

## NOTICE OF FILING

### Details of Filing

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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



A handwritten signature in blue ink that reads "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.



**Statement of Claim**

No. VID of 2024

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

**CPSU, the Community and Public Sector Union** and others named in the Schedule  
First Applicant

**The State of Victoria**  
Respondent

**A. THE PARTIES**

**A.1 The applicants and group members**

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the applicants on their own behalf and on behalf of 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",

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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”

(**2016 Agreement Group Members**);

- (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”

(the **2020 Agreement Group Members**).

2. The first applicant (**CPSU**) is and was at all material times:

- (a) a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth);
- (b) an employee organisation for the purposes of the FW Act;

- (c) capable of suing in its registered name; and
- (d) entitled to represent the industrial interests of the second applicant (**Mr Wren**), the third applicant (**Mr Powell**), the 2016 Agreement Group Members and the 2020 Agreement Group Members, being persons affected by the contraventions alleged below.

3. Mr Wren:

- (a) is, and from June 2018 has been, employed by the State of Victoria in the Department;
- (b) from:
  - (i) June 2018 to 21 August 2018 was:
    - 1. employed in the position of Assessment and Selection Advisor;
    - 2. in that position, classified as a VPS Officer 4.1.7 in accordance with Schedule B to the 2016 Agreement;
  - (ii) 22 August 2018 to February 2021 was:
    - 1. employed in the position of Team Leader in the Campaigns Recruitment Team;
    - 2. in that position, classified as a Senior Officer 5.1 in accordance with Schedule B to the 2016 Agreement (during the 2016 Agreement Period) and Schedule C to the 2020 Agreement (during the 2020 Agreement Period);
  - (iii) February 2021 onwards was and is:
    - 1. employed in the position of Assistant Manager, Talent Delivery;
    - 2. in that position, classified as a Senior Officer 5.1 in accordance with Schedule C to the 2020 Agreement; and
- (c) is and was a national system employee within the meaning of s 13 of the *Fair Work Act 2009* (Cth) (the **FW Act**) in his employment by the State of Victoria.

### PARTICULARS

As to (a), by operation of section 20 of the *Public*

*Administration Act 2004* (Vic), the Secretary of the Department employs, and at all material times has employed, Mr Wren on behalf of the State of Victoria.

4. Mr Powell:

- (a) is, and from November 2017 has been:
  - (i) employed by the State of Victoria in the Department in the position of Assistant Manager, Work and Development Permit Scheme;
  - (ii) in that position, classified:
    - 1. during the 2016 Agreement Period, as a Senior Officer 5.2 in accordance with Schedule B to the 2016 Agreement;
    - 2. during the 2020 Agreement Period, as a Senior Officer 5.2 in accordance with Schedule C to the 2020 Agreement;
- (b) is and was a national system employee within the meaning of s 14 of the FW Act in his employment by the State of Victoria.

#### **PARTICULARS**

As to (a), by operation of section 20 of the *Public Administration Act 2004* (Vic), the Secretary of the Department employs, and at all material times has employed, Mr Powell on behalf of the State of Victoria.

#### **A.2 The respondent**

5. At all material times, the State of Victoria is and was:

- (a) the employer of:
  - (i) Mr Wren;
  - (ii) Mr Powell;
  - (iii) the 2016 Agreement Group Members; and
  - (iv) the 2020 Agreement Group Members;
- (b) an entity able to be sued pursuant to the *Crown Proceedings Act 1958* (Vic);
- (c) a national system employer within the meaning of section 14 of the FW Act.

## **B. THE INDUSTRIAL INSTRUMENTS**

### **B.1 Background**

6. On or about 11 May 2016, the Fair Work Commission approved the 2016 Agreement.

#### **PARTICULARS**

The applicants refer to [2016] FWCA 2934.

7. On 18 May 2016, the 2016 Agreement commenced operation.

#### **PARTICULARS**

The applicants refer to [2016] FWCA 2934 at [5].

8. At all times during the 2016 Agreement Period, the 2016 Agreement covered:

- (a) Mr Wren;
- (b) Mr Powell; and
- (c) the 2016 Agreement Group Members.

9. At all times during the 2016 Agreement Period, the 2016 Agreement applied to:

- (a) Mr Wren;
- (b) Mr Powell;
- (c) the 2016 Agreement Group Members.

10. On or about 2 October 2020, the Fair Work Commission approved the 2020 Agreement.

#### **PARTICULARS**

The applicants refer to [2020] FWCA 5215.

11. On 9 October 2020, the 2020 Agreement commenced operation.

#### **PARTICULARS**

The applicants refer to [2020] FWCA 5215 at [13].

12. At all times during the 2020 Agreement Period, the 2020 Agreement covered:

- (a) Mr Wren;

- (b) Mr Powell;
- (c) the 2020 Agreement Employees.

13. At all times during the 2020 Agreement Period, the 2020 Agreement applied to:

- (a) Mr Wren;
- (b) Mr Powell; and
- (c) the 2020 Agreement Employees.

## **B.2 2016 Agreement: applicable clauses**

### *B.2.1 The classification structure*

14. At all times during the Claim Period up to and including 8 October 2020 (**2016 Agreement Period**), the 2016 Agreement provided that or to the effect that:

- (a) certain positions were to be classified within:
  - (i) the “VPS Structure” in Schedule B to the 2016 Agreement; or
  - (ii) the adaptive classification structures set out at clause 23.1 and Schedule C to the 2016 Agreement

#### **(2016 VPS Structure Positions);**

- (b) the 2016 VPS Structure Positions were classified into Grades 1, 2, 3, 4, 5, 6 and 7, or were classified in a structure that aligned with those Grades; and
- (c) those Grades were divided into value ranges.

### **PARTICULARS**

As to (a), the applicants refer to clause 23.1 and Schedule B to the 2016 Agreement.

As to (b) the applicants refer to clause 23.2. and Schedules B, C and E to the 2016 Agreement.

As to (c) the applicants refer to Schedule B, Schedule C and Schedule E to the 2016 Agreement.

15. At all times during the 2016 Agreement Period, the 2016 Agreement provided that or to the effect that employees would be employed within, and appointed to, a “Grade and Value



Range” based on work requirements in accordance with the “Classification and Value Range Standard Descriptors” at Schedule E to the 2016 Agreement.

#### **PARTICULARS**

The applicants refer to clause 23.3 and 23.5(a) of the 2016 Agreement.

#### *B.2.2 The entitlement to progression*

16. At all times during the 2016 Agreement Period, clause 24.1(b) and (d) of the 2016 Agreement provided that:

#### *“Progression Steps and Amounts*

...

- (b) *Within Grades 5 to the Senior Technical Specialist Grade there are standard progression amounts as detailed in the table at Schedule B. The progression amounts are expressed in terms of dollars and are common to all Employees within a given Grade/Value Range.*

...

- (d) *Progression between progression steps or amounts will occur when an Employee was assessed at his or her annual performance review as meeting the “progression criteria” outlined in the Employee’s performance plan.”*

#### **PARTICULARS**

The reference to the “Senior Technical Specialist Grade” is a reference to Grade 7 (see Schedules B and E to the 2016 Agreement).

17. At all times during the 2016 Agreement Period, clause 24.2(a) and (b) of the 2016 Agreement provided that:

#### *“Top of Grade or Value Range Payment*

- (a) *An Employee at the top of their grade or value range will receive a top of Grade or Value Range payment where the Employee is assessed at their annual performance review as meeting the “progression criteria” outlined in the Employee’s performance plan.*

- (b) *The top of Grade or Value Range payment will be equal to one per cent of the Employee's salary as at 30 June of the relevant performance cycle."*

18. At all times during the 2016 Agreement Period, clause 24.3(g) and (h) of the 2016 Agreement provided that:

*"Performance Cycle and Review*

- (a) *An Employee will be eligible to access progression or a top of Grade or Value Range payment, if the Employee has been in his or her role for 3 months or more, except in the following circumstances:*
  - (i) *the Employee has been appointed on probation under clause 15.4 and has been in his or her role for less than 6 months at the time the performance review is undertaken;*
  - (ii) *the Employee has been appointed to a role with a new Employer and has been in his or her role for less than 6 months at the time the performance review is undertaken;*
  - (iii) *the Employee has completed a formal underperformance process or subject to one under clause 20 at 30 June;*
  - (iv) *the Employee is subject to proven misconduct as per clause 21 during the course of the performance cycle; or*
  - (v) *subject to the terms of clause 8.9 of Schedule C for Community Corrections Practitioners*
- (b) *Higher duties – progression payments*
  - (i) *Where an Employee has been acting in a higher position for a period of twelve months, the Employee will be eligible for consideration of progression or a top of Grade or Value Range payment for continued performance of the higher duties beyond 12 months.*
  - (ii) *In the event an eligible Employee acting in a higher position is progressed to the next progression step/amount in that higher position, on returning to their substantive position they will be deemed to have progressed to the next progression step/amount within their substantive Grade (if applicable)."*

**B.2.3**      *The performance review process*

19.      At all times during the 2016 Agreement Period, clause 24.3 of the 2016 Agreement provided that:

*“Performance Cycle and Review*

- (a)      *The performance cycle is twelve months (1 July to 30 June).*
- (b)      *All Employees must participate in the performance development and review process, including the development of performance plans and conduct of performance discussions and reviews.*
- (c)      *The “progression criteria” are to be agreed with each Employee at the start of the performance cycle or upon the Employee’s commencement in a role. The “progression criteria” may be adjusted by agreement during the performance cycle.*
- (d)      *The “progression criteria” for an individual Employee are to be developed using the performance standards outlined in clause 24.4 (Performance Standards).*
- (e)      *All Employees can expect informal and formal feedback about their performance through the performance cycle with their supervisor or manager.*
- (f)      *A performance review is undertaken at the end of each performance cycle. The Employee’s performance against the “progression criteria” is assessed by their supervisor or manager at that time. Employees must meet all of the elements of their individual performance plan to be eligible for progression or a top of Grade or Value Range payment.”*

20.      At all times during the 2016 Agreement Period, clause 24.4 of the 2016 Agreement provided, inter alia, that:

*“Performance Standards*

- (a)      *The performance standards detailed below may be weighted and combined, appropriate to the role, to make up an individual Employee’s “progression criteria”.*
- (b)      *Performance standards for all Grades are as follows:*
  - (i)      *achieving the performance targets;*
  - (ii)     *demonstrating public sector values and behaviours; and*

(iii) *applying learning and development.*"

**B.2.4**      *Payment of salaries*

21.      At all times during the 2016 Agreement Period, clause 29.1 of the 2016 Agreement provided that:

*"Salaries, allowances, penalty or overtime payments due to an Employee must be paid by the Employer by fortnightly electronic direct credit to a bank account, credit union or building society account nominated by the Employee. In exceptional circumstances, including significant delays in payment of salary, the Employer will make provision for off-line payments."*

**B.3**      **2020 Agreement: applicable clauses**

**B.3.1**      *The classification structure*

22.      At all times during the Claim Period from 9 October 2020 (**2020 Agreement Period**), the 2020 Agreement provided that or to the effect that:

- (a)      certain positions were to be classified within:
  - (i)      the "VPS Structure" in Schedule C to the 2020 Agreement; or
  - (ii)     the adaptive classification structures set out at clause 27.1 and Schedules D to F and clause 1 of Schedule G to the 2020 Agreement

**(2020 VPS Structure Positions);**
- (b)      the 2020 VPS Structure Positions were classified into Grades 1, 2, 3, 4, 5, 6 and 7, or were classified in a structure that aligned with those Grades; and
- (c)      those Grades were divided into value ranges.

**PARTICULARS**

As to (a), the applicants refer to clause 27.1 and Schedules C to F and clause 1 of Schedule G to the 2020 Agreement.

As to (b) the applicants refer to clause 27.2 and Schedules C to F and clause 1 of Schedule G to the 2020 Agreement.

As to (c) the applicants refer to Schedules C to F and

clause 1 of Schedule G to the 2020 Agreement.

23. At all times during the 2020 Agreement Period, the 2020 Agreement provided that or to the effect that employees would be employed within, and appointed to, a “Grade and Value Range based on work requirements in accordance with the “Classification and Value Range Standard Descriptors” at Schedules C to F to the 2020 Agreement.

### **PARTICULARS**

The applicants refer to clause 27.3 and 27.6(a) to the 2020 Agreement.

#### **B.3.2     *The entitlement to progression***

24. At all times during the 2020 Agreement Period, clause 29.4(b) and (c) to the 2020 Agreement provided that:

*“Progression Steps and Amounts*

...

- (b) *Within VPS Grades 5 to 7 there are standard Progression Amounts as detailed in the table at clause 1 of Schedule C. The Progression Amounts are expressed in terms of dollars and are common to all Employees within a given Grade/Value Range.*
- (c) *Progression Steps and Progression Amounts (where relevant) for Employees covered by a VPS Aligned Adaptive Structure or Non-VPS Aligned Adaptive Structure are outlined in the relevant structures as detailed in Section II of this Agreement.”*

25. At all times during the 2020 Agreement Period, clause 29.2(b) and (c) of the 2020 Agreement provided that:

*“Performance Cycle and Review*

...

- (b) *“Progression” means advancing to the next Progression Step for VPS 1-4 or adding the next progression amount to substantive salary for VPS 5-7 in accordance with this clause. Progression Steps and Progression Amounts are referred to in the final column of clause 1 of Schedule C (or relevant part of Section II of this Agreement for Non-VPS Aligned Adaptive Structures).*

- (c) *“Top of Grade or Value Range Payment” means the 1 per cent lump sum of the Employee’s Salary as at 30 June of the Performance Cycle, paid in accordance with this clause to an Employee at the top of their Grade or Value Range in lieu of Progression.”*

26. At all times during the 2020 Agreement Period, clause 29.8(a) of the 2020 Agreement provided that:

- “(a) Progression between progression steps or amounts or the payment of a Top of Grade or Value Range payment will occur if the Employee:*
- (i) meets the eligibility requirements set out in clause 29.5 or clause 29.6 (as relevant);*
  - (ii) is assessed as having met their Progression Criteria at the End of Cycle Performance Review”*

27. At all times during the 2020 Agreement Period, clause 29.5 of the 2020 Agreement provided, inter alia, that:

*“Eligibility requirements for Progression or a Top of Grade or Value Range Payment*

- (a) Employees are eligible to be considered for a Progression or a Top of Grade or Value Range Payment unless any of the exclusions in clause 29.5(b) apply.*
- (b) An Employee is not eligible to be considered for Progression or Top of Grade or Value Range Payment in respect of a Performance Cycle if:*
  - (i) the Employee has been continuously employed in the VPS for less than 12 months as at the end of the Performance Cycle; or*
  - (ii) the Employee obtained a promotion to a position at a higher grade or Value Range, or otherwise negotiated a salary increase, within the performance cycle;*
  - (iii) the Employee was subject to a formal underperformance process under clause 24 at any time during the Performance Cycle; or*
  - (iv) the Employee is subject to proven misconduct as per clause 25 during the course of the Performance Cycle. If the investigation of alleged misconduct spans more than one Performance Cycle, the eligibility exclusion is to be applied in the Performance Cycle in which the determination of the discipline outcome (under clause 25.12 of the Agreement) is made. If a misconduct*

*investigation is ongoing but has not yet concluded the Employee is eligible to be considered for Progression or Top of Grade or Value Range payment but the Employer is not precluded from considering matters which have arisen under clause 25 in assessing whether the Employee has met their Progression Criteria where it is fair and reasonable to do so.”*

28. At all times during the 2020 Agreement Period, clause 29.6 of the 2020 Agreement provided that:

*“Eligibility requirements for Progression or Top of Grade or Value Range Payment – Higher Duties*

- (a) *If an Employee has been acting in a higher position for a period of twelve months at the end of the Performance Cycle and neither clause 29.5(b)(ii), 29.5(b)(iii) or 29.5(b)(iv) apply to the Employee, the Employee will be eligible to be considered for Progression or a Top of Grade or Value Range Payment for continued performance of the higher duties beyond 12 months.*
- (b) *If an Employee progresses to the next progression step or amount while acting in a higher position they will progress to the next Progression Step / Amount within their substantive Grade (if applicable).*
- (c) *An Employee who has been acting in a higher position for a period of less than twelve months at the end of the Performance Cycle, may be eligible to be considered for Progression or a Top of Grade or Value Range payment at their substantive Grade or Value Range, if they are not otherwise ineligible because of the operation of clause 29.5”*

### **B.3.3 The performance review process**

29. At all times during the 2020 Agreement Period, the 2020 Agreement provided that or to the effect that the performance development and progression arrangements outlined in clause 29 of the 2020 Agreement would apply to the 2020-21 performance cycle.

## **PARTICULARS**

The applicants refer to clause 29.1(b) of the 2020 Agreement.

30. At all times during the 2020 Agreement Period, clause 29.2(d), (e) and (g) of the 2020 Agreement provided that:

*“Performance Cycle and Review*

...

- (d) *The Performance Cycle is twelve months (1 July to 30 June).*
- (e) *All Employees must participate in the performance development and review process, including in the development of performance development plans and conduct of performance discussions and reviews.*

...

- (g) *The performance development and review process has three formal stages:*

*Table 11: Performance development and review process*

<b>Stage</b>	<b>Description</b>
<i>Commencement of the Performance Cycle</i>	<p><i>Employer and Employee agree a performance development plan outlining:</i></p> <ul style="list-style-type: none"> <li><i>the agreed performance goals appropriate to the Employee's role; and</i></li> <li><i>the agreed learning and development goals required for the Employee's role and/or to build the Employee's professional capacity and career opportunities.</i></li> </ul> <p><i>In addition, the Employee is expected to comply with the Public Sector Values and Code of Conduct for Victorian Public Sector Employees.</i></p> <p><i>Collectively these three elements constitute the Employee's Progression Criteria. The expected standard for the setting of Progression Criteria is outlined in clause 29.3.</i></p>
<i>Mid-Cycle Performance Review</i>	<i>Undertaken around the mid-point of the Performance Cycle, the Employer and Employee meet to monitor and assess the Employee's performance towards meeting their Progression Criteria.</i>
<i>End of Cycle Performance Review</i>	<i>Undertaken at the end of each Performance Cycle during which the Employee's performance throughout the Performance Cycle is assessed to</i>



	<i>determine whether they have met the Progression Criteria.</i>
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31. At all times during the 2020 Agreement Period, clause 29.3(a), (b) and (d) of the 2020 Agreement provided that:

*“Progression Criteria*

- (a) *The Progression Criteria are to be agreed with each Employee at the start of the Performance Cycle or on the Employee’s commencement in a role. The Progression Criteria may be adjusted by agreement during the Performance Cycle.*
- (b) *Progression Criteria should be sufficiently detailed and clean to enable proper assessment of performance to occur and be consistent with the Employee’s role, skills, capabilities and the relevant Classification Descriptors outlined in Schedule C of the Agreement. The expected capabilities, responsibilities and behaviours appropriate to the role may be weighed and combined to develop the Progression Criteria.*

...

(d) *Setting Progression Criteria*

(i) *VPS 1 to 4 Classified Employees*

*For VPS Grades 1 to 4 (or equivalent), Progression Criteria will not be as onerous as those required for VPS 5 through VPS 7 (or equivalent).*

*While VPS Grades 3 and 4 (or equivalent) are clearly seen as transition points to higher levels of management within the structure and carry additional responsibility, this does not mean work at all lower levels will not be important and demanding. However, it is expected that in setting agreed Progression Criteria the overwhelming majority of persons within Grades 1 to 4 will achieve the objectives and should move through the Salary points.*

(ii) *VPS 5 to VPS 7*

*In setting Progression Criteria for VPS 5 to VPS 7 (or equivalent) classified Employees it is expected Progression Criteria will:*

- *include measures of excellence and skill acquisitions; and*

- *be commensurate with the higher level of responsibility expected of positions of these Grades; and*
- *be more challenging and difficult to achieve.”*

32. At all times during the 2020 Agreement Period, clause 29.8(b) and (d) of the 2020 Agreement provided that:

*“Achieving Progression or Top of Grade or Value Range Payment*

*...*

- (b) *An End of Cycle Performance Review is undertaken at the end of each Performance Cycle. The Employee’s performance against the Progression Criteria is assessed by their supervisor or manager at that time.*

*...*

- (d) *Where an Employee is assessed as not having met their agreed Progression Criteria, the Employee will not obtain Progression or be paid a top of Grade or Value Range Payment.”*

33. At all times during the 2020 Agreement Period, clause 29.9(a) and (d) of the 2020 Agreement provided that:

*“Operation of Progression Steps or Amounts or Top of Grade or Value Range Payment where progression is achieved*

- (a) *Other than as provided for in clause 29.9(b), progression will take effect backdated to 1 July following the completion of the Performance Cycle to which the progression relates.*

*...*

- (d) *Top of Grade or Value Range payments will be paid as a lump sum processed by the Employer at the same time as other progression outcomes resulting for the Performance Cycle following the Employee’s return to work.”*

#### B.3.4 *Payment of salaries*

34. At all times during the 2020 Agreement Period, clause 33.1 of the 2020 Agreement provided that:

*“Salaries, allowances, penalty or overtime payments due to an Employee must be paid by the Employer by fortnightly electronic direct credit to a bank account, credit union or building society account nominated by the Employee. In exceptional circumstances, including significant delays in payment of salary, the Employer will make provision for off-line payments.*

#### **B.4 The effect of the applicable clauses in the 2016 and 2020 Agreement**

35. The effect of the clauses set out in Parts B.2 and B.3 above was that, at all times during the 2016 Agreement Period and the 2020 Agreement Period, for employees classified as a Grade 5, 6 or 7 or equivalent for an adaptive classification structure (**Employees**):

- (a) each Employee was required to participate in the performance development and review process (**performance process**) established by clause 24 of the 2016 Agreement and clause 29 of the 2020 Agreement (as the case applies), including by:
  - (i) developing performance plans; and
  - (ii) conducting performance reviews;
- (b) a performance cycle was twelve months, from 1 July to 30 June the following year;
- (c) “progression” relevantly included a progression amount identified in Schedule B to the 2016 Agreement and Schedule C to the 2020 Agreement (as the case applies);
- (d) a top of grade or value range payment comprised a payment of 1% of the Employee’s salary;
- (e) progression or the payment of a top of grade or value range payment was to occur when an Employee met his or her progression criteria and was eligible for progression within the meaning of clause 24.3(g) and (h) of the 2016 Agreement and clauses 29.5 and 29.6 of the 2020 Agreement;
- (f) each Employee was required to agree their progression criteria with the State of Victoria in relation to each performance cycle;

- (g) each Employee's progression criteria were to be outlined in that Employee's performance plan;
- (h) each Employee's progression criteria were to consist of agreed performance goals, learning and development goals and the demonstration of public sector values and behaviours;
- (i) at the end of each performance cycle, each Employee's performance during the relevant performance cycle was to be assessed by their supervisor or manager against their progression criteria at an end of cycle performance review;
- (j) if the Employee was assessed as having met his or her progression criteria, a progression amount or top of grade or value range payment was to be paid by the State of Victoria to the Employee in the next fortnightly payment of salary immediately following the assessment that the Employee had met his or her progression criteria (the **Next Payment Date**).

#### PARTICULARS

As to (a) the applicants refer to clause 24.3(b) of the 2016 Agreement and 29.2(e) of the 2020 Agreement.

As to (b), the applicants refer to clause 24.3(a) of the 2016 Agreement and clause 29.2(d) of the 2020 Agreement.

As to (c), the applicants refer to clause 24.1(b) of the 2016 Agreement and clause 29.2(b) of the 2020 Agreement.

As to (d), the applicants refer to clause 24.2(a) and (b) of the 2016 Agreement and clause 29.2(c) of the 2020 Agreement.

As to (e), the applicants refer to clauses 24.1(d), 24.3(g) and (h) of the 2016 Agreement and clauses 29.8, 29.5 and 29.6 of the 2020 Agreement.

As to (f), the applicants refer to clause 24.3(c) of the 2016 Agreement and clause 29.3(a) of the 2020 Agreement.

As to (g), the applicants refer to clause 24.1(d) and 24.3(b) of the 2016 Agreement and clause 29.2 (table 11) of the 2020 Agreement.

As to (h), the applicants refer to clauses 24.3(d) and

24.4(a) and (b) of the 2016 Agreement and clause 29.2 (table 11) of the 2020 Agreement.

As to (i), the applicants refer to clause 24.3(f) of the 2016 Agreement and clause 29.8(b) of the 2020 Agreement.

As to (j), the applicants refer to clause 29.1 of the 2016 Agreement and clause 33.1 of the 2020 Agreement.

## **C. THE DEPARTMENT'S APPROACH TO PROGRESSION**

36. At all times during the 2016 and 2020 Agreement Periods, the Department required that all elements of the performance process be recorded in the Nexus system (**Nexus**).

### **PARTICULARS**

The applicants refer to the document *Performance and Development Planning Guideline and Related Policy* (**DPGR Policy**). The DPGR Policy was in writing and was expressed to operate from 1 January 2016 onward. On a date not known to the applicants, the DPGR Policy was updated to refer to the 2020 Agreement. At all material times the DPGR Policy was expressed to have been issued under the authority of the Executive Director, People and Culture. A copy of the DPGR Policy is in the applicants' possession and is available for inspection upon request.

37. At all times during the 2016 and 2020 Agreement Periods, the Department required that each Employee's progression criteria be determined between the Employee and their manager at the commencement of the relevant performance cycle or at the Employee's commencement in a role.

### **PARTICULARS**

The applicants refer to the DPGR Policy.

38. At all times during the 2016 and 2020 Agreement Periods, the Department required that the progression criteria represent the achievement of performance targets, the demonstration of public sector values and behaviours and the application of learning and development.

### **PARTICULARS**

The applicants refer to the DPGR Policy.

39. At all times during the 2016 and 2020 Agreement Periods, the Department required that:
- (a) at the commencement of each performance cycle each Employee must, in conjunction with their manager, develop a new performance and development plan (**PDP**) in Nexus; and
  - (b) the PDP must include progression criteria in relation to performance goals, job-specific accountabilities and values and behaviours.

#### **PARTICULARS**

The applicants refer to the DPGR Policy.

40. At all times during the 2016 and 2020 Agreement Periods, the Department required that Employees employed at Grades 1 to 4 (or equivalent for adaptive classifications) who were assessed at their end of cycle performance review as having “achieved expectations” or higher in relation to the performance goals, job specific accountabilities and values and behaviours set out in their PDP, be recognised as having “met” their progression criteria within the meaning of the 2016 or 2020 Agreement (as the case applies).

#### **PARTICULARS**

The applicants refer to the DPGR Policy.

41. At all times during the 2016 and 2020 Agreement Periods, the Department required that Employees employed at Grades 5 to 7 (or equivalent for adaptive classifications) who were assessed at their end of cycle performance review as having:
- (a) “exceeded expectations” or higher in relation to the performance goals, job specific accountabilities and values and behaviours set out in their PDP, be recognised as having “met” their progression criteria within the meaning of the 2016 or 2020 Agreement (as the case applies);
  - (b) “achieved expectations” in relation to the performance goals, job specific accountabilities and values and behaviours set out in their PDP, be recognised as not having “met” their progression criteria within the meaning of the 2016 or 2020 Agreement (as the case applies).

#### **PARTICULARS**

The applicants refer to the DPGR Policy.

42. By reason of the matters in the preceding paragraph, at all times during the 2016 and 2020 Agreement Periods, the Department denied progression amounts or top of grade or value

range payments (as the case applied) to Employees who were assessed at their end of cycle performance review as having “achieved expectations” in relation to their progression criteria.

#### **D. CONTRAVENTIONS OF THE 2016 AGREEMENT**

##### **D.1 Contraventions of the 2016 Agreement in respect of Mr Wren**

###### *D.1.1 2018-19 performance cycle*

43. On 25 February 2019, Mr Wren’s manager, Ms Trang Nguyen, sent an email to Mr Wren and other 2016 Agreement Employees classified as Grade 5 employees which stated, inter alia, that:

*“Hi team leaders*

*I have added your PDP goals and their measures into Nexus.”*

#### **PARTICULARS**

Ms Nguyen’s email was sent at 5:03pm on 25 February 2019 with the subject line “*PDP goals – VPS5 Team Leaders.*” A copy of the email is in the applicants’ possession and is available for inspection upon request.

44. On 26 February 2019, Ms Nguyen sent an email to Mr Wren and other 2016 Agreement Employees classified as grade 5 employees which stated, inter alia, that:

*“Hi team leaders*

*Some updates have been made around the innovation and technology goal to be more around assessment and selection rather than focusing entirely on attraction.*

*These have been updated on Nexus. Please also see attached.”*

#### **PARTICULARS**

Ms Nguyen’s email was sent at 5:15pm on 27 February 2019 with the subject line “*Re: PDP goals – VPS5 Team Leaders.*” A copy of the email is in the applicants’ possession and is available for inspection upon request.

45. Ms Nguyen's email of 26 February 2019 attached a document titled "*Final PDP Grade 5 2018-19*" which contained draft goals for grade 5 employees for the 2018-19 performance cycle.

#### **PARTICULARS**

The document "*Final PDP Grade 5 2018-19*" is in the applicants' possession and is available for inspection upon request.

46. On a date not known to Mr Wren but shortly following 26 February 2019, Mr Wren copied and pasted the goals contained in the document "*Final PDP Grade 5 2018-19*" into Nexus.

#### **PARTICULARS**

A document titled "*Goal Details Report*", which sets out Mr Wren's goals as they appeared in Nexus relevant to the 2018-19 performance cycle, is in the applicants' possession and available for inspection upon request.

47. On a date not known to Mr Wren but following the events in the preceding paragraph, Ms Nguyen recorded Mr Wren's goals in Nexus as "approved."
48. By reason of the matters in paragraphs 44 to 47, on a date not known to Mr Wren but following 26 February 2019, his progression criteria for the 2018-19 performance cycle:
- (a) were agreed, within the meaning of clause 24.3(c) of the 2016 Agreement; and
  - (b) were contained in a PDP that was recorded in Nexus.
49. Mr Wren's progression criteria for the 2018-19 performance cycle did not provide or include that he was required to meet the agreed upon criteria to a degree that "exceeded expectations".
50. On or around 26 August 2019, Ms Nguyen completed the *Performance Assessment – End Cycle Review 1 July 2019* in Nexus which:
- (a) assessed Mr Wren's performance against the progression criteria in the PDP referred to in paragraph 48; and
  - (b) provided an overall rating for Mr Wren of "Achieving Expectations".

#### **PARTICULARS**

A copy of the *Performance Assessment – End Cycle*



*Review 1 July 2019* completed by Ms Nguyen on 26 August 2019 is in the applicants' possession and is available for inspection upon request.

51. By reason of the matters in the preceding paragraph, on 26 August 2019 Mr Wren met his progression criteria for the 2018-19 performance cycle.
52. As at 26 August 2019, Mr Wren was eligible for progression within the meaning of clause 24.3(g) of the 2016 Agreement.

### **PARTICULARS**

1. Mr Wren had been in the Team Leader of the Campaigns Recruitment Team role for 3 months or more.
  2. Mr Wren had not been appointed to that role on probation under clause 15.4 and had not been in the role for less than 6 months at the time the performance review was undertaken.
  3. Mr Wren had not been appointed to a role with a new Employer and had not been in his or her role for less than 6 months at the time the performance review was undertaken.
  4. Mr Wren had not completed a formal underperformance process nor been subject to one under clause 30 as at 30 June 2019.
  5. Mr Wren had not been subject to proven misconduct as per clause 21 during the course of the 2018-19 performance cycle.
  6. Mr Wren was not subject to the terms of clause 8.9 of Schedule C.
53. Despite the matters alleged at paragraphs 51 and 52 above, on and from 26 August 2019, the State of Victoria did not provide, and Mr Wren did not receive, any progression amount in accordance with Schedule B to the 2016 Agreement.
  54. By reason of the matters in the preceding paragraph, on and from the Next Payment Date following 26 August 2019 the State of Victoria contravened clause 24.1 of the 2016 Agreement.
- D.1.2 2019-20 performance cycle*
55. On 9 January 2020, a Senior Recruitment Manager in People and Workplace Services, Bree Bolst, sent an email to Mr Wren and others which stated, inter alia:

*"Dear all*

*Please find attached the PDP goals that the leadership team have drafted to roll out across all of our respective team.*

*Lesley and Pat – we will discuss in our next one on ones and modify as required.”*

#### **PARTICULARS**

Ms Bolst’s email was sent at 12:00pm on 9 January 2020 with the subject line “*1920 PDP Goals (GJ edits) \_docx.msg*” A copy of the email is in the applicants’ possession and is available for inspection upon request.

56. Ms Bolst’s email of 9 January 2020 attached a document titled “*1920 PDP Goals (GJ edits).docx*” which contained, inter alia, draft goals for the 2019-20 performance cycle for employees classified as Grade 5 under the 2016 Agreement.

#### **PARTICULARS**

The document “*1920 PDP Goals (GJ edits).docx*” is in the applicants’ possession and is available for inspection upon request.

57. On 26 February 2020, Mr Wren copied and pasted the draft goals for grade 5 employees from the document titled “*1920 PDP Goals (GJ edits).docx*” into Nexus.

#### **PARTICULARS**

A document titled “*Goal Details Report*”, which sets out Mr Wren’s goals as they appeared in Nexus relevant to the 2019-20 performance cycle, is in the applicants’ possession and available for inspection upon request.

58. On 26 February 2020, Ms Nguyen recorded Mr Wren’s goals in Nexus as “approved”.
59. By reason of the matters in paragraphs 55 to 55 above, on 26 February 2020 Mr Wren’s progression criteria for the 2019-20 performance cycle:
- (a) were agreed within the meaning of clause 24.3(c) of the 2016 Agreement; and
  - (b) were contained in a PDP that was recorded in Nexus.
60. Mr Wren’s progression criteria for the 2019-20 performance cycle did not provide or include that he was required to meet the agreed upon criteria to a degree that “exceeded expectations”.
61. On 31 July 2020, Mr Wren’s manager Mr Luke Houston completed the *Performance Assessment – End Cycle Review 1 July 2020* in Nexus which:

- (a) assessed Mr Wren's performance against the progression criteria which had been agreed and recorded in the PDP referred to in paragraph 59;
- (b) provided an overall rating for Mr Wren of "Achieving Expectations".

#### **PARTICULARS**

A copy of the *Performance Assessment – End Cycle Review 1 July 2020* completed by Mr Houston on 31 July 2020 is in the applicants' possession and is available for inspection upon request.

- 62. By reason of the matters in the preceding paragraph, on 31 July 2020 Mr Wren met his progression criteria for the 2018-19 performance cycle.
- 63. As 31 July 2020, Mr Wren was eligible for progression within the meaning of clause 24.3(g) of the 2016 Agreement.

#### **PARTICULARS**

1. Mr Wren had been in the Team Leader of the Campaigns Recruitment Team role for 3 months or more.
  2. Mr Wren had not been appointed to that role on probation under clause 15.4 and had not been in the role for less than 6 months at the time the performance review was undertaken.
  3. Mr Wren had not been appointed to a role with a new Employer and had not been in his or her role for less than 6 months at the time the performance review was undertaken.
  4. Mr Wren had not completed a formal underperformance process nor been subject to one under clause 30 as at 30 June 2020.
  5. Mr Wren had not been subject to proven misconduct as per clause 21 during the course of the 2019-20 performance cycle.
  6. Mr Wren was not subject to the terms of clause 8.9 of Schedule C.
- 64. Despite the matters alleged at paragraphs 62 and 63 above, on and from 31 July 2020 the State of Victoria did not provide, and Mr Wren did not receive, any progression amount or top of grade or value range payment in accordance with Schedule B to the 2016 Agreement.
  - 65. By reason of the matters in the preceding paragraph, on and from the Next Payment Date following 31 July 2020 the State of Victoria contravened clause 24.1 of the 2016 Agreement.

## **D.2 Contraventions of the 2016 Agreement in respect of Mr Powell**

### *D.2.1 2018-19 performance cycle*

66. On a date not known to Mr Powell but following 27 November 2018, Mr Powell used Nexus to draft and record his goals for the 2018-19 performance cycle.
67. On 12 and 13 March 2019, Mr Powell's manager, Ms Patricia Roarke, used Nexus to record comments in relation to Mr Powell's draft goals.
68. On a date not known to Mr Powell but following 13 March 2019, Mr Powell used Nexus to read Ms Roarke's comments and amend his goals.

### **PARTICULARS**

A document titled "*Goal Details Report*", which sets out Mr Powell's goals as they appeared in Nexus relevant to the 2018-19 performance cycle, is in the applicants' possession and available for inspection upon request.

69. On a date not known to Mr Powell but after Mr Powell had read Ms Roarke's comments and amended his goals, Ms Roarke recorded Mr Powell's goals in Nexus as "approved".
70. By reason of the matters in paragraphs 66 to 69 above, on a date not known to Mr Powell but following 13 March 2019, his progression criteria for the 2018-19 performance cycle:
  - (a) were agreed within the meaning of clause 24.3(c) of the 2016 Agreement; and
  - (b) were contained in a PDP that was recorded in Nexus.
71. Mr Powell's progression criteria for the 2018-19 performance cycle did not provide or include that he was required to meet the agreed upon criteria to a degree that "exceeded expectations".
72. On 12 August 2019, Ms Roarke completed the *Performance Assessment – End Cycle Review 1 July 2019* in Nexus which:
  - (a) assessed Mr Wren's performance against the progression criteria which had been agreed and recorded in the PDP referred to in paragraph 70;
  - (b) provided an overall rating for Mr Wren of "Achieving Expectations".

### PARTICULARS

A copy of the *Performance Assessment – End Cycle Review 1 July 2019* completed by Ms Roarke on 12 August 2019 is in the applicants' possession and is available for inspection upon request.

73. By reason of the matters in the preceding paragraph, on 12 August 2019 Mr Powell met his progression criteria for the 2018-19 performance cycle.
74. As at 12 August 2019, Mr Powell was eligible for a top of grade or value range payment within the meaning of clause 24.3(g) of the 2016 Agreement.

### PARTICULARS

1. Mr Powell had been in the Assistant Manager, Work and Development Permit Scheme role for 3 months or more.
  2. Mr Powell had not been appointed to that role on probation under clause 15.4 and had not been in the role for less than 6 months at the time the performance review was undertaken.
  3. Mr Powell had not been appointed to a role with a new Employer and had not been in his or her role for less than 6 months at the time the performance review was undertaken.
  4. Mr Powell had not completed a formal underperformance process nor been subject to one under clause 30 as at 30 June 2019.
  5. Mr Powell had not been subject to proven misconduct as per clause 21 during the course of the 2018-19 performance cycle.
  6. Mr Powell was not subject to the terms of clause 8.9 of Schedule C.
- 
75. Despite the matters alleged at paragraphs 73 and 74 above, on and from 12 August 2019 the State of Victoria did not provide, and Mr Powell did not receive, any top of grade or value range payment in accordance with clause 24.2(b) of the 2016 Agreement.
  76. By reason of the matters in the preceding paragraph, on and from the Next Payment Date following 12 August 2019 the State of Victoria contravened clause 24.2 of the 2016 Agreement.

*D.2.2 2019-20 performance cycle*

77. On a date not known to Mr Powell but following 31 January 2020, Mr Powell used Nexus to draft and record his goals for the 2019-20 performance cycle.
78. On 5 and 26 February 2020, Mr Powell's manager, Ms Patricia Roarke, used Nexus to record comments in relation to Mr Powell's draft goals.
79. On a date not known to Mr Powell but following 26 February 2020, Mr Powell used Nexus to read Ms Roarke's comments and amend his goals.

**PARTICULARS**

A document titled "*Goal Details Report*", which sets out Mr Powell's goals as they appeared in Nexus relevant to the 2019-20 performance cycle, is in the applicants' possession and available for inspection upon request.

80. On a date not known to Mr Powell but after Mr Powell had read Ms Roarke's comments and amended his goals, Ms Roarke recorded Mr Powell's goals in Nexus as "approved".
81. By reason of the matters in paragraphs 77 to 80 above, on a date not known to Mr Powell but on or following 26 February 2020, his progression criteria for the 2019-20 performance cycle:
- (a) were agreed within the meaning of clause 24.3(c) of the 2016 Agreement; and
  - (b) were contained in a PDP that was recorded in Nexus.
82. Mr Powell's progression criteria for the 2019-20 performance cycle did not provide or include that he was required to meet the agreed upon criteria to a degree that "exceeded expectations".
83. On 17 August 2020, Ms Roarke used Nexus to complete Mr Powell's *Performance Assessment – End Cycle Review 1 July 2020* in Nexus, which:
- (a) assessed Mr Powell's performance against the progression criteria which had been agreed and recorded in the PDP referred to in paragraph 81; and
  - (b) provided an overall rating for Mr Powell of "Achieving Expectations".

**PARTICULARS**

A copy of the *Performance Assessment – End Cycle*

*Review 1 July 2020* completed by Ms Roarke on 17 August 2020 is in the applicants' possession and is available for inspection upon request.

84. By reason of the matters in the preceding paragraph, on 17 August 2020 Mr Powell met his progression criteria for the 2018-19 performance cycle.
85. As at 17 August 2020, Mr Powell was eligible for a top of grade or value range payment within the meaning of clause 24.3(g) of the 2016 Agreement.

### **PARTICULARS**

1. Mr Powell had been in the Assistant Manager, Work and Development Permit Scheme role for 3 months or more.
  2. Mr Powell had not been appointed to that role on probation under clause 15.4 and had not been in the role for less than 6 months at the time the performance review was undertaken.
  3. Mr Powell had not been appointed to a role with a new Employer and had not been in his or her role for less than 6 months at the time the performance review was undertaken.
  4. Mr Powell had not completed a formal underperformance process nor been subject to one under clause 30 as at 30 June 2020.
  5. Mr Powell had not been subject to proven misconduct as per clause 21 during the course of the 2019-20 performance cycle.
  6. Mr Powell was not subject to the terms of clause 8.9 of Schedule C.
- 
86. Despite the matters alleged at paragraphs 84 and 85 above the State of Victoria did not provide, and Mr Powell did not receive, any top of grade or value range payment in accordance clause 24.2(b) of the 2016 Agreement.
  87. By reason of the matters in the preceding paragraph, on and from the Next Payment Date following 17 August 2020 the State of Victoria contravened clause 24.2 of the 2016 Agreement.

### **D.3 Contraventions of the 2016 Agreement in respect of the 2016 Agreement Group Members**

88. On various dates during the 2016 Agreement Period, each 2016 Agreement Group Member agreed progression criteria for each 2016 Agreement Performance Cycle with the State of Victoria, within the meaning of clause 24.3(c) of the 2016 Agreement.

### **PARTICULARS**

Particulars of the agreement will be provided following the initial trial of the applicants' claims.

89. On various dates during the 2016 Agreement Period, each 2016 Agreement Group Member's progression criteria were contained in PDPs that were recorded on Nexus.

### **PARTICULARS**

Particulars of each 2016 Agreement Group Member's PDP for each 2016 Agreement Performance Cycle will be provided following the initial trial of the applicants' claims.

90. Those progression criteria did not provide or include that the 2016 Agreement Group Member was required to meet the agreed upon criteria to a degree that "exceeded expectations".
91. On various dates during the 2016 Agreement Period, the performance of each 2016 Agreement Group Member during the relevant 2016 Agreement Performance Cycle was:
- (a) assessed by his or her manager or supervisor against the progression criteria which had been agreed; and
  - (b) rated as "Achieving Expectations".

### **PARTICULARS**

The assessment occurred as part of each 2016 Agreement Group Member's end of cycle performance review. Particulars of these assessments will be provided following the initial trial of the applicants' claims.

92. By reason of the matters in the preceding paragraph, on various dates during the 2016 Agreement Period, each 2016 Agreement Group Member met his or her progression criteria for each 2016 Agreement Performance Cycle.
93. As at the date of each 2016 Agreement Group Member's assessment alleged in paragraph 90 above, the relevant 2016 Agreement Group Member was eligible for progression within the meaning of clause 24.3(g) of the 2016 Agreement.

### **PARTICULARS**

1. Each 2016 Agreement Group Member had been in his or her role for 3 months or more.



2. Each 2016 Agreement Group Member had not been appointed to his or her role on probation under clause 15.4 and had not been in the role for less than 6 months.
3. Each 2016 Agreement Group Member had not been appointed to a role with a new Employer and had not been in his or her role for less than 6 months.
4. Each 2016 Agreement Group Member had not completed a formal underperformance process nor been subject to one under clause 30 as at the end of the relevant 2016 Agreement Performance Cycle.
5. Each 2016 Agreement Group Member had not been subject to proven misconduct as per clause 21 during the course of the relevant 2016 Agreement Performance Cycle.
6. Each 2016 Agreement Group Member was not subject to the terms of clause 8.9 of Schedule C.

94. Despite the matters alleged at paragraphs 92 and 93 above, the State of Victoria did not provide, and the 2016 Agreement Group Members did not receive, any progression amount in accordance with Schedule B to the 2016 Agreement or top of grade or value range payment in accordance with clause 24.2(b) of the 2016 Agreement.
95. By reason of the matters in the preceding paragraph, on and from various dates during the 2016 Agreement Period, being the Next Payment Dates following the dates of the assessments alleged in paragraph 89 above, the State of Victoria contravened clause 24.1 or 24.2 (as the case applies) of the 2016 Agreement.

## **E. CONTRAVENTIONS OF THE 2020 AGREEMENT**

### **E.1 Contraventions of the 2020 Agreement in respect of Mr Powell**

96. On a date not known to Mr Powell but following 1 December 2023, Mr Powell used Nexus to draft and record his goals for the 2023-24 performance cycle.

### **PARTICULARS**

A document titled "*Goal Details Report*", which sets out Mr Powell's goals as they appeared in Nexus relevant to the 2023-24 performance cycle, is in the applicants' possession and available for inspection upon request.

97. On a date not known to Mr Powell but following 1 December 2023, Mr Powell's manager Ms Rebekah Poirier recorded Mr Powell's goals in Nexus as "approved".

98. By reason of the matters in paragraphs 96 and 97 above, on a date not known to Mr Powell but following 1 December 2023, his progression criteria for the 2019-20 performance cycle:
- (a) were agreed within the meaning of clause 29.3(a) of the 2020 Agreement; and
  - (b) were contained in a PDP that was recorded in Nexus.
99. Mr Powell's progression criteria for the 2023-24 performance cycle did not provide or include that he was required to meet the agreed upon criteria to a degree that "exceeded expectations".
100. On 23 July 2024, Mr Powell's manager Jo-anne Gabriel used Nexus to complete Mr Powell's *Performance Assessment – End-of-cycle review 1 July 2024*, which:
- (a) assessed Mr Powell's performance against the progression criteria which had been agreed and recorded in the PDP referred to in paragraph 98; and
  - (b) provided an overall rating for Mr Powell of "Achieving Expectations".

#### PARTICULARS

A copy of the *Performance Assessment – End-of-cycle review 1 July 2024* completed by Ms Gabriel on 23 July 2024 is in the applicants' possession and is available for inspection upon request.

101. By reason of the matters in the preceding paragraph, on 23 July 2024 Mr Powell met his progression criteria for the 2023-24 performance cycle.
102. As at 23 July 2024, Mr Powell was eligible for a top of grade or value range payment within the meaning of clause 29.5 of the 2020 Agreement.

#### PARTICULARS

1. Mr Powell had been continuously employed in the Victorian Public Service for 12 months or more as at 23 July 2024.
2. Mr Powell had not obtained a promotion to a position at a higher Grade or Value range, or otherwise negotiate a salary increase, within the performance cycle.
3. Mr Powell was not subject to a formal underperformance process under clause 24 of the 2020 Agreement at any time during the performance cycle.
4. Mr Powell was not subject to proven misconduct as per clause 25 of the 2020 Agreement during the course of the performance cycle.

103. Despite the matters alleged at paragraphs 101 and 102 above, on and from 23 July 2024 the State of Victoria did not provide, and Mr Powell did not receive, any top of grade or value range payment in accordance with clause 29.2(c) of the 2020 Agreement.
104. By reason of the matters in the preceding paragraph, on and from the Next Payment Date following 23 July 2024 the State of Victoria contravened clause 29.8 of the 2020 Agreement.

**E.2 Contraventions of the 2020 Agreement in respect of the 2020 Agreement Group Members**

105. On various dates during the 2020 Agreement Period, each 2020 Agreement Group Member agreed progression criteria for each 2020 Agreement Performance Cycle with the State of Victoria, within the meaning of clause 29.3(a) of the 2020 Agreement.

**PARTICULARS**

Particulars of the agreement will be provided following the initial trial of the applicants' claims.

106. On various dates during the 2020 Agreement Period, each 2020 Agreement Group Member's progression criteria were contained in PDPs that were recorded on Nexus.

**PARTICULARS**

Particulars of each 2020 Agreement Group Member's PDP for each 2020 Agreement Performance Cycle will be provided following the initial trial of the applicants' claims.

107. Those progression criteria did not provide or include that the 2020 Agreement Group Member was required to meet the agreed upon criteria to a degree that "exceeded expectations".
108. On various dates during the 2020 Agreement Period, the performance of each 2020 Agreement Group Member during the relevant 2020 Agreement Performance Cycle was:
- (a) assessed by his or her manager or supervisor against the progression criteria which had been agreed; and
  - (b) rated as "Achieving Expectations".

**PARTICULARS**

The assessment occurred as part of each 2020

Agreement Group Member's end of cycle performance review. Particulars of these assessments will be provided following the initial trial of the applicants' claims.

109. By reason of the matters in the preceding paragraph, on various dates during the 2020 Agreement Period, each 2020 Agreement Group Member met his or her progression criteria for each 2020 Agreement Performance Cycle.
110. As at the date of each 2020 Agreement Group Member's assessment alleged in paragraph 108 above, the relevant 2020 Agreement Group Member was eligible for progression or a top of grade or value range payment within the meaning of clause 29.5 of the 2020 Agreement.

#### **PARTICULARS**

1. Each 2020 Agreement Group Member had been continuously employed in the Victorian Public Service for 12 months or more.
  2. Each 2020 Agreement Group Member had not obtained a promotion to a position at a higher Grade or Value range, or otherwise negotiate a salary increase, within the relevant 2020 Agreement Performance Cycle.
  3. Each 2020 Agreement Group Member was not subject to a formal underperformance process under clause 24 of the 2020 Agreement at any time during the relevant 2020 Agreement Performance Cycle.
  4. Each 2020 Agreement Group Member was not subject to proven misconduct as per clause 25 of the 2020 Agreement during the course of the relevant 2020 Agreement Performance Cycle.
111. Despite the matters alleged at paragraphs 109 and 110 above, on various dates during the 2020 Agreement Period, the State of Victoria did not provide, and the 2020 Agreement Group Members did not receive, any progression amount in accordance with Schedule C of the 2020 Agreement or top of grade or value range payment within the meaning of clause 29.2(c) of the 2020 Agreement.

#### **PARTICULARS**

Particulars will be provided following the initial trial of the applicants' claims.

112. By reason of the matters in the preceding paragraph, on various dates during the 2020 Agreement Period, being the Next Payment Dates following the dates of the assessments alleged in paragraph 108 above, the State of Victoria contravened clause 29.8 of the 2020 Agreement.

**F. LOSS OR DAMAGE**

113. By reason of the contraventions of the 2016 Agreement alleged at paragraphs 54 and 65 above, Mr Wren suffered loss or damage.

**PARTICULARS**

1. As to the contravention alleged at paragraph 54 above, Mr Wren was entitled to a progression amount of \$2,906 in accordance with Schedule B to the 2016 Agreement.
2. As to the contravention alleged at paragraph 65 above, Mr Wren was entitled to a progression amount of \$2,950 in accordance with Schedule B to the 2016 Agreement.
3. Mr Wren has also suffered the loss of interest on the above amounts.

114. By reason of the contraventions of the 2016 and 2020 Agreement alleged at paragraphs 76, 87 and 104 above, Mr Powell suffered loss or damage.

**PARTICULARS**

1. As to the contravention alleged at paragraph 76 above, Mr Powell was entitled to a top of grade or value range payment of \$1,172.93, being 1% of his salary as at 30 June 2019, in accordance with clause 24.2(b) of the 2016 Agreement.
2. As to the contravention alleged at paragraph 87 above, Mr Powell was entitled to a top of grade or value range payment of \$1,190.52, being 1% of his salary as at 30 June 2020, in accordance with clause 24.2(b) of the 2016 Agreement.
3. As to the contravention alleged at paragraph 104 above, Mr Powell was entitled to a top of grade or value range payment of \$1,288.97, being 1% of his salary as at 30 June 2024, in accordance with clause 29.4 of the 2020 Agreement.
4. Mr Powell has also suffered the loss of interest on the above amounts.

115. By reason of the contraventions of the 2016 Agreement alleged at paragraph 95 above, the 2016 Group Members suffered loss or damage.

**PARTICULARS**

Particulars of the loss and damage suffered by group members will be provided following the initial trial.

116. By reason of the contraventions of the 2020 Agreement alleged at paragraph 112 above, the 2020 Group Members suffered loss or damage.

**PARTICULARS**

Particulars of the loss and damage suffered by group members will be provided following the initial trial.

**G. RELIEF**

117. The applicants claim on their own behalf, and on behalf of the Group Members, the relief set out in the Originating Application.

Date: 14 February 2025



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Signed by Kamal Farouque  
Lawyer for the lead applicants

This pleading was prepared by C J Tran and D V Murphy of counsel.

**Certificate of lawyer**

I, Kamal Farouque, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 14 February 2025

A handwritten signature in blue ink, appearing to read 'K Farouque', with a long horizontal flourish extending to the right.

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Signed by Kamal Farouque  
Lawyer for the Applicants

**SCHEDULE**

First Applicant: **CPSU, the Community and Public Sector Union**

Second Applicant: **Patrick Wren**

Third Applicant: **Ben Powell**