

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	14/02/2025 3:56:40 PM AEDT
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File Number:	VID165/2025
File Title:	CPSU, THE COMMUNITY AND PUBLIC SECTOR UNION & ORS v THE STATE OF VICTORIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Originating application starting a representative proceeding under Part IVA of the *Federal Court of Australia Act 1976*

No. of 20

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

CPSU, the Community and Public Sector Union and others named in the schedule

Applicants

The State of Victoria

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Kamal Farouque and Madeleine Castles
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Address for service Level 21, 380 La Trobe Street, Melbourne VIC 3000
(include state and postcode)



Details of claim

On the grounds stated in the accompanying Statement of Claim, the Applicants claim on their own behalf and on behalf of the group members:

1. A declaration that the Respondent contravened section 50 of the *Fair Work Act 2009* (Cth) (**FW Act**) by failing to comply with clause 24.1 and/or 24.2 (as the case applies) of the *Victorian Public Service Enterprise Agreement 2016* (**2016 Agreement**).
2. A declaration that the Respondent contravened section 50 of the FW Act by failing to comply with clause 29.8 of the *Victorian Public Service Enterprise Agreement 2020* (**2020 Agreement**).
3. An order, under section 545 of the FW Act, that the respondent pay compensation to the Applicants and group members.
4. An order, under section 546 of the FW Act, that the Respondent pay a pecuniary penalty in such sum or sums as may be determined by the Court.
5. An order, under section 546 of the FW Act, that the Respondent pay some or all of the pecuniary penalty ordered under (4) above to the First Applicant.
6. Interest on a compound basis.
7. Such further or other order as the Court considers appropriate.

Questions common to claims of group members

The questions of law or fact common to the claims of the group members are:

1. Whether the 2016 Agreement and/or 2020 Agreement applied to the Second and Third Applicants and some or all of the group members.
2. Under the 2016 Agreement, did the progression criteria for the Second and Third Applicants and group members include that they "exceed expectations" in respect of the specified progression criteria merely because the Respondent purported to assess whether progression criteria had been met by reference to whether the Applicant and group members had exceeded expectations?
3. Whether, on the proper construction of clause 24.1 and 24.2 (as the case applies) of the 2016 Agreement, the Second and Third Applicants and group members to whom the 2016 Agreement applied were entitled to progression or a top of grade or value range payment in circumstances where they had, in relation to a performance cycle, been assessed at their end of cycle review as having "achieved expectations".
4. Whether, on the proper construction of clause 24.1 and 24.2 (as the case applies) of the 2016 Agreement, the Second and Third Applicants and group members to whom the 2016 Agreement applied were only entitled to progression or a top of grade or value range payment in circumstances where they had, in relation to a performance cycle, been assessed at their end of cycle review as having "exceeded expectations".



5. If yes to (3) and no to (4), whether the Respondent failed to comply with clause 24.1 or 24.2 (as the case applies) of the 2016 Agreement and thereby contravened section 50 of the FW Act.
6. Under the 2020 Agreement, did the progression criteria for the Second and Third Applicants and group members include that they “exceed expectations” in respect of the specified progression criteria merely because the Respondent purported to assess whether progression criteria had been met by reference to whether the Applicant and group members had exceeded expectations?
7. Whether, on the proper construction of clause 29.8 of the 2020 Agreement, the Second and Third Applicants and group members to whom the 2020 Agreement applied were entitled to progression or a top of grade or value range payment in circumstances where they had, in relation to a performance cycle, been assessed at their end of cycle review as having “achieved expectations”.
8. Whether, on the proper construction of clause 29.8 of the 2020 Agreement, the Second and Third Applicants and group members to whom the 2020 Agreement applied were only entitled to progression or a top of grade or value range payment in circumstances where they had, in relation to a performance cycle, been assessed at their end of cycle review as having “exceeded expectations”.
9. If yes to (7) and no to (8), whether the Respondent failed to comply with clause 29.8 of the 2020 Agreement and thereby contravened section 50 of the FW Act.

Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are all persons:

- (a) who, during any part of the period 14 February 2019 to 18 August 2024 inclusive (**Claim Period**), were employed by the respondent (**State of Victoria**) in the Department of Justice and Community Safety (the **Department**);
- (b) to whom, in their employment, the *Victorian Public Service Enterprise Agreement 2016* (**2016 Agreement**) and/or the *Victorian Public Service Enterprise Agreement 2020* (**2020 Agreement**) applied;
- (c) during the Claim Period up to and including 8 October 2020 (**2016 Agreement Period**):
 - (i) were, in accordance with clause 23.1 of the 2016 Agreement, employed in a position that was classified in:
 1. the ‘VPS Structure’ in Schedule B to the 2016 Agreement; or
 2. any adaptive classification structure aligned to the ‘VPS Structure’,
as a Grade 5, 6 or 7;



- (ii) agreed, in accordance with clause 24.3(c) of the 2016 Agreement, with the State of Victoria on “progression criteria” in relation to the performance cycle commencing:
 1. 1 July 2018 to 30 June 2019; and/or
 2. 1 July 2019 to 30 June 2020

(together, the **2016 Agreement Performance Cycles**);
 - (iii) were, in accordance with clause 24.3(f) of the 2016 Agreement, assessed by their supervisor or manager as having “achieved expectations” in the performance review undertaken at the end of at least one 2016 Agreement Performance Cycle;
 - (iv) were, in accordance with:
 1. clause 24.3(g) of the 2016 Agreement, eligible to access progression or a top of Grade or Value Range payment; and/or
 2. clause 24.3(h) of the 2016 Agreement, eligible for consideration of progression or a top of Grade or Value Range payment; and
 - (v) did not receive any standard progression amount detailed in the table at Schedule B to the 2016 Agreement or a top of Grade or Value Range payment within the meaning of clause 24.1 or 24.2 of the 2016 Agreement (as the case applies) on the purported basis that their progression criteria had not been met within the meaning of clause 24.1(d) or 24.2(a) of the 2016 Agreement because they only “achieved expectations” or did not “exceed expectations”.
- (d) further or alternatively to (c), during the Claim Period from 9 October 2020 to 18 August 2024 (**2020 Agreement Period**):
- (i) were, in accordance with clause 27.1 of the 2020 Agreement, employed in a position that was classified in:
 1. the ‘VPS Structure’ in Schedule C to the 2020 Agreement; or
 2. any adaptive classification structure aligned to the ‘VPS Structure’,

as a Grade 5, 6 or 7;
 - (ii) agreed, in accordance with clause 29.3(a) of the 2020 Agreement, with the State of Victoria on “progression criteria” in relation to the performance cycles commencing:
 1. 1 July 2020 to 30 June 2021;
 2. 1 July 2021 to 30 June 2022;
 3. 1 July 2022 to 30 June 2023; and/or
 4. 1 July 2023 to 30 June 2024

(together, the **2020 Agreement Performance Cycles**);
 - (iii) were, in accordance with clause 29.8(b) of the 2020 Agreement, assessed by their supervisor or manager as having “achieved expectations” in the end of cycle



performance review undertaken in relation to at least one 2020 Agreement Performance Cycle, provided that that assessment had occurred in respect of the 2023-24 performance cycle by no later than 18 August 2024;

- (iv) were, in accordance with clause 29.5 and 29.6 of the 2020 Agreement (as the case applies), eligible to be considered for a “Progression or Top of Grade or Value Range Payment” in respect of the relevant 2020 Agreement Performance Cycle; and
- (v) did not receive ‘Progression Amounts’ referred to in Schedule C to the 2020 Agreement or a ‘Top of Grade or Value Range Payment’ within the meaning of clause 29.2(c) of the 2020 Agreement (as the case applies) on the purported basis that their progression criteria had not been met within the meaning of clause 29.8(a) of the 2020 Agreement because they only “achieved expectations” or did not “exceed expectations”.

Applicant’s address

The Applicant’s address for service is:

Place: Maurice Blackburn Lawyers, Level 21, 380 La Trobe Street, Melbourne VIC 3000

Email: mcastles@mauriceblackburn.com.au; kfarouque@mauriceblackburn.com.au

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 14 February 2025

A handwritten signature in blue ink, which appears to read 'Kfarouque', is written over a horizontal line.

Signed by Kamal Farouque
Lawyer for the Applicant

**Schedule**

No. of 20

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

Applicants

First Applicant:	CPSU, the Community and Public Sector Union
Second Applicant:	Patrick Wren
Third Applicant:	Ben Powell

Date: 14 February 2025