

## OPT OUT FAQs

### ESSSUPER CLASS ACTION

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#### GENERAL

**1. Why have I received this notice?**

You have received this notice because you have been identified as a *potential* group member in the ESSSuper Class Action.

The Supreme Court of Victoria made orders that require all potential group members to be notified of the class action and give them an opportunity to opt out, should they wish to.

Your name and details were provided to us by the Emergency Services Superannuation Board, or your current or former Employer pursuant to Court orders and for the limited purpose of distributing an Opt Out Notice to you.

**2. What is a class action?**

A class action is a type of legal proceeding in which one or more persons (called the lead plaintiff or lead plaintiffs) brings a claim on behalf of a wider group of people who have been affected in a similar way, or by the same conduct. The people in this wider group are called group members. The person who commences the proceeding, the lead plaintiff, does not have to get permission from the group members before commencing the proceeding.

#### THIS CLASS ACTION

**3. What is this class action about?**

This class action is about the miscalculation and underpayment of the super benefits of members of the Transport Fund.

The lead plaintiffs argue that ESSSuper has breached its obligations 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.

If you have **retired, resigned or been retrenched** and your final superannuation entitlement has already been calculated, the class action demands that ESSSuper pay you the amount you have been underpaid.

If you have **not yet retired**, the class action demands that ESSSuper be made to calculate super entitlements with the inclusion of shift penalty allowances, which may have the effect of increasing the amount of super you have when you retire.

#### **4. Who is running the class action?**

Gordon Legal is the law firm representing the lead plaintiffs.

There are three lead plaintiffs: Elwyn Gonsalvez, Sebastiano Ferraro, and Basil Seventis. The lead plaintiffs were or are former railway workers. They are all members of Victorian Branch of the Rail, Tram and Bus Union (**RTBU**).

Gordon Legal is working with the RTBU to bring this class action, to help union members. We are proud to work with the union to try and help members get paid their proper superannuation entitlements.

#### **5. Who is covered?**

The class action is an ‘open’ class action. This means that every person in this category will be included in the class action unless they take steps to positively opt out of the proceedings.

People who have worked in the Victorian transport sector and were members of the ESSS Transport superannuation scheme may be covered by the class action. Our investigations have shown that a wide range of people in different sorts of transport jobs have been affected. Group Members include tram drivers, maintenance and operational staff, train rolling stock construction and maintenance workers, track maintenance and construction workers, network and operations workers; amongst other people.

You do not need to be a current or former member of the RTBU to be a group member. In addition, other union members may also be affected.

To be a group member, you need fit within the following definition:

You may be a group member of this class action if:

(a) You are a member of the Transport Scheme and you:

- i. Perform regular shift work;
- ii. Receive regular shift penalty allowance for that shift work;
- iii. The Board has not approved a schedule of allowances in respect of the shift penalty allowances you receive and published that schedule in the Government Gazette;

OR

(b) You were formerly a member of the Transport Scheme and you:

- i. Performed recognised service within the last two years of your membership of the Transport Scheme;
- ii. Performed regular shift work in the last two years of your membership of the Transport Scheme;
- iii. Received a regular shift penalty allowance from your employer for shift work in the last two years of your membership of the Transport Scheme; and
- iv. Received or became entitled to receive a retirement benefit from the Transport Scheme.

## **6. Should I register with Gordon Legal?**

Registering will ensure that you receive updates about the progress of the class action.

It is free to register with Gordon Legal.

We recommend that you register with Gordon Legal, so we can contact you and tell you about the class action as it progresses.

## **7. How do I register with Gordon Legal?**

You can register with Gordon Legal by completing the “Register Now” form on the ESSSuper Class Action page on Gordon Legal’s website.

The registration form is linked [here](#).

## **AM I ENTITLED TO COMPENSATION?**

### **8. How much compensation will I get?**

The Court will need to find in the plaintiffs favour, including on legal questions of loss and damage, in order for compensation to be paid. Or the proceeding will need to settle with amount to be paid, and that settlement will need to be approved by the Court. Those outcomes will take some time to occur.

Your specific claim for compensation will depend on a number of factors, including whether you are a group member, how much you earned and when, whether you are already retired or not, what sort of shift work you did, and in what amount and how much you and your employer respectively contributed to your superannuation fund over the years. There may be other factors that apply to you.

If you would like to find out the amount of compensation that you might be owed, you can contact Gordon Legal, and our team will be able to help you gather your documents and try and work out what you could be owed.

If you register for the class action, we will get in touch with you to discuss your potential compensation amount.

The registration form is linked [here](#).

We recommend that all group members contact Gordon Legal as soon as they can to try and determine their compensation amount. We will then work through the list of people who have contacted us.

It may take us a few weeks to get in touch with you. There are hundreds of people who have been affected. Please be patient with us.

## **COSTS**

### **9. Will I have to pay anything?**

There is no out-of-pocket cost to taking part in the class action. It is free to register.

You will not have to pay anything if the class action is unsuccessful.

If the class action is successful, then the lawyer's legal fees and the commission of Omni Bridgeway, will be subtracted from the amount awarded to the group as a whole.

### **10. If the class action is successful, how much will go to legal fees?**

If the class action is successful, then the lawyer's legal fees and the commission of Omni Bridgeway, will be subtracted from the amount awarded to the group as a whole. Any payment of legal fees or commission must be first approved by the Court as fair and reasonable.

### **11. Is the class action funded?**

This class action is partly funded by the litigation funder, Omni Bridgeway, with the balance funded by Gordon Legal on a 'No-Win, No-Fee' basis.

## **THE OPT OUT PROCESS**

### **12. What does opt out mean?**

The lead plaintiffs in a class action do not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by 'opting out' of the class action. If you opt out of the class action, you will cease to be a group member. This means that you will not be entitled to any compensation if the class action succeeds. It also means that if the class action fails, you are not bound by the Court's decision.

**13. How can I be a group member if I didn't ask anyone to make a claim for me?**

The lead plaintiffs in a class action do not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by 'opting out' of the class action.

**14. I don't think I am a group member, what do I do?**

If you are not a group member in the class action, you don't need to do anything.

**15. I think I am a group member, what do I do?**

If you are a group member, you can either:

- (a) do nothing, in which case you continue to be a group member in the class action; or
- (b) 'Opt out' of the class action, which means you will cease to be a group member but retain your right to bring your own claim subject to any relevant time limitations.

If you do not opt out, you can also register with Gordon Legal.

**16. I want to remain in the class action, what do I do?**

You don't need to do anything, except consider whether you wish to register your interest with Gordon Legal.

**17. What happens if I opt out?**

If you opt out of the class action, you will cease to be a group member. This means that you will not be entitled to any compensation if the class action succeeds. It also means that if the class action fails, you are not bound by the Court's decision.

**18. What happens if I don't opt out?**

If you do not opt out, you will remain a group member in the proceeding. This means that you will be bound by any settlement or judgment made in the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement made in favour of the Applicants and group members. You may be required to satisfy certain conditions before your entitlement arises.

If the action is unsuccessful, you will not be able to pursue the same claims and may not be able to pursue related claims against the Emergency Services Superannuation Board.

**19. Is there a deadline to opt out?**

Yes. The deadline to opt out of the proceeding is 4.00pm (AEST) on 12 September 2025.

**20. Can I opt back in if I opt out now?**

No, not without express permission from the Court. Once you have opted out, you cannot opt out back in without express permission from the Court.

**21. How do I opt out?**

You opt out by filling out an opt out notice and filing it with the Supreme Court of Victoria. A copy of the opt out notice is available on Gordon Legal's website.

An opt out notice should be sent to the Supreme Court of Victoria at the address or email address provided on the opt out form. Do not send your opt out notice to Gordon Legal.

**22. Should I opt out?**

In making your decision, you should weigh up each of the issues outlined in the opt out notice. You can also obtain independent legal advice about your decision on whether or not to opt out.

In our view, it is in your best interests to remain a group member and not to opt out of the class action proceedings because:

- (a) staying a member of the class action does not carry with it any additional risk to you;
- (b) staying a member of the class action may provide you with the right to benefit from the outcome of the class action; and
- (c) if you were to opt out, you will not receive the benefit of the outcome of the class action and you would therefore need to pursue legal action on your own separately to the class action if you wish to pursue your rights.

**WHAT IS NEXT?**

**23. What is going to happen next?**

The parties have been ordered to attend a mediation at the start of November 2025. If the matter does not resolve at mediation, the parties will commence preparing for a trial.

**24. When is the case going to be heard?**

The court has not listed this matter for an initial trial.

The parties are required to attend a mediation to try to resolve the dispute at the beginning of November. If the matter does not resolve at mediation, the parties will commence preparing for a trial.