

BETWEEN:

DANIEL CHRISTIAN O'BRIEN

Plaintiff

v

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) (and another according to the Schedule attached)

Defendants

ORDER

JUDGE: The Honourable Justice Harris

DATE MADE: 6 February 2025

ORIGINATING PROCESS: Writ filed 21 August 2020

METHOD OBTAINED: Minute of proposed order provided by the plaintiff and copied to the defendants, to which the defendants did not object nor consent.

ATTENDANCE: No appearance, orders made on the papers.

OTHER MATTERS:

A. The amendment to the Notice of Proposed Settlement to disclose an estimate of administration costs was sought in view of the observations of Watson J in *Allen v G8 Education* [2024] VSC 487 at [43]-[51].

B. 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 THAT:

1. The form and content of the notice of proposed settlement to group members (**Notice**), approved and set out in Annexure A to the orders made on 20 December 2024 (**Orders**), be amended as set out in mark up in Annexure A1 to these orders pursuant to ss 33X(4) and 33Y(1) of the *Supreme Court Act 1986* (Vic).
2. Within 2 business days after the date of this order, the first defendant shall in writing authorise Computershare to retrieve, restore (to the extent Computershare is able to do so) and use for the purposes of the distribution of the Notice referred to in paragraph 3(a)(ii) of the orders made on 20 December 2024 and as set out in paragraph 3 below, the ANZ contract number(s) associated with each group member appearing in the Computershare Group Member Contact Data (as that term is defined in paragraph 4 of the orders made on 20 December 2024).



3. Subject to paragraph 2 above, the solicitors for the plaintiff shall instruct Computershare to apply the contract number of the individual group member's car loan to the Notice to group members who are not Registered Group Members to be sent by Computershare pursuant to order 3(a)(ii) of the Orders to the extent that information is available in the Computershare Group Member Contact Data.

DATE AUTHENTICATED: 6 February 2025



THE HONOURABLE JUSTICE HARRIS



Schedule of Parties

BETWEEN:

DANIEL CHRISTIAN O'BRIEN

Plaintiff

AND

**AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED (ACN 005 357 522)**

First Defendant

MACQUARIE BANK LIMITED (ACN 008 583 542)

Second Defendant



Annexure A1



THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA

NOTICE OF PROPOSED SETTLEMENT

ESANDA CAR LOANS (ANZ AND MACQUARIE BANK)

FLEX COMMISSIONS CLASS ACTION

PLEASE READ CAREFULLY

This notice contains important information about the proposed settlement of the Esanda car loans class action against ANZ and Macquarie Bank. It is an important document which contains information that may affect your legal rights.

WHY ARE YOU RECEIVING THIS NOTICE?

1. You have received this notice because you have been identified as a potential group member in the class action.
2. You are a group member if you had a consumer car loan arranged through a car dealer between 1 January 2011 and 31 March 2016 on which a flex commission was paid by ANZ to a car dealer.
3. If you meet these criteria, you may be eligible to receive money if the Court approves the proposed settlement.

WHAT IS THE CLASS ACTION ABOUT?

4. This class action has been brought by Daniel O'Brien (the **Plaintiff**). The Plaintiff has brought this action on his own behalf and on behalf of all group members who entered into similar loan arrangements with ANZ and Macquarie Bank. The Plaintiff is represented by Maurice Blackburn Lawyers.



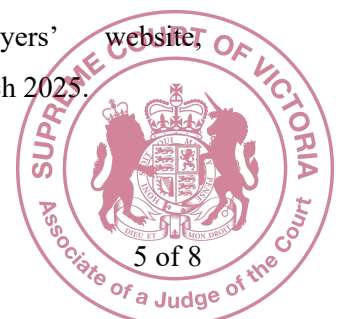
5. The Plaintiff alleges that car dealers acted on ANZ's behalf in providing certain credit services to group members who took out car loans through those dealers. ANZ offered car loans through accredited car dealers through its Esanda business, and Macquarie Bank acquired the Esanda car dealer loan portfolio from ANZ in 2016. The claim alleges that "flex commissions" were paid to those car dealers and that certain features of the flex commission arrangements were unfair and/or not disclosed to consumers who paid higher interest rates on their Esanda car loans than would otherwise have been the case. It is claimed that ANZ and Macquarie Bank are responsible for the flex commission arrangements and non-disclosures, and that they should therefore pay compensation (that is, money) to consumers for the loss they have suffered as a result.
6. ANZ and Macquarie Bank deny the claims made against them in the class action.
7. The parties to the class action have agreed to settle the class action on a no admissions and no liability basis subject to the approval of the Court.

WHAT IS THE PROPOSED SETTLEMENT?

8. The key elements of the proposed settlement are:
 - a. ANZ will pay (without admission of liability) **\$85 million** inclusive of all legal and other costs to settle the claims in the class action (**the Settlement Sum**);
 - b. the Court must approve the proposed settlement for it to take effect; and
 - c. if the Court approves the proposed settlement, it will apply to all group members. This means that group members will not be able to sue the Defendants for issues arising from or related to the claims that were made against the Defendants in the class action.

HOW MUCH MONEY WILL GROUP MEMBERS RECEIVE?

9. At this stage, it is not possible to tell group members how much money they will receive if the Court approves the settlement. This will depend on the number of group members who register; an estimate of each registered group member's individual loss; and the deductions to be made from the Settlement Sum.
10. The Court must approve the methods that will be used to determine whether each registered group member is eligible to receive compensation and, if so, the amount of compensation they will receive. Proposed methods will be set out in a "settlement distribution scheme" which will be available on Maurice Blackburn Lawyers' website, www.mauriceblackburn.com.au/flex from 14 February 2025 until 14 March 2025.



11. It is harder to succeed on legal claims where group members entered their car loans before 21 August 2014. This is because those group members' claims for unfair conduct pursuant to the *National Consumer Credit Protection Act 2009* are statute barred (i.e., out of time). For this reason, group members who entered their car loans before 21 August 2014 are likely to receive significantly less money than those who entered their car loans after this date.

WHAT ARE YOUR OPTIONS?

12. If you previously opted out of the class action, you are not eligible to participate in the proposed settlement and you can disregard this notice. Group members who opted out of the class action completed and returned an opt out notice to the Court by 28 September 2023 or were the subject of a Court order permitting them to opt out.
13. Group members who did not opt out have two options:

OPTION 1: REGISTER YOUR INTEREST TO RECEIVE COMPENSATION

To participate in the proposed settlement, you must register your details with Maurice Blackburn Lawyers **by 14 March 2025** at <https://esandaflexclassaction.mauriceblackburn.com.au>. If the online registration portal is not suitable for your needs, please contact Maurice Blackburn Lawyers on 1800 318 063 or at esandaflexca@mauriceblackburn.com.au. If you have already registered with Maurice Blackburn Lawyers to participate in the class action, there is no need for you to do so again. This is a Court ordered deadline and Maurice Blackburn Lawyers will not have discretion to accept registrations after this time.

OPTION 2: DO NOTHING

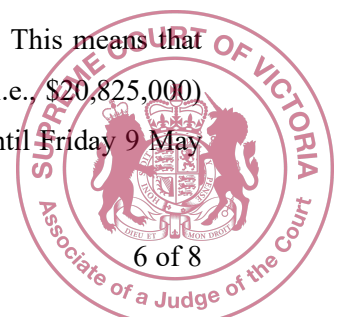
If you have not previously registered and do not register by the deadline of 14 March 2025 you will not be entitled to any money from the settlement, but you will still be bound by it (if it is approved). This means that any claims you may have had against the Defendants covered by the class action will be extinguished.

WHAT DEDUCTIONS WILL BE MADE FROM THE SETTLEMENT SUM?

14. The Court will be asked to approve the following deductions from the Settlement Sum before the remainder is distributed to eligible group members.

LEGAL COSTS

15. The Court has made a "group costs order" of 24.5% in the Proceeding. This means that Maurice Blackburn Lawyers will be paid 24.5% of the Settlement Sum (i.e., \$20,825,000) for legal costs and the legal risks it took in running the class action up until Friday 9 May



2025. The Court may adjust the “group costs order” percentage if it considers an adjustment to be appropriate.

PLAINTIFF’S REIMBURSEMENT PAYMENT

16. The Court will be asked to approve a reimbursement payment of \$30,000 to the Plaintiff to compensate him for his time associated with acting as the Plaintiff in the class action.

SETTLEMENT ADMINISTRATION COSTS

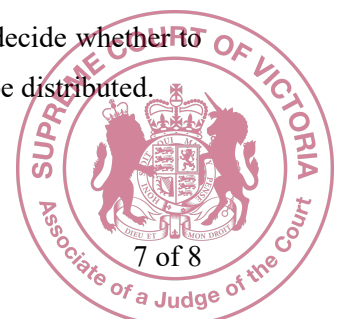
17. The Court will be asked to appoint Maurice Blackburn as the Administrator to implement the distribution process set out in the settlement distribution scheme.
18. There will be up to an estimated \$3.5m in settlement administration costs associated with the distribution of the Settlement Sum to group members. This estimate depends on certain assumptions, including the number of group members who register to participate in the proposed settlement. The costs of the settlement distribution will be offset in part by the interest earned on the Settlement Sum. The Court will be asked to authorise those costs to be paid from the Settlement Sum before the balance is shared among eligible group members. The Court might fix a lower or higher amount if it thinks that a different figure is appropriate.

HOW CAN YOU OBJECT TO THE PROPOSED SETTLEMENT?

19. Group members have the right to object to the proposed settlement and to make submissions as to why the Court should not approve it (or any aspect of it). If you wish to exercise those rights, you must complete the **Notice of Objection** form available at www.mauriceblackburn.com.au/flex and email it to Maurice Blackburn Lawyers at esandaflexca@mauriceblackburn.com.au by 10 March 2025.
20. Any group member who objects may (but is not obliged to) appear before the Court at the hearing of the application to approve the proposed settlement on Friday 9 May 2025 at 10.30 am.
21. Any objections will be considered by the Court in determining whether to approve the proposed settlement.
22. If you want to object to the proposed settlement, but nevertheless participate in it if your objection is overruled and the proposed settlement is approved, you should register as set out above.

WHAT NEXT?

23. The Court will conduct a hearing on Friday 9 May 2025 at 10.30 am to decide whether to approve the proposed settlement, including how the Settlement Sum will be distributed.



WHERE CAN YOU FIND MORE INFORMATION ABOUT THE CLASS ACTION?

24. You can obtain more information and key documents about the class action by visiting:
- a. www.mauriceblackburn.com.au/flex and
 - b. <https://www.supremecourt.vic.gov.au/areas/group-proceedings/flex-commissions-anz-macquarie> .
25. If you have any questions, you can contract Maurice Blackburn Lawyers via:
- a. esandaflexca@mauriceblackburn.com.au; or
 - b. 1800 318 063.
26. Please do not contact the Supreme Court of Victoria. **The Court staff are not permitted to give you legal advice.**
27. If you have any questions and you do not want to speak to Maurice Blackburn Lawyers, you may get independent legal advice.

