.18 L2
Platform 1/7/14 to30/6/15	600	22368.00	9900.00	12468.00		\$36.02 L1 \$37.28 L2
Platform 1/7 /15 to 30/12/15	300	11460.00	4950.00	6510.00	19922.64	\$36.92 L1 \$38.20 L2
SNG69 1/1/16 to 30/4/16	204	7792.80	3366.00	4426.80		\$36.92 L1 \$38.20 L2
SNG69 1/5/16 to 30/5/16	40	1528.00	880.00	648.00	5074.80	\$36.92L1 \$38.20 L2
MMGT 1/6/16 to 30/6/16	40	1528.00	880.00	648.00		\$36.92 L1 \$38.20 L2
MMGT 1/7/16 to 30/7/16	40	1564.80	880.00	684.80	1332.80	\$37.82 L1 \$39.12 L2
MML 1/9/16 to 30/6/17	352	13770.24	7744.00	6026.24		\$37.82 L1 \$39.12 L2
MML 1/7/17 to 30-11-17	270	10913.40	5940.00	4973.40	10999.64	\$39.06 L1 \$40.42 L2
<b>TOTAL</b>	<b>2554</b>	<b>96400.28</b>	<b>46222.00</b>	<b>50178.28</b>	<b>50178.28</b>	

**ANNEXURE 6 – PUBLIC HOLIDAY PENALTY RATES**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which Public Holiday penalty	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	36	1587.60	594.00	993.60		\$42.625 L1
Royal 1/7 /13 to 30/4/14	84	3798.48	1386.00	2412.48	3406.08	\$43.725 L1 \$45.225 L2
Platform 1/5/14 to 30/6/14	12	542.64	198.00	344.64		\$43.725L1 \$45.225 L2
Platform 1/7 /14 to 30/6/15	120	5592.00	1980.00	3612.00		\$45.025 L1 \$46.60 L2
Platform 1/7 /15 to 30/12/15	24	1146.00	396.00	750.00	4706.64	\$46.15 L1 \$47.75 L2
SNG69 1/1/16 to 30/5/16	48	2292.00	792.00	1500.00	1500.00	\$46.15L1 \$47.75 L2
MMGT 1/6/16 to 30/6/16	0	0.00	0.00	0.00		\$46.15 L1 \$47.75 L2
MMGT 1/7 /16 to 30/7/16	6	293.40	132.00	161.40	161.40	\$47.275 L1 \$48.90 L2
MML 1/9/16 to 30/6/17	18	880.20	396.00	484.20		\$47.275 L1 \$48.90 L2
MML 1/7/17 to 30-11-17	6	303.12	132.00	171.12	655.32	\$48.825 L1 \$50.525 L2
<b>TOTAL</b>	<b>354</b>	<b>16435.44</b>	<b>6006</b>	<b>10429.44</b>	<b>10429.44</b>	

ANNEXURE 7 – OVERTIME MON TO SAT FOR THE 1<sup>st</sup> 2 HRS

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which Overtime penalty	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	120	3175.20	1980.00	1195.20		\$25.72- \$34.10 L1 \$26.46 \$35.28 L2
Royal 1/7/13 to 30/4/14	440	11937.20	7260.00	4677.20	5872.40	\$26.235 34.98 L1 \$27135 36.18 L2
Platform 1/5/14 to 30/6/14	40	1085.20	660.00	425.20		\$26.235 34.98L1 \$27.135 36.18L2
Platform 1/7 /14 to30/6/15	520	14539.20	8580.00	5959.20		\$27.015 \$36.02 L1 \$27.96 \$37.28 L2
Platform 1/7 /15 to 30/12/15	260	7449.00	4290.00	3159.00	9543.40	\$27.69 \$36.92 L1 \$28.65 \$38.20 L2
SNG69 1/1/16 to 30/5/16	220	6303.00	3630.00	2673.00	2673.00	\$27.69 \$36.92L1 \$28.65 \$38.20 L2
MMGT 1/6/16 to 30/6/16	40	1146.00	880.00	266.00		\$27.69 \$36.92 L1 \$28.65 \$38.20 L2
MMGT 1/7/16 to 30/7/16	40	1173.60	880.00	293.60	559.60	\$28.365 \$37.82 L1 \$29.34 \$39 12 L2
MML 1/9/16 to 30/6/17	380	11149.20	8360.00	2789.20		\$28.365\$37.82 L1 \$29.34 \$39.12 L2
MML 1/7/17 to 30-11-17	280	8486.80	6160.00	2326.80	5116.00	\$29.295 \$39.06 L1 \$30.315 \$40.42 L2
<b>TOTAL</b>	<b>2340</b>	<b>66444.40</b>	<b>42680.00</b>	<b>23764.40</b>	<b>23764.40</b>	



## ANNEXURE 8 – OVERTIME MON TO SAT FOR EXCESS OF 9.6 HRS

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Employer	Number of hours for which Overtime penalty	Entitlement	Amount paid	Underpayments	Total for employer	Applicable rates/hour
Royal 17/3/13 to 30/6/13	30	1270.08	594.00	676.08		\$25.72 \$34.10 L1 \$26.46 \$35.28 L2
Royal 1/7 /13 to 30/4/14	1096	39653.28	18084.00	21569.28	22245.30	\$26.235 34.98 \$27.135 36.18 L2
Platform 1/5/14 to 30/6/14	88	3183.84	1452.00	1731.84		\$26.235 34.98L1 \$27.13 5 36.18L2
Platform 1/7 /14 to 30/6/15	1364	50849.92	22506.00	28343.92		\$27.015 \$36.02 L1 \$27.96 \$37.28 L2
Platform 1/7/15 to 30/12/15	834	31858.80	13761.00	18097.80	48173.50	\$27.69 \$36.92 \$28.65 \$38.20 L2
SNG69 1/1/16 to 30/5/16	576	22003.20	9504.00	12499.20	12499.20	\$27.69 \$28.65 \$38.20 L2
MMGT 1/6/16 to 30/6/16	239	9129.80	5258.00	3871.80		\$27.69 \$36.92 L1 \$28.65 \$38.20 L2
MMGT 1/7 /16 to 30/7/16	226	8841.12	4972.00	3869.12	7740.92	\$28.365 \$37.82 \$29.34 \$39.12 L2
MML 1/9/16 to 30/6/17	1643	64274.16	36146.00	28128.16		\$28.365 \$37.82 L1 \$29.34 \$39.12 L2
MML 1/7/17 to 30-11-17	1094	44219.48	24068.00	20151.48	48279.64	\$29.295 \$39.06 \$30.315 \$40.42
<b>TOTAL</b>	<b>7196</b>	<b>275283.68</b>	<b>136345.00</b>	<b>138938.68</b>	<b>138938.68</b>	

TOTAL UNDER PAYMENTS TO CLAIM						
ANNEXES	COMPANIES					AMOUNT IN AUD
	ROYAL	PLATFORM	SNG69	MMGT	MML	
ANNEX 1	8488.45	19238.64	4594.00	-1472.78	-7451.46	23396.85
ANNEX 2	24979.90	39909.56	10468.20	2663.70	16951.94	94973.30
ANNEX 3	4897.20	6908.40	2042.04	694.80	5849.64	20392.08
ANNEX 4	6911.28	11031.24	2744.60	559.60	4827.38	26074.10
ANNEX 5	12848.40	19922.64	5074.80	1332.80	10999.64	50178.28
ANNEX 6	3406.08	4706.64	1500.00	161.40	655.32	10429.44
ANNEX 7	5872.40	9543.40	2673.00	559.60	5116.00	23764.40
ANNEX 8	22245.36	48173.56	12499.20	7740.92	48279.64	138938.68
<b>TOTAL</b>	<b>89649.07</b>	<b>159434.08</b>	<b>41595.84</b>	<b>12240.04</b>	<b>85228.10</b>	<b>388147.13</b>