

ESANDA CAR LOAN CLASS ACTION
Crawford v Australia and New Zealand Banking Group Limited & Ors
Supreme Court of Victoria

CLASS ACTION SUMMARY STATEMENT

1. What is a class action?

Where seven or more people have claims that arise out of similar circumstances, a class action can be brought by one plaintiff on their own behalf and representing others.

2. Who is the Esanda car loan class action against, and what is the claim for?

The claim is against Australia and New Zealand Banking Group Limited (**ANZ**), Macquarie Bank Limited and Macquarie Leasing Pty Ltd (together **Macquarie**) concerning “flex commission” arrangements with car dealers. ANZ offered car loans through car dealers through its Esanda business. Macquarie acquired the Esanda car dealer loan portfolio from ANZ in 2016. Flex commission arrangements allowed car dealers at the point of sale to set the interest rates offered to consumers on Esanda car loans. The higher the interest rate, the higher the commission paid by the lender to the dealer.

The claim alleges that certain features of the flex commission arrangements were unfair to consumers who paid higher interest rates on their Esanda car loans than would otherwise have been the case. It is claimed in the class action that ANZ is responsible for the arrangements, Macquarie received payments under the arrangements and they should pay compensation to consumers (or “group members”) for the loss they suffered as a result.

3. Who is a group member in the Esanda Car Loan Class Action?

You may be a group member if you are:

- (a) a natural person; who
- (b) entered into a finance agreement for the purchase of a car issued under ANZ’s credit licence facilitated by an ANZ accredited car dealer in which a Flex Commission was paid to the dealer;
- (c) in the period 1 January 2011 to 31 March 2016.

A complete definition of group members is available at Part A.1 of the Statement of Claim.

4. Who is the law firm acting for the plaintiff?

Maurice Blackburn.

5. What is the role and responsibility of the plaintiff?

The plaintiff, Steele Crawford, whose loan was with ANZ, is the representative of the group members. He is providing and will continue to provide instructions to Maurice Blackburn

regarding the conduct of the case. He may give evidence in a trial. In hearing the plaintiff's case, the Court will be asked to make findings in relation to questions of fact and/or law that are common to all group members.

6. How is the Esanda Car Loan Class Action funded?

All costs associated with the Esanda Car Loan Class Action will be borne by Maurice Blackburn, unless and until there is a successful outcome to the class action. A successful outcome is when a settlement is agreed and approved by the Court or the Court awards compensation in a judgment after a trial.

Maurice Blackburn's no win no fee retainer agreement sets out the terms on which it is acting. Members of the class (group members) can ask to see a confidential copy of the retainer signed by Mr Crawford by contacting Maurice Blackburn.

The plaintiff intends to make an application for a Group Costs Order in the Esanda Car Loan Class Action. If a Group Costs Order is made, then subject to the Court's orders, the retainer agreement will need to be revised.

A Group Costs Order is an order of the Court in which the legal costs payable to the law practice representing the plaintiff and the group members are calculated as a percentage of the amount of any award or settlement. The percentage is determined by the Court.

The plaintiff and group members will not be asked to pay anything upfront. Costs will only be payable in the event of a successful settlement or judgment and then only as approved by the Court.

7. How are legal fees and disbursements charged?

The plaintiff's legal fees and disbursements are 'conditional', meaning that they are only recoverable by Maurice Blackburn if there is a successful outcome. Amounts recoverable by Maurice Blackburn for legal fees and disbursements must be approved by the Court as reasonable, before being deducted from the money to be paid to group members. Those deductions will never exceed a group member's recovery.

If there is a successful outcome, the plaintiff's legal fees and disbursements will be charged in one of two ways:

- (a) calculated using time based billing for professional fees, with disbursements (for example, filing fees, fees for experts and barristers) charged at cost; OR
- (b) calculated as a percentage of the amount of any collective award or settlement in the event that the Court makes a Group Costs Order. The percentage is determined by the Court.

If there is not a successful outcome, the plaintiff's and group members will not be asked to pay Maurice Blackburn's costs or disbursements. Also, the group members cannot be

pursued for costs by ANZ or Macquarie's as the *Supreme Court Act* prohibits orders for costs against group members unless and until a group member takes their own individual action.

8. Are there any other class actions that relate to ANZ, Macquarie's car loan practices?

On 14 October 2020, Maurice Blackburn filed a separate group proceeding in the Supreme Court of Victoria, against the third defendant in this proceeding, Macquarie Leasing Pty Ltd, on behalf of lead plaintiffs Daimin and Tania Nathan. The group proceeding brought on behalf of Mr and Ms Nathan concerns Macquarie Leasing Pty Ltd's use of "flex commission" arrangements with respect to car loans.

9. Who can group members contact for further information about the case?

For further information about the Esanda Car Loan Class Action, group members may contact Maurice Blackburn, at no out of pocket cost, via the following methods:

Email flexclassaction@mauriceblackburn

Phone 1800 318 063

Post Esanda Car Loan Class Action
Maurice Blackburn
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