



DOWNER EDI CLASS ACTION

Justine Lidgett & Cameron Lidgett v Downer EDI Limited (ACN 003 872 000)
Supreme Court of Victoria

Case: S ECI 2023 01835

Filed on: 04/05/2023 01:59 PM

GROUP PROCEEDING SUMMARY STATEMENT

1. What is a class action?

Where seven or more people have claims that arise out of the same or similar circumstances, a class action can be brought by a lead plaintiff on their own behalf and as a representative of others. People in the represented group are called “**group members**”.

The class action will resolve the factual and legal issues that are common to the plaintiffs and group members. This is an efficient way for the legal system to determine the claims of large numbers of people which arise from the same events or circumstances.

2. Who is the Downer class action against, and what is the claim for?

The class action is against Downer EDI Limited (ASX: DOW).

The claim arises from two ASX releases published on 8 December 2022 and 27 February 2023 in which Downer disclosed that (1) one of its top utilities contracts had in fact been loss-making, (2) the company had misreported revenue from the contract since FY20, and (3) due to various factors it would not meet FY23 earnings guidance which had first been given in August 2022 and was reaffirmed by Downer in November 2022.

As a result of those disclosures, the plaintiffs allege that Downer made misleading or deceptive representations regarding the profitability of the utilities contract and the company’s financial performance since FY20 as well as its FY23 earnings guidance, and that the company also breached its continuous disclosure obligations as a result of information that it knew or should have known about those issues.

The class action claims compensation on behalf of Downer’s shareholders who are group members as defined below. Downer’s share price fell more than 20% on both of the dates mentioned above.

3. Who is a group member in the Downer class action?

Group members in the class action are defined as people who acquired an interest in ordinary Downer shares during the period from **23 July 2019 to 24 February 2023**.

There are some exclusions from this definition: for example related parties and associated entities as well as officers or close associates of Downer, and also judges and registrars of the High Court of Australia or the Supreme Court of Victoria.

The full definition of group membership is in paragraph 1 of the statement of claim.

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

Maurice Blackburn acts for the plaintiffs.

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

The role of the lead plaintiffs is to be the representative of group members. They will give instructions to Maurice Blackburn regarding the conduct of the case. In determining the lead plaintiffs’ case, the Court will be asked to make findings in relation to issues of fact and/or

law that are common to group members. In this case the lead plaintiffs are Justine and Cameron Lidgett.

6. How is the Downer class action funded?

There is no third-party litigation funder involved in this case. This means group members will not need to pay a litigation funder's fee or commission in addition to legal costs.

7. How are legal fees and disbursements charged?

Maurice Blackburn is conducting the class action on a "no win no fee" basis. This means group members do not need to contribute to legal costs unless and until the case is successful due to a settlement or a collective award of damages.

If the case is successful, legal costs would be deducted from the settlement sum or a collective damages award, and in this sense would be shared among the plaintiffs and group members.

Maurice Blackburn's costs agreement provides for professional fees to be calculated using time-based billing (ie hourly rates) and for disbursements such as fees for experts and barristers to be charged at cost. Any such costs would need to be approved by the Court before being deducted from the money payable to group members.

Alternatively, the plaintiffs may make an application for a "group costs order". If the Court makes such an order, legal costs will not be calculated in accordance with Maurice Blackburn's costs agreement (as summarised above). Instead, if a group costs order is made by the Court, legal costs will be calculated as a percentage of the amount of any damages award or settlement sum. The appropriate percentage will be determined by the Court.

If the case is *not* successful, the plaintiffs and group members will not need to pay Maurice Blackburn's costs, and group members cannot be required to pay Downer's costs unless they take their own individual action.

8. Are there any other class actions that relate to the same subject matter as this case?

Another class action against Downer has been filed in the Federal Court of Australia. That case is *Jowene Pty Ltd as trustee for Biro Citer Souvenirs Pty Ltd Pension Fund v Downer EDI Limited* (Federal Court of Australia proceeding NSD293/2023). As a result of media reports, Maurice Blackburn is also aware that other law firms are investigating claims against Downer, however no other class actions have been commenced as at early May 2023.

9. Who can Group Members contact for further information about the case?

For more information about the Downer class action, group members can contact Maurice Blackburn, at no out-of-pocket cost, via the following methods:

Email	downeredi@mauriceblackburn.com.au	Post	Downer EDI Class Action Maurice Blackburn
Phone	1800 571 265		PO Box A266 Sydney South 1235