IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Not Restricted

S ECI 2020 03924

DAIMIN NATHAN — First Plaintiff

TANIA NATHAN — Second Plaintiff

v

MACQUARIE LEASING PTY LTD
(ACN 002 674 982) — Defendant

JUDGE:	Harris J
WHERE HELD:	Melbourne
DATE OF HEARING:	20 August 2025
DATE OF JUDGMENT:	19 September 2025
CASE MAY BE CITED AS:	Nathan v Macquarie Leasing Pty Ltd
MEDIUM NEUTRAL CITATION:	[2025] VSC 594

PRACTICE AND PROCEDURE – Group Proceeding – Application for approval of settlement of group proceeding – Whether confidentiality orders should be made – Whether settlement distribution scheme is fair and reasonable – Settlement distribution between classes of group members – Deductions from the settlement fund – Whether group costs order should be varied – Settlement approved – *Supreme Court Act 1986* (Vic) Part 4A, ss 33V, 33ZDA.

APPEARANCES:	Counsel	Solicitors
For the Plaintiffs	D Fahey with M Bui	Maurice Blackburn
For the Defendant	S Gerber	Gilbert + Tobin

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HER HONOUR:

1 The plaintiffs, Tania and Daimin Nathan, brought this group proceeding on behalf of group members who entered into car loans with the defendant, **Macquarie** Leasing Pty Ltd, that was arranged through car dealers.[1] The group members claim to have suffered loss because of the effect of undisclosed 'flex commissions' paid by Macquarie to the dealers.[2] In substance, the plaintiffs' claim was that the arrangement permitted the dealers to set an interest rate at their discretion on car loans, which was above a base rate identified by Macquarie. Macquarie would then pay the dealer a commission on the difference between the base rate and the interest rate set by the dealer. This undisclosed commission had the effect of inflating the interest rate paid on the loan.

2 The parties have agreed to settle the proceeding for the sum of $56.5 million (the **settlement sum**) to be distributed to the plaintiffs and group members. The settlement sum includes provision for payment of legal costs and settlement administration costs. The settlement is agreed on the basis that there are no admissions nor acceptance of liability by Macquarie. The parties sought orders from the Court approving the settlement pursuant to s 33V of the ***Supreme Court Act*** *1986* (Vic). After the filing of written submissions and a hearing on 20 August 2025, I made the orders sought, which are set out in Annexure A. These are my reasons for making those orders.

The nature of the claims in the proceeding

3 This proceeding is one of three related group proceedings in respect of 'flex commissions' that have been commenced in this Court against separate defendant parties, all of which have settled and in which settlements have now been approved.[3]

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1 Plaintiffs' **Amended Statement of Claim** filed on 28 August 2024, [1].

2 The group is defined to be persons who entered into such loans between 1 March 2013 and 31 October 2018. Affidavit of Richard Ryan affirmed on 14 July 2025 (**Ryan Affidavit**), [14].

3 ***O'Brien*** *v ANZ* [2025] VSC 389 (Supreme Court proceeding number S ECI 2020 03365) and *Fox v Westpac* (Supreme Court proceeding number S ECI 2020 02946).

4 The group members are persons who, between 1 March 2013 and 31 October 2018, entered into car loans with Macquarie through a car dealer, in respect of which Macquarie paid the car dealers a 'flex commission'.[4]

5 The charging of the 'flex commission' was alleged by the plaintiffs to involve the following conduct, which was not disclosed by Macquarie or the car dealer, to the group members:

(a) Macquarie set a '**base rate**' of interest to be charged on car loans for the specific dealers, being the minimum rate of interest Macquarie would accept on car loans entered into through that dealer;

(b) Macquarie authorised the dealer, at their discretion, to set the interest rate to be payable by the group members, on a case by case basis, under those loans (**Contract Rate**); and

(c) Macquarie paid the dealer a proportion of the difference between the base rate and the Contract Rate as set by the dealer in respect of those loans (the **flex commission**).[5]

6 A consequence of this arrangement was that the higher the Contract Rate that was set by the dealers at their discretion, the greater the flex commission paid to them and the greater the return to Macquarie.

7 The plaintiffs' and group members' claims in this proceeding were that:

(a) the undisclosed conduct of the car dealers in respect of the flex commission was unfair for the purposes of s 180A of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**), and for which Macquarie is liable by operation of s 78 of the NCCPA;[6]

4 Ryan Affidavit, [14].
5 Amended Statement of Claim, [8].
6 Amended Statement of Claim, [4]-[32], [52]-[80].

(b) Macquarie's conduct in failing to disclose the matters in respect of the flex commission was misleading or deceptive in contravention of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), in circumstances where the plaintiffs or any person in their position would have had a reasonable expectation that Macquarie would disclose that the interest rate and loan term had been set by the dealer at their discretion;[7] and

(c) the car loans were entered into in 'sheer ignorance of something relevant to the transaction at hand', being the flex commissions, which were operative causes of the entry into the loan contracts. This was said to constitute a mistake at law and would entitle the plaintiffs and group members to rescind their loan contracts or would render the contract void or voidable.[8]

8 The orders of the Court approving the settlement were sought pursuant to s 33V of the *Supreme Court Act*, which provides:

> **33V Settlement and discontinuance**
>
> (1) A group proceeding may not be settled or discontinued without the approval of the Court.
>
> (2) If the Court gives such approval, it may make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement or paid into court.

9 The purpose of s 33V is to ensure that the Court can review whether a settlement is in the interests of all group members who will be bound by the settlement, and, is fair and reasonable having regard to the claims of those group members.[9]

10 The affidavits in support of the application included the following key documents, some of which were provided on a confidential basis:

(a) information as to the proposed Settlement Distribution Scheme, published on the plaintiffs' solicitor's website pursuant to orders made on 12 May 2025;

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7 Amended Statement of Claim, [33]-[39], [81]-[87].
8 Amended Statement of Claim, [40]-[48A], [88]-[95B].
9 *Matthews v AusNet Electricity Services Pty Ltd* [2014] VSC 663, [34] (Osborn JA); *Iddles v Fonterra Aust Pty Ltd* [2023] VSC 566, [22]-[27] (Delany J).

(b) deed of settlement and release between the plaintiffs, defendant and the third party litigation funder;

(c) an expert report of costs consultant, Ms Kerrie-Ann Rosati of DGT Costs Lawyers, as to the estimate of the reasonable costs that are likely to be incurred during the settlement administration process (**Costs Report**);[10]

(d) a report by Professor Vince Morabito of February 2025 containing empirical research regarding group costs order percentage rates, and plaintiff compensation amounts;[11] and

(e) an opinion prepared by counsel addressing matters relevant to the appropriateness of accepting the settlement (**Counsel Opinion**).[12]

11 No group members had objected to the proposed settlement, and Macquarie supported the orders giving effect to the proposed settlement.

12 The primary issues in determining whether to approve the settlement were:

(a) whether the settlement sum was fair and reasonable, having regard to the risks in establishing liability and entitlement to relief, both in respect to the plaintiffs themselves and in respect to all group members, as known at the time of settlement;

(b) whether the settlement sum distribution was fair and reasonable as between the parties, and as between group members; and

(c) whether the group costs order, which provides for legal costs of 24.5% of the settlement sum to be paid to the solicitors for the plaintiffs, remained

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10 Exhibited as a confidential exhibit (Exhibit RER-13) to Ryan Affidavit). The Costs Report was filed confidentially given the inclusion of confidential and privileged costs related information.

11 'Group Costs Orders, Funding Commissions, Volume of Class Action Litigation, Reimbursement Payments and Biggest Settlements', 5 February 2025 (**Morabito Report**). An extract of the Morabito Report was in Exhibit RER-12 to the Ryan Affidavit.

12 Also exhibited as a confidential exhibit (Exhibit RER-13) to the Ryan Affidavit, given the privileged assessment of the plaintiffs' and group members' claims, and the merits and risks in establishing those claims.

appropriate and whether other deductions from the settlement sum were appropriate.

Relevant procedural background

13 For the purposes of assessing the fairness and reasonableness of the settlement, it is necessary to refer to certain steps taken and orders made in the course of the proceeding.

14 This group proceeding was commenced by writ in October 2020. It proceeded to trial and was heard before John Dixon J for six weeks from October 2024. The trial of this proceeding was heard jointly with the related proceeding, *Fox v Westpac Banking Corporation*.[13]

Group costs order

15 The effect of a group costs order is that the liability of the plaintiffs and group members to pay their solicitor's legal costs is calculated as a percentage of any award or settlement recovered in the proceeding. In September 2021, in the related proceedings, Nichols J declined to make a group costs order at the rate of 25%. Her Honour determined that a sufficient basis for the exercise of the Court's discretion under s 33ZDA of the *Supreme Court Act* was not established.[14]

16 In August 2022, the plaintiffs applied for a group costs order at the rate of 24.5%, pursuant to s 33ZDA of the *Supreme Court Act*.[15]

17 The plaintiffs' application and those in the related proceedings were heard together by Nichols J in February 2023 and was unopposed by Macquarie. In March 2023, her Honour granted the group costs order at the rate of 24.5%, and subsequently made orders on 9 March 2023 reflecting that rate.[16]

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13 Supreme Court proceeding number S ECI 2020 02946.
14 See *Fox v Westpac; Crawford v ANZ* (2021) 69 VR 487, 491 [8].
15 Ryan Affidavit, [30].
16 Orders of the Honourable Justice Nichols made on 9 March 2023.

Opt out and registration

18 On 20 July 2023, Justice Nichols made 'soft' class closure orders in this proceeding permitting group members to opt out of, or register for, the proceeding by 28 September 2023. Those orders were varied by orders her Honour made on 1 August 2023 extending the date by which group members could opt out or register in the proceeding to 3 October 2023.[17] The 'soft' class closure orders were made to enhance the prospects of settlement at mediation by providing the parties and the mediator with critical information of the participating class and therefore total claim size.[18]

Mediation

19 In accordance with orders of Nichols J, the parties attended mediation on 14 December 2023.[19] However, the proceeding did not settle.[20]

20 Two further unsuccessful mediations occurred, one on 3 October 2024, and another on 7 November 2024 (after the tenth day of trial).[21]

Trial and settlement

21 The trial of the proceeding occurred from 14 October 2024 for a total of 16 hearing days. Judgment was reserved.[22]

22 On 26 February 2025, after the trial and whilst judgment was reserved, the parties reached an in-principle settlement agreement on the basis that Macquarie made no admissions or acceptance of liability and that the settlement be conditional upon the execution of a settlement deed and Court approval.[23]

23 On 10 April 2025, the plaintiffs, on behalf of the group members, entered into a deed of settlement and release with Macquarie, Maurice Blackburn and the third party

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17 Ryan Affidavit, [36].
18 *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [38].
19 Orders of the Honourable Justice Nichols made on 20 July 2023.
20 Ryan Affidavit, [45].
21 Ryan Affidavit, [46]-[47].
22 Ryan Affidavit, [48].
23 Ryan Affidavit, [49].

litigation funder, **Vannin** Capital Investments (Australia) Pty Limited, to settle the proceeding for payment by Macquarie of the settlement sum, $56.5 million.[24]

24 On 12 May 2025, I made orders approving the terms of a notice of proposed settlement to be distributed to registered and unregistered group members and to be posted on Maurice Blackburn's website, the Court's website and advertised in newspapers. The orders also required the Settlement Distribution Scheme to be displayed on Maurice Blackburn's website. Those orders further provided for registration of any group members who wished to participate in the settlement who were not already registered and a process by which group members may object to the proposed settlement.

25 The plaintiffs' affidavit evidence demonstrated that the 12 May 2025 orders had been complied with,[25] and I am satisfied that the procedural fairness requirements associated with the settlement application have been satisfied.

Reinstatements and late registrations

26 After the soft closure orders made by Nichols J, orders were made by the Court on several occasions[26] reinstating as group members, persons who had opted out of the proceeding by mistake and who had wished to be reinstated as group members.

27 Following the closure of the registration period, being 19 June 2025, a large number of people contacted Maurice Blackburn requesting late registration. Maurice Blackburn identified from those people a further 30 potential group members who Maurice Blackburn considered should be permitted to register late to participate in the settlement, on the basis that there were circumstances that prohibited them from registering before the close of the registration period.[27] A further 36 potential group

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24 The defendant, the plaintiffs on behalf of group members, and Maurice Blackburn executed a deed of variation of the settlement agreement on 14, 16 and 19 August 2025 respectively. At the time of the hearing of the settlement approval application, the variation deed remained to be executed by Vannin, for reasons identified at the hearing, but was expected to be executed imminently. See Orders of Harris J made on 21 August 2025, [2(a)(i)]; **Transcript** of Proceedings, *Nathan v Macquarie Leasing Pty Ltd* (Supreme Court of Victoria, Proceeding number S ECI 2020 03924, Harris J, 20 August 2025) T4.17-5.24.

25 Ryan Affidavit, [52]-[54].

26 Orders of Nichols J made on 27 and 28 September, 31 October and 7 December 2023; Orders of Delany J made on 3 October 2023; Orders of Dixon J made on 21 August 2024 and 4 December 2024.

27 Ryan Affidavit, [57]; Supplementary affidavit of Richard Ryan affirmed on 18 August 2025, [8]-[15] (**Supplementary Ryan Affidavit**).

members who had opted out of the proceeding but who had also registered, contacted Maurice Blackburn, stating that they had opted out of the proceeding by mistake and wished to be reinstated.[28]

28 The plaintiffs proposed that the Court should make orders for the late registration or reinstatement of the respective potential group members because they had given reasons as to the circumstances which prevented them from registering within the specified time, or that they had opted out by mistake, or were unaware they had opted out.[29] The evidence was that the registration or reinstatement of these further limited group members would not make a material difference to the distributions of settlement proceeds to eligible group members.[30]

29 It was submitted that registration and reinstatement of those group members in this proceeding would be consistent with the Court's approach to reinstatement in the related proceeding, ***O'Brien*** *v ANZ*.[31]

30 I accepted these submissions. It is important that group members comply with orders of the Court as to registration in group proceedings. Registration requirements are imposed by Court order in appropriate circumstances for reasons including the facilitation of settlement. Registration of group members who seek to participate in any settlement facilitates the estimation of potential returns to group members and thus appropriate settlement figures. Group members seeking to participate in a settlement without having registered will, if they are reinstated, impact on the individual entitlements of group members. It cannot, therefore, be assumed that reinstatement orders will be made in every case, as it may not be fair and reasonable and in the interests of justice to permit participation by persons who have not complied with orders requiring registration.

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28 Ryan Affidavit, [58].
29 Ryan Affidavit, [60].
30 Supplementary Ryan Affidavit, [15]-[16], Exhibit RER-14.
31 *O'Brien*, [34]-[35]; Ryan Affidavit, [60]; Transcript 20/08/25, T12.16-T13.17.

31 In this case, I accepted that it was appropriate to make orders permitting the registration of the 30 persons who had not registered, and the reinstatement of those 36 group members who had opted out, referred to at [27] above, because:

(a) the evidence is that each person has provided to Maurice Blackburn:

(i) a reason why particular circumstances such as illness, family or workplace issues, or technical problems affected their ability to be notified of the registration requirement, or to register prior to the deadline; or

(ii) an explanation that those persons who opted out did so by mistake, or were unaware that they had done so;[32] and

(b) the registration of this limited number of people will not make a material difference to the distributions received by eligible group members.

Confidentiality orders

32 The plaintiffs sought confidentiality orders in respect of certain parts of the material filed in support of the settlement approval application to prohibit the publication or disclosure of that material other than to the Court, the plaintiffs' counsel and solicitors and representatives of the third party funder, Vannin, involved in the proceeding. The orders sought were in the same terms as the confidentiality orders made in *O'Brien*.[33]

33 My observations in *O'Brien* are again relevant:

> Confidentiality orders are frequently made in settlement approval applications given the nature of the material relied on, including information subject to legal professional privilege. It is always, however, necessary to consider the basis for the making of confidentiality orders and the scope of the material over which they are sought, given the importance of the principles of open justice.[34]

32 Ryan Affidavit, [57]-[58].
33 **Plaintiffs' Outline of Submissions** filed 21 August 2025, [14].
34 *O'Brien*, [37].

34 The principles relating to confidentiality applications in the context of group proceedings were set out by Matthews J in *Andrianakis v Uber Technologies Inc (Settlement Approval)*:

> Confidentiality orders are not granted as of right. They will not be made automatically or by default. Open justice is an important principle and it is to be given effect to, unless it is necessary for the administration of justice for certain restrictions to be imposed.
>
> In instances such as this, where the Court's approval is being sought and where the Court relies on the frank and comprehensive disclosure of all relevant information, including material which is confidential and/or protected by legal professional privilege, the interests of justice are served by the Court making confidentiality orders. Enabling the Court to fulfil its task is the only purpose for which the information is being provided to the Court. If the risk of disclosure of such information served to discourage the information being provided to the Court, then that is clearly contrary to the administration of justice. This is an important context for the consideration of confidentiality orders.[35]

35 The material over which the plaintiffs sought confidentiality orders on the basis that it was either legally privileged or commercially sensitive and therefore had the requisite confidential character, was identified in a schedule to the proposed orders. It related to:

(a) legally privileged information, including the plaintiffs' counsel's opinion on the proposed settlement and other risk and prospects assessments of the case; and

(b) evidence concerning risk assessments, claims value estimates and methodologies and litigation budgets and expenditure.[36]

36 The reasons for making confidentiality orders in respect of such material are similar to those expressed in *O'Brien*, where disclosure of the evidence would cause real and substantial prejudice to the plaintiffs and group members if the settlement was not approved or did not proceed, and the matter proceeded to judgment. In respect of legal professional privilege, '[t]he privilege exists to serve the public interest in the administration of justice by encouraging full and frank disclosure by clients to their

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35 [2024] VSC 733, [42]-[43].

36 Plaintiffs' Outline of Submissions, [16].

lawyers'.[37] Here, as was the case in *O'Brien*, the advice of legal counsel to the plaintiffs as to the prospects of their success on their claim and the risks and merits of causes of action is quintessentially privileged, and therefore confidential between the plaintiffs and their counsel. Disclosure of such legal advice to the Court for the purpose of enabling the Court to perform its function under s 33V of the *Supreme Court Act* to determine the fairness and reasonableness of the proposed settlement, does not diminish the interests of the plaintiffs in confidentiality over that matter. With the exception of disclosure to the Court, it is appropriate that the confidentiality orders be made to preserve confidentiality of that material.

37 In reviewing the material subject to the proposed confidentiality orders, I considered that certain parts of the submissions and of Mr Ryan's affidavit did not justify confidentiality orders.[38] The nature of the information was not such that, in my view, disclosure would prejudice the plaintiffs or group members in the application, nor in their conduct of the proceeding if it did not settle. Counsel for the plaintiffs and the defendant both accepted that the relevant content of the plaintiffs' written submissions, which referred to but did not disclose confidential content of previously filed affidavits, did not need to be subject to confidentiality orders as the statement itself would not constitute a waiver of the confidentiality of the material.[39]

38 In respect of the relevant paragraph of Mr Ryan's affidavit, I accepted that details of the legal adviser's assessments of claim strengths and weaknesses should remain confidential. However, a reference made in the affidavit to the fact that conclusions were reached by Mr Ryan and by counsel that the proceeding had a considerable degree of risk, particularly in respect of the mistake claims, was material to my decision in this case, and was to a significant degree implicit in the loss allocation formula, which is public. Disclosure of that information was not prejudicial to the parties if disclosed.[40]

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37 *Esso Australia Resources Ltd v Federal Commissioner for Taxation* (1999) 201 CLR 49, 64 (Gleeson CJ, Gaudron and Gummow JJ).

38 Plaintiffs' Written Submissions dated 14 July 2025, [65]; , and Ryan Affidavit, [156].

39 Transcript 20/08/25, T8.7-9.4.

40 Transcript 20/08/25, T9.14-10.9.

39 It was, in my view, appropriate to make the confidentiality orders sought in respect of the remaining information as it would cause prejudice to the plaintiffs and group members if disclosed.

Applicable principles

40 The considerations relevant to the exercise of the Court's power to approve a settlement pursuant to s 33V are well established. The central questions are whether the proposed settlement is fair and reasonable, having regard to the claims made on behalf of the relevant group members, and whether the settlement has been undertaken in the interests of the group members as a whole.[41] The question of fairness and reasonableness includes consideration as to the fairness of the claims between the parties, and the fairness and reasonableness of the settlement distribution as between the group members.[42]

41 Ultimately, the outcome must be assessed as being within a range of what would be fair and reasonable outcomes, there being no single unique outcome that would constitute a 'correct' settlement or the only fair and appropriate settlement.[43] Factors relevant to approval of a settlement, as drawn from the authorities, have been listed in the Court's Practice Note for the *Conduct of Group Proceedings*:

(a) the complexity and likely duration of the litigation;

(b) the reaction of the group to the settlement;

(c) the stage of the proceeding;

(d) the likelihood of establishing liability;

(e) the likelihood of establishing loss or damage;

(f) the risks of maintaining a group proceeding;

(g) the ability of the defendant(s) to withstand a greater judgment;

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41 ***Botsman*** *v Bolitho* (2018) 57 VR 68, 111 [201]-[202] (Tate, Whelan and Niall JJA); ***Camilleri*** *v The Trust Company (Nominees) Ltd* [2015] FCA 1468, [32]-[44] (Moshinsky J).

42 ***Fuller v Allianz*** *Australia Insurance Ltd* ***(Settlement Approval)*** [2025] VSC 160, [71], [73], [95] (Matthews J); ***Allen v G8 Education*** *Ltd (No 4)* [2024] VSC 487 [25(a)] (Watson J).

43 *Botsman*, 112 [207] (Tate, Whelan and Niall JJA); *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2)* (2007) 236 ALR 322, 339 [50] (Jessup J); *Fuller v Allianz (Settlement Approval)*, [70] (Matthews J).

(h) the range of reasonableness of the settlement in light of the best recovery;

(i) the range of reasonableness of the settlement in light of all the attendant risks of litigation; and

(j) the terms of any advice received from counsel and/or from any independent expert in relation to the issues which arise in the proceeding.[44]

42 These factors were addressed in the plaintiffs' affidavit material and in particular by the confidential Counsel Opinion.

The proposed settlement

43 The settlement was reached after the matter had run to trial and judgment was reserved.

44 The central terms of the agreed settlement and the subject of the settlement deed executed by the parties were as follows:

(a) Macquarie would pay a sum in full settlement of the proceeding of $56.5 million inclusive of costs into a settlement holding fund within 30 days of the settlement deed;

(b) Macquarie would make no admissions, including as to liability;

(c) Maurice Blackburn were to receive 24.5% of the settlement sum pursuant to the group costs order made with respect to the proceeding;

(d) the plaintiffs were to receive $40,000 as compensation for the time and responsibility of being representative plaintiffs in the proceeding; and

(e) Maurice Blackburn would be appointed settlement administrator under the Settlement Distribution Scheme and indemnified from the settlement administration fund in respect of taxes or liabilities reasonable incurred.[45]

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44 Supreme Court of Victoria, *Practice Note GEN 10*: *Conduct of Group Proceedings (Class Actions) (Second Revision)*, 13 October 2020, [16.6]; See *Fuller v Allianz (Settlement Approval)*, [67].

45 Ryan Affidavit, [49], [93], Confidential Exhibit RER-13.

45 The plaintiffs' evidence was that the amount of the proposed settlement was informed from the plaintiffs' perspective on modelling of the estimated value of the plaintiffs' and group members' claims in the proceeding, conducted by Maurice Blackburn with the assistance of a forensic accountant, Martin Cairns.[46]

46 With respect to the plaintiffs' claim, the basis on which loss was identified was described in the plaintiffs' evidence as follows:

> [The plaintiffs] were unaware that their car dealer, Booran Motors, had set the interest rate on their car loan at 12.75%; that the defendant accordingly owed and would pay Booran Motors a flex commission in the amount of $2,863 (excluding GST); and that the result of the dealer's conduct was that the plaintiffs' would, and did, pay $3,396.60 more over the life of the loan than they would have paid had the interest rate been the base rate set by the defendant (see Mr Cairns' report at [48]). Mr Cairns then calculated pre-judgment interest on that loss to 31 December 2023, subsequently updated to 31 December 2024.
>
> [T]he quantum of the benefits to the dealer and the defendant from this undisclosed conduct was measured by the amount that the contract rate of the plaintiffs' car loan exceeded the base rate which the defendant had set for Booran Motors; and
>
> [T]he unfairness was to be redressed by an order compensating the plaintiffs for the difference between the amount of interest they in fact paid under their loan contract; and what they would have paid had the rate of interest on their loan contract been the base rate.[47]

47 The plaintiffs' legal advisors used that reasoning to estimate the losses of group members. As at the time the proposed settlement was agreed in principle, the defendant estimated, based on data available to it, that there were approximately 169,978 unique car loan contracts held by group members in the class, and 193,900 group members.[48] Pursuant to orders of the Court, Macquarie had undertaken a data matching process of matching registered group members with information recorded in its lending systems.[49] It was then required to provide (and did provide) claim data about the loan contracts for all registrants it identified as group members, including the:

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46 Ryan Affidavit, [61]-[62]. The report of Martin Cairns, forensic accountant, dated 27 June 2023 (**Cairns Report**), identified a loss methodology which was used to assess group member claim values.

47 Ryan Affidavit, [63].

48 Ryan Affidavit, [65].

49 Ryan Affidavit, [67]; Orders of Associate Justice Efthim dated 24 October 2023, 8 December 2023 and 5 September 2024.

(a) contract interest rate for each car loan;

(b) base rate applicable to each car loan;

(c) amount financed under each car loan; and

(d) the term of each car loan.[50]

48 Based on the information provided by Macquarie, the plaintiffs identified the following data (as at 6 September 2024, being the date the plaintiffs last provided Macquarie with registrant data for matching):[51]

Registration and Group Member Figures at time of Loss Model for Settlement		
1.	Number of group members in the proceeding	193,900
2.	Number of unique car loans in the proceeding	169,978
3.	Number of registrants in the proceeding	79,509
4.	Number of matched registered group members	64,465
5.	Number of unmatched registrants	15,044
6.	Number of unique matched car loans	62,917
7.	Number of unique matched car loans entered prior to 14 October 2014	7,495
8.	Number of unique matched car loans entered on or after 14 October 2014	55,422

49 Maurice Blackburn prepared a loss model for settlement based on this data, which took into account the range between:

(a) losses on the 62,917 loan contracts which had been matched to registered group members (noting that some car contracts had been entered into by more than one person jointly, and alternatively that some group members had more than one contract); and

(b) the estimated losses on *all* loan contracts entered into over the relevant period.[52]

50 Ryan Affidavit, [68].
51 Ryan Affidavit, [69].
52 Ryan Affidavit, [79].

50 The model took into account the potential for additional people to seek to register after the distribution of a settlement notice. In fact, an additional 24,377 potential group members did register to participate in the settlement after distribution of the settlement notice in May 2025.[53]

51 Following a further matching process, there was by the time of the settlement approval application, 80,197 loan contracts matched to registered group members in the proceeding, which was 47.18% of the total number of eligible loan contracts of 169,978.[54] Of that number of matched contracts:

(a) 9,353 (or 12%) had been entered into prior to 14 October 2014, and gave rise to claims in mistake only; and

(b) 70,844 (or 88%) had been entered into on or after 14 October 2014, and gave rise to statutory claims as well as mistake claims.[55]

52 The registration and claim data after distribution of the settlement notice was as follows:

Registration and Group Member Figures *after* settlement notice distribution		
1.	Number of group members in the proceeding	193,900
2.	Number of unique car loans in the proceeding	169,978
3.	Number of registrants in the proceeding	103,999
4.	Number of matched registered group members	86,124
5.	Number of unmatched registrants	17,875
6.	Number of unique matched car loans	80,197
7.	Number of unique matched car loans entered prior to 14 October 2014	9,353
8.	Number of unique matched car loans entered on or after 14 October 2014	70,844

53 Ryan Affidavit, [73]. 113 potential group members also registered after 6 September 2024 before the settlement.

54 Ryan Affidavit, [78]. I am satisfied, having regard also to information made available in the Confidential Exhibits, that the solicitors for the plaintiffs' estimation of a hypothetical 8% increase in registrations following settlement was appropriately arrived at and involved an acceptable degree of accuracy in comparison to the final outcome, see Ryan Affidavit, [89].

55 Ryan Affidavit, [79].

53 The split of 'mistake claims' and 'statutory claims' was different to the *O'Brien* proceeding where there were significantly more mistake claims than statutory claims,[56] reflecting the fact that the time period for contracts in this proceeding was later in time than in *O'Brien*.

54 At the time of settlement, Maurice Blackburn calculated the aggregate loss of all registered group members based on the total of matched loan contracts, and the approach of taking the total interest paid, less the total interest which would have been paid at the base rate. Pre-judgment interest was then added to the principal loss.[57] This estimation process informed the amount for which the parties agreed to settle, taking into account that the settlement would involve the release of the plaintiffs and the common claims of the group members against Macquarie in the proceeding.

Loss Assessment Formula

55 The loss estimate for registered group members did not include any adjustment for group members who had claims only in mistake and who were, on Macquarie's case, statute barred from bringing the statutory claims. This was taken into account in the distribution between group members of the total settlement amount. In summary, the entitlements of group members with mistake claims were calculated at a rate significantly less than those of group members with statutory claims, essentially at a rate of 10% of the interest paid.[58] This was to reflect the comparative risk associated with establishing the 'mistake' claims and the statutory claims.[59]

56 The Loss Assessment Formula adopted for the proposed Settlement Distribution Scheme was based on the model applied to the plaintiffs' losses, but took into account potential deficiencies in the claim data available for all group member claims.

57 The Settlement Distribution Scheme described the Loss Assessment Formula relevantly as follows:[60]

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56 There were approximately 70% mistake claims and 30% statutory claims: *ANZ v O'Brien*, [53], [59].
57 Ryan Affidavit, [80]-[82].
58 Ryan Affidavit, [109].
59 Ryan Affidavit,, [111]-[112].
60 Ryan Affidavit, [110].

SCHEDULE B – LOSS ASSESSMENT FORMULA

An Eligible Group Member who entered a car loan contract:

(a) before 14 October 2014 will have their Assessed Losses associated with that contract calculated using methods 1 or 2 below;

(b) on or after 14 October 2014 will have their Assessed Losses associated with that contract calculated using methods 3 or 4 below.

Method 1: Where the Group Member Data is sufficient to calculate the Eligible Group Member's Assessed Losses, their Assessed Losses will be calculated using the following formula:

Loss = ((Contract Rate - Base Rate) + Pre-judgment Interest) × 10%

Method 2: If no Group Member Data has been provided to the Scheme Administrator in respect of the Eligible Group Member or it is insufficient to calculate the Eligible Group Member's Assessed Losses, their Assessed Losses will equal the average Assessed Losses of all Eligible Group Members who entered their loans before 14 October 2014.

Method 3: Where the Group Member Data is sufficient to calculate the Eligible Group Member's Assessed Losses, their Assessed Losses will be calculated using the following formula:

Loss = (Contract Rate - Base Rate) + Pre-judgment Interest

Method 4: If no Group Member Data has been provided to the Scheme Administrator in respect of the Eligible Group Member or it is insufficient to calculate the Eligible Group Member's Assessed Losses, their Assessed Losses will equal the average Assessed Losses of all Eligible Group Members who entered their loans on or after 14 October 2014.

Term	**Meaning**
Contract Rate	The total amount of interest paid by the Eligible Group Member under their car loan contract as set out in the Group Member Data.
Base Rate	The total amount of interest that the Eligible Group Member would have paid under their car loan contract if: (a) the applicable rate of interest under their car loan contract was the base rate as set out in the Group Member Data; and (b) all other terms of the loan contract were the same.
Pre-judgment Interest	The simple interest which has accrued on the Eligible Group Member's loss (i.e., Contract Rate - Base Rate)

	since the commencement of the proceeding, being 14 October 2020, to the date of the Approval Orders.[61]

Was the settlement fair and reasonable?

Fairness *inter partes*

58 Macquarie, who was represented by experienced solicitors and counsel, supported the settlement.

59 In this case, despite a very high degree of engagement between group members and Maurice Blackburn after the settlement was advertised, involving thousands of emails and phone calls,[62] there were no objections raised to the settlement. This was not a determinative consideration, but was, in my view, and in the circumstances of this case, a relevant consideration. The absence of any objections was indicative of support for the settlement to proceed, which in turn indicated that the settlement was fair and reasonable. It remained necessary for the Court, with all the information available to it, to consider the settlement and determine whether it was in fact fair and reasonable having regard to all relevant matters.[63]

60 I considered that it was both reasonable and appropriate to enter the compromise. The fact that the proceeding ran to trial and was vigorously defended meant that the plaintiffs' case was fully tested, as was the position of Macquarie. The parties were in a very strong position to assess the strengths and weaknesses of their case, and to determine an appropriate settlement.

61 I accepted that the settlement sum was a fair and reasonable amount at which to resolve the plaintiffs' and the group members' claims. The evidence of the careful methodology employed by the plaintiffs, informed by data made available by the defendant, demonstrated a rational and reasonable way of assessing the total loss. The evidence, including the confidential Counsel Opinion, demonstrated the range of

61 Ryan Affidavit, [110].
62 Ryan Affidavit, [53]-[54].
63 See ***Anderson-Vaughan v AAI Limited*** *(Settlement Approval)* [2025] VSC 469 [43] (Matthews J).

other factors that the plaintiffs' solicitors considered in arriving at the settlement sum. The settlement will have the effect of releasing all group members' claims against Macquarie, but this is the orthodox effect of orders made in a group proceeding,[64] and there have been full opportunities for group members who wish to participate in settlement to do so. I was satisfied that the settlement sum was, in all the circumstances, comfortably within the range of a fair and reasonable settlement for group members in the proceeding.

Fairness *inter se*

62 The question for the Court in considering the fairness of the proposed settlement between group members, is whether the proposed settlement distribution scheme is 'framed to achieve a broadly fair division of the proceeds, treating like group members alike',[65] and has a rational and fair explanation for any differential treatment amongst group members as a whole.

63 As was the case in *O'Brien*, in this proceeding, there were two broad classes represented amongst the group members whose proposed entitlements under the proposed distribution were materially different. Those group members who entered into their car loan contracts on or after 14 October 2014 had both statutory claims under the *NCCA* and the *ASIC Act*, and common law claims in mistake. Group members who entered into their car loan before that date had claims in mistake only. This was treated as a distinguishing factor in the Settlement Distribution Scheme.

64 It is useful to reiterate the observations of Moshinsky J in *Camilleri v Trust Company (Nominees) Ltd*:

> In this case, as in many representative proceedings, the manner in which the settlement sum is to be distributed requires assumptions to be adopted and judgment calls to be made. There are different classes of claimants within the body of group members here, and it is necessary to arrive at some model that fairly and reasonably divides the settlement sum between those classes, recognising the differences in their respective claims. There is no single approach which alone can qualify as reasonable for sharing the fixed pool of

64 *Fuller (Settlement Approval)*, [58] (Matthews J).
65 *Camilleri*, [5(e)].

> funds among the claimants. Inevitably, adjustments in a given approach will be favourable for certain group members at the expense of others.
>
> The question, therefore, can only be whether the model is within the bounds of fairness and reasonableness in its attempts to balance what are, unavoidably, conflicts between the interests of the different claimants.[66]

65 The differential treatment between the two categories of group members, those with mistake claims only and those with statutory claims also was, in my view, a rational and fair response to the risks applying to each group of claims. In addition to the evident problems created by the pleading of the statutory time bars to the claims of those group members who entered into their loan contracts before 14 October 2014, the confidential Counsel Opinion identified other matters taken into account in assessing the mistake claims as entailing significant barriers to success, or in the language of the plaintiffs' solicitor Mr Ryan, 'significantly increased risks in proving those claims'.[67]

66 Although the Loss Assessment Formula would result in significantly lower amounts payable to group members with mistake claims only, I considered that it was fair as between group members because of the significant difference in the risks proving the mistake claims as opposed to the statutory claims.

67 I also considered the provision in the Loss Assessment Formula for group members who have some, but insufficient or incomplete loan data[68] to apply the primary formula to receive the average assessed losses of all eligible group members with the same kind of claim (that is, statutory or mistake claims) to be fair. The insufficiency of data provided by Macquarie for some group members is a matter over which those group members have no control.

Other matters relevant to the distribution of the settlement sum

68 As was the case in *O'Brien*, the Settlement Distribution Scheme provides for a minimum distribution amount of $20. Group member entitlements calculated as being

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66 *Camilleri,* [40]-[41].

67 Ryan Affidavit, [112].

68 There will be a process by which Maurice Blackburn will seek to match registered group members who have not been matched already to Macquarie's loan data. Persons who are not matched using these processes will be ineligible to participate in the Settlement. See Ryan Affidavit, [123].

under that threshold will not be distributed and will be kept in the settlement pool for distribution to other group members. The rationale identified in the evidence for having a minimum threshold for distributions was that the administration costs make it disproportionate and uneconomic to distribute amounts less than $20.[69] I accepted that this was a reasonable and fair response to the potential for disproportionate expenditure on administration costs, and a solution which prioritised return to group members with the most substantial losses.

69 The Amended Settlement Distribution Scheme also provides for the return of any residual settlement sum remaining, following costs deductions and payments of distributions to group members, to Macquarie, if it is uneconomical to be further distributed to group members.[70] If it would be economical to be further distributed to group members, that will be done on a pro rata basis.[71] I was of the view (as expressed with respect to the same proposal in *O'Brien*),[72] that this was a sensible and reasonable solution for a potential residual amount that cannot be accurately predicted in advance.

70 Both the minimum threshold amount for distribution and the proposal for the disposition of any residual settlement were appropriate.

Deductions from the Settlement Sum

Group costs order

71 The effect of the group costs order made by Nichols J in March 2023 pursuant to subsection 33ZDA(1) of the *Supreme Court Act* was that Maurice Blackburn could recover costs at a rate of 24.5% of the settlement, subject to further order. It was necessary to determine whether there is any reason why that order should be varied.

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69 Ryan Affidavit, [77], [96], [123]-[124], [132]-[133]; Plaintiffs' Outline of Submissions [45]-[46].

70 Plaintiffs' Outline of Submissions (n 35) [47], citing cl 11.4; see Ryan Affidavit, Exhibit RER-12, 87, **Amended Settlement Distribution Scheme** dated 10 July 2025.

71 Amended Settlement Distribution Scheme, clauses 11.4 and 11.5.

72 *O'Brien*, [81].

72 The effect of the group costs order is that an order would be made for the deduction of $13,842,500 for legal costs from the settlement sum, being 24.5% of $56.5 million.

Considerations on whether the group costs order should be varied

73 Subsection 33ZDA(3) provides:

> The Court, by order during the course of the proceeding, may amend a group costs order, including, but not limited to, amendment of any percentage ordered under subsection (1)(a).

74 There have been several recent occasions on which the Court, in a settlement approval application, has been required to consider whether there should be any variation to a group costs order. Justice Watson in *Allen v G8 Education Ltd (No 4),*[73] Justice Matthews in *Fuller v Allianz*[74] and *Anderson-Vaughan v AAI Limited,*[75] and Justice Delany in ***Gehrke v Noumi*** *Ltd*[76] have considered the exercise of the Court's discretion as to whether to vary a group costs order. It was also necessary for me to consider this issue in *O'Brien*, which related to the same group costs order as made in this proceeding. The following observations from those cases are particularly relevant.

(a) The power of amendment of a group costs order allows the Court to ensure that the terms of the order remain appropriate, having regard to the information available to the Court which can inform an analysis of whether the percentage to be paid continues to be appropriate.[77]

(b) The consideration of whether to exercise the power to amend a group costs order under s 33ZDA(3) does not involve a *de novo* hearing regarding the appropriateness of the group costs order.[78] That has already been considered by the Court when the group costs order was made. For that reason, it is relevant to consider the reasons for which the Court made that order.[79]

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73 ***Allen v G8 Education*** *Ltd (No 4)* [2024] VSC 487 (Watson J).
74 [2025] VSC 160 (Matthews J).
75 [2025] VSC 469.
76 [2025] VSC 373 ('***Gehrke v Noumi***').
77 *Fuller v Allianz (Settlement Approval)*, [153]; *Mumford v EML Payments Limited* [2022] VSC 750, [94]-[95] (Delany J); *Gehrke v Noumi,* [190]-[192] (Delany J).
78 *Allen v G8 Education,* [63(b)]; *Fuller v Allianz (Settlement Approval),* [154]-[155]; *Gehrke v Noumi,* [190]-[191].
79 *Allen v G8 Education,* [63(d)]; *Fuller v Allianz (Settlement Approval)*, [154]-[155]; *Gehrke v Noumi,* [190]-

(c) The Court should ensure that costs payable to the legal representatives under the group costs order remain proportionate, in that they continue to represent an appropriate reward in the context of the effort and investment of the legal practice, the duration of the proceedings and the risks which were undertaken.[80]

75 In this case, Maurice Blackburn did not retain separate counsel to respond to any queries from the Court on the group costs order at the hearing on the settlement approval. That had occurred in previous proceedings[81] to provide an independent source of submissions on the group costs orders apparently in view of the potential conflict of interest for the plaintiffs' solicitor and counsel. As noted by Matthews J in *Fuller v Allianz*, it is the duty of counsel for the plaintiffs to inform the Court if any circumstance has arisen which would render the group costs order percentage rate excessive.[82] I agree. Counsel for the plaintiffs, in submissions, expressly acknowledged the obligation of counsel to raise any matter which may be regarded as relevant to the question of whether the group costs order should be varied, including any material change of circumstance, and confirmed that there were no such changed circumstances.[83] There was no need, in my view, for any separate counsel or solicitor to be briefed to address this issue.

The reasons for making the group costs order

76 In making the group costs order,[84] Nichols J emphasised a number of considerations which are appropriate now to note. As her Honour made the group costs order with respect to this proceeding and the two related proceedings, *Fox v Westpac* and *O'Brien*, these factors, as relevant to costs following settlement, were referred to in my judgment in *O'Brien*.[85]

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[191].

80 *Allen v G8 Education*, [63(e)]; *Fuller v Allianz (Settlement Approval)*, [154]-[155].

81 See *Fuller v Allianz (Settlement Approval)*, [162]-[165].

82 *Fuller v Allianz (Settlement Approval)*, [165].

83 Transcript 20/08/25, T24.31-28.09.

84 The orders were made in this proceeding, the *Fox v Westpac* proceeding, and the *O'Brien* proceeding: see *Fox v Westpac (No 2)*.

85 *O'Brien v ANZ*, [95]-[99].

77 First, her Honour observed that the group costs orders in this and the related proceedings would 'guarantee to group members recovery of 75.5% of any settlement sum or damages award' which would protect against costs and funding fees disproportionately eroding compensation.[86] This was a real and substantial benefit to group members. In making this observation, Nichols J noted the potential for the percentage to be varied by Court order if that was in the interests of group members.[87]

78 The group costs order would provide certainty to group members on the basis that the other alternative funding model would require an application for a common fund order at the conclusion of the proceeding, and at the time of making the group costs order, there was an unsettled controversy as to the Court's power to do so.[88]

79 A further important consideration was that the group costs order would provide, from the outset, equality between group members in the sharing of liability for legal and funding costs.[89]

80 The rate of the group costs order was superior to the alternative funding rate. The alternative funding arrangement with Vannin (entailing 25% of the recovered amount, subject to obtaining a common fund order) was itself a 'good deal' as assessed by reference to publicly available data establishing the mean and average returns to group members in class actions with third-party funding.[90]

The plaintiffs' submissions – there is no reason to vary the group costs order

81 The plaintiffs submit that the group costs order remains appropriate because the considerations which informed the decision of Nichols J in making the order continue to apply. It is submitted that:

(a) Maurice Blackburn bore considerable risk in the proceeding in place of the plaintiffs, by reason of the costs agreement between them. The anticipated risk relating to establishing the allegations was evidenced by the fact that the

86 *Fox v Westpac (No 2)*, [45].
87 *Fox v Westpac (No 2)*, [45]-[46].
88 *Fox v Westpac (No 2)*, [47], [50]-[52].
89 *Fox v Westpac (No 2)*, [51].
90 *Fox v Westpac (No 2)*, [49].

proceeding was strongly defended by Macquarie and ran almost to completion. Every step in the proceeding was contested, involving numerous interlocutory applications and a prolonged mediation process concluding only after judgment had been reserved.

(b) Significant costs have in fact been incurred by Maurice Blackburn over the course of litigation. As disclosed in the evidence before the Court on the group costs order application, Maurice Blackburn had a private funding arrangement with Vannin pursuant to which Vannin paid 50% of the project costs including professional fees and disbursements and committed to paying 50% of adverse costs orders or security for costs. Maurice Blackburn is obliged to pay Vannin 50% of any contingency fee payment it receives in the proceeding.

(c) The settlement occurred within the range confidentially estimated in the evidence before the Court on the group costs order application.

(d) The rate of the group costs order at 24.5% remains a mid to low range percentage based on the empirical research in the Morabito Report.[91]

(e) The structural benefits of the costs order remain, in that the funding model is fair and equitable in sharing the costs of the proceeding and providing certainty and transparency throughout the litigation.

(f) There have been no objections and no circumstances have arisen which would make the group costs order excessive and therefore contrary to the interests of group members.[92]

Conclusion – there is no reason to vary the group costs order

82 There is no reason to vary the percentage rate in the group costs order made by Justice Nichols.

91 Ryan Affidavit, [158] and RER-12 (Chapter 5 of the Morabito Report).
92 Plaintiffs' Outline of Submissions, [62]-[69].

83 As I observed with respect to the risk undertaken by Maurice Blackburn in *O'Brien*, it was a significant one, having regard to the claims and the defences pleaded by Macquarie. I also take into consideration the opinions expressed in the confidential Counsel Opinion which addresses both the strengths and the weaknesses of the claims. Events subsequent to the making of the group costs order indicate that the risk was realistically assessed. Although the proceeding was settled, Macquarie declined to settle before trial and defended the proceeding strongly throughout.

84 Although the risk was shared by Vannin by reason of the agreement between it and Maurice Blackburn, it was shared on the basis, now realised, that Maurice Blackburn must account to Vannin for 50% of the contingency fee component of the costs amount which will be paid.

85 The strong defence of the proceeding, and the fact that it proceeded through multiple interlocutory applications to a fully contested trial, meant that significant costs were in fact incurred.

86 It is relevant that there were no objections from any group member, notwithstanding the high degree of engagement by group members with Maurice Blackburn after the settlement notification process, through telephone calls and emails. The percentage rate and the actual sum had been disclosed in the settlement notice and was available to group members in the period in which they could raise any objections to the settlement.

87 The continuing appropriateness of the percentage rate in the group costs orders was supported by the range of percentages in group costs orders in this Court, the Federal Court of Australia and the Supreme Court of New South Wales which were the subject of the study in the Morabito Report. That report, as at February 2025, identified 24.5% as the median rate for group costs orders in 2022 and 2023 and 28.75% for group costs

orders granted in 2024.[93] Orders made in 2025 have been of a similar or larger percentage.[94]

88 Finally, a strong reason why it would not be appropriate to vary the percentage rate in the group costs order is that the settlement itself is within the estimated range of settlement outcomes which was provided to the Court in evidence at the time of the application. The proceeding has followed the course broadly anticipated by the plaintiffs' solicitors and on which the Court acted in making the group costs order. There is no reason why it would be appropriate to vary that percentage rate in the group costs order now.

The appointment of the Scheme Administrator

89 The plaintiffs' evidence included evidence as to Maurice Blackburn's experience in administering settlements of group proceedings, particularly the expertise and experience of the staff in the settlement administration team and the efficient systems and processes that team has developed.[95] The evidence also included the confidential Costs Report, including the instructions from Maurice Blackburn concerning detail of the work involved in the settlement administration process.

90 Mr Ryan also gave evidence that since the settlement had been advertised, there had been numerous contacts with Maurice Blackburn with queries about the scheme. Client service officers and paralegals at Maurice Blackburn responded to approximately 3,000 email enquiries and 4,450 telephone calls and voicemail messages in the period between 19 May 2025 and 19 June 2025. These inquiries involved matters such as the registration process, requests for assistance in identifying car loan details, and questions about the Settlement Distribution Scheme.[96]

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93 Morabito Report, 9; Ryan Affidavit, Exhibit RER-12, 99.

94 *Clarke v JB Hi-Fi Group Pty Ltd* [2025] VSC 288 (Nichols J), [2] at 30%; *Edwards v Hyundai Motor Company Australia Pty Ltd*; *Sims v Kia Australia Pty Ltd (Ruling No 3)* [2025] VSC 429 (Osborne J) at [181(c)] (a GCO at the rate of 24.75% up to $120 million in return; 20% between $120 million and $150 million; and 15% over $150 million); *Laricchia v WiseTech Global Ltd* [2025] VSC 482 (Croft J) at [61] (35%); *Byrnes v Origin Energy Ltd* [2025] VSC 504 (Waller J) at [41] (30%). See generally *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553 (Delany J).

95 Ryan Affidavit, [99]-[104].

96 Ryan Affidavit, [53]-[54].

91 Evidence of Maurice Blackburn's experience in scheme administration was also before the court in *O'Brien*.[97] I concluded in that case that if Maurice Blackburn was appointed as Scheme Administrator, the experience of that firm's settlement administration team, their specialised systems, and the fact that they will have ready access to staff at Maurice Blackburn who conducted the proceeding in the event that any factual or legal issues involving entitlements arise, meant that the administration would be conducted efficiently and effectively.[98]

92 The evidence of the experience of Maurice Blackburn staff in the process of responding to inquiries about issues in this proceeding that will also be relevant in the scheme administration was, in my view, indicative of a further benefit in Maurice Blackburn administering the scheme.

93 I was satisfied that it was appropriate that Maurice Blackburn be appointed Scheme Administrator.

The costs of the settlement administration

94 Maurice Blackburn sought approval of settlement administration costs of $1,533,000 inclusive of GST, and the further costs of $7,700 for the report prepared by the costs consultant Ms Rosati. Ms Rosati was appointed as a special referee for the purpose of estimating the reasonable costs likely to be incurred during the settlement administration.[99]

95 Ms Rosati's report was provided to the Court on a confidential basis. Ms Rosati analysed the costs of the work that Maurice Blackburn had advised would be involved in the phases of work involved in the settlement administration. Ms Rosati was satisfied that the rates proposed to be charged for the work were fair and reasonable; that the allocation of work between staff of differing degrees of seniority and payment rate appeared to be fair and reasonable for a reasonably complex settlement

97 *O'Brien*, [127]-[128].
98 *O'Brien*, [128].
99 Orders of Justice Harris made of 12 May 2025, orders 16-17.

administration; and that the settlement administration would involve the significant amount of work estimated by Maurice Blackburn.

96 The fact that this amount would be deducted from the total sum was also notified to the group members in the settlement notice.[100] No objections to that aspect of the settlement were received.

97 The amount of settlement administration costs are significant. However, I accepted, having regard to the evidence of Ms Rosati that the work involved in the settlement administration is complex and extensive. It will involve work relating to data transformation and assessment to enable confirmation of eligibility of group members to receive distributions, calculation of assessed losses and estimation of distribution amounts, distribution of assessment notices and collection of bank account details from eligible group members. Several of these stages will involve interactions with group members and responding to queries. Finally, there will be costs involved in concluding the scheme, dealing with any residual settlement sum and responding to any further queries following distribution.

98 I also have had regard to the evidence of Mr Ryan that there has already been a significant degree of work involved in responding to enquiries of group members, which gives some indication of the volume of communications that may arise in the course of the settlement administration.[101]

99 I accepted that the deduction of the settlement administration costs in the sum of $1,533,000 inclusive of GST is fair and reasonable.

Compensation payment to Tania and Daimin Nathan, the representative plaintiffs

100 The settlement agreement involved a deduction from the settlement sum to provide for a payment of $40,000 to the plaintiffs as compensation for the time, inconvenience and stress involved in their discharge of the responsibilities as representative plaintiffs.

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100 Ryan Affidavit, [172].
101 Ryan Affidavit, [53]-[54].

101 The evidence of Mr Ryan was that Mr and Mrs Nathan had discharged their roles very conscientiously, and that the work involved in being representative plaintiffs in the proceeding had been significant. This was particularly the case given that the proceeding had run to trial after numerous interlocutory applications involving the frequent need for instructions. The Nathans were required to produce documents by way of discovery and to prepare affidavits (Mrs Nathan for the group costs order application and Mr and Mrs Nathan for the substantive issues in the proceeding). Mrs Nathan was required for cross examination and gave evidence at trial. Mr Ryan described Mrs Nathan as having been an impressive witness, having given her evidence 'confidently and calmly, and [being] unshaken in cross examination.'[102]

102 Compensation payments to plaintiffs in a group proceeding are frequently made, as demonstrated by the research in the Morabito Report. That report reviewed compensation payments in group proceedings in the Federal Court of Australia, Supreme Court of New South Wales and the Supreme Court of Victoria, which ranged from $2,000 to $268,243. The median payment in group proceedings since December 2004 was $20,000.[103]

103 The compensation payment is appropriate. The role that the plaintiffs, and in particular Mrs Nathan, have had to discharge has been onerous and time consuming given the length of the proceeding which required their involvement over five years, and the fact that it proceeded to a final hearing at which Mrs Nathan gave evidence and was cross-examined.

104 The payment to each plaintiff is consistent with the median payment. Although this means that the payment will be larger than a single payment at the median rate, I consider this reasonable given the volume of work involved for the plaintiffs. I considered it is a fair and reasonable compensation for the specific responsibilities undertaken by the plaintiffs. It was also relevant that no objection has been made to the payment.

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102 Ryan Affidavit, [164].

103 Morabito Report, 12 (Ryan Affidavit, Exhibit RER-12, 102).

Conclusion – the orders proposed by the plaintiffs and supported by the defendant were appropriate

105 For the reasons above, I was satisfied that the settlement was fair and reasonable and in the interests of group members. The settlement sum was within the reasonable and appropriate range, having regard to all the circumstances, and the proposal for the distribution of that sum between group members was fair and reasonable, having regard to the relevant circumstances of the two classes of group member (those with statutory claims, and those with mistake claims only). I was satisfied that the deductions from the settlement sum were appropriate. I was also satisfied that the process by which the settlement was reached, group members were informed of their rights to participate, and their rights to object, was fair.

106 In these circumstances, I made the orders sought by the plaintiffs.

CERTIFICATE

I certify that this and the 31 preceding pages are a true copy of the reasons for judgment of the Honourable Justice Harris of the Supreme Court of Victoria delivered on 19 September 2025.

DATED this nineteenth day of September 2025

ANNEXURE A

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST S ECI 2020 03924

BETWEEN:

DAIMIN NATHAN First Plaintiff

TANIA NATHAN Second Plaintiff

-and-

MACQUARIE LEASING PTY LTD (ACN 002 674 982) Defendant

ORDER

JUDGE:	The Honourable Justice Harris
DATE MADE:	21 August 2025
ORIGINATING PROCESS:	Writ filed 14 October 2020
METHOD OBTAINED:	At hearing on 20 August 2025
ATTENDANCE:	Mr D Fahey with Mr M Bui, counsel for the plaintiff. Mr S Gerber, counsel for the defendant.
OTHER MATTERS:	A. This order is signed by the Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*. B. Justice Harris' reasons for the orders made will be delivered separately. C. These orders amend the original orders made on 21 August 2025 which refer in the heading to "Common Law Division" rather than "Commercial Court".

THE COURT ORDERS THAT:

Confidentiality

1. Pursuant to s 18(1)(a) of the *Open Courts Act 2013* (Vic) and/or the Court's inherent jurisdiction, and subject to any further order of the Court:

   a. the documents or parts of documents identified in Schedule A to this order (**Confidential Materials**) be confidential and, absent prior order of the Court, not be published or disclosed to any other person other than:

SUPREME COURT OF VICTORIA
Associate of a Judge of the Court

i. her Honour Justice Harris (**Settlement Judge**), staff of the Settlement Judge, and staff in the Court Registry necessarily involved in the filing or administration of the Confidential Materials (**Approved Persons**);

ii. the plaintiffs' solicitors and counsel; and

iii. representatives of Vannin Capital Investments (Australia) Pty Limited (**Vannin**) with involvement in the proceeding;

b. the plaintiffs file in the Registry unredacted copies of the documents being or containing the Confidential Materials, such documents to be marked as confidential on RedCrest;

c. the plaintiffs have leave to file, and serve on the defendant, copies of the documents being or containing the Confidential Materials, redacted to conceal the Confidential Materials; and

d. the plaintiffs be otherwise excused from any requirement to file or serve the Confidential Materials.

Settlement approval

2. Pursuant to s 33V(1) and (2) of the *Supreme Court Act 1986* (Vic) (the **Act**), the:

a. settlement of the proceeding is approved on the terms set out in:

i. the deed of settlement dated 10 April 2025, as amended by the deed of variation executed by the plaintiffs, defendant and Maurice Blackburn on 16, 14 and 19 August respectively (and which is to be executed by Vannin); and

ii. the Amended settlement distribution scheme exhibited at page 68 to exhibit RER-12 to the affidavit of Richard Erle Ryan dated 14 July 2025 (**SDS**);

(together, the **Settlement**)

and

b. the SDS is to be given effect.

3. Pursuant to s 33ZB of the Act, the persons affected and bound by the Settlement are the plaintiffs, defendant, and persons described in [1] of the Amended Statement of Claim filed on 28 August 2024, other than such persons who opted out of and have not been reinstated in the proceeding (**Group Members**).

4. The claims of the plaintiffs and Group Members in the proceeding be dismissed.

SUPREME COURT OF VICTORIA
Associate of a Judge of the Court

5. Pursuant to s 33V(2) of the Act, the following amounts are approved for the purposes of the SDS:

   a. the sum of $13,842,500 as the "plaintiffs' legal costs and disbursements";

   b. the sum of $1,540,355.30 for "administration costs"; and

   c. the sum of $40,000 as the "plaintiffs' reimbursement payment".

Scheme Administrator

6. Pursuant to s 33ZF of the Act, Maurice Blackburn be appointed as the administrator of the SDS (**SDS Administrator**), with the powers and immunities set out in the SDS.

7. Pursuant to r 9.06 of the of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) (**Rules**), the SDS Administrator be joined as a party to the proceeding for the limited purpose of exercising the SDS Administrator's liberty to apply for the purposes of order 8 below and to give effect to orders 2(b) and 5 above.

8. The SDS Administrator has liberty to apply in respect of any matter arising in or in relation to the administration of the SDS, on not less than three clear business days' notice to each party to the proceeding and the Court.

Administration and dismissal

9. The SDS Administrator shall report to the Settlement Judge regarding the performance of the SDS, including the costs incurred and distributions made, every six months.

10. Upon the SDS Administrator being satisfied that the implementation of the SDS has been completed:

    a. the SDS Administrator shall deliver to the Court:

       i. addressed to the Associate to the Settlement Judge – a report identifying the principal steps taken to implement the SDS, including the costs incurred and distributions made to any person pursuant to the SDS;

       ii. proposed orders for the dismissal of the proceeding;

    b. the SDS Administrator shall notify the defendant that the steps in order 10(a) above have been taken; and

    c. subject to any other order of the Court - the proceeding shall be dismissed with no order as to costs.

Costs

11. There be no order as to the costs of the proceeding.

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Associate of a Judge of the Court

12. All inter partes costs orders in the proceeding as between the plaintiffs, the solicitors for the plaintiffs, and the defendant be vacated. This order does not affect the group costs order (being order 1 made by the Honourable Justice Nichols on 9 March 2023).

Group members (registration and reinstatement)

13. The persons listed in Schedule B be deemed to have registered to participate in this proceeding.

14. The persons listed in Schedule C be reinstated as group members in this proceeding pursuant to s 33J(6) of the Act.

DATE AUTHENTICATED: 21 August 2025

THE HONOURABLE JUSTICE HARRIS

SCHEDULE A – CONFIDENTIAL MATERIALS

The following documents or parts of documents comprise the Confidential Materials referred to in Order 1(a) of these Orders:

1. the text highlighted in blue in the affidavit of Richard Erle Ryan affirmed 14 July 2025 (**Ryan Affidavit**), other than the text highlighted in paragraph [156];

2. the text highlighted grey in exhibit RER-12 to the Ryan Affidavit;

3. the whole of confidential exhibit RER-13 to the Ryan Affidavit;

4. the whole of the independent expert report by Kerrie-Ann Rosati dated 27 June 2025; and

5. the text highlighted in blue and redacted in the plaintiffs' outline of submissions filed and served on 14 July 2025 excluding the text highlighted in paragraph [65].

SCHEDULE B –LATE REGISTRANTS

[redacted]

[redacted]

SCHEDULE C – REINSTATED GROUP MEMBERS

[redacted]

[redacted]

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