IN THE SUPREME COURT OF VICTORIA
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Not Restricted

S ECI 2025 01120

Jeremy Bergman	Plaintiff
v	
Entain Group Pty Limited (ACN 151 956 768)	Defendant

JUDGE:	Nichols J
WHERE HELD:	Melbourne
DATE OF HEARING:	14 May 2026
DATE OF RULING:	20 July 2026
CASE MAY BE CITED AS:	Bergman v Entain Group Pty Limited (GCO Ruling)
MEDIUM NEUTRAL CITATION:	[2026] VSC 458

GROUP PROCEEDINGS – Costs – Costs to be calculated as a percentage of the amount of any award or settlement recovered – Application for a group costs order – Whether proper evidentiary basis to make group costs order – Whether group costs order fixed at 33 per cent appropriate or necessary – Principles to be applied – Application granted – *Supreme Court Act 1986* (Vic), s 33ZDA – *Allen v G8 Education Ltd* [2022] VSC 32 – *Fox v Westpac; Crawford v ANZ* [2021] VSC 573; (2021) 69 VR 487 – *Bogan v The Estate of Peter John Smedley (Deceased)* [2022] VSC 201 – *Lay v Nuix Ltd* [2022] VSC 479; (2022) 167 ACSR 27 – *Clarke v JB Hi-Fi Group Pty Ltd* [2025] VSC 288 – *Gehrke v Noumi Ltd* [2022] VSC 672 – *Bergman v Sportsbet Pty Ltd (GCO Ruling)* [2025] VSC 521.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Ms J Buncle with Mr O Nanlohy	Maurice Blackburn
For the Defendant	Mr B Holmes	Mallesons

HER HONOUR:

Introduction

1 This is a group proceeding issued under Part 4A of the *Supreme Court Act 1986* (Vic) (**the Act**), on behalf of persons who placed bets with the defendant, **Entain** Group Pty Limited, using an 'in-play' betting service known as a 'Fast Code Service' via the Entain website and smartphone app. The plaintiff alleges that this service was prohibited by s 5(1) of the *Interactive Gambling Act 2001* (Cth) and seeks relief under the Australian Consumer Law, in contract and under equitable principles of restitution.

2 The plaintiff, Jeremy **Bergman**, seeks a Group Costs Order (or **GCO**) pursuant to s 33ZDA of the Act. Specifically, the plaintiff seeks:

> 1. Pursuant to section 33ZDA(1) of the *Supreme Court Act 1986* (Vic):
>
>   a. The legal costs payable to the solicitors for the plaintiffs and group members, Maurice Blackburn, be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding, and that percentage be 35% (subject to further order); and
>
>   b. Liability for payment of the legal costs pursuant to paragraph 1(a) be shared among the plaintiff and all group members.
>
> 2. Pursuant to section 33ZDA(2) of the *Supreme Court Act 1986* (Vic), upon the making of orders pursuant to paragraph 1, the solicitors for the plaintiff and group members, Maurice Blackburn:
>
>   a. Be liable to pay any costs payable to the defendant in the proceeding; and
>
>   b. Be liable to give any security for the costs of the defendant in the proceeding that the Court may order be given by the plaintiff.[1]

3 The plaintiff relied on his affidavit affirmed 16 March 2026 and affidavits of his solicitor, Lee Taylor, affirmed 20 March 2026 and 31 March 2026. Mr Taylor is a principal lawyer at Maurice Blackburn Lawyers and has carriage of this proceeding on behalf of the plaintiff and group members.

1 Extract from the Amended Summons dated 14 April 2026.

4 Much of the evidence on which the plaintiff relied was properly claimed to be confidential. It disclosed the solicitor's assessment of strengths and weaknesses of the claim. Material of that kind would ordinarily be privileged and would remain confidential, including from the defendant. It was disclosed to the Court in order to assist the Court to evaluate the application for a GCO. I will make orders under r 28.03.3(1) of the *Supreme Court (General Civil Procedure) Rules 2025* (Vic), in respect of particular parts of the affidavits and other material upon which the plaintiff relies, having been satisfied that those orders are appropriate upon examining the material. It is necessary in these Reasons to broadly refer to some of the evidence that was the subject of a claim to confidentiality, but in terms that I consider does not afford a forensic or tactical advantage to the defendant that it otherwise would not have. The broad scope of the issues raised on this application were described openly in counsel's oral submissions on the hearing of this application.

5 The **defendant** did not seek to be heard on the application, in keeping with the proper approach to an application of this kind. The parties agreed that the plaintiff should bear his own costs of, and incidental to, this application.

6 For the reasons set out below, I will make a GCO in respect of the plaintiff's legal costs in this proceeding, at the rate of 33%.

<u>Governing principles</u>

7 Section 33ZDA(1)(a) of the Act relevantly provides that the Court may make an order that the legal costs payable to the law practice representing the plaintiff and group members be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding, being the percentage set out in the order.

8 The statutory criterion for the exercise of the power to make a GCO under s 33ZDA is that *the court be satisfied that it is appropriate or necessary to ensure that justice is done in the proceeding* to make such an order. The principles governing the making of a GCO under s 33ZDA have been given extensive consideration in previous decisions of this

Court. I refer to what is said in *Allen v G8 Education Ltd,*[2] *Bogan v The Estate of Peter John Smedley (Deceased)*[3] and *Lay v Nuix Ltd.*[4]

9 In *Clarke v JB Hi-Fi Group Pty Ltd,*[5] I summarised some of the pertinent considerations in these terms:

> (a) GCOs are recognised to possess inherent substantive structural benefits. The plaintiff and group members will receive a fixed proportion of any award or settlement (subject to any variation by Court order) and the law firm must assume the burden of meeting any adverse costs award and any security for costs. This engenders certainty and transparency. Fixing costs as a percentage of the recovered sum eradicates for the plaintiff and group members any risk that their compensation, if recovered, will be eroded by costs beyond the fixed percentage. Traditional costs calculation methods present that risk of erosion of recoveries. Those benefits are real rather than illusory when the GCO rate is set at a level that is reasonable and proportionate.
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> (b) A corollary of the statutory model is that it permits the legal practice to benefit from the upside as the damages recovered increase proportionally to the costs incurred. Considerations of reasonableness and proportionality accordingly inform the setting of an appropriate GCO percentage. Determination of the reasonableness and proportionality of a proposed GCO rate may be evaluated against numerous measures, including whether it is proportional to the risk undertaken by the law firm in the proceedings, the likely amount to be recovered in the proceedings, and the legal costs and disbursements that are likely to be incurred in the proceedings (including the likely potential adverse costs). It is, however, also to be recognised that this evaluation occurs at an early stage of proceedings where such assessments are likely fraught with uncertainty.[6]
>
> (c) The appropriate rate must be determined with regard to the facts of the particular case but it is nevertheless appropriate to compare what is sought with the rates that have been fixed in decided cases. It may also be instructive to have regard to the principles employed in other contexts to analyse returns on investment.[7]
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> (d) At the time an initial GCO order is made, the Court is necessarily engaged in a forward-looking exercise with limited information. For this reason, s 33ZDA(3) provides an important safeguard allowing the

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2 *Allen v G8 Education Ltd* [2022] VSC 32, [15]–[31], distilling *Fox v Westpac; Crawford v ANZ* (2021) 69 VR 487; [2021] VSC 573 (***Fox v Westpac***).

3 *Bogan v The Estate of Peter John Smedley (Deceased)* [2022] VSC 201, [6]–[14].

4 *Lay v Nuix Ltd* [2022] VSC 479; (2022) 167 ACSR 27, 49 [74]–[77].

5 *Clarke v JB Hi-Fi Group Pty Ltd* [2025] VSC 288, [6].

6 *Gehrke v Noumi Ltd* [2022] VSC 672, [53] (***Gehrke***); *Bogan,* [13(c)(iv)]; *Warner v Ansell Limited* [2024] VSC 491, [55]–[58].

7 *Dawson & Anor v Insurance Australia Ltd & Anor* [2024] VSC 808, [18] (***Dawson***) and the authorities there cited.

Court to revisit the GCO rate in light of known facts regarding the proceeding.[8]

Submissions

10 The plaintiff submitted that the proposed order met the statutory criteria, and should be granted, advancing two substantive points.

11 First, the form of funding that would obtain under a GCO will confer important benefits on group members. It will guarantee that the plaintiff and group members will receive a fixed proportion of any award or settlement. On the rate proposed, subject to any variation by the Court under s 33ZDA(3) of the Act, even if the proceeding resolves for a 'low' sum and requires the investment of significant costs, group members will still receive approximately two-thirds of the sum awarded. This is particularly relevant given the risks of this proceeding. The funding model afforded by a GCO is a simple, and clear arrangement that will ensure the efficient, equitable sharing of costs between the plaintiff and group members without requiring a costs-sharing order to be made at a later stage of the proceeding. The making of a GCO will ensure those structural benefits for group members, thereby ensuring that justice is done in the proceeding.

12 Second, on the question of the percentage at which the plaintiff's legal costs should be calculated, the plaintiff submitted that:

(a) To consider whether the proposed rate is reasonable and proportionate, regard should be had to what has occurred in other cases as part of the overall comparative analysis. The range of rates across all proceedings in which a GCO has been made is between 14% and 40%. The median rate is each 24.5%. Considering awards in and after 2024 only, the range of rate is between 27.5% and 40%, the mean being approximately 30.7% and the median, 30%. For consumer class actions the range is between 24.5% and 27.5%, with the median at 24.5%.

8 *Dawson,* [18] and the authorities there cited.

(b) The case of *Bergman v **Sportsbet** Pty Ltd*,[9] which is a proceeding substantially similar to the present proceeding in which the same plaintiff is instructing the same solicitors, is of particular relevance. In that case, Matthews J made a GCO with a rate of 33%. A higher rate is warranted in this proceeding because it will not be materially less costly to litigate but the outcome, including as to quantum, is less certain.

(c) By comparing the GCO rates ordered in other cases, and the particular risks arising in this proceeding, the proposed GCO rate of 35% is proportionate and reasonable.

(d) The plaintiff accepts that although this data serves to contextualise the present application, a comparative analysis based on raw figures alone in insufficient. It is critical to consider the particular circumstances of this proceeding. Mr Taylor gives evidence about the prospects of, and particular legal and financial risks entailed in, this proceeding. In submissions that were properly characterised as confidential, the plaintiff addressed that evidence. The evidence was also that the costs to be incurred in this proceeding will be substantial.

(e) The high degree of uncertainty in relation to both liability and quantum means that modelling of potential returns to Maurice Blackburn from the investment of resources and assumption of risk in this case, will not be of utility because the inputs to any such modelling are too uncertain. Some indicative claim values have been modelled and given in Mr Taylor's evidence, but they cannot be sensibly adjusted for litigation risk because of the uncertainty affecting several aspects of the case. Modelling of potential returns was provided in *Sportsbet* in support of the application for a GCO in that case, but additional uncertainties in this case make it less useful here.

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9 *Bergman v Sportsbet Pty Ltd (GCO Ruling)* [2025] VSC 521 (***Sportsbet***).

(f) One relevant comparator is that, were third party litigation funding obtained in this proceeding as an alternative to a GCO it would almost certainly be more expensive.

13 Separately, it was submitted that the proposed GCO will assist Maurice Blackburn in securing third party litigation funding. If a GCO is made Maurice Blackburn intends to seek 'external support'. In other words, it intends to enter into a costs and profit sharing arrangement if it can, in which the GCO rate will represent the upper limit of the return available to the funder within that structure. Fixing the rate at 35% will increase the likelihood of securing third party support for the proceeding.

Evidence

14 On the question of existing and alternative funding arrangements, the evidence was that the plaintiff and Maurice Blackburn have entered into a retainer and costs agreement in which Maurice Blackburn presently acts for the plaintiff on a 'No Win No Fee' basis, and will provide any security for costs that may be ordered and will provide an indemnity for the plaintiff in relation to adverse costs until a GCO is made. This was disclosed to Mr Bergman when he retained Maurice Blackburn and he now instructs it to make this application.

15 If the GCO is not granted, Maurice Blackburn will not continue to act on a purely conditional basis. It is permitted under the retainer to seek third party funding, continue conditionally, or terminate the agreement. Its intention is to seek conventional third party funding, should that occur. Mr Taylor gave evidence about his dealings with third party funders and attempts to secure litigation funding, and his conclusion (for the reasons that he gave) was that third party funding would almost certainly be more expensive for group members than the costs to them under the proposed GCO.

16 As noted earlier, much of Mr Taylor's evidence was validly claimed to be confidential because it contained the assessments of Maurice Blackburn and Mr Taylor on the risks of litigating this case. I have considered that evidence but will describe it only in general terms here. I will add that it is neither necessary nor appropriate to set out in

detail my view about the merits of the case. In short, the evidence (Mr Taylor's opinion) was as follows.

17 There is presently uncertainty as to the value of the claims in this proceeding. Mr Taylor explained why it is difficult to assess the size of the represented class. He explained Maurice Blackburn's methodology for assessing both the number of group members and the potential value of their claims, and the basis for drawing certain conclusions that have informed Maurice Blackburn's estimates of the claim value size.

18 Mr Taylor also provided cogent and detailed explanations for his assessment of the risks of litigation.

19 Mr Taylor provided his estimate of the costs likely to be incurred in the proceeding, calculating professional fees on a hourly rate basis and estimating disbursements.

20 Mr Bergman himself gave evidence, which was relevantly that:

(a) Mr Bergman is a Personal Trainer by profession;

(b) Before agreeing to become the plaintiff, Mr Bergman was told that Maurice Blackburn may seek a GCO and when he entered into a retainer and cost agreement with the firm, he understood that the firm intended to do so;

(c) His view is that a GCO is a simple funding arrangement which is clear for him and group members to understand. Its effect will be that the costs of running the case will be capped. The most important factor for him is that a GCO providing for costs to be calculated as a fixed percentage of any return, guarantees that the majority of the money will go to group members if the case settles or if a judgment is obtained. It will also ensure that he is protected against the risks of any adverse costs, which will be borne by Maurice Blackburn. As such, he believes that the making of a GCO will be in his interests and in the interests of group members.

Consideration

21 I consider that making a GCO in this case will allow the proceeding to be funded in a way that will afford important structural protections to group members. As the plaintiff submitted, a GCO will guarantee that the plaintiff and group members will receive a fixed proportion of any award or settlement, engendering certainty from the outset. Provided the percentage rate is fixed an appropriate point, returns to group members (if the case is successful) will not be disproportionately eroded by legal costs. On the proposed rate, group members will still receive approximately two-thirds of the sum awarded. The plaintiff can run the proceeding with protection against the risk of adverse costs. The structure is simple and readily understandable.

22 On the question of the appropriate rate, the following considerations are relevant:

(a) I accept that the rates ordered in other cases provide something of a contextual benchmark. The rate sought by the plaintiff is within the 'range' although towards the higher end of it. I accept the plaintiff's submissions to that effect.

(b) It is difficult to make meaningful comparisons between cases of very different kinds. I accept that there is a relatively high degree of uncertainty about the outcome of the case, accepting the novelty of the causes of action advanced (see also Matthews J in *Sportsbet*[10]). There is also real uncertainty about the potential class size in this case. Uncertainty is an aspect of risk.

(c) I accept that it is likely that, were traditional third party funding obtained without a GCO, the legal costs to group members would likely be at least somewhat higher than the costs that will be incurred under the proposed GCO, having regard to the evidence of Mr Taylor. How much higher those costs would be, cannot be determined on the evidence.

(d) In this case, the comparison the plaintiff made with *Sportsbet* is informative. Essentially the plaintiff relied upon *Sportsbet* providing a highly relevant benchmark, but said the percentage rate by which costs are calculated should

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10 *Sportsbet*, [31].

be increased in this case (from 33% to 35%). Several things may be said about that comparison. First, the legal and factual claims advanced in each case are substantially similar. Second, although it is an obvious point, the defendants are different. Evidence in one case about the systems used for offering and facilitating in-play betting must address the facts relevant to the respective defendants. Third, I accept, for the reasons the plaintiff submitted, that there are some elements of this case that increase the degree of uncertainty concerning its prospects, compared with *Sportsbet*. It is unnecessary to document them here. Fourth, *Sportsbet* is much more advanced and is to proceed to trial in this Court very soon. That has at least two consequences. One is that because of the substantial similarity between the claims, the legal work undertaken by Maurice Blackburn to prepare *Sportsbet* will undoubtedly be of benefit to Maurice Blackburn as the plaintiff's solicitors in this case, particularly having regard to the prominence of novel legal issues in these cases. The other is that what occurs in *Sportsbet* will to a greater or lesser extent, crystalise some of the risks attendant on this case. The extent to which that occurs will be greatly influenced by whether or not the *Sportsbet* case proceeds to judgment. Even if it does not, the plaintiff's adviser's understanding of the issues involved will evolve and develop as the *Sportsbet* case progresses.

(e) On the question of the costs likely to be incurred in this proceeding, the plaintiff's evidence was substantially lacking in detail. The quantum of the estimated costs struck me as high, given the nature of the issues in the case. I accept that the items identified in the costs estimate reflect steps that will occur in the litigation, but the description of the steps to occur in the litigation were generic, devoid of any detail specific to this case. There was nothing to explain the reasoning process supporting the quantum of costs said to be required. Among other things, if costs are to be proportionate, they must be proportionate to the value of the work undertaken, and commensurate not just with the assumption of risk but with the expenditure of effort. I do not doubt that the plaintiff's lawyers will expend considerable effort in prosecuting this case. I have misgivings about their assessment of the effort required, insofar as it is reflected in their costs estimates, for the reasons I have given. The uncertainties about the case were no reason for the plaintiff's solicitors not to address this issue in their evidence.

23 Taking all of those things into account, I am prepared to make a GCO by fixing a percentage that is higher than the mean, by reference to GCOs made in other cases. A rate higher than the mean reflects the risk-related considerations discussed. I am not prepared to order a higher rate than was ordered in *Sportsbet*. The evidence does not establish the 'same costs but potentially lower return' proposition advanced in support of the submission that the appropriate rate in this case should be both modelled on *Sportsbet* and higher than the rate fixed in that case.

24 I will add that I do not regard as a relevant consideration in this case, Maurice Blackburn's desire to make the proceeding more attractive to a funder by fixing a higher rate. Maurice Blackburn is seeking the GCO under s 33ZDA which is predicated on the premise that it will fund the case and assume the risks of doing so. This court has accepted that costs sharing arrangements are not inherently excluded by the statutory provision.[11] However, the evidence in this case does not establish a basis for increasing the costs to group members in order to accommodate that preference.

25 Finally, I am prepared to make a GCO despite the uncertainties attendant upon the assessment of the appropriate percentage rate at which to fix the plaintiff's costs. For the reasons given, the structural benefits of a GCO are real, and should be afforded to group members. Of particular relevance in this case is protection against the erosion of returns by legal costs. Giving primacy to the interests of group members, I consider that a GCO in this case is a suitable or fitting means of ensuring that justice is done in the proceeding, as that notion is to be understood in the context of s 33ZDA.[12] The capacity of this Court under s 33ZDA(3) to review the rate now set, may be important

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11 *Fox v Westpac; Crawford v ANZ* [2021] VSC 573; (2021) 69 VR 487, 512–3 [80]–[86].
12 See *Allen*, [18]; *Bogan*, [12]; *Fox v Westpac*, 491 [8].

in this case in ensuring that the ultimate award of costs remains reasonable and proportionate.

CERTIFICATE

I certify that this and the 10 preceding pages are a true copy of the reasons for ruling of the Honourable Justice Nichols of the Supreme Court of Victoria delivered on 20 July 2026.

DATED this 20th day of July 2026.

SUPREME COURT OF VICTORIA
Associate of a Judge of the Court

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Associate