

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/07/2020 4:07:00 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID488/2020
File Title:	PAUL BRADSHAW & ANOR v BSA LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/07/2020 9:41:45 AM AEST

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Statement of claim

No. of 20

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

Paul Bradshaw and another
Applicants

BSA Limited (ACN 088 412 748)
Respondent

Introduction

1. The Applicants bring this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The proceeding is commenced by the Applicants on their own behalf and on behalf of those persons who (**workers**):
 - a. are natural persons;
 - b. in the period 2003 to the date of filing this Statement of Claim, have provided services as telecommunications technicians to the Respondent;
 - c. did not receive payments or benefits which were required to be made or provided by the Respondent to employees; and
 - d. are an Ordinary Group Member (as defined in paragraphs 7 to 8 below) or a Subprime Group Member (as defined in paragraphs 9 to 10 below).
3. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the Respondent.
4. The Respondent (**BSA**), at all material times:
 - a. was and is a corporation and is able to be sued;
 - b. was and is engaged in the telecommunications industry.

Filed on behalf of (name & role of party)	Paul Bradshaw and Scott Uren, Applicants		
Prepared by (name of person/lawyer)	Vicky Antzoulatos		
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(include state and postcode)			

5. The First Applicant performed services for the benefit of BSA pursuant to the agreement referred to in paragraph 15 below in the period from around June 2014 to around November 2018.
6. The Second Applicant performed services for the benefit of BSA pursuant to the agreement referred to in paragraph 30 below in the period from around May 2017 to December 2018.

Ordinary Group Members

7. Each Ordinary Group Member:
 - a. is a natural person;
 - b. in the course of BSA's business, received one or more directions by BSA to perform work for the benefit of BSA (**Work Order**);
 - c. performed work for the benefit of BSA in respect of one or more Work Orders;
 - d. signed one or more BSA Agreements (as defined in paragraph 11 below); and
 - e. is not a "*Subprime Group Member*".
8. The First Applicant is an Ordinary Group Member.

Subprime Group Members

9. Each Subprime Group Member:
 - a. is a natural person;
 - b. in the course of BSA's business, received one or more directions by BSA to perform work for the benefit of BSA (**Work Order**);
 - c. performed work for the benefit of BSA in respect of one or more Work Orders;
 - d. was a party to a contract that it may be inferred was entered into between BSA and the Subprime Group Members; and
 - e. is not an "*Ordinary Group Member*".
10. The Second Applicant is a Subprime Group Member.

BSA Agreements

11. BSA entered into written agreements with the Ordinary Group Members (**BSA Agreements**), including the following (**Pleaded BSA Agreements**):
 - a. Telephone Installation and Maintenance Services Contractor Agreement, P04, dated around January 2008 (**2008 BSA Agreement**).

- b. Cable Works and Satellite Works Contractor Services Agreement, Version 9.2, dated around November 2011 (**2011 BSA Agreement**).
 - c. Contractor Services Agreement, Regional Satellite Works Subscription TV Agreement, dated around January 2013 (**2013 January BSA Agreement**).
 - d. Cable Works and Satellite Works Contractor Services Agreement, dated around July 2013 (**2013 July BSA Agreement**).
 - e. BSA Master Services Agreement, dated around February 2014 (**2014 BSA Agreement**).
 - f. BSA Master Services Agreement, version 2.0, dated around March 2015 (**2015 BSA Agreement**).
 - g. Contractor Services Agreement, version 10, dated around October 2016 (**2016 BSA Agreement**).
12. Under the definitions of “*Agreement*” and “*Statement of Work*” in clause 1, the 2014 BSA Agreement was (amongst other things) comprised of the “Statement of Work (Optus) Agreement”, dated around January 2014 (**2014 Statement of Work Agreement**).
13. Under clause 1A.2(c), the 2016 BSA Agreement was (amongst other things) comprised of the “Foxtel Installation Services Operations Manual” (**2016 BSA Foxtel Manual**).
14. In respect of the Pleaded BSA Agreements:
- a. each of the Pleaded BSA Agreements was stated to have been entered into by (i) BSA and (ii) a corporation;
 - b. contrary to what was stated in the Pleaded BSA Agreements, each of the Pleaded BSA Agreements was entered into by (i) BSA and (ii) the Ordinary Group Members.

Particulars

The conclusion in (b) follows when regard is had to the totality of the relationship as between the Ordinary Group Members and BSA, including:

- (i) the substance of the contractual terms of the Pleaded BSA Agreements, as set out below;
 - (ii) the system operated by BSA;
 - (ii) the work practices imposed by BSA.
15. In around June 2014, the First Applicant signed an agreement in the form of the 2014 BSA Agreement (which was in the name of Southern Electrical and Data Pty Ltd).

Terms of the Pleaded BSA Agreements relevant to Ordinary Group Members

16. Each of the Pleaded BSA Agreements stipulated, in substance, that the Ordinary Group Members were to provide services in accordance with BSA's procedures.

Particulars

- (i) 2008 BSA Agreement, clauses 4.1, 5.1, 17.1(a) and 17.1(b).
- (ii) 2011 BSA Agreement, definition of "*Agreement*" in clause 1.1, clauses 2.1, 2.2, 5.1, 9.1 and Schedules and Annexures set out in clause 1.2A (especially Schedules 2, 4, 5 and 7).
- (iii) 2013 January BSA Agreement, definition of "*Agreement*" in clause 1.1, clauses 1.3, 2.1, 3.8, 4.1 and 8.3; Schedules 2A, 2C and 3.
- (iv) 2013 July BSA Agreement, definition of "*Agreement*" in clause 1.1, clauses 2.1, 3.9, 5.1, 8.1 and 8.2; and Schedules 2, 4 and 5.
- (v) 2014 BSA Agreement, definition of "*Agreement*" in clauses 1.1, 4.1, 6.1, 6.2(f), 6.2(g), 10.1 and 10.2; and Schedule 5.
- (vi) 2015 BSA Agreement, definition of "*Agreement*" in clauses 1.1, 4.1, 6.1, 6.2(f), 6.2(g), 10.1 and 10.2; and Schedule 5.
- (vii) 2016 BSA Agreement, definition of "*Agreement*" in clause 1.1, clauses 1A.2(c), 2.1, 2.2, 5.1, 8.1, and 24.1.

17. Each of the Pleaded BSA Agreements had a term, in substance, requiring the Ordinary Group Members to comply with standards of work stipulated by BSA.

Particulars

- (i) 2008 BSA Agreement, clause 18; Schedule E.
- (ii) 2011 BSA Agreement, clauses 5.1, 5.4, 5.9, 6.1, 6.2 and 8.2; Schedule 2, clause 1.2(g).
- (iii) 2013 January BSA Agreement, clauses 4.2, 4.4, and 5.1; Schedule 2C.
- (iv) 2013 July BSA Agreement, clause 5.1, 5.4, and 6.1; Schedule 4.
- (v) 2014 BSA Agreement, clauses 6.1, 6.2 and 8.3.
- (vi) 2015 BSA Agreement, clauses 6.1, 6.2 and 8.3.
- (vii) 2016 BSA Agreement, clause 2.2 and 5.1.

18. Each of the Pleaded BSA Agreements had a term, in substance, stipulating service levels that the Ordinary Group Members were required to meet when performing services for the benefit of BSA.

Particulars

- (i) 2008 BSA Agreement, clauses 6.1, 6.2, 6.3, and 6.4; Schedule 4.
- (ii) 2011 BSA Agreement, clauses 5.1, 5.2, 5.3, and 5.4; Schedule 4.
- (iii) 2013 January BSA Agreement, clauses 5.1, 5.2, 5.3, and 5.4; Schedule 2C.
- (iv) 2013 July BSA Agreement, clauses 6.1, 6.2, 6.3 and 6.4; Schedule 4.
- (v) 2014 Statement of Work Agreement, clause 8.
- (vi) 2014 BSA Agreement, clauses 6.2.
- (vii) 2015 BSA Agreement, clauses 6.2; Schedule 7, clause 5.1 and 5.2, and Annexure 4.

- (viii) 2016 BSA Agreement, clause 6.2, 6.3, and 6.4; Schedule 4.
- (ix) 2016 BSA Foxtel Manual, clause 10.3.1.

19. Each of the Pleaded BSA Agreements contained stipulations in respect of the appearance and presentation of Ordinary Group Members when performing services for the benefit of BSA.

Particulars

- (i) 2008 BSA Agreement, clause 4.2(d); Schedule F clauses 5 and 15.
- (ii) 2011 BSA Agreement, clauses 23.4; Schedule 2, clause 1.1.
- (iii) 2013 January BSA Agreement, Schedule 2A, clause 1.1.
- (iv) 2013 July BSA Agreement, Schedule 2, clause 1.1(d).
- (v) 2014 Statement of Work Agreement, clause 5.5.3.
- (vi) 2014 BSA Agreement, clause 6.3.
- (vii) 2015 BSA Agreement, clause 6.3.
- (viii) 2016 BSA Agreement, clause 23.4.
- (ix) 2016 BSA Foxtel Manual, clauses 9.1.3(c), 14.1.1, 14.1.2, 14.1.4 and 14.1.5.

20. Each of the Pleaded BSA Agreements had a term, in substance, stipulating the manner of tools and/or equipment to be used by Ordinary Group Members when performing services for the benefit of BSA.

Particulars

- (i) 2008 BSA Agreement, clauses 21.1 and 22.1.
- (ii) 2011 BSA Agreement, clauses 5.2, 5.5, 5.6, and 20.1; Schedule 5, clauses 1(f) and 12(a).
- (iii) 2013 January BSA Agreement, clauses 4.2, 4.6, 4.7, and 18.1; Schedule 3, clauses 1(f) and 10(a).
- (iv) 2013 July BSA Agreement, clauses 5.2, 5.5, 5.6 and 20.1; Schedule 5, clauses 1(f) and 12(a).
- (v) 2014 Statement of Work Agreement, clauses 5.7, 5.8 and 5.9; Schedule 1 clause 6.2; Schedule 2, 5.1.
- (vi) 2014 BSA Agreement, clauses 6.8.
- (vii) 2015 BSA Agreement, clauses 6.8.
- (viii) 2016 BSA Agreement, clause 5.2, 5.7, and 5.8.
- (ix) 2016 BSA Foxtel Manual, clauses 14.3.1, 14.3.3, 14.4.1, 14.5.1, 14.5.3 and 14.6.1.

21. Each of the Pleaded BSA Agreements had a term, in substance, that the Ordinary Group Members had no right to be provided by BSA with any, or a minimum, number of Work Orders (or any other direction or request to perform work).

Particulars

- (i) 2008 BSA Agreement, clauses 10.1 and 10.2.
- (ii) 2011 BSA Agreement, clause 8.5; Schedule 5, clause 5(c) and (f).
- (iii) 2013 January BSA Agreement, clauses 7.1, 7.2, and 7.6; Schedule 3, clause 4.

- (iv) 2013 July BSA Agreement, clause 8.5; Schedule 5, clause 5.
- (v) 2014 Statement of Work Agreement, clause 5.5.
- (vi) 2014 BSA Agreement, clauses 5.3(a) and 5.6.
- (vii) 2015 BSA Agreement, clauses 5.3(a) and 5.6.
- (viii) 2016 BSA Agreement, clause 8.5.
- (ix) 2016 BSA Foxtel Manual, clause 5.1.1, 5.1.2 and 5.1.3.

22. Each of the Pledged BSA Agreements had a term, in substance, that BSA would pay to the Ordinary Group Members an amount as set by BSA.

Particulars

- (i) 2008 BSA Agreement, clauses 6.1(a) and 6.2.
- (ii) 2011 BSA Agreement, clauses 7.1 and 8.6; Schedule 3, clause 2.1.
- (iii) 2013 January BSA Agreement, clause 6.1; Schedule 2B, clause 1.
- (iv) 2013 July BSA Agreement, clauses 7.1, 8.6; Schedule 3, clause 2.
- (v) 2014 Statement of Work Agreement, clause 11; Schedule 1, clause 8; Schedule 2, clause 7; Schedule 3, clause 7.
- (vi) 2014 BSA Agreement, clauses 4.1, 15.1 and 15.2.
- (vii) 2015 BSA Agreement, clauses 4.1, 15.1 and 15.2.
- (viii) 2016 BSA Agreement, clause 7.1, and 8.6.

23. Each of the Pledged BSA Agreements had a term, in substance, that BSA would create invoices (being Recipient Created Tax Invoices (**RCTIs**)) in respect of payments made by BSA for services provided to BSA.

Particulars

- (i) 2008 BSA Agreement, clause 6.3.
- (ii) 2011 BSA Agreement, clause 7.2.
- (iii) 2013 January BSA Agreement, clauses 6.1 and 6.2.
- (iv) 2013 July BSA Agreement, clause 7.2.
- (v) 2014 BSA Agreement, clause 16.3.
- (vi) 2015 BSA Agreement, clause 16.3.
- (vii) 2016 BSA Agreement, clause 7.2

24. Each of the Pledged BSA Agreements had a term, in substance, stipulating when BSA would make payments to the Ordinary Group Members.

Particulars

- (i) 2008 BSA Agreement, clause 6.3.
- (ii) 2011 BSA Agreement, clause 7.1.
- (iii) 2013 January BSA Agreement, clause 6.1.
- (iv) 2013 July BSA Agreement, clause 7.1.
- (v) 2014 BSA Agreement, clauses 16.1, 16.2 and 16.5.
- (vi) 2015 BSA Agreement, clauses 16.1, 16.2 and 16.5.
- (vii) 2016 BSA Agreement, clause 7.1.

25. Each of the Pledged BSA Agreements had a term, in substance, that BSA could withhold and/or set-off payments owing to Ordinary Group Members if money was owing to BSA by the Ordinary Group Members.

Particulars

- (i) 2008 BSA Agreement, clause 6.4.
- (ii) 2011 BSA Agreement, clause 7.5.
- (iii) 2013 January BSA Agreement, clause 6.3.
- (iv) 2013 July BSA Agreement, clause 7.5.
- (v) 2014 Statement of Work Agreement, clause 5.3.2; Schedule 3, clause 5.
- (vi) 2014 BSA Agreement, clause 16.7.
- (vii) 2015 BSA Agreement, clause 16.7.
- (viii) 2016 BSA Agreement, clause 7.5.

26. Each of the Pledged BSA Agreements had a term, in substance, that Ordinary Group Members were required to participate in training.

Particulars

- (i) 2008 BSA Agreement, clauses 9.2, 9.3, and 17.1.
- (ii) 2011 BSA Agreement, clauses 3.2, 3.4, and 9.1; Schedule 5, clause 23.
- (iii) 2013 January BSA Agreement, clauses 3.1, 3.3, 8.1; Schedule 3, clauses 21 and 23.
- (iv) 2013 July BSA Agreement, clauses 3.2, 3.4; Schedule 5, clause 23; Schedule 7, clause 1.2.
- (v) 2014 Statement of Work Agreement, clause 9.
- (vi) 2014 BSA Agreement, clauses 23.12; Schedule 1, clause 2.1.
- (vii) 2015 BSA Agreement, clause 23.12; Schedule 1, clause 2.1; Schedule 7, clauses 9.1 and 9.3.
- (viii) 2016 BSA Agreement, clauses 3.2, 3.4, and 9.1.
- (ix) 2016 BSA Foxtel Manual, clause 9.1.4, and 9.1.5.

27. Each of the Pledged BSA Agreements had a term, in substance, that the Ordinary Group Members had to maintain records, which were to be made available to BSA for auditing.

Particulars

- (i) 2008 BSA Agreement, clauses 2.6, 3.5 and 11.
- (ii) 2011 BSA Agreement, clauses 7.8; Schedule 5, clause 22.
- (iii) 2013 January BSA Agreement, clauses 3.9, 6.8, 6.9, 26.1, 26.2 and 26.3; Schedule 3, clause 20.
- (iv) 2013 July BSA Agreement, clauses 3.10 and 7.8; Schedule 5, clause 22.
- (v) 2014 BSA Agreement, clauses 11.1, 11.2, 11.3 and 23.14.
- (vi) 2015 BSA Agreement, clauses 11.1, 11.2, 11.3 and 23.14.
- (vii) 2016 BSA Agreement, clause 7.8.
- (viii) 2016 BSA Foxtel Manual, clause 10.5 and 14.6.3.

28. Each of the Pleaded BSA Agreements had a term, in substance, that BSA had the contractual right to terminate as follows:
- a. upon giving 14 days notice for any reason (clause 14.2 of the 2008 BSA Agreement);
 - b. at any time by giving 7 business days written notice (clause 14.4 of the 2011 BSA Agreement);
 - c. immediately upon written notice for any reason (clause 12.4 of the 2013 January BSA Agreement);
 - d. at any time by giving 7 business days written notice (clause 14.4 of the 2013 July BSA Agreement);
 - e. at any time and in its absolute discretion (clause 33.1 of the 2014 BSA Agreement);
 - f. at any time and in its absolute discretion (clause 33.1 of the 2015 BSA Agreement);
 - g. at any time and for any reason immediately upon giving written notice (clause 14.4 of the 2016 BSA Agreement).
29. Each of the Pleaded BSA Agreements had a term, in substance, that BSA could require an Ordinary Group Member to pay money to BSA in the event that work was performed to a standard contended by BSA to be in breach of the agreement in question.

Particulars

- (i) 2008 BSA Agreement, clause 19; Schedule G.
 - (ii) 2011 BSA Agreement, clause 5.4, 6.4 and Schedule 4.
 - (iii) 2013 January BSA Agreement, clause 5.4; Schedule 2C; Schedule 5, clause 1.2.
 - (iv) 2013 July BSA Agreement, clause 6.4; Schedule 4; Schedule 7, clause 6.
 - (v) 2014 Statement of Work Agreement, clause 5.3.2.
 - (vi) 2014 BSA Agreement, clause 27.2.
 - (vii) 2015 BSA Agreement, clause 27.2.
 - (viii) 2016 BSA Agreement, clause 5.5, 6.4 and Schedule 4.
30. Except for the 2015 BSA Agreement, each of the Pleaded BSA Agreements had a term, in substance, requiring Ordinary Group Members to have availability set as follows:
- a. In respect of the 2008 BSA Agreement, to be available at any time including, without limitation, on weekends, public holidays, and after hour recall services when required (clauses 2.11, 2.12, and 2.13).
 - b. In respect of the 2011 BSA Agreement, at least 3 months before the beginning of each month (clause 8.4; Schedule 5, clauses 1(a) and 5(b)).

- c. In respect of the 2013 January BSA Agreement, at least 3 months before the beginning of each month (clause 7.5; Schedule 3, clauses 1(a) and 4).
 - d. In respect of the 2013 July BSA Agreement, at least 3 months before the beginning of each month (clause 8.4; Schedule 5, clauses 1(a) and 5).
 - e. In respect of the 2014 Statement of Work Agreement, at least one month in advance (clause 5.5).
 - f. In respect of the 2016 BSA Agreement, at least 3 months before the beginning of each month (clause 8.4).
31. Except for the 2015 BSA Agreement, each of the Pledaded BSA Agreements had a term, in substance, that BSA could require an Ordinary Group Member perform work on certain weekends and public holidays.

Particulars

- (i) 2008 BSA Agreement, clauses 2.11, and 2.12.
 - (ii) 2011 BSA Agreement, clause 8.4; Schedule 5, clause 5(a).
 - (iii) 2013 January BSA Agreement, clauses 7.4 and 7.5.
 - (iv) 2013 July BSA Agreement, clauses 8.3 and 8.4; Schedule 5, clause 5(b).
 - (v) 2014 Statement of Work Agreement, definition of "*Business Day*" in clause 2, clause 5.5.1.
 - (vi) 2016 BSA Agreement, clauses 8.3 and 8.4.
32. Except for the 2015 BSA Agreement, each of the Pledaded BSA Agreements had a term, in substance, stipulating the times in which the Ordinary Group Members were required to be available to provide services to BSA.

Particulars

- (i) 2008 BSA Agreement, clauses 2.11, 2.12 and 2.13.
- (ii) 2011 BSA Agreement, clauses 8.3, and 8.4; Schedule 4, clause 4; and Schedule 5, clause 5.
- (iii) 2013 January BSA Agreement, clauses 7.4 and 7.5; Schedule 3, clauses 1 and 4.
- (iv) 2013 July BSA Agreement, clauses 8.3 and 8.4; Schedule 5, clauses 1 and 5.
- (v) 2014 Statement of Work Agreement, clause 5.5.1.
- (vi) 2016 BSA Agreement, clause 8.3 and 8.4.
- (vii) 2016 BSA Foxtel Manual, clause 3.1.

Work practices

33. At all material times, BSA's work practices (in respect of both Ordinary Group Members and Subprime Group Members) comprised of the following:

Procedures and manuals

- a. BSA provided to workers hard copy and electronic procedure manuals.

- b. BSA required that workers have a hard copy of the procedure manuals in their vehicles.
- c. BSA required that workers performed work in accordance with the standards, procedures and practices set out in the procedure manuals.

Supervision and audits

- d. BSA appointed “*Supervisors*” (being full time employees of BSA) to manage and supervise workers performing services in a particular location.
- e. The Supervisors were the point of contact for workers in respect of any questions or issues arising from work done by the workers.
- f. From time to time, the Supervisors audited work done by workers, by inspection of the premises at which work was performed, in order for BSA to assess compliance with standards, procedures and practices set out in the procedure manuals, including both as to the quality of the work and the methods employed to do the work.

Work Orders

- g. BSA had an electronic system used by it to allocate and monitor Work Orders (***BSA’s Electronic System***).
- h. Workers were required to own a portable device (such as an iPad) in order to log on to BSA’s Electronic System and receive allocation of Work Orders multiple times a day.
- i. Work Orders were allocated to the workers by 6:00pm to 7:00pm the day prior via BSA’s Electronic System.
- j. The Work Orders allocated in the evening before (as described in the subparagraph immediately above) could be modified by BSA by the next morning.
- k. Workers were not able to pick and choose the Work Orders allocated to them.
- l. The number of Work Orders allocated to workers varied from day to day.
- m. Workers had no ability to predict or to control the minimum number of Work Orders allocated to them.
- n. Workers had a limited ability to dictate or control the geographic areas of Work Orders.
- o. Workers had no ability to predict or control the type of Work Orders they were assigned.
- p. Workers had little or no control over how long a Work Order would take.

- q. Workers did not have an unfettered ability to decline a Work Order.
- r. Each worker's location, when performing Work Orders, was monitored and tracked by BSA.

Payment

- s. The amount payable by BSA for completion of a Work Order was fixed by BSA.
- t. Workers did not negotiate the terms or amounts of payment for completion of Work Orders.

Hours of work and timing of jobs

- u. Workers generally were allocated Work Orders so that they worked from 7am to (at least) 5pm.
- v. Each Work Order had a countdown timer attached to it which was allocated by BSA.
- w. BSA measured and recorded workers' compliance with timers.
- x. If workers did not complete the Work Order within the time allocated by the timers, they would be subject to disciplinary action by BSA.

Particulars of disciplinary action

The disciplinary action included issuing a breach notice, issuing fewer Work Orders, or suspending the worker from receiving Work Orders for a period of time.

Service Levels

- y. If workers did not complete Work Orders to the standard required by BSA (including meeting KPIs), they would be subject to disciplinary action by BSA.

Particulars of disciplinary action

As per the equivalent particulars above, including BSA withholding payments or seeking repayments of amounts paid by BSA to the workers.

- z. In the event that BSA concluded that a worker had not complied with policies, manuals and methods of work, the worker would be subject to disciplinary action by BSA.

Particulars of disciplinary action

As per the equivalent particulars above, including BSA withholding payments or seeking repayments of amounts paid by BSA to the workers.

Training and meetings

- aa. BSA required workers to attend meetings and do training, including:
 - i. Monthly WHS toolbox meetings, which was not paid; and
 - ii. BSA Training courses as required by BSA.

Branding, uniform and tools

- bb. BSA required workers to wear identification with BSA branding.
- cc. Workers who were installing Foxtel were required to wear uniforms with BSA and Foxtel logos.
- dd. Workers were required to use and/or obtain tools specified by BSA.

Availability

- ee. Workers had to inform BSA at least one month in advance about their availability.
- ff. If workers wanted to take time off, they were required to give at least one month's notice of unavailability to work on particular days.

Unpaid entitlements

- gg. BSA did not make any payments in respect of minimum wage.
 - hh. BSA did not make any payments in respect of Annual Leave.
 - ii. BSA did not make any payments in respect of Overtime.
 - jj. BSA did not make any payments in respect of Long Service Leave.
 - kk. BSA did not make any payments in respect of allowances owing to employees under the *Fair Work Act* or the *Telecommunications Services Award 2010* (or such other Award that covers the Group Members and each of the Applicants).
 - ll. BSA did not make any payments in respect of Superannuation.
34. At all material times, BSA's work practices (in respect of Ordinary Group Members) comprised of the following (in addition to the matters pleaded immediately above):
- a. BSA required all parties to its contracts to be corporations.
 - b. Workers were generally allocated Work Orders on 5 or 6 days a week.
 - c. BSA generated RCTIs and sent them to the workers.
 - d. BSA made payments to Ordinary Group Members in accordance with RCTIs.

Inferred contract between Subprime Group Members and BSA

- 35. The Second Applicant is the sole director of Escom Communications Pty Ltd (***Escom***).
- 36. In around early 2017, the Second Applicant caused Escom to enter into an agreement (***Subprime/Marcomm Agreement***) with Marcomm Communication Pty Ltd (***Marcomm***).
- 37. It was a term of the Subprime/Marcomm Agreement that, from April 2017, the Second Applicant would commence providing "Services" (defined as being install, maintain and repair services in respect of telecommunications equipment and appliances).

Particulars

Clause 1; Schedule 1, items 1 and 2.

38. It was a term of the Subprime/Marcomm Agreement that the Second Applicant would continue to provide Services until the Subprime/Marcomm Agreement was terminated in accordance with the terms of the Subprime/Marcomm Agreement.

Particulars

Clause 2.

39. It was a term of the Subprime/Marcomm Agreement that Escom must comply with any:
- a. procedures;
 - b. obligations;
 - c. work scopes;
 - d. workmanship quality;
 - e. stock management;
 - f. approved material list; and
 - g. scheduled installation appointment time,
- as specified by "*the Customer*".

Particulars

Clause 16(h).

40. It was a term of the Subprime/Marcomm Agreement that remuneration paid to Escom for the Services was as set out in Item 3 of the First Schedule, with the amount payable being a Fixed Fee in relation to each service which is specified by the Customer.

Particulars

Clause 21; Schedule 1, item 3.

41. It was a term of the Subprime/Marcomm Agreement that Marcomm would make payment to Escom 7 days after Marcomm received payment from "*The Customer*", and that Marcomm retained the right to deduct from moneys payable to Escom any amount deducted or charged by "*The Customer*" against Escom.

Particulars

Clause 28; Schedule 1, item 4.

42. The Second Applicant provided services to BSA purportedly on behalf of Escom under the Subprime/Marcomm Agreement.

43. The services provided by the Second Applicant were:
- a. to facilitate obligations owed by Marcomm to BSA, in respect of an agreement between Marcomm and BSA;
 - b. provided for the benefit of BSA in the course of BSA's business.
44. By reason of the facts and matters referred to in paragraph 39 above:
- a. in performing the services, the Second Applicant was required to comply with BSA's procedures, obligations, work scopes, workmanship quality, stock management, approved material list, and scheduled installation appointment time;
 - b. BSA controlled and directed, and had the capacity to control and direct, the manner in which the Second Applicant performed work;
 - c. Marcomm did not control and direct, or have the capacity to control and direct, the manner in which the Escom and/or the Second Applicant provided services.
45. The Second Applicant repeats paragraph 33 above and says further that:
- a. Marcomm did not provide any of its own manuals to the Second Applicant;
 - b. Marcomm did not supervise any of the work done by the Second Applicant;
 - c. Marcomm did not have any input into, or control over what Work Orders were received and accepted by the Second Applicant, or management or otherwise of those Work Orders;
 - d. Marcomm did not have any input into, or control over the hours and times in which the Second Applicant provided services to BSA;
 - e. Marcomm did not have any input into, or control over the manner in which the Second Applicant performed services, including as to the standard of the work done by him;
 - f. Marcomm did not conduct any training of the Second Applicant;
 - g. save as to the making of payments by Marcomm, all (or substantially all) dealings and correspondence in which the Second Applicant engaged in respect of the provision of services were as between the Second Applicant and officers and employees of BSA;
 - h. Marcomm did not have any engagement with the Second Applicant in respect of the provision of services by him, save as to payment of money by Marcomm.

46. By reason of the acts and conduct of the parties referred to in 33, and 35 to 45 above, it is to be inferred that a contract was entered into between BSA and the Second Applicant (***Inferred Uren Contract***).
47. It was a term of the Inferred Uren Contract that the Second Applicant would perform services for the benefit of BSA, in accordance with Work Orders issued by BSA.
48. It was a term of the Inferred Uren Contract that the Second Applicant was required to comply with BSA's procedures, obligations, work scopes, workmanship quality, stock management, approved material list, and scheduled installation appointment time.
49. It was a term of the Inferred Uren Contract that, in consideration for the provision by the Second Applicant of his services, BSA would make payments to Marcomm:
 - a. in an amount set by BSA;
 - b. at times set by BSA.
50. It was a term of the Inferred Uren Contract that it could to be terminated by either party on the giving of reasonable notice.
51. By reason of the acts and conduct of the parties referred to in 33 above, it is to be inferred that a contract was entered into between (on the one hand) BSA and (on the other hand) the Subprime Group Members (***Inferred Subprime Contracts***).
52. It was a term of the Inferred Subprime Contracts that the Subprime Group Members would perform services for the benefit of BSA, in accordance with Work Orders issued by BSA.
53. It was a term of the Inferred Subprime Contracts that the Subprime Group Members were required to perform work in accordance with the standards, procedures and practices set out in BSA's procedure manuals.
54. It was a term of the Inferred Subprime Contracts that, in consideration for the provision by the Subprime Group Members of their services, BSA would make payments:
 - a. in an amount set by BSA;
 - b. at times set by BSA.
55. It was a term of the Inferred Subprime Contracts that they could to be terminated by either party on the giving of reasonable notice.

Characterisation of relationship between the Applicants and BSA

56. BSA controlled and directed, or had the capacity to control and direct, the manner in which the workers (including the Applicants) performed work, including in respect of the following matters:
 - a. The procedures to be followed when completing Work Orders.

Particulars

Paragraphs 16, 33(a)-(c) and (f), 39, 44,48 and 53.

- b. The standards and requirements to be complied with when completing Work Orders.

Particulars

Paragraphs 17, 33(a)-(c) and (f), 39, 44 and 48.

- c. The service levels to be complied with when completing Work Orders.

Particulars

Paragraphs 18 and 33(a)-(c) and (f), 39, 44, 48 and 53.

- d. The appointment by BSA of a “*Supervisor*” in order to manage and supervise workers.

Particulars

Paragraph 33(d)-(e).

- e. The audits by Supervisors of work done by the workers.

Particulars

Paragraph 33(f).

- f. The issue of Work Orders, including that there was no right to receive any minimum number of Work Orders.

Particulars

Paragraphs 21 and 33(g)-(r).

- g. The times in which workers were to be available to perform work.

Particulars

Paragraphs 30 , 31 , 32 , and 33(u).

- h. The provision of training.

Particulars

Paragraphs 26 and 33(aa) above.

- i. Attendance at meetings.

Particulars

Paragraph 33(aa) above.

- j. BSA had the right to terminate the contracts with workers at short notice and without cause.

Particulars

Paragraphs 28, 50 and 55 above.

- k. BSA had the power to impose, and did impose disciplinary action on workers in respect of perceived or actual poor performance.

Particulars

Paragraph 33(x), (y) and (z).

- l. BSA specified the tools that a worker was to use.

Particulars

Paragraphs 20 and 33(dd) above.

- m. The appearance of the workers.

Particulars

Paragraphs 19 and 33(bb) and (cc) above.

- n. The superintendence by BSA of the worker's finances.

Particulars

Paragraph 57 below.

- o. In respect of Ordinary Group Members, BSA had the right to require the Ordinary Group Members, to pay money to it in the circumstances pleaded in paragraph 29 above.
- p. In respect of Ordinary Group Members, the provision of information by the worker to BSA, and BSA's rights to be provided with information and audit the worker.

Particulars

Paragraph 27 above.

- 57. BSA superintended the workers' finances, including those of the Applicants, by reason of the following matters:

- a. The amount payable for work done was set by BSA.

Particulars

Paragraphs 22, 33(s), 49 and 54 above.

- b. The timing of payments was set by BSA.

Particulars

Paragraphs 24, 49 and 54 above.

- c. BSA did not negotiate the terms or amounts of payment for completion of Work Orders.

Particulars

Paragraph 33(t) above.

- d. In respect of Ordinary Group Members, BSA created RCTIs in respect of payments made by BSA for services provided to BSA.

Particulars

Paragraphs 23, 34(c) and (d) above.

- e. In respect of Ordinary Group Members, BSA was entitled to withhold and/or set-off payments owing to workers if money was owing to BSA.

Particulars

Paragraph 25 above.

- f. In respect of Ordinary Group Members, BSA could require workers to pay money to BSA in the event that work was performed in a standard contended by BSA to be in breach of the agreement in question.

Particulars

Paragraph 29 above.

- 58. By reason of the following matters, the workers, including the Applicants, were integrated in the business of BSA and did not conduct a business of their own:
 - a. BSA controlled the allocation of Work Orders.

Particulars

Paragraphs 21, 33(g)-(r), 47 and 52.

- b. Workers had little or no control over the manner of performing their work.

Particulars

Paragraphs 16, 17, 18, 33(a)-(r), 47, 48, 52 and 53.

- c. BSA's business (in respect of providing services in the telecommunications industry):
 - i. was the marshalling and direction of the labour of the workers in order to perform Work Orders; and
 - ii. did not involve BSA, by any of its employees or officers other than workers, performing Work Orders.
- d. The workers:
 - i. performed all of BSA's operations in completing Work Orders in the telecommunications industry;

- ii. did not supplement, or perform merely part of work, by BSA's other employees or officers of completing Work Orders in the telecommunications industry.

59. The completion, by the workers, of Work Orders was represented as the activity of BSA.

Particulars

- (i) The appearance of the workers (as pleaded in paragraphs 19 and 33(bb) and (cc) above).
- (ii) The issue of Work Orders by BSA to the workers was done pursuant to agreements between, on the one hand, BSA and, on the other hand, one of Foxtel, Optus, Austar, NBN Co, Ericsson, Fox Sports and Telstra.
- (iii) BSA represented, in its financial reports, in substance, that the completion of Work Orders (and payments received by BSA following such completion) was the activity of BSA, as follows:
 - (A) 2004 Annual Report, pages 7, 8, 11, 12, 28, 29 and 30.
 - (B) 2005 Annual Report, pages 7, 8, 11, 12, 13, 14, 18, 51, 52 and 53.
 - (C) 2006 Annual Report, pages 4, 5, 6, 7, 8, 10, 11, 31, 32, 33 and 34.
 - (D) 2007 Annual Report, pages 5, 7, 8, 9, 12, 13, 29, 30, 31 and 32.
 - (E) 2008 Annual Report, pages 4, 6, 8, 9, 12, 13, 14, 34, 35, 36 and 37.
 - (F) 2009 Annual Report, pages 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 34, 35, 36 and 37.
 - (G) 2010 Annual Report, pages 4, 6, 7, 9, 11, 13, 14, 36, 37, 38 and 39.
 - (H) 2011 Annual Report, pages 4, 6, 7, 12, 13, 15, 16, 17, 36, 37, 38 and 39.
 - (I) 2012 Annual Report, pages 4, 5, 6, 7, 10, 11, 12, 42, 43, 44 and 45.
 - (J) 2013 Annual Report, pages 4, 5, 6, 7, 10, 11, 12, 42, 43, 44 and 45.
 - (K) 2014 Annual Report, pages 4, 5, 6, 7, 10, 11, 17, 29, 44, 45, 46 and 47.
 - (L) 2015 Annual Report, pages 4, 5, 6, 7, 10, 11, 31, 32, 33 and 34.
 - (M) 2016 Annual Report, pages 4, 5, 6, 7, 8, 9, 13, 31, 32, 33 and 34.
 - (N) 2017 Annual Report, pages 4, 5, 6, 7, 8, 9, 29, 31, 32, 33 and 34.
 - (O) 2018 Annual Report, pages 4, 5, 6, 7, 8, 9, 31, 32, 33 and 34.
 - (P) 2019 Annual Report, pages 4, 5, 6, 7, 8, 9, 29, 30, 31 and 32.

60. The workers had limited scope to carry on an enterprise in order to generate profit.

Particulars

The maximum amount of profit that a worker could generate was limited by:

- (i) the number of Work Orders allocated by BSA to the worker;
- (ii) the rate of payment set by BSA;
- (iii) the number of Work Orders completed by the worker.

61. No goodwill inured to the workers, including the Applicants, by reason of services performed for BSA.

62. The workers, including the Applicants, carried out little, or no, advertising to the public promoting a business being carried on by the worker.

63. The workers, including the Applicants, were economically dependent upon, and provided services exclusively, or to an extent that was almost exclusive, to BSA.
64. By reason of the matters pleaded above, on the totality of the relationship as between the workers, including the Applicants, and BSA, the relationship was one of employment.

National Employment Standards

65. BSA was a “*constitutional corporation*” within the meaning of s 12 of the *Fair Work Act 2009* (Cth) (***Fair Work Act***).
66. BSA was a “*national system employer*” within the meaning of s 14 of the *Fair Work Act*.
67. The workers were “*national system employees*” within the meaning of s 13 of the *Fair Work Act*.
68. The workers:
 - a. provided to BSA a firm advance obligation to providing on-going work; and
 - b. did not have capacity to have access to rest and recreation.

Particulars

Paragraphs 30, 31, 32, 33(ee) and 33(ff) above; and, in respect of Ordinary Group Members, paragraph 34(b).

69. On the whole of the relationship, the workers were not “*casual employees*” within the meaning of s 86 of the *Fair Work Act*.

Particulars

The Applicants rely on paragraphs 30, 31, 32, 33(ee), 33(ff), and 56 above; and, in respect of Ordinary Group Members, paragraph 34(b).

70. Under s 87 of the *Fair Work Act*, the workers (including each of the Applicants) were entitled to 4 weeks of paid annual leave for each year of service with BSA.
71. Under s 90(2) of the *Fair Work Act*, if, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.
72. Under s 96 of the *Fair Work Act*, the workers (including each of the Applicants) were entitled to 10 days of paid personal/carer’s leave for each year of service with BSA.
73. In contravention of s 44 of the *Fair Work Act*, BSA:
 - a. did not grant the workers (including each of the Applicants) any annual leave, or make any payments to the workers (including each of the Applicants) in respect of annual leave.
 - b. did not grant the workers (including each of the Applicants) any personal leave.

Telecommunications Services Award 2010

74. From 1 January 2010, the workers, including the Applicants, were covered by the *Telecommunications Services Award 2010 (Award)*.

Particulars

- (i) The Applicant repeats paragraph 2(b), 4 and 64 above.
- (ii) Clauses 4.1 and 4.2 of the Award.

75. From June 2014 to around November 2018, the First Applicant was engaged by BSA on a full-time basis, within the meaning of clause 11 of the Award.

Particulars

- (i) Paragraph 69 above.
- (ii) The First Applicant generally worked for an average of 38 or more hours per week.
- (iii) The First Applicant usually started work at 7.00am each morning and remained working in the field until around 6.00pm, and generally worked 6 days per week.

76. The First Applicant was a “*Telecommunications Technician*” within the meaning of Schedule B, classification B.1.3 of the Award.

77. From around May 2017 to December 2018, the Second Applicant was engaged by BSA on a full-time basis, within the meaning of clause 11 of the Award.

Particulars

- (i) Paragraph 69 above.
- (ii) The Second Applicant worked for an average of 38 or more hours per week.
- (iii) The Second Applicant usually started work around 7.30am each morning and remained working in the field until around 6.30pm, and generally worked 6 days per week.

78. The Second Applicant was a “*Telecommunications Technician*” within the meaning of Schedule B, classification B.1.3 of the Award.

79. Under clause 14.1(c) of the Award, each of the Applicants was entitled to be paid by BSA a weekly minimum wage, as varied from time to time, according to the rate per week in respect of a Telecommunications Technician.

80. Under clause 17.1(a) of the Award, each of the Applicants was entitled to be paid by BSA a vehicle allowance.

81. Under clause 17.1(c) of the Award, each of the Applicants was entitled to be paid by BSA a telephone allowance.
82. Under clause 17.1(d) of the Award, each of the Applicants was entitled to be paid by BSA a meal allowance.
83. Under clause 17.1(e) of the Award, each of the Applicants was entitled to be paid by BSA expenses and travelling time.
84. Under clause 17.2 of the Award, each of the Applicants was entitled to be paid by BSA a tool allowance.
85. Under clause 19.2 of the Award, BSA was required to make superannuation contributions to a superannuation fund for the benefit of each of the Applicants.
86. Under clause 20.1 of the Award, ordinary hours of work are to be an average of 38 per week.
87. Under clause 20.8 of the Award, each of the Applicants was entitled to be paid a penalty rate of time and a half for ordinary time worked:
 - a. Between midnight on Friday and 7.00 am on Sunday; and
 - b. Between 1.00pm on Saturday and midnight on Sunday.
88. Under clause 21.1 of the Award, each of the Applicants was entitled to be paid overtime rates of time and a half for the first 3 hours in excess of ordinary hours and double time thereafter, with each day's work to stand alone.
89. Under clause 23.3, the amounts payable to each of the Applicants in respect of annual leave was the wages and loadings under clause 20, with a loading of 17.5%.
90. In contravention of s 45 of the *Fair Work Act* and in breach of the Award:
 - a. The weekly payments received by each of the Applicants were less than the minimum wage entitlement in accordance with clause 14.1(c) of the Award in the certain periods.

Particulars

Particulars of the periods will be provided.

- b. The Applicants were not paid a vehicle allowance in accordance with clause 17.1(a) of the Award.
- c. The Applicants were not paid a telephone allowance in accordance with clause 17.1(c) of the Award.
- d. The Applicants were not paid a meal allowance in accordance with clause 17.1(d) of the Award.

- e. The Applicants were not paid expenses and travelling time in accordance with clause 17.1(e) of the Award.
 - f. The Applicants were not paid a tool allowance in accordance with clause 17.2 of the Award.
 - g. BSA did not make superannuation contributions in accordance with clause 19.2 of the Award.
 - h. The Applicants were not paid penalty rates in respect of work done on weekends in accordance with clause 20.8 of the Award.
 - i. The Applicants were not paid overtime rates in accordance with clause 21.1 of the Award.
 - j. The Applicants were not paid amounts in respect of annual leave in accordance with clause 23.3 of the Award.
91. In the alternative to paragraphs 75 to 79 above, if the Applicants were engaged on a casual basis within the meaning of clause 11 of the Award:
- a. Under clause 11.3, each of the Applicants was entitled to be paid per hour 1/38th of the weekly wage referred to in paragraph 79, plus 25%.
 - b. In contravention of s 45 of the *Fair Work Act* and in breach of the Award, each of the Applicants was not paid amounts in accordance with clause 11.3 of the Award.
92. Under s 539(1) of the *Fair Work Act*, each of s 44 and s 45 of the *Fair Work Act* is a “civil remedy provision”.
93. Under s 545(1) of the *Fair Work Act*, BSA is liable to pay compensation to each of the Applicants.

Particulars

Each of the Applicants is entitled to be paid an amount to put him in the position he would have been in, had he been treated as an employee.

Section 357 of the *Fair Work Act*

94. BSA represented to the Ordinary Group Members that the contract of employment under which the Ordinary Group Members were employed by BSA was a contract for services, under which the workers would perform work as an independent contractor.

Particulars

- (i) 2008 BSA Agreement, clauses 2.2 and 4.2(e).
- (ii) 2011 BSA Agreement, clause 2.2 and 4.1.
- (iii) 2013 January BSA Agreement, clause 3.10.
- (iv) 2013 July BSA Agreement, clause 4.1.
- (v) 2014 BSA Agreement, clause 4.2(b).

- (vi) 2015 BSA Agreement, clause 4.2(b)
- (vii) 2016 Agreement, clauses 2.2 and 4.1.

95. By reason of the matters pleaded in paragraph 64 above, the representation in paragraph 94 above was made in contravention of s 357 of the *Fair Work Act*.

96. Under s 539(1) of the *Fair Work Act*, s 357 is a “civil remedy provision”.

Penalty under the *Fair Work Act*

97. By reason of the contraventions of s 44, s 45 and s 357 (in the case of the First Applicant) of the *Fair Work Act*, under s 546 of the *Fair Work Act*, BSA is liable to pay a pecuniary penalty to each of the Applicants.

Independent Contractors Act 2006 (Cth)

98. In the alternative to paragraphs 65 to 93 above, if the workers were independent contractors of BSA, the Applicants make the following claim under the *Independent Contractors Act 2006 (Cth)* (***Independent Contractors Act***).

99. Each of the Pledaded BSA Agreements and the Inferred Subprime Contract was a “services contract” within the meaning of s 5 of the *Independent Contractors Act*.

Particulars

- (i) Each agreement was an agreement to which an independent contractor was a party.
- (ii) Each agreement related to the performance of work by the independent contractor.
- (iii) Each agreement has a relevant “constitutional connection” within the meaning of s 5(2), in that BSA is a “constitutional corporation” within the meaning of s 4.

100. Each of the Pledaded BSA Agreements and the Inferred Subprime Contract was “unfair” and/or “harsh” within the meaning of s 12 of the *Independent Contractors Act*.

Particulars

- (i) The Applicants repeat paragraphs 56 to 64 above.
- (ii) The Applicants repeat paragraphs 69 to 91 above.
- (iii) The Applicants say further that each agreement was “unfair” or “harsh” because, in substance, they provided the same services as an employee, but received less remuneration.

101. In the circumstances, each of the Pledaded BSA Agreements and the Inferred Subprime Contract is amenable to being varied under s 16 of the *Independent Contractors Act* in

order to put each of the Applicants in the position he would have been in had he been an employee, by inserting a term that BSA pay the appropriate sum to each of the Applicants.

Date: 23 July 2020

A handwritten signature in blue ink, appearing to read 'V. Antzoulatos', is positioned above a horizontal dotted line.

Signed by Vicky Antzoulatos
Lawyer for the Applicants

This pleading was prepared by Vicky Antzoulatos (lawyer), Jonathon Dooley (counsel) and Ian Pike SC.

Certificate of lawyer

I, Vicky Antzoulatos, 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: 23 July 2020

A handwritten signature in black ink, appearing to read 'V. Antzoulatos', with a long horizontal stroke extending to the right.

Signed by Vicky Antzoulatos
Lawyer for the Applicants