



NERITA SOMERS & ORS V BOX HILL INSTITUTE - SECI 2020 01535

CLASS ACTION SUMMARY STATEMENT

Case: S ECI 2020 01535

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1. What is a group proceeding?

A group proceeding, also known as a class action, is a proceeding brought by the representative plaintiffs on their own behalf and on behalf of group members against another party(s) called the defendant(s), where the plaintiffs and the group members have similar claims against the defendant(s). Group proceedings are brought to resolve the common issues of fact or law for the wider group.

2. Who is a group member in the Box Hill Institute Student Pilot group action?

You are a group member if you enrolled with Box Hill Institute (BHI) to study a Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (CPL Diploma) between 6 December 2015 and the date of the commencement of this proceeding, on 26 March 2020.

3. What is the Box Hill Institute Student Pilot group action about?

This group proceeding is brought by the representative plaintiffs (the plaintiffs) on their own behalf and on behalf of all persons who are group members. In brief, the plaintiffs allege in the statement of claim in this proceeding that:

- (a) BHI breached its contract to deliver the CPL diploma course with due care and skill to enable the plaintiffs and group members to obtain their commercial pilots licence (CPL) through the Civil Aviation Safety Authority (CASA) within 2 years studying part time or 14 months full time as represented;
- (b) BHI breached its duty of care to put in place proper systems to monitor the delivery of the CPL Diploma course to ensure that the course materials, theoretical training and practical training was appropriate to enable the plaintiffs and group members to meet the objectives of the CPL Diploma course within the represented time frames;
- (c) BHI breached its statutory guarantee to deliver the CPL Diploma Course with due care and skill in breach of s 60 of the *Australian Consumer Law (Victoria)*;
- (d) BHI breached its statutory guarantee to deliver the CPL Diploma Course in a manner which was fit for purpose in breach of s 61 of the *Australian Consumer Law (Victoria)*;
- (e) BHI engaged in unconscionable conduct through the manner in which it billed the plaintiffs and group members for theoretical and practical training throughout the CPL Diploma course;
- (f) BHI engaged in misleading and deceptive conduct by misrepresenting to the plaintiffs and group members that the CPL Diploma course had been designed to enable the plaintiffs and group members to obtain their CPL through CASA within 2 years of part time study or 14 months of full time study;

The plaintiffs claim, on behalf of themselves and the group members, common law damages and damages pursuant to sections 236 and 267(3)(b) and section 267(4) of the *Australian Consumer Law (Victoria)*.

4. The roles and responsibilities of the representative plaintiffs?

On 26 March 2020, the representative plaintiffs Nerita Somers, Adel Hassanein, Matthew Lamont and Felix Ouldandov commenced a group proceeding in the Supreme Court of Victoria against Box Hill Institute (BHI). The plaintiffs provide instructions to Gordon Legal regarding the conduct of the case and may give evidence during the proceeding.

5. Who is the law firm acting for the representative plaintiffs?

Gordon Legal.

6. Is this group proceeding funded by a litigation funder?

No.

7. Has another group proceeding been issued, or is likely to be issued, by another law firm that relates to the same subject matter as this group proceeding?

Not to the knowledge of Gordon Legal. Hymans Solicitors, located at Level 2, 243-245 Lonsdale Street, Dandenong, Victoria 3175 have informed Gordon Legal that it currently acts for four students who enrolled in the CPL Diploma course and who are currently contemplating whether to remain as group members or commence separate proceedings.

8. How legal fees and disbursements will be charged by Gordon Legal

Gordon Legal acts on a No Win, No Fee basis. Gordon Legal's professional fees will be calculated on the Supreme Court Scale of Costs. Disbursements, such as fees for experts and barristers, will be charged at cost. Legal costs, to include professional fees and disbursements, are 'conditional' and are only recoverable by Gordon Legal if there is a successful outcome. In the event that the class action is successful Gordon Legal is (subject to approval of the Court) entitled to charge its clients an uplift fee of 25% of its normal fees if the group members individual claim is successful.

If the class action succeeds and compensation is payable to the group members, the representative plaintiffs intend to apply to the Court for an order that some of that compensation be used to help pay a share of the costs which are incurred by them in running the group proceeding but which are not able to be recovered from BHI.

9. How you can obtain further information about the group proceedings?

You may view Gordon Legal's website to find out more about the group proceedings at <https://gordonlegal.com.au/services/class-actions/bhi-class-action/> You may also request a telephone appointment with one of the lawyers working on the group proceedings by contacting Gordon Legal on (03) 9603 3000 or by email at bhisoar@gordonlegal.com.au for an obligation (cost free) appointment.