



GROUP PROCEEDING SUMMARY STATEMENT
GONSALVEZ & ORS V EMERGENCY SERVICES SUPERANNUATION BOARD

Case: S ECI 2024 01683

Superior Court of Victoria
File No: 2024 02:06 PM

What is this group proceeding about?

This group proceeding relates to the miscalculation and underpayment of the super benefits for members of the Transport Superannuation Fund (the **Transport Fund**) administered by the Emergency Services Superannuation Board (**ESSSuper Board**). It alleges that the ESSSuper Board breached certain duties owed to members of the Transport Fund by failing to include shift penalty allowances in the calculation of “salary”, for the purpose of calculating super benefits.

The group proceeding covers former members of the Transport Fund who retired, resigned or were retrenched (**Former Fund Members**) and members of the Transport Fund who are still working (**Current Fund Members**).

The group proceeding is seeking that ESSSuper Board pay the amount Former Fund Members have been underpaid and the ESSSuper Board be made to calculate super entitlements with the inclusion of shift penalty allowances for Current Fund Members.

No other group proceedings have been, or are likely to be, filed that relate to the same subject matter as this group proceeding

Am I a group member?

You will be a group member if:

- You are or have been a member of the Transport Fund; and
- You performed recognised service within the last two years you were a member of the Transport Fund;
- You worked shifts as a member of the Transport Fund; and
- You received a shift penalty allowance in the last two years you were a member of the Transport Fund; and
- You received or became entitled to receive a retirement benefit; OR
- Your shift penalty allowance has not been approved by the ESSSuper Board.

If you do not wish to participate in the group proceeding, there will be an opportunity for you to opt out of the class action at a future time.

If you do wish to participate in the group proceeding and be entitled to receive compensation if the claim is successful, you will likely be required to formally register your claim at a future time.

You will receive a Notice about the opt out and registration process which explains these options and the steps you are required to take at a future date.

Who is acting for the Lead Plaintiffs?

Gordon Legal is acting for the Lead Plaintiffs and other group members in this group proceeding against the Emergency Services Superannuation Board.

Who are the Lead Plaintiffs and what responsibilities do they have?

There are three Lead Plaintiffs in this proceeding – Elwyn Gonsalvez, Sebastiano Ferraro and Basil Seventis. Mr Gonsalvez and Mr Ferraro are retired, former members of the Transport Fund and Mr Seventis is a current member of the Transport Fund.

The Lead Plaintiffs will receive advice from and provide instructions to Gordon Legal about the case on behalf of all group members. They will provide instructions about key stages in the proceeding, including in relation to any offers of settlement.

Mr Gonsalvez, Mr Ferraro and Mr Seventis have overarching obligations to act honestly, avoid undue delay and expense, and to exercise best endeavours to take steps to resolve the proceeding.

In the event that the case does not settle prior to trial, the Lead Plaintiffs may be required to provide evidence regarding their individual claim.

What costs are involved?

The group proceeding is partly funded by Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd (the **Funder**), with the balance funded by Gordon Legal on a 'No- win, No-Fee' basis.

If the group proceeding is successful, (whether by settlement or judgment), the funding agreements provide for the Funder to be reimbursed the legal costs it has paid, and paid a funding commission of between 15% and 25% of the total Resolution Sum. The Court may order all group members to share in the legal costs to be reimbursed to, and funding commission paid to, the Funder.

If the group proceeding is successful, Gordon Legal will be entitled to recover the 'No-Win-No-Fee' fees which become payable from the Resolution Sum, under the terms of the funding agreement.

Gordon Legal will also be entitled to recover the "Uplift fee" from the Resolution Sum under the terms of the Scheme.

This means that Gordon Legal is accepting some of the risk of the group proceeding and will in effect waive 25% of its fees and the total amount of the uplift to the Lead Plaintiffs and the Group Members unless there is a successful outcome.

Any payment of legal fees or commission must be first approved by the Court as fair.

If the group proceeding is unsuccessful, the Funder will cover the costs.

In no circumstances will group members ever be out of pocket by participating in the group proceeding – whether the case is successful or unsuccessful.

Who can I contact to get further information?

You can contact Gordon Legal by sending an email to ESSSuper@gordonlegal.com.au or by calling 1300 59 95 17. You will not be charged a fee for contacting Gordon Legal to ask questions about the group proceeding.