

SUPREME COURT OF VICTORIA

BOX HILL INSTITUTE STUDENT PILOT CLASS ACTION

NERITA SOMERS

ADEL HASSANEIN

MATTHEW LAMONT

FELIX OULDANOV

V

BOX HILL INSTITUTE

GOBEL AVIATION PTY LTD

(trading as Soar Advanced Flight Training)

(S ECI 2020 01535)

**IMPORTANT NOTICE**

On 26 March 2020, Nerita Somers, Adel Hassanein, Matthew Lamont and Felix Ouldanov (**the Plaintiffs**) commenced a group proceeding in the Supreme Court of Victoria against Box Hill Institute (**BHI**). Gobel Aviation Pty Ltd (**Soar**) has since been joined as a second defendant.

The group proceeding arises out of the delivery of the Diploma of Aviation (Commercial Pilot Licence - Aeroplane) (**CPL Diploma**) and is brought by the Plaintiffs on their own behalf and on behalf of persons who it is alleged have suffered loss and damage as a result of the manner in which the CPL Diploma course was delivered and course fees were charged.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members in the proceeding and who may be affected by it.

You have been identified as a potential group member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

### **1. What is a group proceeding?**

A group proceeding, also known as a class action, is a proceeding brought by the plaintiffs on their own behalf and on behalf of group members against the defendants, where the plaintiffs and the group members have similar claims against the defendants.

Group members are bound by any judgment in or settlement of the group proceeding unless they choose not to participate by “opting out” of the proceeding. This means that:

- (a) if the group proceeding is successful or settles through mediation or alternative dispute resolution, group members may be eligible for a share of any court awarded damages or settlement monies;
- (b) if the group proceeding is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the group proceeding, group members will not be able to pursue their claims against the defendants in separate legal proceedings unless they have opted out.

### **2. What is the Box Hill Institute Student Pilot group proceeding about?**

The Plaintiffs allege that BHI failed to deliver the CPL Diploma course so as to enable group members to obtain their commercial pilot licence as it had represented. It is also alleged that BHI and Soar failed 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, so as to enable group members to meet the objectives of the CPL Diploma course within the represented time frames. The Plaintiffs claim loss and damage from BHI and Soar for these failures.

The defendants deny that they are liable to group members and defend the group proceeding on various grounds.

Copies of the amended statement of claim filed by the Plaintiffs and the defences filed by the defendants are available for download from the website of the solicitors of the Plaintiffs (see below).

### **3. Are you a group member?**

You are a group member if you enrolled in the CPL Diploma course between 6 December 2015 and 26 March 2020, or are the legal personal representative of the estate of any deceased person who would otherwise have qualified as a group member.

If you are unsure whether or not you are a group member, you should contact Gordon Legal on 03 9603 3000 or email [bhisoar@gordonlegal.com.au](mailto:bhisoar@gordonlegal.com.au) or seek your own legal advice without delay.

#### 4. What does 'opt out' mean?

The Plaintiffs in a group proceeding do not need to seek the consent of group members to commence a group proceeding on their behalf. However, group members can cease to be group members by "opting out" of the group proceeding. If you do not want to continue to be a group member, you can opt out now (see below).

#### 5. Will you be liable for legal costs if you remain a group member?

You will **not become liable for any legal costs** simply by remaining as a group member. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Gordon Legal or other lawyers to do that work for you. A copy of the terms on which Gordon Legal are acting in the group proceeding may be obtained from them (contact details below);
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the group proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs that are incurred by the Plaintiffs in running the group proceeding but which are not able to be recovered from BHI or Soar; and
- (c) group proceedings are often settled out of court. If that occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

#### 6. What should you do?

##### Option 1: Remain a group member

**If you wish to remain a group member there is nothing you need to do at the present time.** The Plaintiffs will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of group members. However, you are invited to contact the Plaintiffs' lawyers, Gordon Legal, at <https://gordonlegal.com.au/services/class-actions/bhisoar-class-action/> and register as a group member so that future notices about the group proceeding can be sent to your preferred address.

Unless you opt out, you will be bound by any settlement or judgment of the group proceeding.

If the group proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the group members, although you may have to satisfy certain conditions before your entitlement arises.

If the group proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against BHI or Soar in other legal proceedings.

If you consider that you have claims against the defendants which are based on your individual circumstances, or otherwise additional to the claims described in the group proceeding, it is important that you seek independent legal advice about whether you should remain a group member **before** the deadline for opting out (see below).

**Option 2: Opt out of the group proceeding**

**If you do not wish to remain a group member**, you must opt out of the group proceeding by completing the “Opt Out Notice” below and returning it to the Supreme Court of Victoria at the address on the form.

If you opt out, you will not be bound by any order, judgment or settlement in the group proceeding and you will be able to bring your own claim against BHI or Soar. However, if you opt out, you will not be entitled to any share in the benefit of a successful outcome in the group proceeding.

If you wish to bring your own claim against BHI or Soar, you should seek your own legal advice about your claim and the applicable time limits that apply to bringing a claim before opting out.

**You must decide what to do BEFORE 18 November 2020.** If you want to opt out, you must send your Opt Out Notice to the Supreme Court so that it arrives before **4:00pm on 18 November 2020**, otherwise it may not be effective.

**7. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the application, the statement of claim filed by the Plaintiffs and the defences filed by the defendants, can be obtained by:

- (a) downloading them from <https://gordonlegal.com.au/services/class-actions/bhi-soar-class-action/>;

- (b) telephoning Gordon Legal on (03) 9603 3000 and requesting that a copy be posted or emailed;
- (c) inspecting them by visiting the Registry of the Supreme Court of Victoria in Melbourne at Level 2, 436 Lonsdale Street, Melbourne; or
- (d) locating them on the Supreme Court website at <https://www.supremecourt.vic.gov.au/court-decisions/case-list/box-hill-institute-student-pilot-class-action>.

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you should contact Gordon Legal on (03) 9603 3000 or email [bhisoar@gordonlegal.com.au](mailto:bhisoar@gordonlegal.com.au), or seek your own legal advice.

You should not delay in making your decision, as the deadline for the opt out is **18 November 2020**.

This notice is published pursuant to Orders made by the Supreme Court on 14 October 2020.

**Rule 18A.04**

**Form 18AB**

**NOTICE OF OPTING OUT BY A GROUP MEMBER**

IN THE SUPREME COURT OF VICTORIA  
01535  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

No. S ECI 2020

BETWEEN:

**NERITA SOMERS** and others according to the  
attached schedule

First Plaintiff

and

**BOX HILL INSTITUTE**

First Defendant

and

**GOBEL AVIATION PTY LTD (trading as Soar  
Advanced Flight Training)**

Second Defendant

To: The Prothonotary, Supreme Court of Victoria Registry,  
Level 2, 436 Lonsdale Street, Melbourne VIC 3000

Gordon Legal  
22/181 William Street  
Melbourne VIC 3000

Lander & Rogers  
Level 12, 600 Bourke Street  
Melbourne VIC 3000

Maddocks  
Collins Square, Tower Two, Level 25  
727 Collins Street  
Melbourne VIC 3008

I, [*print name*], .....  
a group member in the above group proceeding, give notice under section 33J(2) of  
the **Supreme Court Act 1986** that I am opting out of this proceeding.

Date:	
Signature of group member or the group member's solicitor:	
Address of group member:	

**Please return this notice by 18 November 2020 to:**

The Group Proceedings Coordinator

**By mail:**

Supreme Court of Victoria Registry,

Level 2, 436 Lonsdale Street,

Melbourne VIC 3000

**Or by email:**

[cldgroupproceedings@supcourt.vic.gov.au](mailto:cldgroupproceedings@supcourt.vic.gov.au)