

**BETWEEN:**

**ELWYN GONSALVEZ & ORS (according to the Schedule attached)**

Plaintiffs

- and -

**EMERGENCY SERVICES SUPERANNUATION BOARD**

Defendant

**ORDER**

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**JUDGE:** The Honourable Justice Watson

**DATE MADE:** 18 November 2024

**ORIGINATING PROCESS:** Writ filed 11 April 2024

**HOW OBTAINED:** On the papers

**ATTENDANCE:** Not applicable

**OTHER MATTERS:** A. This order is signed by the Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*

**THE COURT ORDERS BY CONSENT THAT:**

1. The orders of the Honourable Justice Watson made on 5 August 2024 (the **Orders**) are amended by:
  - (a) replacing “30 September 2024” with “31 January 2025” in order 6, being the date the parties shall attend a conference before a Judicial Registrar;
  - (b) replacing “7 October 2024” with “7 February 2025” in order 9, being the date the parties file any applications for discovery;
  - (c) replacing “27 September 2024” with “10 December 2024” in order 10, being the date the plaintiffs may give discovery (if any) by affidavit; and



- (d) replacing “18 November 2024” with “14 April 2025” and “23 December 2024” with “1 May 2025” in order 13, being the dates between which the parties attend a mediation.
2. Order 8 of the Orders is vacated and, in lieu thereof, by **4:00pm** on **31 January 2025**, the defendant shall make discovery, by way of affidavit, of the first tranche of discovery of the categories of documents set out in **Annexure A** to this order.
  3. By **4:00pm** on **26 November 2024**, the defendant shall produce a list of private sector employers who have had employee members of the Transport Scheme since 11 April 2018.

#### **Further Case Management**

4. The matter be listed for a further case management conference on **21 February 2025** at **9:30am**.

#### **Other Matters**

5. Liberty to apply.
6. Costs are reserved.

**DATE AUTHENTICATED:** 18 November 2024

  
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**THE HONOURABLE JUSTICE WATSON**



## ANNEXURE A

### CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE DEFENDANT

For the purposes of discovery, the following **definitions** apply:

- a) “**Board**” means the Emergency Services Superannuation Board.
- b) “**Defined benefit**” has the meaning defined in paragraph [20] of the Plaintiffs’ Statement of Claim filed on 11 April 2024.
- c) “**Final average salary**” has the meaning defined in paragraph [21] of the Plaintiffs’ Statement of Claim filed on 11 April 2024.
- d) “**Metro**” refers to Metro Trains Pty Ltd.
- e) “**RTBU**” refers to the Rail, Tram and Bus Union.
- f) “**Shift penalty allowance**” has the meaning defined in paragraph [26] of the Plaintiffs’ Statement of Claim filed on 11 April 2024.
- g) “**TS Act**” means the *Transport Superannuation Act 1988* (Vic).
- h) “**Transport Fund**” refers to the Transport Superannuation Fund established under the TS Act.

#### A. Parties and Group Members

- 1. Documents (including agreements, correspondence, file notes, minutes and memoranda) that relates or refers to the Board’s approval and publication of:
  - (a) a Government Gazette on 26 June 2008 concerning the schedule of shift penalty allowances in respect of “Metropolitan Train Drivers” covered by the Metropolitan Train Drivers covered by the Connex Melbourne Union Collective Agreement 2006–2009; and
  - (b) any subsequent collective agreements entered into by Metropolitan Train Drivers as referred to in subsection G of the particulars of paragraph [5] of the Board’s defence filed on 16 September 2024 (Defence).

#### B. The Transport Fund

- 2. The Trust Deed agreements establishing the Board as the trustee of the Transport Fund, if any.
- 3. Copies of any contract or agreement between Metro and the Board that relates or refers to the administration of the Transport Fund.



### **C. Member “Salary” and Entitlements**

4. Correspondence between Metro and the Board that relates or refers to the Board’s calculation of the named plaintiffs’ Defined Benefits.
5. Documents (including file notes and memoranda of communications or meetings) between the named plaintiffs and the Board, which refer or relate to their concerns about the calculation of their Final Average Salary and/ or Defined Benefit.

### **D. The Board’s obligations in respect of the Transport Superannuation Fund**

6. Policies, procedures, guides, manuals and protocols that relates or refers to the calculation of a Transport Fund Members’ Defined Benefit pursuant to the TS Act.
7. Documents that relates or refers to the process for approving and publishing in the Government Gazette of a schedule of shift penalty allowances.
8. Documents that relates or refers to the Board’s power under s 38 of the TS Act to compel employers of Transport Fund members, including Metro, to furnish it with any information the Board requires for the purpose of administering the TS Act.
9. Documents (including agreements, correspondence, file notes, minutes and memoranda) that relates or refers to any application to the Board for the approval or publishing in the Government Gazette of a schedule of shift penalty allowances for members of the Transport Fund made by Metro and its predecessors.

### **E. The Plaintiff’s Defined Benefit Entitlements**

10. The three named plaintiffs’ respective files in electronic form, including all records pertaining to their membership of the Transport Scheme and any correspondence passing between them and the Board.

### **F. The Board’s alleged breaches of duty**

11. Correspondence, minutes of meetings, file notes and memoranda between delegates of the RTBU and the Board regarding the RTBU’s concerns related to the calculation of Defined Benefits of members of the Transport Fund.
12. Correspondence, minutes of meetings, file notes and memoranda concerning the correspondence sent by Gordon Legal to the Board on 3 February 2023 and 27 March 2024.



**SCHEDULE OF PARTIES**

**S ECI 2024 01683**

**ELWYN GONSALVEZ**

First Plaintiff

**SEBASTIANO FERRARO**

Second Plaintiff

**BASIL SEVENTIS**

Third Plaintiff

**- AND -**

**EMERGENCY SERVICES SUPERANNUATION  
BOARD**

Defendant

