

## NOTICE OF FILING

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File Title: PITA AWATERE TE TAU O TE RANGI v WILSON SECURITY PTY LTD  
(ABN 90 127 406 295)  
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*Sia Lagos*

Registrar

### Important Information

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

No. WAD 229 of 2022

**~~Paul Nathan Hamilton~~**  
**Pita Awatere Te Tau O Te Rangī**  
Applicant

**Wilson Security Pty Ltd**  
**(ABN 90 127 406 295)**  
Respondent

**Defence of the Respondent to the Second Further Amended Statement of Claim**

(filed pursuant to order (1) ~~(4)~~ of the orders made by the Honourable Justice Colvin dated 17 October 11 May 2023)

In answer to the second further amended statement of claim filed 13 September 2023 dated ~~2 May 2023~~ and served on the first respondent (~~Wilson~~) on ~~12 May 2023~~ (2FASOC), the respondent (~~Wilson~~) says as follows.

Note: Unless otherwise stated, this defence does not adopt the defined terms used in the 2FASOC.

In this defence, the term **Sites** is used to describe, collectively, the Karratha Gas Plant (~~KGPKGB~~), Pluto LNG Park (**Pluto**), King Bay Supply Base (**KBSB**) and Burrup Material Facility (**BMF**).

For the avoidance of doubt, Wilson does not plead to any headings or definitions employed by the applicant and in particular does not plead to and does not admit headings or definitions that incorporate characterisations of conduct.

1. As to paragraph 1, Wilson:
  - a. Says that the definition of Group Members in paragraph 1(b) remains is inconsistent with the definition of Group Members in the second further amended originating application filed 13 September 2023 dated ~~2 May 2023~~ and is therefore embarrassing and liable to be struck out;

- b. admits that this proceeding was commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
  - c. says that to the extent that any cause of action accrued for a contravention of any civil penalty provision occurring prior to 12 June 2015 (being the date of the commencement of Federal Court of Australia Proceeding No WAD 138/2021) (which is denied), that cause of action cannot be maintained pursuant to s 544 of the *Fair Work Act 2009* (Cth) (**FW Act**);
  - d. refers to paragraph 7 below; and
  - e. otherwise does not know and therefore cannot admit the allegations in paragraph 1.
2. Wilson admits paragraph 2.
3. As to paragraph 3, Wilson:
  - a. admits that by correspondence dated 27 October 2022 (**27 October letter**) and 16 November 2022 respectively, the solicitors for the then lead applicant Mr Paul Hamilton ~~the applicant~~ wrote to the solicitors for Wilson requesting records relating to the employment of the applicant and certain named persons;
  - b. says that the documents requested in sub-paragraph 2.2(a) and (b) and (e) (to the extent that it referred to records of employee absenteeism) of the 27 October letter were not 'employee records' within the meaning of Part 3-6 of Division 3 of the *Fair Work Regulations 2009* (Cth) (**FW Regs**);
  - c. says further that on or about 14 December 2022, the solicitors for Wilson provided the solicitors for Mr Hamilton ~~the applicant~~ with documents responsive to that request.
  - d. otherwise does not know and therefore cannot admit the allegations in paragraph 3.

#### **Particulars**

Copies of the correspondence referred to in paragraph 3(a) and (c) above are in the possession of the solicitors for Wilson and may be inspected upon request.

4. Wilson denies the allegations in paragraph 4 and refers to and repeats paragraphs 5 to ~~32~~ 35 below and the particulars thereunder.
5. As to paragraph 5, Wilson:

- a. admits that at all material times until 18 June 2020, the Security Services Industry Award 2010 (**2010 Award**) and thereafter, the Security Services Industry Award 2020 (**2020 Award**), were in force and covered, subject to the terms of those awards and the FW Act and any other legislation, employers in the Security Services industry (within the meaning of that term in clause 4.2 of the 2020 Award and clause 4 of the 2010 Award) and employees employed in the classification listed in the awards (clause 4.2 of both awards);
  - b. refers to paragraph 7 below; and
  - c. otherwise denies the paragraph.
6. Wilson admits ~~denies~~ paragraph 6 and refers further to paragraphs 7 and 7A below.
7. As to paragraph 7, Wilson:
- a. says that on or about 5 October 2017, the applicant entered into an employment contract with Wilson as a Relieving Officer on a Part Time Basis, effective from 9 October 2017 (**Part-Time Contract**);

#### **Particulars**

Letter to the applicant dated 4 October 2017 and signed by the applicant on 5 October 2017, a copy of which is in the possession of Wilson's solicitors and may be inspected upon request.

- b. says that there were terms of the Part Time Contract that:
  - i. the applicant was required to work at any Wilson sites as directed by Wilson (cl 7 of the Part-Time Contract);
  - ii. the applicant was to work an average of fewer than 38 hours per week over a roster cycle (plus reasonable additional hours) and agreed to work up to 12 ordinary hours per shift (cl 8 of the Part-Time Contract);
  - iii. the remuneration and other monetary benefits provided to the applicant under the Part-Time Contract compensate the applicant for any entitlements that the applicant may have under the Security Services Industry Award 2010, any award, other industrial instrument, or law including, but not limited to, overtime payments, weekend and holiday penalties, shift allowance, vehicle allowance, travelling expenses, annual leave loading and any other entitlements, unless otherwise specified in the Part-Time Contract (cl 15.1 of the Part-Time Contract);

- iv. the remuneration and other monetary benefits paid to the applicant under the Part-Time Contract which is in excess of any entitlements that the applicant may have under the Security Services Industry Award 2010, any award, other industrial instrument, or law may be set off against any such entitlements (cl 15.2 of the Part-Time Contract).

(the terms in sub-paragraph 7(b)(iii) and (iv) are collectively referred to as the **Part-Time Set-off Clause**).

- c. says further that pursuant to the terms of the Part-Time Contract:
  - i. the applicant commenced his part-time employment on 13 October 2017;
  - ii. from on or about 19 October 2017, the applicant worked at the Fremantle Ports site; and
  - iii. from on or about 1 December 2017, the applicant commenced working at the Sites.
- d. says further that on or about 23 February 2018 the applicant entered into an employment contract with Wilson as a Facilities Protection Officer on a full-time basis, effective from 12 February 2018 (**Full-Time Contract**);

#### **Particulars**

Letter to the applicant dated 14 February 2018 and signed by the applicant on 23 February 2018, a copy of which is in the possession of Wilson's solicitors and may be inspected upon request.

- e. says further that there were terms of the Full-Time Contract:
  - i. the applicant was required to work at the Woodside Karratha facilities or any other Wilson sites as directed by Wilson (cl 3 of the Full-Time Contract);
  - ii. the applicant's hours and days of work, unless otherwise advised, will be set out in the site rotational roster, including weekends, evening and public holidays and that the roster was subject to change according to Wilson's operational requirements and the client's operational requirements (cl 7.1 of the Full-Time Contract);
  - iii. the remuneration and other benefits provided to the applicant are specifically set off against, applied to and absorb any existing or newly-

introduced payments or benefits to which the applicant is or may become legally entitled under any legislation, award, enterprise agreement or other industrial instrument including, but not limited to, overtime payments, weekend and holiday penalties, shift allowance, vehicle allowance, travelling expenses, annual leave loading and any other entitlement, unless otherwise specified in the agreement (cl 23 of the Full-Time Contract) (**Full-Time Set-off Clause**);

- f. says on 21 December 2021, the applicant's employment with Wilson was terminated; and
- g. otherwise denies the paragraph.

~~says that on about 10 November 2009, the applicant entered into an ISS Security Pty Limited Western Australia Individual Transitional Employment Agreement Burrup Peninsula Karratha Western Australia Agreement (**ITEA**) with ISS Security Pty Ltd (**ISS**);~~

#### **Particulars**

~~Letter to the applicant dated 14 October 2009 enclosing the ITEA a copy of which is in the possession of Wilson's solicitors and may be inspected upon request.~~

~~says that there were terms of the ITEA that:~~

~~the applicant was employed by ISS as a Permanent Hourly Paid AWA Level 2 Security Officer effective from 13 October 2009 (**ISS Employment**), located at the Woodside Karratha facilities;~~

~~the applicant's ordinary hours of work were an average of 38 hours per week averaged over a 52-week period (ITEA cl 27.1);~~

~~the ordinary hours of work are up to 12 hours per day, but the applicant may be required to work ordinary shifts of up to 14 hours to cover employee absences (ITEA cl 27.1); and~~

~~meal breaks are half an hour unpaid (day work), 20 minutes to half an hour paid and included as time worked (weekday shift work) and 20 minutes to half an hour paid and included as time worked (7-day shift work) (ITEA cl 27.1);~~

~~says that the ITEA pleaded in paragraph 7(a) above:~~

~~is a “workplace agreement” within the meaning of s 4 of the *Workplace Relations Act 1996* (Cth) as amended by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (Cth);~~

~~by reason of the matter pleaded in paragraph 7(c)(i) above, is a “WR Act instrument” within the meaning of cl 2(2) of Schedule 3 Part 2 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**FW Transitional Act**);~~

~~by reason of the matter pleaded in paragraph 7(c)(ii) above, is an “individual agreement-based transitional instrument” within the meaning of cl 2(5) of Schedule 3 Part 2 of the FW Transitional Act; and~~

~~by reason of the matters pleaded in paragraph 7(c)(iii) above, continued in existence despite the repeal of the WR Act, by operation of cl 2(1) of Schedule 3 Part 2 of the FW Transitional Act.~~

~~says the ITEA applied to the applicant’s ISS Employment until such time as it was varied or terminated in accordance with cl 9(1) and (2) of Schedule 3 Part 3 of the FW Transitional Act.~~

### **Particulars**

- ~~i. ITEA signed by the applicant on or about 10 November 2009.~~
- ~~ii. Declaration Receipt from the Workplace Authority dated 24 December 2009.~~
- ~~iii. Notice under s 346M of the *Workplace Relations Act 1996* (Cth) dated 13 December 2010 given by the Workplace Authority.~~
- ~~iv. The applicant’s ITEA passed the no-disadvantage test by the Workplace Authority on or around 13 January 2010.~~
- ~~v. Copies of the above documents are in the possession of Wilson’s solicitors and may be inspected upon request.~~

~~the ITEA has not been varied or terminated in accordance with Part 3 of Schedule 4 to the FW Transitional Act;~~

~~further, where an agreement-based transitional instrument, including a workplace agreement, applies to an employee, or to an employer, the modern award does not apply to the employee or the employer by operation of cl 28(1) of Schedule 3 Part 5 of the FW Transitional Act;~~

~~in the premises, at all material times, the 2010 Award and the 2020 Award did not apply to the applicant's employment at Wilson during the period of employment relevant to this proceeding;~~

~~further, by a Business Sale Agreement dated 24 December 2013, and effective from about 31 March 2014, Wilson acquired certain businesses operated by ISS and other associated entities within the ISS group of companies, including, inter alia, the guards and patrol security services business carried on by ISS or its associated entities at the Woodside Karratha facilities;~~

~~on about 13 March 2014, the applicant entered into an employment contract with Wilson as a Security Guard on a Full Time basis;~~

### **Particulars**

~~Offer of employment to the applicant dated 24 February 2014 and signed by the applicant on or about 13 March 2014, a copy of which is in the possession of Wilson's solicitors and may be inspected upon request.~~

~~says further that there were terms of the applicant's employment that:~~

~~the applicant was required to work at WFP Manager or any other Wilson sites as directed by Wilson (cl 3);~~

~~the ITEA applied to the applicant's employment (cl 6.1); and~~

~~the remuneration and other benefits provided to the applicant are specifically set off against, applied to and absorb any existing or newly introduced payments or benefits to which the applicant is or may become legally entitled under any legislation, award, enterprise agreement or other industrial instrument including, but not limited to, overtime payments, weekend and holiday penalties, shift allowance, vehicle allowance, travelling expenses, annual leave loading and any other entitlement, unless otherwise specified in the agreement (cl 23);~~

~~on or about 11 March 2015, the applicant entered into an employment contract with Wilson as a Facility Protection Officer (**FPO**) on a Full Time basis effective from 13 March 2015;~~



### **Particulars**

~~Offer of employment to the applicant dated 11 March 2015 and signed by the applicant on or about 16 March 2015, a copy of which is in the possession of Wilson's solicitors and may be inspected upon request.~~

~~says it was a term of the applicant's employment that:~~

~~the applicant was required to work at the Woodside Karratha facilities or any other Wilson sites as directed by Wilson (cl 4);~~

~~the applicant's hours and days of work, unless otherwise advised, will be set out in the site rotational roster, including weekends, evening and public holidays and that the roster was subject to change according to Wilson's operational requirements and the client's operational requirements (cl 7.1);~~

~~the remuneration and other benefits provided to the applicant are specifically set off against, applied to and absorb any existing or newly introduced payments or benefits to which the applicant is or may become legally entitled under any legislation, award, enterprise agreement or other industrial instrument including, but not limited to, overtime payments, weekend and holiday penalties, shift allowance, vehicle allowance, travelling expenses, annual leave loading and any other entitlement, unless otherwise specified in the agreement (cl 23);~~

~~says further that on 16 March 2015, the applicant entered into an Individual Flexibility Agreement (IFA) with Wilson;~~

### **Particulars**

~~Wilson Security Pty Ltd IFA signed by the applicant on or about 16 March 2015, a copy of which is in the possession of Wilson's solicitors and may be inspected upon request.~~

~~it was a term of the IFA that the applicant received an aggregated hourly rate of \$30 and waived allowances, loadings and penalty rates and otherwise varied applicable Award provisions;~~

### **Particulars**

~~The IFA varied the following clauses of the 2010 Award: cl 15, 16, 21, 22, 23 and 24.4(b).~~

says that despite the matters pleaded in paragraphs 7(g) and (n) above:

~~in or around November 2019, Wilson commenced paying the applicant in accordance with the 2010 Award; and~~

~~in the period November 2019 to February 2020, Wilson back paid the applicant his 2010 Award entitlements to 2016;~~

#### **Particulars**

~~In the period November 2019 to February 2020, the applicant was back paid the following amounts in respect of his employment for the period 2016 to 2019: 2016 \$8,973.37; 2017 \$6,506.79; 2018 \$20,937.80 and 2019 \$15,043.77 (which amounts were subject to applicable taxation).~~

~~says on 6 September 2021, the applicant's employment with Wilson was terminated;~~

~~otherwise denies the paragraph.~~

7A. ~~In the alternative to paragraph 7 above, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), Wilson Further to paragraph 7 above, at all material times:~~

a. ~~says that at all material times, cl C.2 of Schedule C to the 2010 Award relevantly provided as follows:~~

i. ~~"An employee at [Security Officer Level 2] performs work above and beyond the skills of a Security Officer Level 1 and to the level of their skills, competence and training" (cl C.2.1);~~

ii. ~~"A Security Officer Level 2:~~

1. ~~works from complex instructions and procedures under general supervision which may not necessarily be at the site where the officer is posted (cl C.2.2(a));~~

2. ~~assists in the provision of on-the-job training (cl C.2.2(b));~~

3. ~~exercises good interpersonal communications skills (cl C.2.2(c));~~

4. ~~co-ordinates work in a team environment or works individually under general supervision of a more senior security officer who~~

- may not necessarily be at the site where the officer is posted (cl C.2.2(d));
5. is responsible for assuring the quality of their own work (cl C.2.2(e)); and
  6. is required to act as first response to security incidents/matters” (cl C.2.2(f));
- iii. “Indicative of the tasks which an employee at [Security Officer Level 2] may perform are the following:
1. duties of securing, watching, guarding, protecting as directed, including responses to alarm signals and attendances at and minor non-technical servicing of [automated teller machines (**ATMs**)] ... (cl C.2.3(a));
  2. crowd control functions including at shopping centres, major events, sporting tournaments, nightclubs, sporting venues and other entertainment venues or public areas where events, concerts or similar activities are conducted (cl C.2.3(b));
  3. patrol in a vehicle two or more separate establishments or sites, including where more than one site held by the same business is being patrolled (cl C.2.3(c));
  4. monitor and respond to electronic intrusion detection or access control equipment terminating at a visual display unit and/or computerised printout (except for simple closed circuit television systems). Such work must not include complex data input into a computer (cl C.2.3(d));
  5. monitor and act upon walk-through electromagnetic detectors; and/or monitor, interpret and act upon screen images using x-ray imaging and/or observation equipment, including in connection with airport security zones (cl C.2.3(e));
  6. operate a public weigh-bridge (cl C.2.3(f));
  7. record and/or report security incidents or matters on a computer based system (cl C.2.3(g));

8. control a dog used to assist the security officer to carry out the duties of watching, guarding or protecting persons, premises or property (cl C.2.3(h)); and
  9. conduct frisk searches of persons and screening using explosive trace detection including or in connection with airport security zones (cl C.2.3(i));
- iv. "A Security Officer Level 2 may be required to perform the duties of a Security Officer Level 1 provided that such duties are not designed to promote deskilling" (cl C.2.4));
- b. ~~says that at all material times~~, cl A.2 of Schedule A to the 2020 Award relevantly provided as follows:
- i. "An employee at [Security Officer Level 2] performs work above and beyond the skills of a Security Officer Level 1 and to the level of their skills, competence and training" (cl A.2.1);
  - ii. "A Security Officer Level 2:
    1. works from complex instructions and procedures under general supervision which may not necessarily be at the site where the officer is posted (cl A 2.2(a));
    2. assists in the provision of on-the-job training (cl A.2.2(b));
    3. exercises good interpersonal communications skills (cl C 2.2(c));
    4. co-ordinates work in a team environment or works individually under general supervision of a more senior security officer who may not necessarily be at the site where the officer is posted (cl A 2.2(d));
    5. is responsible for assuring the quality of their own work (cl A 2.2(e)); and
    6. is required to act as first response to security incidents/matters" (cl A.2.2(f));
  - iii. "Indicative of the tasks which an employee at [Security Officer Level 2] may perform are the following:

1. duties of securing, watching, guarding, protecting as directed, responding to alarm signals (including attendances) and when not along, minor non-technical servicings of ATMs, not including cash replenishment (cl A.2.3(a));
  2. crowd control functions including at shopping centres, major events, sporting tournaments, nightclubs, sporting venues and other entertainment venues or public areas where events, concerts or similar activities are conducted (cl A.2.3(b));
  3. patrol 2 or more separate establishments or sites in a vehicle, including where operated by the same business (cl A.2.3(c));
  4. monitor and respond to electronic intrusion detection or access control equipment terminating at a visual display unit or computerised printout (except for simple closed circuit television systems), not including complex data input into a computer (cl A.2.3(d));
  5. monitor and act on walk-through electromagnetic detectors, or monitor, interpret and act on screen images using x-ray imaging or observation equipment, including in or in connection with airport security zones (cl A.2.3(e));
  6. operate a public weigh-bridge (cl A.2.3(f));
  7. record or report security incidents or matters on a computer based systems (cl A.2.3(g));
  8. control a dog used to assist the security officer to carry out the duties of watching, guarding or protecting persons, premises or property (cl A.2.3(h)); and
  9. conduct frisk searches of persons and screening using explosive trace detection, including in or in connection with airport security zones (cl A.2.3(i));
- iv. A Security Officer Level 2 may be required to perform duties of a Security Officer Level 1 that are not designed to promote deskilling” (cl A.2.4);

- c. ~~says that at all material times~~, the applicant's duties and responsibilities involved, inter alia, the following (including the period when he was employed to the Sites as a Relieving Officer):
- i. undertaking general training including training regarding use of computerised access controls, prohibited items, fire awareness, bag searches, vehicle testing and searching, conducting body searches and undertaking bomb threat detection and management training;
  - ii. monitoring and authorising the entrance and departure of employees, customers, contractors, visitors and other persons to guard against theft and maintain the security of the premises;
  - iii. managing the key depository and issuing site keys, identifying restricted and non-restricted keys when issuing, and undertaking key audits;
  - iv. conducting site access and egress control using the Access Control System, known as the Enterprise Buildings Integrator (**EBI**) and from time to time creating access cards for workers and visitors to the sites (which required the input of basic data into the EBI);
  - v. responding to alarms and the investigation of disturbances;
  - vi. delivering security services across all facilities including patrolling facilities by foot and/or vehicle and in accordance with the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) in the maritime zones ~~including patrolling (foot and vehicle)~~ and monitoring marine vessel movements and recording tugboat activity;
  - vii. conducting prestart vehicle checks;
  - viii. completing daily and weekly checks of ambulance and medical response equipment;
  - ix. undertaking access card and equipment audits;
  - x. conducting site inductions;
  - xi. conducting vehicle inspections and bag checks;
  - xii. administering alcohol and drug tests via breathalyser;
  - xiii. completing documentation including daily operational reports, prestart handover sheets, patrol sheets and incident reports (where required);
  - xiv. conducting site escorts where required;

- xv. first response to medical, security or emergency incidents; and
  - xvi. general administration duties such completing and checking visitor logs;
- d. the duties referred to in paragraph 7A(c) above encompassed the tasks described in paragraphs 7A(a)(ii)(1), (4) and (6) and 7A(b)(ii)(1), (4) and (6) above;
  - e. the duties referred to in paragraph 7A(c) above encompassed and were described by the indicative tasks described in paragraphs 7A(a)(iii)(1), (3), (4), (5), (7) and 7A(b)(iii)(1), (3), (4), (5), (7) above; and
  - f. by reason of the above, ~~in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied)~~, the applicant was properly classified as a Level 2 Security Officer for the purpose of Schedule C of the 2010 Award and Schedule A of the 2020 Award.

#### **Particulars**

The duties described in paragraph 7A(c) above are in part set out in a Facility Protection Officer Position Description dated 16 February 2015, a copy of which is in the possession of the solicitors for Wilson and may be inspected upon request.

- 8. As to paragraph 8, Wilson:
  - a. refers to and repeats paragraphs ~~4(e)~~, 7 and 7A above; and
  - b. otherwise denies the paragraph.
- 9. As to paragraph 9, Wilson:
  - a. admits the EBI (as ~~defined~~ referred to in paragraph 7A(c)(iv)~~d~~) above) performs the functions described in paragraph 9(a)(i) to (ix) of the 2FASOC;
  - b. refers to and repeats paragraphs 7 and 7A above; and
  - c. otherwise denies the paragraph.
- 10. ~~As to paragraph 10, admits that clause 16.1 of the 2020 Award and clause 19.1 of the 2010 Award required wages to be paid to employees covered by those awards either weekly or fortnightly~~ Wilson admits paragraph 10 and says that at all material times throughout his employment with Wilson, the applicant's wages (after a deduction of tax) were paid fortnightly and electronically transferred into the applicant's nominated banking account in accordance with the applicant's contracts of employment with Wilson; ~~and.~~

~~a. otherwise denies the paragraph and refers to paragraphs 7 and 7A above.~~

#### **Particulars**

- ~~i. Letter of employment dated 24 February 2014 at cl 6.1.~~
- ~~ii. Letter of employment dated 11 March 2015 at cl 7.1.~~
- ~~iii. Copies of this correspondence is in the possession of the solicitors for Wilson and may be inspected upon request.~~

11. Wilson admits paragraph 11.

12. ~~As to paragraph 12, Wilson:~~ admits paragraph 12

~~a. refers to and repeats paragraphs 1(c), 7 and 7A above; and~~

~~b. otherwise admits the paragraph but says further that on a proper construction of cl 21.4(a) of the 2010 Award and cl 14.5(a) of the 2020 Award, the breaks referred to in those clauses do not have to be separated by working days and can be continuous with each other; and~~

#### **Particulars**

As an example, three breaks three days each can be taken on nine consecutive days.

13. As to paragraph 13, Wilson:

a. ~~says further~~ that the paragraph is vague and embarrassing and liable to be struck out;

b. under cover of that objection:

i. ~~refers to and repeats paragraphs 1(c), 7, 7A and 12 above;~~

~~says that by reason of the matter referred to in paragraphs 7(m) and (n) above, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), by operation of the IFA, cl 21.4 of the 2010 Award and/or cl 14.5 of the 2020 Award did not apply to the applicant's employment;~~

#### **Particulars**

~~Wilson relies on s 144 of the FW Act and the terms of the IFA referred to in paragraphs 7(m) and (n) above.~~

ii. says that pursuant to the terms of alternatively, ~~in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied):~~



1. ~~says that~~ under the two week on / one week off roster (**2:1 Roster**), employees were paid for all hours worked beyond the first 48 hours in any two-week “on swing” shift at overtime rates;
  2. ~~says further that~~ the 2:1 Roster provided an “off swing” break of 168 continuous hours;
  3. ~~says that~~ on a proper construction of the 2010 Award and the 2020 Award, the “off swing” break of 168 continuous hours referred to in paragraph 13(b)(ii)(2) above complied with the long breaks requirement specified in cl 21.4 of the 2010 Award and/or cl 14.5 of the 2020 Award;
- 3A. says further that in any event, under the 2:1 Roster, the applicant was, pursuant to the Part-Time Contract and/or the Full-Time Contract, paid for all hours worked beyond the first 48 hours in any two-week “on swing” at overtime rates.
4. ~~says further that~~ under the two week on / two week off roster (**2:2 Roster**), employees were paid for all hours worked beyond the first 48 hours in any two-week “on swing” shift at overtime rates;
  5. ~~says further that~~ the 2:2 Roster provided an “off swing” break of 336 continuous hours;
  6. ~~says further that~~ on a proper construction of the 2010 Award and the 2020 Award, the “off swing” break of 336 continuous hours referred to in paragraph 13(b)(ii)(5) above complied with the long breaks requirements specified in cl 21.4 of the 2010 Award and/or cl 14.5 of the 2020 Award; and
- c. otherwise denies the paragraph and says further that by reason of the matters pleaded in paragraph 13(b) above, it did not roster or direct the applicant to work rostered cycles without his minimum number of long breaks per roster cycle;
  - d. says further that to the extent that the rostering obligations in clause 21.4(a) of the 2010 Award and clause 14.5(a) of the 2020 Award could not be satisfied by providing the “off swing” break of 168 continuous hours (on a 2:1 Roster), Wilson satisfied its obligations under those clauses by paying overtime to the

applicant for all hours worked beyond the first 48 hours in any two-week “on swing” at overtime rates; and

- e. to the extent that Wilson’s rostering obligations pursuant to clause 14.5(a) of the 2020 Award and clause 21.4(a) of the 2010 Award could not be satisfied in the manner described in paragraph 13(d) above, the payment to the applicant for all hours worked beyond the first 48 hours in the two-week “on-swing” at overtime rates were provided to the applicant by Wilson pursuant to, or under, the Part-time Contract to which the applicant was not entitled under the 2010 Award nor the 2020 Award (**Long Break Overtime Award Overpayment**); and
- f. the Long Break Overtime Award Overpayment was remuneration provided under the Part-Time Contract and/or the Full-Time Contract within the meaning of the Part-Time Set-off Clause and/or the Full-Time Set-off Clause.

14. As to paragraph 14, Wilson:

- ~~a. refers to and repeats paragraphs 1(c), 7 and 7A above;~~
- a. says further that the paragraph is vague and embarrassing and liable to be struck out;
- b. under cover of that objection:
  - ~~i. says by reason of the matter referred to in paragraphs 7(m) and (n) above, in the event that the 2010 Award and the 2020 Award applied to the applicant’s employment (which is denied), by operation of the IFA, cl 21.4(b) of the 2010 Award and 14.5(b) of the 2020 Award did not apply to the applicant’s employment;~~

#### **Particulars**

~~Wilson relies on s144 of the FW Act and the terms of the IFA referred to in paragraphs 7(m) and (n) above.~~

- ii. it says that alternatively, in the event that the 2010 Award and the 2020 Award applied to the applicant’s employment (which is denied), on a proper construction of the 2010 Award and the 2020 Award, all hours worked beyond 48 hours in any two-week swing and for which overtime was paid were not “ordinary hours” or “ordinary time” for the purposes of cl 21.4(b) of the 2010 Award or cl 14.5(b) of the 2020 Award; and
- iii. it refers to and repeats paragraph 13(b)(ii)(1);

- c. otherwise denies the paragraph and says further that by reason of the matters pleaded in paragraphs 13 and 14~~(e)~~ (b)(ii) above, it did not roster or direct the applicant to work more than 48 ordinary hours or ordinary time without a long break;
- d. to the extent that Wilson's rostering obligations pursuant to clause 21.4(b) of the 2010 Award and 14.5(b) of the 2020 Award could not be satisfied in the manner described in paragraph 14(b)(ii) above, the payment to the applicant for all hours worked beyond the first 48 hours in the two-week "on swing" at overtime rates were provided to the applicant by Wilson pursuant to, or under, the Part-Time Contract and/or the Full-Time Contract to which the applicant was not entitled under the 2010 Award nor the 2020 Award (48 Continuous Hours Break Overtime Award Overpayment); and
- e. the 48 Continuous Hours Break Overtime Award Overpayment was remuneration provided under the Full-Time Contract within the meaning of the Full-Time Set-off Clause and the Part-Time Contract within the meaning of the Part-Time Set-off Clause.

15. As to paragraph 15, Wilson:

- a. ~~Refers to and repeats paragraphs 1(c), 7 and 7A above; says that the paragraph is vague and embarrassing and liable to be struck out;~~
- b. ~~says by reason of the matter referred to in paragraphs 7(m) and (n) above, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), by operation of the IFA, cl 23.3 of the 2010 Award and/or cl 19.3 of the 2020 Award did not apply to the applicant's employment;~~

#### **Particulars**

~~Wilson relies on s144 of the FW Act and the terms of the IFA referred to in paragraphs 7(m) and (n) above.~~

- b. ~~alternatively, in the event that the 2010 Award and 2020 Award applied to the applicant's employment (which is denied), under cover of that objection refers further to paragraphs 15A to 15C below; and~~
- c. otherwise admits the paragraph.

*Handover*

15A. Further to paragraph 15 above:

- a. prior to the commencement of a rostered shift, the applicant was required to attend a Site approximately 15 minutes prior to his rostered start time to complete a handover with the outgoing shift FPO counterpart (**the Handover**);
- b. the purpose of the Handover was to identify for the incoming shift FPO counterpart any issues or matters which required attention or to identify other risks or dangers to prepare the FPO for his or her shift;
- c. as part of the Handover, employees were required to complete a short document referred to as a “shift change checklist” or “handover sheet”;
- d. the Handover period was short, and typically no more than 2 to 5 minutes;
- e. upon completing his Handover at the conclusion of his rostered shift, the applicant was permitted to leave a Site prior to his rostered end time, and usually 10 to 15 minutes prior to the conclusion of the rostered shift and was not required to work more than a 12-hour shift;
- f. by reason of the matters referred to in paragraph 15A(a), (d) and (e) above, the applicant typically left site within 12 hours of his arrival and therefore performed work during his shift for no more than 12 hours; and
- g. in the premises, by reason of the matters referred to in paragraph 15A(a) to (f) above, the applicant worked shifts of 12 hours duration, which included a paid 30-minute break (or a series of breaks that cumulatively amounted to at least 30 minutes).

### Particulars

- i. ~~As to (a) and (c), the particulars subjoined to paragraph 7(c), above are repeated.~~ The requirement to conduct a handover and pre-start inspection was also detailed in the Burrup Standard Operating Procedures for Woodside Energy Limited dated 15 February 2021 (**2021 SOP**) at cll 2.5, 2.19, 14.2 and 14.3. ~~The requirement to conduct a handover was also detailed in an email to the applicant from Chris Rentoule (Facility Protection Supervisor at Wilson) on 8 May 2015 (9.53AM).~~ Copies of these documents are in the possession of the solicitors for Wilson and may be inspected upon request.
- ii. ~~As to (c) to (e),~~ Wilson refers to an emails sent to the applicant from ~~Mr Rentoule on 8 May 2015 (5.30AM), from Jose Canadas on 15 March 2017 (2.35PM) and Mr Canadas on 19 May 2020 (2.11PM).~~ Copies of these documents are in the possession of the solicitors for Wilson and may be inspected upon request.

- iii. ~~As to (d)~~, Shift Change – Check List for the KGP site dated 16 April 2021, Shift Change – Check List for the Pluto site dated 16 April 2021 and Shift Change – Handover Sheet for KBSF site dated 15 April 2021 are in the possession of the solicitors for Wilson and may be inspected upon request.
- iv. Further particulars may be provided closer to the trial.

*Prestart vehicle checks*

15B. Further to paragraph 15 above:

- a. prior to the commencement of a rostered shift, incoming FPO teams were required to perform a vehicle check which:
  - i. involved one daily check performed by only one FPO in the FPO team driving the vehicle that day which may or may not have been the applicant, comprising the checks set out in a document titled Checklist A;
  - ii. involved one weekly check performed by only one FPO in the FPO team driving the vehicle that day which may or may not have been the applicant, each Friday, comprising the checks set out in Checklist B;
  - iii. would typically take no more than 2 to 5 minutes (Checklist A) and 5 to 10 minutes (Checklist B); and
  - iv. the prestart checks referred to in paragraph 15B(a)(i) to (iii) above were a precautionary measure required to maintain the safety of the vehicle and identify if any damage had occurred;

**Particulars**

Copies of Checklist A and Checklist B are in the possession of the solicitors for Wilson and may be inspected upon request.

- b. by reason of the matters referred to in paragraphs 15A and 15B(a) above, the applicant typically left site within 12 hours of his arrival and therefore performed work during his shift for no more than 12 hours; and
- c. in the premises, the applicant worked shifts of 12 hours in duration, which included a paid break of 30 minutes.

*Drive to Sites*

15C. Further to paragraph 15 above, Wilson:

- a. denies that driving to or from the Sites from the accommodation camp constituted work for the purposes of the 2010 Award or the 2020 Award; and
- b. in the alternative, that driving to or from the sites was shared by FPOs and on any particular trip, the applicant may or may not have been driving.

16. As to paragraph 16, Wilson:

- a. refers to and repeats paragraphs 7, 7A, 15 and 15A to ~~and~~ 15C above;
- b. ~~says by reason of the matter referred to in paragraphs 7(m) and (n) above, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), by operation of the IFA, cl 23.3 of the 2010 Award and/or cl 19.3 of the 2020 Award did not apply to the applicant's employment; and~~

**Particulars**

~~Wilson relies on s144 of the FW Act and the terms of the IFA referred to in paragraphs 7(m) and (n) above.~~

- c. says further that the applicant was paid in full for the 12-hour shift he worked; and
- d. otherwise denies the paragraph; and
- e. in the alternative, if the applicant was entitled to payment for hours worked which were not paid as alleged in paragraph 16 of the 2FASOC, by operation of the Part-Time Set-off Clause and/or the Full-Time Set-off Clause, any such entitlement was set-off against, satisfied by or absorbed by the Long Break Overtime Award Overpayment and/or the 48 Continuous Hours Break Overtime Overpayment (Set-off Defence).

17. As to paragraph 17, Wilson:

- a. refers to and repeats paragraphs 4(e), 7, 7A, 15A ~~and~~ to 15C above;
- b. says further that the applicant was paid in full for the 12 hour shift he worked; and
- c. otherwise ~~admits~~ denies the paragraph.

18. As to paragraph 18, Wilson:

- a. refers to and repeats paragraphs 4(e), 7, 7A, 15A, to 15C and 17 above;

- b. says further that the applicant was paid in full for the 12 hour shift he worked;  
and
  - c. otherwise ~~admits~~ denies the paragraph-; and
  - d. in the alternative, if the applicant was entitled to payment for hours worked which were not paid as alleged in paragraph 18 of the 2FASOC, Wilson relies on the Set-off Defence.
19. As to paragraph 19, Wilson:
- a. ~~refers to and repeats paragraphs 1(e), 7 and 7A above;~~
  - a. ~~alternatively, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), will refer to the full terms and effect of cl 14.2 of the 2020 Award and cl 21.6(b) of the 2010 Award at trial;~~
  - b. says that the applicant's paid rest break did not have pre-determined commencement times because rest breaks had to be taken when operations or activities at the Sites permitted those breaks to be taken;
  - c. says further that the applicant was able to take a rest break at any time whilst he ~~it~~ was on shift, where it was reasonably practicable for him to do so; and
  - ca. says further that the applicant did take a rest break at any time whilst he was on shift, where it was reasonably practicable for him to do so;
  - d. refers to paragraph 19A below; and
  - e. in the alternative, if the applicant was entitled to payments in relation to rest breaks, as alleged in paragraph 19 of the 2FASOC, Wilson relies on the Set-off Defence.

### Particulars

- i. Whether it was reasonably practicable to take a break whilst on shift fell to be considered in the context that each Site, or parts of the Sites, were designated "Land-Side Restricted Zone", being a type of port security zone within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) and the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Cth) to which access was restricted, and were the subject of heightened levels of security measures including heightened screening and search requirements.
- ii. Vehicles entering and departing Sites were searched on a continuous and random basis and were recorded: 2021 SOP cl 2.10.

- iii. Personnel bags were searched, and metal detection searches were to be conducted on a continuous and random basis: 2021 SOP cl 2.10.
- iv. All persons visiting the Sites were required to hold Maritime Security Identification Cards (**MSIC**) or be escorted by a person with a valid MSIC.
- v. The capacity to ~~take~~ take a break was determined by each Facility Protection Officer in conjunction with their colleagues, where necessary, and depended on the practical circumstances at each Site on a particular day.
- vi. Further particulars may be provided.

19A. Further to paragraph 19 above, at all material times:

a. the KGP site:

- i. was an operational integrated gas plant facility, producing liquified natural gas, domestic gas, condensate and LPG;
- ii. operated 24 hours per day with Woodside staff and/or third parties on site at all times; and
- iii. was guarded by between two to four FPOs and supervised by a Facility Protection Supervisor for each day shift and night shift;

b. the Pluto site:

- i. was an operational liquified natural gas plant facility;
- ii. operated 24 hours per day with Woodside staff and/or third parties on site at all times; and
- iii. was guarded by two FPOs for each day shift and night shift who worked unsupervised;

c. the KBSB site:

- i. operated as a marine supply facility;
- ii. typically had no Woodside staff and/or third parties on site during the night shift; and
- iii. was guarded by two FPOs for each day shift and one FPO for each night shift ~~work~~ who worked unsupervised;

d. the BMF site:

- i. operated a mooring facility:



- ii. had no Woodside staff and/or third parties on site during the night shift; and
  - iii. was guarded by one FPO for each day shift only who worked unsupervised, and typically ~~none~~ not guarded at night;
- e. prior to leaving the accommodation camps to attend work at the Sites, mess facilities were available to the applicant to collect food and beverages to consume throughout his shift;
- f. by reason of the matters referred to in paragraphs 19 and 19A(a) to (d) above:
- i. it was not reasonably practicable to pre-determine a start or finish time for rest breaks at the Sites;
  - ii. in respect of the KGP site, the designated Facility Protection Supervisor worked with FPOs to determine break times which depended on the individual operational circumstances of the particular shift;
  - iii. in respect of the Pluto, KBSB and BMF sites, it was left to the individual FPO (including the applicant) to determine when to take his rest break which depended on the individual operational circumstances of the particular shift;
- g. by reason of the matters referred to in paragraphs 19A(a)(iii), 19A(b)(iii) and 19A(c)(iii) above, during both day and night shifts at KGP and Pluto and during day shifts at KBSB:
- i. the applicants paid rest breaks were able to be covered by the ~~second~~ another FPO on duty; and
  - ii. the applicant was able to take a paid rest break at any time when it was practicable for him to do so.
- h. by reason of the matters referred to in sub-paragraph 19A(c)(ii) and (iii) above, the applicant was able to take a paid rest break at any time it was practicable for him to do so whilst on night shift at KBSB; and
- i. by reason of the matters referred to in paragraph 19A(d)(ii) and (iii) above, the applicant was able to take a paid rest break at any time it was practicable for him to do so whilst on day or night shift at BMF.

20. As to paragraph 20, Wilson:

- a. refers to and repeats paragraphs 7, 7A, 15, 15A to 15C and 16 to 19A above; and

~~b. says by reason of the matter referred to in paragraphs 7(m) and (n) above, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), cl 23.3 of the 2010 Award and/or cl 19.3 of the 2020 Award did not apply to the applicant's employment; and~~

#### **Particulars**

~~Wilson relies on s144 of the FW Act and the terms of the IFA referred to in paragraphs 7(m) and (n) above.~~

c. otherwise denies the paragraph.

21. As to paragraph 21, Wilson:

a. says that the paragraph is vague and embarrassing and liable to be struck out; and

b. under cover of that objection, refers to and repeats paragraphs 7 and 7A above; and

c. ~~alternatively, in the event that the 2010 Award and the 2020 Award applies to the applicant (which is denied),~~ otherwise denies the paragraph and refers to paragraphs 8 and 9 above; and

d. in the alternative, if the applicant was entitled to payments which he was not paid by reason of his being incorrectly classified under the 2010 Award or the 2020 Award as alleged in paragraph 21 of the 2FASOC, Wilson relies on the Set-off Defence.

22. As to paragraph 22, Wilson:

a. admits that the applicant's rostered shift times were either 5AM to 5PM or 5PM hrs to 5AM; and

~~b. refers to and repeats paragraphs 7 and 7A above;~~

b. ~~alternatively, in the event that the 2010 Award and the 2020 Award applies to the applicant (which is denied)~~ says further that:

i. commencing in about 2015, rosters covering periods of up to one month were posted at the gatehouse at each Site; and

ii. published rosters including start and finish times were available to the applicant via Wilson's Extranet system, and later, from December 2017, on demand using Wilson's internal intranet portal known as 'WNet'; and

c. otherwise denies the paragraph.

23. Wilson denies paragraph 23 and refers to and repeats paragraph 22 above.
24. As to paragraph 24, Wilson:
- ~~a. refers to and repeats paragraphs 7 and 7A above;~~
  - a. says further that less than two-thirds of the applicant's ordinary shifts over the span of the whole period of any of his roster cycles did not include the period between midnight and 6AM;
  - b. by reason of the matter pleaded at paragraph 24(ba) above, ~~in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied);~~ the work performed by the applicant over the span of the whole period of a roster cycle did not constitute "permanent night work" within the meaning of clause 22.2 of the 2010 Award and/or clause 20.3 of the 2020 Award;
  - c. in the premises the applicant was not entitled to be paid a permanent night shift allowance pursuant to clause 22.3 of the 2010 Award or clause 20.2 of the 2020 Award;
  - ~~d. further, by reason of the matter referred to in paragraphs 7(m) and (n) above, in the event that the 2010 Award and the 2020 Award applied to the applicant's employment (which is denied), by operation of the IFA, the applicant was not entitled to be paid a permanent night shift allowance; and~~

**Particulars**

~~Wilson relies on s144 of the FW Act and the terms of the IFA referred to in paragraphs 7(m) and (n) above.~~

- d. otherwise denies the paragraph.
25. Wilson denies paragraph 25 and says further that:
- a. it refers to and repeats paragraph 24 above.; and
  - b. in the alternative, if the applicant was entitled to payments which he was not paid by reason of being paid the regular night shift allowance of 21.7% rather than the permanent night shift allowance of 30% as alleged in paragraph 25 of the 2FASOC, Wilson relies on the Set-off Defence.
26. Wilson denies paragraph 26 and refers to and repeats paragraphs 24 and 25 above.
27. As to paragraph 25~~7~~, Wilson:—denies the paragraph and refers to and repeats paragraphs 12 to 26 above and the particulars thereunder.

- ~~a. refers to and repeats paragraphs 7 and 7A above; and~~
  - ~~b. in the event that the 2010 Award and the 2020 Award applies to the applicant (which is denied), otherwise denies the paragraph and refers to and repeats paragraphs 12 to 26 above and the particulars thereunder.~~
- 28. Wilson denies paragraph 28 and refers to and repeats paragraph 27 above ~~and the particulars thereunder.~~
- 29. Wilson denies paragraph 29 and refers to and repeats paragraphs 27 and 28 above.
- 30. Wilson denies paragraph 30 and refers to and repeats paragraphs 27 to 29 above.
- 31. Wilson denies paragraph 31 and refers to and repeats paragraphs 27 to 30 above.
- 32. Wilson denies paragraph 32 and refers to and repeats paragraphs 27 to 31 above.
- 33. As to paragraph 33, Wilson:
  - a. refers to and repeats paragraphs 27 to 32 above; and
  - b. otherwise denies the applicant and group members are entitled to the relief set out in the second further amended originating application.
- 34. Further to paragraphs 1 to 33 above, insofar as orders pursuant to s 546(1) of the FW Act are sought to be imposed in respect of any proven contraventions (which is denied) prior to 12 June 2015, Wilson relies on the limitation period prescribed in s 544 of the FW Act.
- 35. Further and in the alternative to the Set-Off Defence, if the Court concludes that Wilson cannot rely on the set-off Defence, then:
  - a. the Court ought in any event exercise its discretion pursuant to s 545(2)(b) of the FW Act to reduce any compensation otherwise payable to the applicant by the Long Break Overtime Award Overpayment and/or the 48 Continuous Hours Break Overtime Award Overpayment and/or the Meal Break Overpayment; and
  - b. it would not be appropriate, within the meaning of s 545 of the FW Act, to make an order for compensation in respect of the applicant in circumstances where such an order failed to accord with the compensatory and remedial purposes of s 545 by failing to take into account the Long Break Overtime Award Overpayment and/or the 48 Continuous Hours Break Overtime Award Overpayment.

**DATED:** 10 November 2023 ~~27 June 2023~~



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