

Issue a Compliance Notice and formed reasonable belief

FWI: s.22 irrelevant information 23 March 2021

[MAT-11162-Q4Z7: AUSTAL SHIPS PTY LTD](#) (Austal Ships Pty Ltd, AS)

Evidence Received

The following evidence was received from AS and considered in forming my RB. I have relied on the records produced by Austal Limited's group of companies' s.22 irrelevant information who has capacity to produce the records on behalf of the company, including materials relating to AP and its workers.

- Excel spreadsheet of workers sponsored under subclass 400 visa, position, and work stream.
- Subclass 400 visa applications generated 17 and 24 January 2020 (all workers)
- Training Guides and Objective plans for both work cohorts – Electrical, and Piping & Mechanical cohort (all employees)
- Letter to Philippines Immigration re: travel and work arrangements dated 5 and 6 February 2020 (all workers)
- Subclass 400 visa grant notifications dated 20, 21 and 28 January 2020 (all workers)
- Payroll bank files for s.22 irrelevant information.
- Pay slips for entire period deployed to Australia for s.22 irrelevant information.
- Philippines work contracts (all employees)
- Confirmation of temporary assignment to Australia (**Assignment Letters**) (all employees)
- Covering letter to documents produced to FWO from Austal Ships of 21 August 2020.
- ASIC Current Company Extract for AP dated 3 April 2017.
- License to Transact Business in the Philippines.
- Application for AP to engage in shipbuilding and repair of naval combat vessels in the Philippines.

Austal Philippines Pty Ltd (AP) employees sent to work in Australia

AS and AP are 100% owned subsidiaries of Austal Limited, a locally owned publicly listed company that derives its revenue from the provision of aluminium ships for military and civilian applications. The company has shipyards located in Australia and the Philippines, administered by its head office in Henderson, Western Australia.

Austal Limited is involved in the design, manufacture, and maintenance of military and commercial vessels and ships².

AS in its 21 August 2020 letter to the FWO, advised:

1. *Austal Ships Pty Ltd (Austal Ships) is the company under which the Austal Group's Australian operations are carried out. The Australian operations are conducted primarily at Henderson, which is a naval base located about 30km south of Perth, Western Australia.*
2. *Austal Philippines Pty Ltd (Austal Philippines) is the company under which the Austal Group's Philippines operations are carried out. The Philippines operations are conducted primarily at Balamban, which is a naval base located near Cebu, Philippines.*

¹ <https://www.austal.com/profiles-0>

² <https://www.austal.com/corporate-ships-systems-support>

3. *Austal Ships and Austal Philippines carry out very similar work and vessel construction activities. The commercial vessels that are constructed in both Henderson and Balamban are similar in nature.*
4. *Austal to provide select members of its Filipino workforce with the opportunity to travel to Australia for short periods to perform work on the 'first of class' vessels being constructed at the Henderson shipyard.*

AS produced the following spreadsheet identifying the selected employees who travelled to Australia and supplied labour and undertaking skill sharing arrangements. The listing provides the roles (Electricians or Engineering), position, and visa details

| Electrical - PO# 365956 | | | | | | | |
|--------------------------|-----------------------------|----------|-------------------------------|-----------------------------|-----------------|-----------------|--|
| | Names | Position | Current Visa | Date of Grant | Visa Expiration | Passport Number | |
| 1 | s.22 Irrelevant information | | Temporary Work (subclass 400) | s.22 Irrelevant information | | | |
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| 8 | | | | | | | |
| 9 | | | | | | | |
| 10 | | | | | | | |
| Engineering - PO# 365762 | | | | | | | |
| | Names | Position | Current Visa | Date of Grant | Visa Expiration | Passport Number | |
| 1 | s.22 Irrelevant information | | Temporary Work (subclass 400) | s.22 Irrelevant information | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
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In addition, AS produced the worker's Filipino employment contracts, immigration departure letters, and Temporary Assignment letters for all thirty of the above workers citing their duties, and the purpose of travel to Australia as *'...to support the P&M department...'* for the engineering cohort, or the *'...support the Electrical department...'* for the electrical cohort for the *'...outfit on the following vessels – 117m Trimaran, 88m Trimaran and two 57m Patrol boats constructed in our Henderson shipyards.'*

The confirmation of temporary assignment letter for all the workers produced by AS, identifies the initial period of deployment to Australia commenced between 7 to 9 February 2020. The RoCs held on 10, 11, 15 and 17 December 2020 with several workers confirmed the employee commenced work between 7 or 10 February 2020 dependant on inbound flight availability.

Employer of Labour – Filipino workers in Australia

Austal Philippines Pty Ltd

Reason: Each of the employment contracts produced by AS, were made between the employees and AP. The terms of these contracts underpinned the employee's deployment to Australia. Confidential RoCs held on 10, 11, 15 and 17 December 2020 with four employees deployed to Australia who each identified they considered their employer to be AP.

The 'Confirmation of Temporary Assignment' letter dated 6 February 2020 (**Assignment Letters**) issued to each of the employees was made on AP letterhead which clearly identifies in the footer, the Australian incorporated ABN number of the employer citing: Austal Philippines Pty Ltd 88 079 160 651.

An ASIC search records Austal Philippines Pty Limited as holding a registered ABN of: 88 079 160 651

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Austal Philippines Pty Ltd 88 079 160 651

Documents also assessed included those produced by AS, to include:

- ASIC Current Company Extract for AP dated 3 April 2017;
- License to Transact Business in the Philippines; and
- Application for AP to engage in shipbuilding and repair of naval combat vessels in the Philippines.

Equifax company extract dated 26 August 2020 and 23 March 2021, identified Austal Philippines Pty Ltd was an Australian registered company, with its registered office of 100 Clarence Beach Road, Henderson WA, with both directors residing in Australia.

There is minimal evidence to support a transfer of employment from AP to AS while the employees performed work in Australia.

Status of AP as a National Systems Employer

AS is a locally owned company deriving revenue from the provision of aluminium ships for military and civilian applications. The company is administered by its head office in Henderson, Western Australia.

AS invited 30 Filipino workers from its Philippines operations 'AP' to Australia applying for, and approved Subclass 400 Temporary Work (Short Stay Specialist) visas for the specific position of workers being:

- Electrician under the group 'Electrical Guys Batch January 2020'; or
- Fitter-Welder under the group 'Engineering Guys Batch January 2020'; or
- Pipe Fitter under the group 'Engineering Guys Batch January 2020'.

In AS's letter to FWO of 21 August 2020, AS stated '*...select members of its Filipino workforce [providing] the opportunity to travel to Australia for short periods to perform work on the 'first of class' vessels being constructed at the Henderson shipyard.*'

A "national system employee" is defined in section 13 of the FW Act, as an individual so far as he or she is employed, or usually employed, by a national system employer. "National system employer" is defined in section 14 FW Act and relevantly includes, under subsection 14(1)(a) "...a constitutional corporation, so far as it employs, or usually employs, an individual".

Constitutional corporations are "foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth". A corporation will be a trading corporation if it is a corporation registered in Australia and engages in the activity of providing goods or services for payment, as a sufficiently significant proportion of its overall activities.

AP is a trading corporation pursuant to the constitutional definition.

In addition to the above, to be a national systems employer, there must be sufficient connection to Australia.

I have considered *Fair Work Ombudsman v Chia Tung Development Corp Ltd* (Chia) regarding employees engaged by a Taiwanese company to work as metal fabricators and welders on short fixed-term contracts in Australia, were “national system employees” on the basis that the employees:

- (a) commenced and concluded their work in Australia in distinct periods;
- (b) they resided in Australia for the entire periods of work;
- (c) worked in Australia over periods of time which were not “transient”, extending to between 42 and 49 days, within which daily shifts were worked; and
- (d) did not work in between the periods where they were in Australia for either the employer or anyone else, emphasising an unbroken employment period.

Similarly, AP employees were to reside in Australia for their anticipated 12-week duration of their work at the Henderson Shipyard, and remained so for the actual 6-month duration. During this time the employees’ period of work was unbroken, working solely at Henderson Shipyards for AP.

I have formed a reasonable belief the employees of AP while working at AS operations in Western Australia, were national systems employees engaged by AP.

Additional considerations:

1. During the meeting of 9 February 2021, s.22 irrelevant information s.22 irrelevant information, stated that she had contemplated ‘the employment relationships between the AP and the Filipino employees working in Australia were capable of being subject to “Australians Workplace laws”’; and
2. the deployment contracts refer to a per diem in AUD and bonus payments of 130% of their ordinary wages usually earned while in the Phillipines is evidence that AP also contemplated that the Employees’ employment in Australia was subject to Australia’s labour law framework

Industrial Instrument

AS has an approved enterprise agreement titled ‘[Austal \(Australian Operations\) Enterprise Agreement 2015-2019](#)’. At clause 2 parties bound to the agreement are:

- a) *Austal Ships Ply Ltd (ACN 079 160 679) and Austal Service Darwin Ply Ltd (160 267 934) (Austal);*
- b) *The employees of Austal employed in the classifications contained in Schedule 1 of this agreement working at any site including but not limited to:*
 - i. *100 Clarence Beach Road, Henderson in the State of Western Australia; and*
 - ii. *7 Champion Road, East Arm in the Northern Territory*

Clause 4 of the agreement states ‘*This Agreement shall stand alone and operate to the exclusion of any other awards or agreements that would otherwise apply had it not been for the making of this Agreement.*’

Section 53 of the FW Act provides an enterprise agreement covers an employee or employer if the agreement is expressed to cover (however described) the employee or the employer.

As the agreement does not expressly cover AP, the employees were not covered by the *Austal (Australian Operations) Enterprise Agreement 2015-2019*.

The Manufacturing and Associated Industries and Occupations Award 2020

I am relying on the version of the Award as at 27 July 2020 because although a number of clauses were renumbered from 29 May 2020, they all remain substantively the same.

AP is in the business of manufacturing ships and vessels. The *Manufacturing and Associated Industries and Occupations Award 2020* defines at clause 4.8 *Manufacturing and Associated Industries and Occupations to mean*:

the manufacture, making, assembly, processing, treatment, fabrication and preparation of:

- *the products, structures, articles, parts or components set out in clause 4.9*

Clause 4.9:

(e): ***ships, boats, barges and marine vessels*** of all descriptions, and components; and

(k) ***electrical***, electronic, telecommunications, lighting, radio, television and X-ray products, equipment, apparatus, ***installations***, appliances, devices and signs.

The Manufacturing Award covers the activity of ship building and/or the installation of electrical equipment (per clause 4.9(k)), with clauses 4.8(a) and 4.9(e) providing coverage for “manufacture, making, assembly of...ships, boats, barges and marine vessels of all descriptions, and components”.

More broadly, the Manufacturing Award covers making and installing anything made from metal or steel, which we understand the pipes and components of sprinkler systems would be.

The award also includes at 4.8(k) and 4.8(l) the “manufacture, making, assembly, processing, treatment, fabrication, preparation...installation of...reco ding, measuring and controlling devices for electricity, fluids, gases, heat, temperature, pressure, time, weight, mass, etc.” and “electrical,electronic,telecommunications,lighting radio,television and X-ray products, equipment, apparatus, installations, appliances, devices and signs”.

The above provisions offer sufficient coverage for building ships and assembling components of ships, as well as installing electrical devices and wiring, and fire sprinkler pipes and systems. Fire sprinkler systems are components of ships that record or measure gas, heat, or temperature, and contain electrical components. The award also covers making and installing anything made from metal, such as pipes.

Plumbing and Mechanical fitter employees

Letters issued to the Philippines Immigration Office stated the plumbing and mechanical fitters ‘*will be travelling to Australia to support the P&M Department with the Piping and Mechanical outfit on the following vessels - 117m trimaran, 88m trimaran and two 57m Patrol boats constructed in our Henderson Shipyard.*’

The position details of the subclass 400-visa applications documents produced by AS for plumbing and mechanical fitters identifies the duties for such work to include:

“To fabricate, assemble and install piping systems, pipe supports and related equipment for hydraulic, fuel, pneumatic, cooling, fire/sprinkler and domestic systems. Working with both metallic and plastic pipes and materials.”

During the meeting of 9 February 2021 with AS, the **s.22 irrelevant information** stated the Filipino workers traveled to Australia to familiarise themselves with the vessel in Australia, by completing Plumbing and Mechanical fitting work, so they can take that experience back to the Philippines to make sure a consistent outcome was achieved with the vessel to be built in the Cebu shipyard. **s.22 irrelevant information** also stated that during this time, the workers would be performing similar duties as that which they would ordinarily perform while engaged in the Philippines.

In a RoC of the 17 December 2020, a plumbing and mechanical employee stated his duties in Australia were primarily installation of fresh and sea water piping work, and sprinkler system installations.

Electrical installation employees

Letters issued to the Philippines Immigration Office stated the plumbing and mechanical fitters '*will be travelling to Australia to support the Electrical Department with the outfit on the following vessels - 117m trimaran, 88m trimaran and two 57m Patrol boats constructed in our Henderson Shipyard.*'

The position details of the subclass 400-visa applications documents produced by AS for plumbing and mechanical fitters identifies the duties for such work to include:

'Responsible for the electrical job on the vessel like installation of cable tray and brackets, run and tie cable, installation of electrical equipment, termination, and commissioning/testing of all electrical equipment.'

During the meeting of 9 February 2021 with AS, the **s.22 irrelevant information** stated what the electrical employees were doing as '*...assisting out, understanding the electrical systems on board, knew the cable route, how to install a tray, comprehension of our electrical drawings and numbering systems so that when we build a vessel.'*

In a ROC of 15 December 2020, an electrical employee stated his duties in Australia were primarily Cable pulling, completing cables, completing the cables in the [electrical] panel, {and} panel boards in the bridge deck. They held no electrical licencing (in Australia) and were unable to undertake electrical connections.

Award coverage assessment:

I reasonably believe the *Manufacturing and Associated Industries and Occupations Award* applies to the Filipino workers engaged as **electrical, welding, and plumbing installations workers**.

Classification

The Manufacturing and Associated Industries and Occupations Award 2020

The Manufacturing and Associated Industries and Occupations Award 2020 identifies the classification levels, descriptions, minimum training requirements and wage are relative to a C10 (the standard rate) for employees covered by this award.

I am relying on the version of the Award as at 27 July 2020 because although a number of clauses were renumbered from 29 May 2020, all clauses remain substantively the same.

During the meeting with AS of 9 February 2021, **s.22 irrelevant information** for AS confirmed there were no skills assessments or tests undertaken as part of the 400-visa application or skills recognition as this is undertaken on-the-job as a daily task.

The visa applications and RoC's of 10, 11, 15 and 17 December 2020 both identified that the work performed by the AP employees aligned with the C11 classification as they were required to:

- work from complex instructions and procedures (installation and construction plans and drawings, quality control standards);
- assists in the provision of on-the-job training (assisting transfer skills and train other Australian workers);
- works individually under general supervision; and
- responsible for assuring the quality of their own work.

The indicative tasks at Clause A.5.4 of the Award provides an employee at C11 may perform:

- uses precision measuring instruments;
- inventory and store control including licensed operation of all appropriate materials handling equipment, use of tools and equipment within the scope of basic (non-trades) maintenance, and computer operation at a level higher than that of an employee at level C12;
- basic fault finding skills;
- performs basic quality checks on the work of others;
- assists in the provision of on-the-job training;
- has a knowledge of the employer's operation as it relates to production process;

Employees assisting the investigation confirmed they completed relevant training either with AP or held Filipino certification or trades recognition certification recorded with Filipino government authorities.

Despite some of the employees citing they held relevant certifications in pipe fitting or electrical recognitions registered with Philippines TESDA (Technical Education and Skills and Development Authority), without a formal skills recognition test being conducted of clause A 4 of the Award as is required to test competency skill for classification levels above C13, I am unable to form a reasonable belief that the employees had the minimum training requirements to exceed the classification level of a C13 Engineering/ Manufacturing Employee—Level II:

A.4.4 Wage Group: C13

(a) Engineering/Manufacturing Employee—Level II

(i) An Engineering/Manufacturing Employee—Level II is an employee who has completed up to 3 months' structured training so as to enable the employee to perform work within the scope of this level.

(ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:

- *works in accordance with standard operating procedures and established criteria;*
- *works under direct supervision either individually or in a team environment;*
- *understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;*
- *understands and utilises basic statistical process control procedures;*
- *follows safe work practices and can report workplace hazards.*

To advance to the next classification level of C12 and beyond, requires the completion of a certificate, diploma or advanced diploma or other overseas skills recognition test.

For this reason, I have formed a reasonable belief that the employees and all those who travelled under the same terms and conditions of employment should be classified at Wage Group: C13 and had completed up to 3 months' structured training so as to enable the employee to perform work within the scope of this level (clause A.4.4(a)(i)).

I do not consider the employees were classified at Wage Group: C14 as this classification only applies to employees completing inductions (for 38 hours).

I reasonably believe based on wage records produced by Austal, that similarly, all 30 workers were not paid the minimum requirements of the Fair Work Act 2009 and the relevant modern Award rates of pay.

Full-time employment

The latest employment contracts for the following employees alter the original 'daily hire – project employee' to a 'Regularization' or 'regular employment' contract with vacation and sick leave entitlements provided to the employees.



Consideration was also given to the employment contracts identifying the Employees were not engaged as part-time employees with the Assignment Letters contracting the employees to work a minimum of 48 hours per week.

Despite some records suggesting employees were paid for public holidays taken, but debited sick leave payments from payments owed in the relevant pay period, I further considered the Federal Court *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 (*Rossato*)³ held at [282] the 'real substance', practical reality and true nature of an employment relationship rather than its form when determining whether an employee is in fact a casual employee at law. Further, it established at [282] that casual employment is ordinarily indicated by an absence of a *'firm advance commitment as to the duration of the employee's employment or the days/hours the employee will work.'*

I have further considered the *WorkPac Pty Ltd v Skene* [2018] FCAFC 131⁴ case where Tracey, Bromberg And Rangiah JJ at [173] determined *'The indicia of casual employment referred to in the*

³ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2020/84.html>

⁴ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2018/131.html>

authorities – irregular work patterns, uncertainty, discontinuity, intermittency of work and unpredictability – are the usual manifestations of an absence of a firm advance commitment of the kind just discussed. An irregular pattern of work may not always be apparent but will not necessarily mean that the underlying cause of the usual features of casual employment, what Hamzy identified as the “essence of casualness”, will be absent.’.

The Employees’ employment had a definite advanced commitment in respect of both the duration of work (that is the initial period of 12 weeks later extended to 6 months) and days, hours, or general pattern of work. None of the Employees had the capacity to choose whether to work a period of working time as required by AP.

Clause 9 of the Award provides that any employee not specifically engaged as being a part-time or casual employee is for all purposes of the award a **full-time employee**.

The Employees were given a commitment of specific hours for a defined fixed term. I have formed a reasonable belief the above thirty employees were full-time employees while employed in Australia.

Rates of Pay assessment (Award vs Received)

The employees were paid their relevant base rate of pay, paid to them into their Filipino bank account, and the home currency of being the Philippine peso.

In addition to any ordinary wage payments, AP paid a ‘per diem’ (daily allowance for incidentals and food) of \$90 Australian dollars.

Payments made to **s.22 irrelevant information**

Austal’s **s.22 irrelevant information** supplied pay slips in response to a request for evidence on what the following randomly selected employee was paid during the period of work in Australia. An assessment of the pay slips produced by AS, disclosed the following payment were made to **s.22 irrelevant information** during his deployment to Australia. The table identifies amounts paid to **s.22 irrelevant information** for his hours worked in Australia.

Dividing the amounts paid each fortnight with the number of hours worked in the pay period determined the rate of pay based on the monthly exchange rate between Filipino peso and the Australian dollar, was between **s.47E(d) Certain operations of an agency** as highlighted in the following table of assessment of pay slips:

s. 22 Irrelevant information

AS's meeting of 9 February 2021, and contracts produced by AS disclosed the employees worked a standard 48-hour week, for no additional remuneration. Conversations held with the Filipino workers on 10, 11, 15 and 17 December 2020, recalled they were required to work Saturdays from 6 am to 3 pm.

AS confirmed in its 9 February 2021 meeting that time records were not routinely kept, as the record keeping of any times was maintained at the floor supervisor level and not provided to or kept by the company.

Pay slips for all periods while deployed to Australia records the hours worked by **s.22 irrelevant information** as a pipefitter is exemplified as follows, and identifies the amounts paid:

s.22 Irrelevant information

s.47E(d) Certain operations of an agency and are below the rates stipulated by the *Manufacturing and Associated Industries and Occupations Award 2020* on all rates pursuant to this award. The additional AUD\$90 daily per diem is insufficient to bring the rate to a level compliant with the award **s.47(d) Certain operations of an agency**.

This rate excludes the 30% bonus purportedly paid upon the workers' return to the Philippines, but from the above calculation, the inclusion of this amount is also insufficient to meet the requirements of the award.

Assessment of **s.22 irrelevant information** wages

An assessment of the pay slips produced by AS, disclosed the following payment were made to **s.22 irrelevant information** during his deployment to Australia. The table identifies amounts paid to **s.22 irrelevant information** for his hours worked in Australia.

Dividing the amounts paid each fortnight with the number of hours worked in the pay period determined the rate of pay based on the monthly exchange rate between Filipino peso and the Australian dollar, was between **s.47E(d) Certain operations of an agency**

s. 22 Irrelevant information

AS confirmed in its 9 February 2021 meeting that time records were not routinely kept, as the record keeping of any times was maintained at the floor supervisor level and not provided to or kept by the company.

Pay slips for all periods while deployed to AS records the hours worked by s.22 Irrelevant information

is exemplified as follows:

s. 22 Irrelevant information

s.47E(d) Certain operations of an agency and are below the rates stipulated by the *Manufacturing and Associated Industries and Occupations Award 2020* on all rates pursuant to this award (exclusive of the AUD\$90 daily per diem).

Contraventions Identified

I have formed a reasonable belief the following contravention have occurred based on the rate of pay made to s.22 irrelevant information and s.22 irrelevant information were not paid the correct award rates as follows:

s.22 irrelevant information

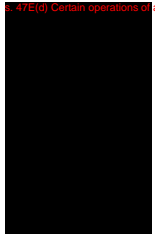
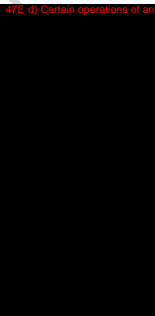


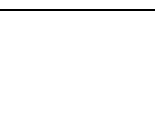
s. 22 Irrelevant information

s. 22 Irrelevant information

In addition, based on the evidence of how the payments were made to all employees via their Filipino bank accounts, the contracts indicating similar remuneration arrangements, including the payment of the same per diem of AUD\$90 per day, the travel arrangements cited in the RoCs of 10, 11, 15 and 17 December 2020 that all workers were transported by the company to and from the worksite at Henderson to the employee accommodation, I have formed the view that all employees while in Australia were not paid in accordance with the Award.

I have formed a reasonable belief based on the above amounts paid to the employee were insufficient to meet the employer's obligations to the following award obligations:

Full-time employee table of contraventions:

| Clause | Entitlements | Paid (AVG) | Award rate | Evidence |
|---|--|--|------------|---|
| Clause 24.1 [7 February 2020 and 28 May 2020] | Full-time Minimum Wage contravention failing to pay the Employees no less than the rate assigned to their appropriate classification (other than employees specified in clause 20.1(d) in respect of the ordinary hours worked. (Full-time minimum wage entitlement) |  | \$20.06 | |
| Clause 20.1 [between 29 May 2020 and 7 August 2020] | | | | |
| Clause 41.1(a) [7 February 2020 and 28 May 2020] | Overtime Rate (first 3 hours) contravention failing to pay to the Casual Employees 150% of the ordinary hourly rate for the first 3 hours of overtime worked Monday to Friday. |  | \$30.09 | <ul style="list-style-type: none"> • Pay slips identify a single rate of pay for all hours worked. • Contracts evidence standard hours as 48 per week. • Determined by dividing the total paid by the number of hours on the payslips. |
| Clause 32.2(a) [between 29 May 2020 and 7 August 2020] | | | | |
| Clause 41.1(a) [7 February 2020 and 28 May 2020] | Overtime Rate (after 3 hours) contravention failing to pay to the Casual Employees 200% of the ordinary hourly rate after the first three hours until the completion of the overtime work Monday to Friday. |  | \$40.12 | |
| Clause 32.2(b) [between 29 May 2020 and 7 August 2020] | | | | |
| Clause 41.7 [7 February 2020 and 28 May 2020] | Saturday Work - day worker First 3 hours failing to pay to the Casual Employees required to work overtime on a Saturday 150% of the ordinary hourly rate for the first 3 hours |  | 30.09 | <p>Employees stated were required to work most Saturday's from 6am to 2.30 or 3pm.</p> <ul style="list-style-type: none"> • Pay slips identify a single rate of pay for all hours worked. |
| Clause 32.5 [between 29 May 2020 and 7 August 2020] | | | | |
| Clause 41.7 [7 February 2020 and 28 May 2020] | Saturday Work - day worker after three hours work failing to pay to the Casual Employees required to work overtime on a Saturday 200% of the ordinary hourly rate after the first three hours of overtime worked. |  | \$40.12 | <p>Employees stated were required to work most Saturday's from 6am to 2.30 or 3pm.</p> <ul style="list-style-type: none"> • Pay slips identify a single rate of pay |
| Clause 32.5 | | | | |

| | | | | |
|---|--|--|--|-----------------------|
| [between 29 May 2020 and 7 August 2020] | | | | for all hours worked. |
|---|--|--|--|-----------------------|

Timeframe to Comply

| Will the employer be required to undertake calcs | Period to be provided for compliance | Reasons for period of compliance (e.g. extended timeframe for multiple employees) |
|--|--------------------------------------|--|
| Yes | 10 weeks | 1) Number of workers = 30; and 2) Potential size of repayment 3) Complexity of calculations required and because we have had limited dealings with AP to date. |

Method of Service

| Method of Service | Yes / No | Further information |
|--|----------|--|
| Email to Director; and Express post. Email copies to be sent to both Directors prior to a meeting being held on 24/3/21 at 2:30 pm SA time | | To ASIC registered office recorded as @ 23/3/21 as: Registered Office Director(s): s.22 irrelevant information Current Address: 100 CLARENCE BEACH ROAD HENDERSON WA 6166 from: 15-Jul-1997 Doc No: 013126417 |

s.22 irrelevant information

Fair Work Inspector
23 March 2021

Documents released by the Fair Work Ombudsman
Under the Freedom of Information Act

GPO Box 9887, Adelaide SA 5001

25 March 2021

s.22 irrelevant information

AUSTAL PHILIPPINES PTY LIMITED
100 Clarence Beach Road
HENDERSON WA 6166

Reference number: MAT-11162-Q4Z7

COMPLIANCE NOTICE ISSUED TO AUSTAL PHILIPPINES PTY LIMITED

Dear **s.22 irrelevant information**

I refer to the investigation undertaken by the Fair Work Ombudsman (FWO) into Austal Limited, its subsidiaries, including Austal Philippines Pty Limited concerning 30 Filipino workers (the **Employees**) who were deployed to Australia to work at the Henderson Shipyard in Western Australia between 7 February 2020 and 7 August 2020.

The FWO is an independent agency responsible for ensuring compliance with the *Fair Work Act 2009* (FW Act) and other relevant Commonwealth workplace laws.

BACKGROUND

An investigation was conducted to establish whether Austal Philippines Pty Limited and associated entities had complied with the FW Act.

As a result of that investigation, I reasonably believe:

- (a) during the period that the Employees were deployed in Australia, they were employed by Austal Philippines Pty Limited and were national system employees within the meaning of section 14 of the FW Act; and
- (b) Austal Philippines Pty Limited has contravened terms of the *Manufacturing, and Associated Industries and Occupations Award 2020* (prior to 29 May 2020, the *Manufacturing, and Associated Industries and Occupations Award 2010*) (**Award**) as set out in the attached compliance notice dated **25 March 2021 (Compliance Notice)**.

I have determined that the appropriate enforcement measure in this instance is to issue Austal Philippines Pty Limited with the Compliance Notice under section 716 of the FW Act.

ACTION REQUIRED

The Compliance Notice provides Austal Philippines Pty Limited with an opportunity to rectify the identified contraventions.

The Compliance Notice sets out a number of actions that Austal Philippines Pty Limited is required to take on or before **3 June 2021**. Please consider the actions specified in the Compliance Notice carefully.

Complying with the Compliance Notice is not an admission (nor does it constitute a finding) that Austal Philippines Pty Limited has contravened the Award.

In order to assist you to undertake the calculations and rectification required by the Compliance Notice, we have attached:

- (a) a copy of the Award version in place from 12 February 2020
<http://awardviewer.fwo.gov.au/award/show/MA000010>
- (b) a copy of the Award version in place from 29 May 2020
<http://awardviewer.fwo.gov.au/award/show/MA000010>
- (c) Pay guide effective from 1 July 2019 – 28 May 2020
<http://awardviewer.fwo.gov.au/award/downloadsummary/G0107414>
- (d) Pay guide effective from 29 May 2020
<http://awardviewer.fwo.gov.au/award/downloadsummary/G0107817>

This information can also be found on our website (www.fairwork.gov.au), which contains further tools to help you understand and comply with your obligations, including a Pay and Conditions Tool (PACT) to accurately calculate pay, leave and other entitlements.

OBLIGATIONS UNDER THE COMPLIANCE NOTICE

If Austal Philippines Pty Limited fails to comply with the Compliance Notice by **3 June 2021** it may contravene section 716(5) of the FW Act (unless it has a reasonable excuse).

In those circumstances, the FWO may commence legal action against Austal Philippines Pty Limited and/or individuals involved in Austal Philippines Pty Limited's failure to comply with the Compliance Notice. A Court may impose penalties of up to \$6,660 in respect of an individual or \$33,300 in respect of a body corporate for each failure to comply with a Compliance Notice.

Alternatively, Austal Philippines Pty Limited may apply to the Federal Court, Federal Circuit Court or an eligible State or Territory Court for a review of this Compliance Notice on either or both of the following grounds:

- (a) Austal Philippines Pty Limited did not commit the contravention(s) set out in this Compliance Notice
- (b) the Compliance Notice does not comply with sections 716(2) or 716(3) of the FW Act.

For further general information about Compliance Notices, please refer to our Compliance and Enforcement Policy, which can be found on our website.

Finally, we note that you may be liable to a civil penalty or other civil remedy under the FW Act if you give false or misleading information, or produce false or misleading documents, to the FWO. You may also be liable for a criminal offence under the *Criminal Code* (Cth) if you do so.

Should you wish to discuss this letter, or clarify any of the issues raised in the Compliance Notice, please

s.22 Irrelevant information

Yours sincerely

s.22 Irrelevant information

Fair Work Inspector
Fair Work Ombudsman

GPO Box 9887
ADELAIDE SA 5001

COMPLIANCE NOTICE

(issued under section 716(2) of the *Fair Work Act 2009* (Cth))

Date of Issue: 25 March 2021

Name of Employer: AUSTAL PHILIPPINES PTY LIMITED

ACN: 079160651

ABN: 88079160651

Director(s):

s.22 irrelevant information

I, s.22 irrelevant information, being a duly appointed Fair Work Inspector, reasonably believe that Austal Philippines Pty Limited (**Employer**) has contravened terms of the *Manufacturing and Associated Industries and Occupations Award 2020* (prior to 29 May 2020, the *Manufacturing and Associated Industries and Occupations Award 2010*) (**Award**), as described below. This Compliance Notice requires you to take steps to remedy the contraventions described below.

Rights and obligations under this Compliance Notice

1. Failure to comply with this Compliance Notice may contravene section 716(5) of the *Fair Work Act 2009* (Cth) (**FW Act**) and render you liable for a civil penalty (unless you have a reasonable excuse).
2. You may be liable to a civil penalty or other civil remedy if you give false or misleading information or produce false or misleading documents in response to this Compliance Notice. You may also be liable for a criminal offence under the *Criminal Code* (Cth) if you do so.
3. If you do not comply with this Compliance Notice, the Fair Work Ombudsman may, without further notice, commence legal action against you and/or individuals involved in your failure to comply with this Compliance Notice to recover any outstanding monies which this Compliance Notice requires you to pay and to seek civil penalties.
4. Complying with the Compliance Notice is not an admission that you contravened, or have been found to have contravened, the Award.
5. You may apply to the Federal Court, Federal Circuit Court or eligible State or Territory Court for a review of this Compliance Notice on either or both of the following grounds:
 - (a) you did not commit the contraventions set out in this Compliance Notice;
 - (b) this Compliance Notice does not comply with sections 716(2) or 716(3) of the FW Act.

Details of the contravention(s)

6. Between 7 February 2020 and 7 August 2020 (**Period**), the Employer, engaged the following employees (collectively, **Employees**) who performed work on vessel(s) under construction at shipyard facilities operated by Austal Ships Pty Ltd located at Henderson, Western Australia:

| Employee | |
|----------|-----------------------------|
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7. During the Period, the Employer engaged the Employees on a full-time basis.
8. During the Period, the Employees performed work within the scope of a C13 Engineering/ Manufacturing Employee—Level II employee, as defined in Schedule B of the Award between 7

February 2020 and 28 May 2020 and Schedule A of the Award from 29 May 2020 to 7 August 2020.

9. During the Period, the Employer contravened clauses of the Award (as in force at the time of the contraventions) set out in the table below:

| | | |
|-----|---|---|
| (a) | Clause 20.1 [between 29 May 2020 and 7 August 2020] | Full-time Minimum Wage contravention failing to pay the Employees no less than the rate assigned to their appropriate classification in respect of ordinary hours worked. |
| | Clause 24.1 [Between 7 February 2020 and 28 May 2020] | |
| (b) | Clause 32.2(a) [between 29 May 2020 and 7 August 2020] | Overtime Rate (first 3 hours) contravention failing to pay to the Employees 150% of the ordinary hourly rate for the first 3 hours of overtime worked Monday to Friday. |
| | Clause 41.1(a) [between 7 February 2020 and 28 May 2020] | |
| (c) | Clause 32.2(b) [between 29 May 2020 and 7 August 2020] | Overtime Rate (after 3 hours) contravention failing to pay to the Employees 200% of the ordinary hourly rate after the first three hours until the completion of the overtime worked Monday to Friday. |
| | Clause 41.1(a) [between 7 February 2020 and 28 May 2020] | |
| (d) | Clause 32.5 [between 29 May 2020 and 7 August 2020] | Saturday Work - day worker first 3 hours failing to pay to the Employees required to work overtime on a Saturday, 150% of the ordinary hourly rate for the first 3 hours |
| | Clause 41.7 [between 7 February 2020 and 28 May 2020] | |
| (e) | Clause 32.5 [between 29 May 2020 and 7 August 2020] | Saturday Work - day worker after three hours work failing to pay to the Employees required to work overtime on a Saturday, 200% of the ordinary hourly rate after the first three hours of overtime worked. |
| | Clause 41.7 [between 7 February 2020 and 28 May 2020] | |

Required action under this Compliance Notice

10. In accordance with section 716(2) of the FW Act, I require you by **3 June 2021** to:

Step 1 – calculate and rectify underpayments

- A. In respect of the contravention referred to in row (a) of the table above, for each Employee:

- (i) identify the number of hours the Employee worked during the Period in respect of which the Minimum Wage Entitlement was required to be paid by the Award (**Hours**);
 - (ii) identify the amount the Employer paid to the Employee during the Period that attracted the Minimum Wage Entitlement (having regard to the Hours) (**Amount Paid**);
 - (iii) calculate the amount the Employer should have paid to the Employee during the Period in respect of the Minimum Wage Entitlement (having regard to the Hours) (**Entitlement Amount**);
 - (iv) make a payment to each Employee equal to the difference between the Amount Paid and the Entitlement Amount (**Underpayment Amount**);
 - (v) make a record of each of the Hours, the Amount Paid, Entitlement Amount and Underpayment Amount (**Underpayment Rectification Information**).
- B. Repeat the same process described in Step 1A for each of the contraventions referred to in rows (b) to (e) of the table above.

Step 2 – Superannuation

- C. Calculate any superannuation contributions required by the Award in respect of the amounts required to be paid to each Employee as a result of Step 1.
- D. In relation to each Employee who is owed such additional superannuation contributions, pay such additional superannuation contributions to a Superannuation Fund on behalf of the employee.

Reasonable evidence of steps taken to comply with this Compliance Notice

11. In accordance with section 716(2) of the FW Act, I require you to produce the following reasonable evidence of your compliance with the actions specified in paragraph 10 above by **10 June 2021**:
- (a) a schedule that sets out for each Employee:
 - (i) the Underpayment Rectification Information in respect of each of the contraventions referred to in the table at paragraph 9 above;
 - (ii) the amount of any additional superannuation contributions calculated for the employee and paid to the employee's Superannuation Fund;
 - (b) proof that Underpayment Amount for each of the contraventions referred to in the table at paragraph 9 above has been made to each Employee such as a bank transfer showing the transfer of funds to the employee and their Superannuation Fund, or a copy of the employee's payroll records showing the payment(s).
12. The evidence referred to above must be provided to the Fair Work Ombudsman by email to **s.22 irrelevant information**.
13. You may be liable to a civil penalty or other civil remedy under the FW Act if you give false or misleading information or produce false or misleading documents in response to this Compliance Notice. You may also be liable for a criminal offence under the *Criminal Code* (Cth) if you do so.

s.22 irrelevant information

**Fair Work Inspector
Fair Work Ombudsman**



GPO Box 9887
ADELAIDE SA 5001

18 June 2021

s.22 irrelevant information

Austal Philippines Pty Limited
Trading as Austal Philippines
100 CLARENCE BEACH RD
HENDERSON WA 6166

Reference number: MAT-11162-Q4Z7

LETTER OF ACKNOWLEDGEMENT OF COMPLIANCE

Dear s.22 irrelevant information

I refer to the investigation undertaken by the Fair Work Ombudsman (FWO) into Austal Limited, its subsidiaries, including Austal Philippines Pty Limited concerning 30 Filipino workers (the **Employees**) who were deployed to Australia to work at the Henderson Shipyard in Western Australia between 7 February 2020 and 7 August 2020.

BACKGROUND

An investigation was conducted to establish whether Austal Philippines Pty Limited and associated entities had complied with the Fair Work Act 2009 (FW Act).

As a result of that investigation, I reasonably believed during the period that the Employees were deployed in Australia, they were employed by Austal Philippines Pty Limited and were:

- (a) national system employees within the meaning of section 14 of the FW Act; and
- (b) Austal Philippines Pty Limited had contravened terms of the Manufacturing, and Associated Industries and Occupations Award 2020 (prior to 29 May 2020, the Manufacturing, and Associated Industries and Occupations Award 2010) (**Award**).

As a result of my reasonable belief that contraventions of Commonwealth workplace laws had occurred, Austal Philippines Pty Limited was served with a compliance notice dated 25 March 2021 regarding the contraventions detailed above (**Compliance Notice**).

ACKNOWLEDGEMENT OF COMPLIANCE

This letter is to acknowledge that Austal Philippines Pty Limited has complied with the Compliance Notice. As a result, no further action will be taken by the FWO in relation to the contraventions detailed in the Compliance Notice for the contravention period.

NEXT STEPS

Following your compliance with the Compliance Notice, it is very important that you review your practices moving forward to ensure that all of your employees have their minimum entitlements met in accordance with any applicable awards, agreements, determinations and/or orders and the FW Act.

To assist you, we have linked the following materials (a number of which were also previously provided to you):

- (a) a link to the current version of [Manufacturing, and Associated Industries and Occupations Award 2020](https://awardviewer.fwo.gov.au/award/show/MA000010#P2685_242389) effective from 26 March 2021; [https://awardviewer.fwo.gov.au/award/show/MA000010#P2685_242389]
- (b) the current Manufacturing, and Associated Industries and Occupations Award 2020 [pay guide](https://awardviewer.fwo.gov.au/award/downloadsummary/G0107892); [https://awardviewer.fwo.gov.au/award/downloadsummary/G0107892]
- (c) information about your [pay slip and record keeping obligations](https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping); and [https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping]

This information can also be found on our website (www.fairwork.gov.au), which contains further tools to help you understand and comply with your obligations, including:

- (a) a Pay and Conditions Tool (PACT) to accurately calculate pay, leave and other entitlements;
- (b) templates and checklists to make record keeping easy; and
- (c) an online learning centre to learn the basics and get new skills.

We recommend that you register at www.fairwork.gov.au for My Account to save all your information in one place and get priority support when you need it.

We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, by completing our online feedback form at www.fairwork.gov.au/feedback.

Should you wish to discuss this letter or any of your obligations further, please contact me on s.22 irrelevant information

s.22 irrelevant information

s.22 irrelevant information

s.22 irrelevant information

s.22 irrelevant information
Fair Work Inspector
Fair Work Ombudsman

FWO - FOI Requests

From: s.22 irrelevant information
Sent: Monday, 21 June 2021 12:39 PM
To: s.22 irrelevant information
Cc: s.22 irrelevant information
Subject: Austal Philippines Pty Limited - Letter of acknowledgement of partial compliance - MAT-11162-Q4Z7 [SEC=OFFICIAL]
Attachments: MAT-11162-Q4Z7_Letter of acknowledgement of compliance with CN_21JUNE2021.pdf

OFFICIAL

Good morning s.22 irrelevant information and s.22 irrelevant information

Further to s.22 irrelevant information email of 18 June 2021, I acknowledge that Step 1 of the Compliance Notice dated 25 March 2021 has been complied in full and that rectification of Step 2 (superannuation) is currently underway. I understand that the Australian Taxation Office (ATO) has been informed of the Employees' entitlement to superannuation, and this is being managed by s.22 irrelevant information.

As a result, no further action at this time will be taken by the Fair Work Ombudsman in relation to the contraventions detailed in the Compliance Notice for the contravention period. In due course we expect to be provided with evidence that Step 2 of the Compliance Notice has been fully rectified.

Should you wish to discuss this letter or any of your obligations further, please contact me on s.22 irrelevant information

Kind regards

s.22 irrelevant information Fair Work Inspector

Enforcement
FAIR WORK OMBUDSMAN

s.22 irrelevant information


GPO Box 9887 Adelaide SA 5001 | 148 Frome Street, Adelaide SA 5000

www.fairwork.gov.au | Fair Work Infoline: 13 13 94 | [subscribe to email updates](#)

Documents released by the Fair Work Ombudsman
Under the Freedom of Information Act

GPO Box 9887
ADELAIDE SA 5001

21 June 2021

s.22 irrelevant information

Austal Philippines Pty Limited
Trading as Austal Philippines
100 CLARENCE BEACH RD
HENDERSON WA 6166

Reference number: MAT-11162-Q4Z7

LETTER OF ACKNOWLEDGEMENT OF PARTIAL COMPLIANCE

Dear s.22 irrelevant information and s.22 irrelevant information

I refer to the investigation undertaken by the Fair Work Ombudsman (FWO) into Austal Limited, its subsidiaries, including Austal Philippines Pty Limited concerning 30 Filipino workers (the **Employees**) who were deployed to Australia to work at the Henderson Shipyard in Western Australia between 7 February 2020 and 7 August 2020.

BACKGROUND

An investigation was conducted to establish whether Austal Philippines Pty Limited and associated entities had complied with the Fair Work Act 2009 (FW Act).

As a result of that investigation, I reasonably believed during the period that the **Employees** were deployed in Australia, they were employed by Austal Philippines Pty Limited and were:

- (a) national system employees within the meaning of section 14 of the FW Act; and
- (b) Austal Philippines Pty Limited had contravened terms of the Manufacturing, and Associated Industries and Occupations Award 2020 (prior to 29 May 2020, the Manufacturing, and Associated Industries and Occupations Award 2010) (**Award**).

As a result of my reasonable belief that contraventions of Commonwealth workplace laws had occurred, Austal Philippines Pty Limited was served with a compliance notice dated 25 March 2021 regarding the contraventions detailed above (**Compliance Notice**).

ACKNOWLEDGEMENT OF PARTIAL COMPLIANCE

This letter is to acknowledge that Austal Philippines Pty Limited has partially complied with the Compliance Notice.

I acknowledge that Step 1 of the Compliance Notice has been complied in full and that rectification of Step 2 is currently underway. I understand that the Australian Taxation Office (**ATO**) has been informed of the Employees' entitlement to superannuation, and that this is being managed by [REDACTED].

As a result, no further action at this time will be taken by the FWO in relation to the contraventions detailed in the Compliance Notice for the contravention period. In due course we expect to be provided with evidence that Step 2 of the Compliance Notice has been fully rectified.

NEXT STEPS

Following your compliance with the Compliance Notice, it is very important that you review your practices moving forward to ensure that all of your employees have their minimum entitlements met in accordance with any applicable awards, agreements, determinations and/or orders and the FW Act.

We recommend that you register at www.fairwork.gov.au for My Account to save all your information in one place and get priority support when you need it.

We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, by completing our online feedback form at www.fairwork.gov.au/feedback.

Should you wish to discuss this letter or any of your obligations further, please contact me on [REDACTED]

Yours sincerely

s.22 irrelevant information

Fair Work Inspector
Fair Work Ombudsman

s.22 irrelevant information

Navigation: Save, Save & Close, Deactivate, Refresh, Check Access, Email a Link, Word Templates

Close contravention

Decision

Owner: s.22 irrelevant information

Details | Approval Requests | Related

Decision

- Related Matter * [MAT-11162-Q4Z7 : AUJSTAL SHIPS PTY LTD](#)
- Decision * [Close contravention](#)
- Status * [Approved](#)
- Decision Date * 21/06/2021
- Created By * s.22 irrelevant information

Contraventions

Decision Form View + New Decision Contrav... Refresh

| Created On | Contravention | Investigation Status (Contravention) | Matter Related Party |
|--------------------|-----------------------------------|--------------------------------------|----------------------|
| 21/06/2021 2:29 PM | Wages - Underpayment of Base Rate | Non-compliant | AUSTAL PHILIP |
| 21/06/2021 2:29 PM | Penalty rates - Weekend | Non-compliant | AUSTAL PHILIP |

Matter Related Party

Select Related Party [AUSTAL PHILIPPINES PTY LIMITED : Subjec...](#)

- Organisation [AUSTAL PHILIPPINES PTY LIMITED](#)
- Individual ---

Comments

Austal has rectified step one of the CN by making payment of over \$158k as set out in the ERs calculations titled Workers Payroll Analysis 2021.

Companies CEO confirmed payments were made and the company produced payslips setting out rectification payments.'

ATO - Super (Step 2) is being managed with the ATO and s.22 irrelevant information to identify how to comply with super laws with EE's that have all returned to Philippines and cannot open a super account etc.

Matter to close .

Related Document Links + New Document Refere... Refresh

| Document Name (Related Document Ref | Related Document Reference | Regarding | Related Matter | Document UF |
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