



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

No: VID1661/2018

**LAWRENCE RIDGE**  
Applicant

**HAYS SPECIALIST RECRUITMENT (AUSTRALIA) PTY LIMITED (ACN 001 407 281)**  
Respondent

### **ORDER**

**JUDGE:** JUSTICE MURPHY

**DATE OF ORDER:** 22 March 2019

**WHERE MADE:** Melbourne

#### **THE COURT ORDERS THAT:**

1. Pursuant to r.1.39 of the Rules, the time for service of the interlocutory application dated 21 March 2019 be abridged, *nunc pro tunc*, to 5.00 pm on 21 March 2019.
2. Pursuant to s 33X(5), alternatively s 33ZF(1) of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), the Respondent:
  - (a) by 4.00 pm on 22 March 2019 send, by email to those group members who are current employees, a notice in the terms set out in **Annexure A** to these Orders; and
  - (b) by 4.00 pm on 29 March 2019 send to those group members who are no longer employed by it a notice in the terms set out in **Annexure B** to these Orders, by email to the last known address of the group member, and in the event that method fails, by post to the last known postal address of the group member.

#### **Pleadings**

3. By 4.00 pm on 12 April 2019 the applicant file and serve any amended statement of claim.
4. By 4.00 pm on 17 May 2019 the respondent file and serve its defence.



5. By 4.00 pm on 31 May 2019 the applicant file any reply.

### **Discovery**

6. By 4.00 pm on 24 May 2019 the parties exchange proposed categories of documents to be discovered by and to each of them.
7. By 4.00 pm on 7 June 2019 the parties confer as to the categories of documents to be discovered by and to each of them.
8. By 4.00 pm on 14 June 2019 the parties file and serve any application in respect of documents to be discovered together with any affidavit in support.
9. By 4.00 pm on 21 June 2019 each party file and serve any affidavit in response to an application referred to in Order 8.
10. The parties exchange outlines of submissions (not to exceed 3 pages) not less than two (2) clear business days before the hearing of any application pursuant to Order 8.
11. Any application pursuant to Order 8 be listed for hearing at 10.15 am on 25 July 2019.

### **Common fund and opt out**

12. By 24 May 2019 the applicant deliver to the respondent the applicant's proposals in respect of:
  - (a) the making of a common fund order; and
  - (b) opt out and class closure;together with a draft of any proposed notice to group members.
13. By 7 June 2019 the respondent deliver any response to a proposal received pursuant to Order 10.
14. By 14 June 2019 the applicant file and serve any application (together with any affidavit in support) in respect of:
  - (a) a common fund order; and
  - (b) opt out and class closure.
15. By 21 June 2019 the respondent file and serve any affidavit in response to an application pursuant to Order 14.



16. The parties exchange outlines of submissions (not to exceed 3 pages) not less than two (2) clear business days before the hearing of any application pursuant to Order 14.

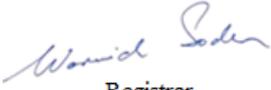
**Applications and further directions**

17. Any applications pursuant to Order 8 or 14 be listed for hearing at 10.15 am on 25 July 2019.
18. The case management conference be adjourned to 9.30 am on 1 April 2019.

**Other matters**

19. Costs reserved.
20. Liberty to apply.

Date that entry is stamped: 22 March 2019

  
Registrar

This order has been amended pursuant to r 39.05 of the *Federal Court Rules 2011*



## Annexure A

### *Lawrence Ridge v Hays Specialist Recruitment (Australia) Pty Ltd* Federal Court of Australia proceeding VID1661 of 2018

#### “HAYS CLASS ACTION”

#### IMPORTANT NOTICE TO GROUP MEMBERS

1. According to the records of Hays Specialist Recruitment (Australia) Pty Ltd (**Hays**), you are or were an employee of Hays whose legal rights may be affected by a class action that has been commenced in the Federal Court of Australia.
2. You should read this notice carefully as it may affect your legal rights.

#### WHAT THE CLASS ACTION IS ABOUT

3. The class action was started by Mr Lawrence Ridge. Mr Ridge was employed by Hays and classified by Hays as a “casual” employee, working in coal mines.
4. Mr Ridge brings the class action on his own behalf and on behalf of all other persons who:
  - (a) were employed by Hays as a coal mining employee (under the *Black Coal Mining Industry Award 2010*) (**Award**) to work at a black coal mine in Queensland or Western Australia at any time between 21 December 2012 and 21 December 2018; and
  - (b) were treated by Hays as a “casual” employee; and
  - (c) worked according to a long-term pre-determined roster and worked an average of 35 ordinary hours or more per week.
5. The persons represented in the class action are called “**group members**”. Mr Ridge seeks orders from the Court, for his benefit and the benefit of all the group members, including:
  - (a) rulings (called “declarations”) that he and the “group members” were not “casual” employees but instead “full-time” employees, and so were entitled to annual leave and



other benefits (shift loading, weekend and public holiday penalty rates, and overtime) under the Award and/or the *Fair Work Act 2009 (Cth)*; and

(b) orders that he and the group members be backpaid those employment benefits.

6. Mr Ridge also asks the Court to impose a “pecuniary penalty” (similar to a fine) on Hays.

### **WHY IS THIS NOTICE BEING SENT TO YOU?**

7. According to Hays’ records, you were employed by Hays to work at a black coal mine in Queensland or Western Australia at a time between 21 December 2012 and 21 December 2018, and therefore you may be a “group member” who is covered by the class action.

8. The Court has ordered that Hays provide a copy of this notice to all the group members, to inform group members about the following matters:

- (a) you may be a group member in the class action;
- (b) as part of the class action, Mr Ridge will argue that he and the group members were not, as a matter of law, “casual” employees, but rather were “full time” employees;
- (c) if you are a group member, and if Mr Ridge’s argument turns out to be correct, then it may not be correct for Hays to say that you are currently a “casual” employee, and if Hays were to terminate your employment 31 March 2019 (or at any time) you may be entitled to a longer period of notice of that termination (or payment in lieu of sufficient notice).
- (d) if you are a group member, and if Mr Ridge’s argument turns out to be wrong, then Hays may be correct to say that you are currently engaged as a casual, and that your current casual assignment will end on 31 March 2019.

9. You should be aware of the arguments being made in the class action, when you are considering any communications from Hays about your employment, and in particular any offer of a new contract from Hays. You may wish to obtain independent legal advice about any such offer.

### **DO YOU HAVE TO BE A GROUP MEMBER IN THE CLASS ACTION?**

10. If you fit the definition of a “group member” then you are, currently, automatically a group member in the class action. This does **not** mean you are liable for any legal costs, and it does not



mean you have to *remain* a group member. You will be given an opportunity, later this year, to **remove** yourself from the class action by “opting out”.

11. Further information about the class action, and your rights to opt out of it, will be sent to you later this year.

## **FURTHER INFORMATION**

12. If you want more information about the class action, you can see the papers Mr Ridge has filed with the Court explaining his claim (called the “Originating Application” and the “Statement of Claim”) on the website of his lawyers, Adero Law, at [www.aderolaw.com.au](http://www.aderolaw.com.au) and click “Hays Class Action”.
13. If you have any other questions regarding this Notice, you can contact Kellie Pledger at Adero Law, on [kellie.pledger@aderolaw.com.au](mailto:kellie.pledger@aderolaw.com.au) or seek independent legal advice.
14. Please **DO NOT CONTACT THE COURT** as the Court staff are not able to offer legal advice.



## Annexure B

### *Lawrence Ridge v Hays Specialist Recruitment (Australia) Pty Ltd* Federal Court of Australia proceeding VID1661 of 2018

#### “HAYS CLASS ACTION”

#### IMPORTANT NOTICE TO GROUP MEMBERS

15. According to the records of Hays Specialist Recruitment (Australia) Pty Ltd (**Hays**), you are or were an employee of Hays whose legal rights may be affected by a class action that has been commenced in the Federal Court of Australia.
16. You should read this notice carefully as it may affect your legal rights.

#### WHAT THE CLASS ACTION IS ABOUT

17. The class action was started by Mr Lawrence Ridge. Mr Ridge was employed by Hays and classified by Hays as a “casual” employee, working in coal mines.
18. Mr Ridge brings the class action on his own behalf and on behalf of all other persons who:
- (a) were employed by Hays as a coal mining employee (under the *Black Coal Mining Industry Award 2010*) (**Award**) to work at a black coal mine in Queensland or Western Australia at any time between 21 December 2012 and 21 December 2018; and
  - (b) were treated by Hays as a “casual” employee; and
  - (c) worked according to a long-term pre-determined roster and worked an average of 35 ordinary hours or more per week.
19. The persons represented in the class action are called “**group members**”. Mr Ridge seeks orders from the Court, for his benefit and the benefit of all the group members, including:
- (a) rulings (called “declarations”) that he and the “group members” were not “casual” employees but instead “full-time” employees, and so were entitled to annual leave and



other benefits (shift loading, weekend and public holiday penalty rates, and overtime) under the Award and/or the *Fair Work Act 2009 (Cth)*; and

(b) orders that he and the group members be backpaid those employment benefits.

20. Mr Ridge also asks the Court to impose a “pecuniary penalty” (similar to a fine) on Hays.

### **WHY IS THIS NOTICE BEING SENT TO YOU?**

21. According to Hays’ records, you were employed by Hays to work at a black coal mine in Queensland or Western Australia at a time between 21 December 2012 and 21 December 2018, and therefore you may be a “group member” who is covered by the class action.

22. The Court has ordered that Hays provide a copy of this notice to all the group members, to inform group members about the following matters:

- (a) you may be a group member in the class action;
- (b) as part of the class action, Mr Ridge will argue that he and the group members were not, as a matter of law, “casual” employees, but rather were “full time” employees;
- (c) if you are a group member, and if Mr Ridge’s argument turns out to be correct, and to apply to the circumstances of your employment, then you may be entitled to back payment of annual leave and other benefits (shift loading, weekend and public holiday penalty rates, and overtime);
- (d) if you are a group member, and if Mr Ridge’s argument turns out to be wrong or not to apply to the circumstances of your employment, then you will not be entitled to any back payment.

### **DO YOU HAVE TO BE A GROUP MEMBER IN THE CLASS ACTION?**

23. If you fit the definition of a “group member” then you are, currently, automatically a group member in the class action. This does **not** mean you are liable for any legal costs, and it does not mean you have to *remain* a group member. You will be given an opportunity, later this year, to **remove** yourself from the class action by “opting out”.

24. Further information about the class action, and your rights to opt out of it, will be sent to you later this year.



## **FURTHER INFORMATION**

25. If you want more information about the class action, you can see the papers Mr Ridge has filed with the Court explaining his claim (called the “Originating Application” and the “Statement of Claim”) on the website of his lawyers, Adero Law, at [www.aderolaw.com.au](http://www.aderolaw.com.au) and click “Hays Class Action”.
26. If you have any other questions regarding this Notice, you can contact Kellie Pledger at Adero Law, on [kellie.pledger@aderolaw.com.au](mailto:kellie.pledger@aderolaw.com.au) or seek independent legal advice.
27. Please **DO NOT CONTACT THE COURT** as the Court staff are not able to offer legal advice.