IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS (CLASS ACTIONS)

Not Restricted

S ECI 2021 00930

BETWEEN:

ZOEY ANDERSON-VAUGHAN — Plaintiff

v

AAI LIMITED (ACN 005 297 807) & ORS
(according to the attached Schedule) — Defendants

JUDGE:	Matthews J
WHERE HELD:	Melbourne
DATE OF HEARING:	30 June 2025
DATE OF RULING:	30 June 2025
DATE OF WRITTEN REASONS:	4 August 2025
CASE MAY BE CITED AS:	Anderson-Vaughan v AAI Limited & Ors (Settlement Approval)
MEDIUM NEUTRAL CITATION:	[2025] VSC 469

PRACTICE AND PROCEDURE — Application for approval of settlement of group proceeding — Whether the terms of settlement fair and reasonable — Whether settlement distribution scheme fair and reasonable — Settlement approved — *Supreme Court Act 1986* (Vic) Part 4A, ss 33V, 33ZF.

PRACTICE AND PROCEDURE — Application for payment of costs of administering settlement distribution scheme — Costs approved.

PRACTICE AND PROCEDURE — Approval for payment of legal costs from settlement sum — Whether group costs order should be amended — *Supreme Court Act 1986* (Vic) Part 4A, s 33ZDA.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Mr L Armstrong KC with Mr D Fahey and Mr T Farhall	Maurice Blackburn
For the Defendants	Ms J Findlay	King & Wood Mallesons

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HER HONOUR:

A Introduction

1 This is an application pursuant to s 33V of the *Supreme Court Act 1968* (Vic) (**Act**) seeking the Court's approval of a proposed settlement of a group proceeding brought against AAI Limited, TAL Life Limited and MTA Insurance Pty Ltd (collectively, **Insurers**). The parties propose to settle the proceeding on terms that AAI pay $34 million (**Settlement Sum**) without any admission of liability.

2 The proceeding relates to the sale of 'add-on' insurance products to consumers between 1 May 2006 and 30 June 2018. Those products were issued by the Insurers and sold on the Insurers' behalf by car or motorcycle dealerships to the plaintiff and group members when they purchased or leased vehicles from the dealerships. The products were usually added onto the loans that the dealerships arranged for the group members to finance their motor vehicle purchase. The products consisted of: loan protection ('consumer credit') insurance, equity ('guaranteed asset protection' or 'shortfall') insurance, cash benefit insurance, extended vehicle warranty insurance and tyre and rim insurance (collectively, **Insurance Products**). The plaintiff and group members are persons/entities who purchased one or more of the Insurance Products during the period from 1 May 2006 to 30 June 2018.

3 The plaintiff and group members alleges that the Insurers engaged in misleading and deceptive conduct, contravened provisions under the *Corporations Act 2001* (Cth) (***Corporations Act***) in relation to the provision of personal advice and/or were unjustly enriched in relation to the sale of the Insurance Products to the plaintiff and group members. As a consequence of the Insurers' conduct, the plaintiff and group members allege they purchased the Insurance Products and paid the premiums for those Insurance Products on the mistaken belief that: they had not purchased the Insurance Products, it was a precondition to their vehicle's finance that they purchase the Insurance Products, the Insurance Products had material value or the Insurance Products were suitable for them.

4 On 30 June 2025, I heard the application for approval of the proposed settlement (**Settlement Approval Application**). At the end of the hearing I made orders that:

(a) the proposed settlement be approved;

(b) the proposed orders regarding the settlement distribution scheme (**SDS**) and appointment of Maurice Blackburn as the scheme administrator (**Scheme Administrator**) are appropriate;

(c) the proposed deductions from the Settlement Sum for the costs of administering the settlement and for payments to the plaintiffs be approved; and

(d) the GCO rate will not be amended.

5 This judgment sets out my reasons for making those orders.

B Procedural history

B.1 Application for group costs order

6 On 11 August 2023, Stynes J granted the plaintiff's application for a group costs order (**GCO**), pursuant to s 33ZDA of the Act, in the following terms:[1]

> (a) the legal costs payable to the solicitors for the plaintiff and group members, Maurice Blackburn, be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding, that percentage being (subject to further order) 25% inclusive of GST; and
>
> (b) liability for payment of the legal costs payable pursuant to paragraph (a) be shared among the plaintiff and all group members.
>
> …

B.2 Notices to group members: registration and opt out

7 In October 2022, the Insurers made available to Maurice Blackburn its customer data. The customer data sets out information about the policies purchased by the group member, such as the type of Insurance Product purchased, date of purchase, premium paid and any refunds, remediation payments and/or claims received. The customer

[1] See *Anderson-Vaughan v AAI Limited* [2023] VSC 465 (**GCO Reasons**) for the reasons for granting the GCO.

data contained about 300,000 policies. The customer data formed the basis for the distribution of the relevant notices to group members about the proceeding.

8 On 2 May 2023, Nichols J made orders for the provision of notices to group members, pursuant to ss 33X and 33Y of the Act, regarding the commencement of the proceeding and the right of group members to register or opt out of the proceeding. The orders also made provision for a hearing if the parties could not reach an agreement on the proposed form of the notices. That hearing took place on 12 February 2024 before Delany J.

9 On 12 March 2024, Delany J made orders approving a registration and opt-out notice (**Notice**) and the process for its distribution, and set an opt-out deadline of 18 June 2024 (**Opt-Out deadline**).[2] The distribution process allowed for two rounds of distribution of the Notice. Orders were also made for advertisements to be published in nine major newspapers about the proceeding and the Notice.

10 The first round of distribution took place between 26 March and 16 April 2024. Maurice Blackburn distributed approximately 63,000 emails and 150,000 text messages. Approximately 13,500 postal notices were sent to persons where a bounce back notification was received from the email or text message distribution.

11 The second round of distribution took place between 21 May and 4 June 2024. This involved sending reminders to approximately 120,000 persons, excluding persons who had already registered after the first round of distribution or had a bounce back notification. The reminders were only sent via email and text message.

12 After the Opt-Out deadline had passed, Maurice Blackburn engaged Equifax Australia to undertake a data enrichment process for the contact details of the remaining unregistered group members. This was done to identify whether an alternative mobile number was available for those group members so that the notices could be re-sent. Equifax had identified there were about 11,400 group members (**Equifax List**) which had an alternative mobile number. Between 1 and 2 August 2024, notices were then redistributed to those group members via text messages.

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2 See *Anderson-Vaughan v AAI Limited (No 2)* [2024] VSC 65 for the reasons for approving the Notice and the making of the Opt-Out deadline.

Between 15 and 16 August 2024, reminder text messages were sent to the remaining unregistered group members on the Equifax List. The deadline for group members on the Equifax List to participate in any pre-trial settlement was 21 August 2024 (**Equifax deadline**).

13 During the registration process, Maurice Blackburn engaged in a data matching process, to match the persons who registered with the group proceeding with the persons in the Insurers' customer data. A list of registered group members (**Registered Group Members**) was produced and provided to the Insurers' solicitors. The most recent list dated 30 September 2024 contained about 40,800 matched persons in relation to 62,879 policies (**Registered Group Members List**).

B.3 Settlement negotiations and orders regarding the approval application

14 After the production of the Registered Group Members List, the parties were ordered on 2 July 2024 to participate in a mediation. The mediation took place on 1 October 2024 and was unsuccessful.

15 On 25 October 2024, Delany J referred the proceeding to judicial mediation. The judicial mediation took place on 11 February 2025 and was unsuccessful.

16 On 22 February 2025, two days before the trial was due to commence before Delany J on 24 February 2025, the parties reached an in-principle settlement conditional upon the execution of a settlement deed and court approval. On the same day, Delany J ordered the plaintiff to file and serve any application for orders pursuant to s 33V of the Act, being an application for the Court's approval of the settlement. The settlement deed was executed by the parties on 27 February 2025 (**Settlement Deed**).

17 On 7 March 2025, I made orders by consent for the plaintiff to make an application for orders:

> (a) that the settlement of the proceeding on the terms agreed with the Defendants as recorded in a settlement deed dated 27 February 2025 ("Settlement Deed") be approved under section 33V of the Act;
>
> (b) that the Plaintiffs be authorised *nunc pro tunc* to enter into and give effect to the Settlement Deed on behalf of each of the Group Members, under section 33ZF of the Act;

(c) that a settlement distribution scheme (SDS) be approved under section 33V of the Act;

(d) that Maurice Blackburn (or any other specified person who consents to be bound by the terms of the settlement deed between the parties which impose obligations on the Settlement Administrator) be appointed as administrator of the SDS ("Settlement Administrator");

(e) that pursuant to rule 9.06 of the Supreme Court (General Civil Procedure) Rules 2015 the Settlement Administrator be joined as a party to the Proceeding for the limited purpose of exercising the Settlement Administrator's liberty to apply;

(f) that each of the Defendants and their Related Parties (as defined in the Settlement Deed) be released by the Plaintiff and each of the Group Members, from each claim made by or on behalf of the Plaintiff or any Group Members in the Proceeding;

(g) dismissing all of the claims in the Proceeding of the Plaintiff and of each Group Member, with no order as to costs and with all previous costs orders (excluding the Group Costs Order made on 11 August 2023) vacated;

(h) that the Proceeding be dismissed with effect as and from the date of the completion of the administration of the Settlement Distribution Scheme, being the date on which the final distribution under the Settlement Distribution Scheme is confirmed to the Court by the Settlement Administrator.

18 On 27 March 2025, the plaintiff issued a summons seeking:

(a) on the first return:

(i) orders approving proposed notice of settlement to group members and the distribution of the notice;

(ii) orders deeming certain persons who had mistakenly registered in the Allianz group proceeding[3] but have been identified to be a likely group member in this proceeding to be Registered Group Members;

(iii) orders appointing a special costs referee to provide a report to the Court as to the reasonable costs to be incurred during the settlement administration process; and

[3] This was another group proceeding involving the sale of add-on insurance products by Allianz. I approved the settlement in that proceeding in *Fuller & Anor v Allianz Australia Insurance Ltd & Anor (Settlement Approval)* [2025] VSC 160 (***Fuller v Allianz***).

(b) on the second return, orders approving the proposed settlement, the settlement administration process, confidentiality orders in relation to the settlement and other ancillary orders giving effect to the settlement.

19 On 4 April 2025, I made orders in relation to the first return of the summons. Amongst other things, orders were made:

(a) deeming those persons who had mistakenly registered in the Allianz proceeding to be Registered Group Members, such that they have leave to seek a benefit pursuant to the settlement;

(b) approving the notices of proposed settlement pursuant to ss 33X(4) and 33Y(1) of the Act;

(c) for the distribution of the notices to the Registered Group Members and to persons who registered their claim in this proceeding prior to the Opt-Out deadline but whose details could not be matched to the defendants' customer data (**Unmatched Registrants**), by way of email, SMS or ordinary post (depending on the information available for each Registered Group Member and Unmatched Registrant);

(d) for the publication on Maurice Blackburn's website, the summary notice of the settlement, the pleadings, a copy of the order itself and a redacted copy of the settlement distribution scheme (including instructions on how group members can access an unredacted copy of the settlement distribution scheme);

(e) for the publication on Maurice Blackburn's website and the Supreme Court's website and advertisement in nine major newspapers, the general notice of the proposed settlement;

(f) for correspondence to be sent to persons who registered their claim in this proceeding after the Opt-Out deadline (**Late Registrants**) by email or SMS, informing them that they would be identified to the Court and that it is a matter for the Court whether it decides to make an order to allow any late registrants to be treated as registered group members;

(g) pursuant to s 33ZF of the Act, that any group member who wishes to object to the proposed settlement must:

(i) complete and submit an online objection notice through the Supreme Court's website or send a completed notice of objection to the Court via email or post, by 4pm on 27 May 2025; and

(ii) unless the Court otherwise orders, attend, or send a representative to attend, the Supreme Court of Victoria on 30 June 2025 at 10am when the Settlement Approval Application is to be heard, and may address the Court on reasons why the proposed settlement should not be approved;

(h) for the costs of and incidental to the preparation and distribution of the notices and responding to queries from group members be costs in the proceeding; and

(i) pursuant to s 33ZF of the Act and/or r 50.01 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) appointing Kerrie Rosati of DGT Costs Lawyers as a special referee to make a report for the Court regarding the special referee's estimate as to the reasonable costs that are likely to be incurred during the settlement administration process.

20 The second return of the summons, being the settlement approval hearing, took place on 30 June 2025.

C **Summary of the claims**

21 The Insurance Products purported to replicate, for additional periods, the manufacturers' warranties, or to protect the consumer's equity in the vehicle, or to provide repayments of the customer's vehicle loan, or to provide cover for damage to tyres or wheel rims.

22 It is alleged that the Insurance Products did not provide material value to the insureds and were sold in circumstances that involved breaches of the law. Those alleged breaches of the law can be summarised as follows:

(a) **Misleading and deceptive conduct:** the plaintiff alleges that the dealers failed to disclose certain 'Cautionary Matters'[4] about the features and benefits of the Insurance Products. That failure to disclose implicitly represented that there were no 'Cautionary Matters' applicable to the customers that a reasonable person expected to be disclosed but had not been disclosed and/or that the Insurance Products had material value to the customer, such that a prudent person would rationally purchase them. The plaintiff further alleges that some representations were made that purchase of the Insurance Products was a precondition to the customers obtaining finance for their vehicles.

(b) **Personal advice claims**: the plaintiff alleges that in requesting personal information from the customers in discussions about their ability to meet repayment obligations for their finance and the Insurance Products, the dealers were acting as 'financial advisers' for the purposes of the *Corporations Act*. Therefore, they were subject to the obligations in that Act regarding the provision of personal financial advice, including an obligation to act in the customer's best interests.

(c) **Mistake claims**: the plaintiff alleges that by reason of the contraventions described above, the customers were not sufficiently informed that they had purchased the Insurance Products, that it was not a precondition to finance that they had to purchase the Insurance Products, that the Insurance Products had no material financial value and that the Insurance Products were not suitable for the customers.

23 The mistake claims were particularly important for group members who had purchased the Insurance Products more than six years prior to the commencement of this proceeding, because the limitation periods for the misleading and deceptive conduct and personal claims would have run out for those group members. The limitation period for the mistake claim would not begin to run until those group members became aware of, or reasonably ought to have become aware of, the mistake.

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4 Defined in the Further Amended Statement of Claim, [25]-[26].

24 The Insurers denied all the claims. In brief, the Insurers denied that:

(a) The purchase of the Insurance Products was a condition of obtaining finance. The product disclosure statements for each insurance product contained statements that the purchase of the Insurance Products was not a condition to obtaining finance. The product disclosure statements contained statements like:

(i) 'Similar insurance may be arranged with an insurer of your own choice. The purchase of this insurance is optional.'; or

(ii) 'You are not obliged to purchase Loan Protection Insurance and you may choose to apply for and arrange consumer credit insurance through a different insurer.'

(b) The dealers' conduct misled customers, because the dealers were trained and instructed to use sales scripts when they interacted with customers. In particular, the wording of the script the dealers used contained clear wording to disclose the optionality of the purchase of Insurance Products. For example, the first sentence after introducing themselves is: 'I must inform you that these insurances are optional and can only be purchased at the time you purchase your vehicle.'

(c) The dealers offered financial product advice in contravention of the *Corporations Act*. The Insurers contend that the customers would not have reasonably regarded the dealers as providing them with financial advice, but rather were only merely offering the Insurance Products for sale. The fact that the dealers obtained the customer's personal information for the purposes of finance does not mean that the dealers were recommending the Insurance Products to them. The dealers only provided general advice and this was expressly disclosed to the consumers in the paperwork.

(d) The Insurance Products lacked material value. The Insurance Products transferred risk from the customer to the Insurers, which provided peace of mind and convenience to the consumers. Further, the Insurers did make

payouts for claims made under the Insurance Products. Customers who purchased the Insurance Products could make the necessary clams if and when they needed to.

(e) The customers were mistaken as to what they had purchased. On this matter, the Insurers point to the fact that the Insurance Products had cooling-off periods where the customers could have cancelled the policies and obtain a full refund.

D Proposed settlement

25 In short, the parties propose to settle the proceeding on the following terms:

(a) AAI to pay a fixed sum of $34 million in full and final settlement of the plaintiff's and group members' claims against it;

(b) the plaintiff's solicitors are to receive 25% of $34 million pursuant to the GCO (subject to any variation ordered by the Court);

(c) the plaintiff is to receive $30,000, as compensation for the time and involvement in the proceeding;

(d) the settlement is to be distributed according to the proposed SDS; and

(e) Maurice Blackburn seeks appointment as the settlement administrator under the SDS and seeks approval of its associated costs, which are to come out of the $34 million.

E Materials relied on by the plaintiff

26 In support of the Settlement Approval Application, the plaintiff relies on the following materials:

(a) an affidavit of Rebecca Gilsenan, Principal at Maurice Blackburn, affirmed on 27 March 2025 (**First Gilsenan Affidavit**);

(b) an expert report from Ms Rosati, the special referee appointed by the Court, dated 26 May 2025;

(c) a further affidavit of Ms Gilsenan affirmed on 11 June 2025 (**Second Gilsenan Affidavit**);

(d) the confidential opinion of counsel (**Counsel Opinion**), exhibited to the Second Gilsenan Affidavit; and

(e) the plaintiff's written submissions dated 11 June 2025.

F Objections

27 As set out at paragraph 19(g), group members who object to the settlement were to complete and submit an online objection notice through the Supreme Court's website or send a completed notice of objection to the Court via email or post, by 27 May 2025; and, unless the Court otherwise ordered, attend, or send a representative to attend, the hearing of the Settlement Approval Application.

28 The plaintiff's solicitor indicated to the Court at the hearing that no objections were received from group members about the settlement. The plaintiff submits that the lack of objections from group members is a factor that indicates that the settlement is fair and reasonable.

G Late opt-outs

29 On 12 March 2024, Delany J made orders establishing the opt-out regime for the proceeding and the deadline for doing so. The form and content of the Notice were set out in the annexures to those orders.

30 As briefly set out at paragraph 9, the order provided for the Notice to be:

(a) sent to persons known to have purchased the Insurance Products during the relevant period;

(b) posted on the plaintiff's solicitor website;

(c) posted on the Supreme Court of Victoria's website;

(d) made available for inspection at the Commercial Court Registry of the Supreme Court of Victoria; and

(e) advertised in specific state and national newspapers.

31 On 26 June 2025, the Court informed the parties that the Commercial Court Registry had received 26 late opt-out requests since 22 February 2025, the date when the parties reached a settlement. The 26 group members who made the request were sent an email from the Registry that the deadline to opt out had expired, the proceeding had settled, the approval of the settlement was listed for hearing on 30 June 2025, that the opt-out request was refused and the person remained a group member.

32 In my view, the Court and the parties are entitled to proceed on the basis that deadlines ordered by the Court will be adhered to. Properly, pursuant to s 33J(3) of the Act, the Court has a discretion to allow late opt-outs. However, allowing late opt-outs is the exception rather than the rule, and it is appropriate that group members wishing to apply to extend the date by which they can opt out do so on the basis of proper material. Group members who do not opt out or register by the deadline cannot just wait to see if they like the settlement before deciding to opt out. Group members had ample opportunity to opt out by the deadline, and waiting until the settlement was announced is just too late.

33 For the same reasons as I expressed at paragraphs 52 to 54 of *Fuller v Allianz*, the late opt-out notices will not be accepted. Those persons remain group members and are bound by the settlement.

H Late Registrants

34 The First Gilsenan Affidavit states that, as of, 27 March 2025, there were approximately 1,580 persons who had registered late. Those persons can be separated into:

(a) 475 matched persons who registered after the Opt-Out deadline, but before the 21 August 2024 deadline for persons on the Equifax List;

(b) 857 unmatched persons who registered after the Opt-Out deadline but before the 21 August 2024 deadline for person on the Equifax List; and

(c) 250 persons who either registered their interest on Maurice Blackburn's online portal or sent a late registration request to Maurice Blackburn after 21 August 2024 and no matching has yet been undertaken.

35 The plaintiff submits that the Late Registrants should be allowed to participate in the settlement because there will not be a risk of material or unfair dilution of the Settlement Sum. This is because a majority of the Late Registrants registered in between the Opt-Out deadline and the Equifax deadline, and the addition of those Late Registrants will only reduce the average payment to group members by a very minimal amount. The plaintiff also submits that the additional work that would be required to determine which deadline applied to those who registered in between the two deadlines would be disproportionate to the nominal dilution of the Settlement Sum.

36 I accept the plaintiff's submission that the Late Registrants should be allowed to participate in the settlement. Having reviewed how much the average payments[5] would be reduced by if the Late Registrants were allowed to participate, I am satisfied that the reduction is very minimal and that the final payment to the group members will still be fair and reasonable. As I stated at paragraph 64 of *Fuller v Allianz*, adopting this approach is sensible and pragmatic, as the costs for the parties and the Court to consider the circumstances of each Late Registrant is disproportionate to the effect on those group members who registered within time. This is not to encourage or endorse non-adherence to court-ordered deadlines. I consider it appropriate that the acceptance of late registrations be cut off as of the day before the settlement hearing, being 29 June 2025, as I am concerned that there may be an unknown number of group members seeking to register late after that time, which could have a more significant effect on the amount each of the Registered Group Members will receive. The orders which I made on 30 June 2025 do not specifically state this. The plaintiff should advise my Associates whether they seek a further order to that effect.

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5 The actual numbers are confidential.

I Legal principles

37 The legal principles in the determination of an application under s 33V of the Act are well settled. The Court's overarching role in making its decision is to protect the interests of group members. I recently examined the factors that the Court should consider when determining an application under s 33V of the Act in *Fuller v Allianz*[6] and I adopt those principles here.[7]

38 As I said in *Fuller v Allianz*:

> The consideration for the Court is thus typically framed as being whether the proposed settlement is fair and reasonable:
>
> (a) as between the parties, often referred to as *inter partes* fairness; and
>
> (b) as between group members, often referred to as *inter se* fairness.[8]

J Fairness as between the parties

39 The question for the Court here is whether the proposed settlement is fair and reasonable in the interests of the group members considered as a whole.[9] In answering that question, the Court will have regard to the following factors:

(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;

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6 [2025] VSC 160, [65]-[72] ('*Fuller v Allianz*').

7 See also *O'Brien v ANZ & Anor* [2025] VSC 389 (Harris J) and *Gehrke & Anor v Noumi Ltd & Anor* [2025] VSC 373 (Delany J) for more recent settlement approval applications in the context where the GCO was granted.

8 *Fuller v Allianz*, [71].

9 *Camilleri v Trust Company (Nominees) Limited* [2015] FCA 1468, [5(e)] (Moshinsky J) (***Camilleri***).

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

(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.[10]

40 I said in *Fuller v Allianz* that:

> [t]hese matters are not mandatory considerations or an exhaustive list; the relevance or relative importance of particular factors will vary depending on the particular circumstances of the application before the Court.[11]

41 I have been assisted in my assessment of whether the proposed settlement is fair as between the parties by the plaintiff's submissions which addresses the factors above and also by the Counsel Opinion. In *Fuller v Allianz*, I said that:

> it has become common practice for counsel who were briefed for the plaintiff to provide the Court, as officers of the Court rather than as advocates for a party, with a detailed opinion as to the reasonableness of the proposed settlement. Having the benefit of a frank opinion from counsel with intimate knowledge of the claims, defences, evidence and arguments is an important tool for the Court when considering whether to approve a proposed settlement. However, the opinion from counsel is not accepted unquestioningly: the judge hearing the settlement application applies a critical eye to it.[12]

42 Having regard to the plaintiff's submissions and the Counsel Opinion, I am satisfied that the settlement as between the parties is fair. I agree with the plaintiff's submission that the proceeding was complex. There were multiple causes of action that were going to be advanced by the plaintiff. Further, at the time of settlement, several lay witness statements had been filed as well as expert reports. A pre-trial expert conclave was also completed with a joint expert report produced. The trial was estimated to run for 12 sitting days and judgment was not expected until late 2025 at the earliest. Further, the prospect of an appeal from the unsuccessful party would have led to

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10 These factors are contained in the Supreme Court of Victoria, Practice Note SC Gen 10, Conduct of Group Proceedings (Class Actions).

11 *Fuller v Allianz*, [68].

12 Ibid, [78].

further delays. In settling the proceeding now, there is certainty and distribution of the Settlement Sum can occur in around 13–14 months from the settlement approval.

43 In contrast to *Fuller v Allianz*, no objections were received from group members by the deadline set by the Court about the settlement. The lack of objections from group members is a factor that indicates the settlement is fair and reasonable but it is not a factor that carries much weight.[13] The Court still has a role to protect the group members' interests, despite the absence of objections.[14]

44 The plaintiff also submits that the settlement had occurred at a late stage of the proceeding, that is all the evidence had been filed, common questions had been settled,[15] written outlines of opening submissions had been prepared and the parties were ready to commence the trial. Therefore, the plaintiff was in the best position to assess the strengths and weaknesses of the case. It is true that costs had already been incurred up until the point of settlement, however, the plaintiff submits and I accept that further costs would have been incurred throughout the trial. The trial was listed for 12 sitting days and there was also the possibility of an appeal by the unsuccessful party, which would have added more costs and delays to a resolution of the proceeding. The plaintiff submits that the proposed settlement now puts a stop to additional costs being incurred. I agree.

45 Factors (d) to (j) in paragraph 39 above were addressed in the Counsel Opinion. I am constrained by what I can set out here about what was said about those factors given the confidential nature of the Counsel Opinion. However, after considering the Counsel Opinion on those factors, I am satisfied that the plaintiff's counsel has properly examined the merits of the plaintiff's case and the appropriateness of the settlement. Further, in the Second Gilsenan Affidavit, Ms Gilsenan states that extensive modelling was performed to estimate the potential claim value of the Registered Group Members. She also goes on to set out the factors that went into producing the modelling. This further supports my view that extensive work has been performed in assessing the appropriateness of the settlement.

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13 *Caason Investments Pty Limited v Cao (No 2)* [2018] FCA 527, [49].

14 Ibid.

15 See *Anderson-Vaughan v AAI Limited & Ors (No 3)* [2024] VSC 820 (Delany J).

K Fairness as between group members

46 In assessing whether the settlement is fair as between group members, I need to consider the plaintiff's proposed SDS. This is the manner in which the Settlement Sum is intended to be distributed between the group members.

47 In *Fuller v Allianz*,[16] I referred to the factors Moshinsky J set out in *Camilleri*, which his Honour said were relevant to the assessment of whether a proposed distribution scheme is fair and reasonable having regard to the interests of the group as a whole. Those factors are:

(a) the risks faced by the claim group in establishing (relevantly to the present case) that any defendant owed and breached a duty of care — liability risk;

(b) the risks faced by the claim group in proving that any and if so what compensable damage resulted from a defendant's breach of duty — quantification risk;

(c) the risks faced by the claim group in executing any damages award against a given defendant — recovery risk;

(d) the proportion which the settlement payment bears to the estimated 'best case' outcome for the claimants;

(e) the extent to which the 'best case' outcome would, even if it occurred, be devalued by reason of:

(i) the delays of trials and appeals; and

(ii) the unrecoverable 'solicitor-client' costs that would be incurred in those further proceedings.[17]

K.1 The proposed SDS

48 The proposed SDS has seven key stages, as set out in the table below:

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16 *Fuller v Allianz,* [96].

17 *Camilleri*, [32].

Stage	Overview
Eligibility confirmation (SDS Clause 5)	The Scheme Administrator will seek further information from certain people to determine whether they are eligible to participate in the settlement.
Calculation of loss (SDS Clause 7)	Group members' individual losses will be calculated by the Scheme Administrator by applying a loss assessment formula. Each group member's distribution amount will then be based on their assessed loss from the formula on a pro-rata basis. Group members will be notified of what distribution amount they are entitled to. This amount is final and binding.
Collection of bank account details (SDS Clause 8)	Group members whose estimate distribution amount is more than the minimum distribution amount of $30 will be requested to provide their bank account details to the Scheme Administrator if they want to receive their distribution amount. Group members who do not provide their bank account details will forfeit their payment and it will be redistributed to the other group members.
Calculation of distribution amounts (SDS Clause 9)	The Scheme Administrator will calculate each group member's distribution amount based on the quantum of the distribution sum. The calculations are final and binding i.e., they are not subject to challenge by a group member.
Payment of distribution amounts (SDS Clause 10)	The Scheme Administrator will pay group members their distribution amount that exceeds the minimum distribution amount into their nominated bank account. A remittance notice will also be sent to each group member who receives a payment.

Residual settlement sum (SDS Clause 11)	Once the distribution amounts have been paid out to group members and there is a residual amount left, the Scheme Administrator will determine how that residual amount should be distributed.
Conclusion of SDS (SDS Clause 12)	Once all the payments have been made the Scheme Administrator will attend to closing the SDS.

49 The SDS also provides for the deduction from the Settlement Sum for legal costs, administration costs and a reimbursement payment to the plaintiff.

K.2 Assessment methodology for the SDS

50 Having regard to the Counsel Opinion, the plaintiff submits that the proposed SDS is fair and reasonable. The same methodology will be adopted to calculate each group member's loss. The assessment methodology is also consistent with the case that was going to be advanced at trial, in particular that damages should be assessed on a 'no transaction' basis. Further, the plaintiff submits that the methodology will deliver fair relativities as between the group members, in particular the differing risks associated with the statutory claims as opposed to the mistake claims are reflected in the assessed loss formula. Further, there would be additional costs and delays if a 'more perfect' assessment process were to be adopted (to the extent that one were possible).

K.3 Procedural factors

51 The plaintiff submits there are three reasons the SDS provides a fair procedure for the distribution of the Settlement Sum. Firstly, there is a process where group members who have registered a claim but are yet to have been matched to the customer data can have their eligibility assessed. The Scheme Administrator will request further information from these group members to determine their eligibility. Once a decision about their eligibility is made, it is final. There is no right of review or appeal. The plaintiff submits this method appropriately balances the need to ensure all eligible group members who registered and matched to the customer data can participate in the settlement, with the interests of all Registered Group Members in avoiding delay

and erosion of the Settlement Sum by reason of additional costs associated with reviews and appeals of the Scheme Administrator's decisions.

52 Secondly, the SDS calculates each eligible group member's loss based on their customer data because the SDS will treat the customer data as final and binding. Eligible group members will be notified of the Insurance Products they are recorded as having purchased and when it was purchased. The Scheme Administrator will also have the power to make amendments to the customer data based on the information provided by group members. The plaintiff submits that it is appropriate for the calculation and distribution to be based on the customer data as this is the most accurate group member data available and was also what formed the basis of the settlement negotiations between the parties. The plaintiff submits that the alternative course to take would be for the customer data to be reviewed and amended as the case may be. The plaintiff submits that would add cost and delay to the settlement distribution process and there is no reason to suggest why this other course is necessary.

53 Lastly, the plaintiff submits that someone would need to be appointed to administer the distribution and that it would be appropriate to appoint Maurice Blackburn as administrator. I deal with the reasons why Maurice Blackburn should be appointed as the Scheme Administrator in Part L below.

K.4 Conclusion regarding fairness as between group members

54 I accept the plaintiff's submissions regarding the operation of the SDS. I consider that the settlement is fair as between group members and that the SDS is fair as between group members, for the reasons submitted by the plaintiff. In my view, the criteria set out in *Camilleri* have been met.

L <u>The identity of the settlement administrator and their costs</u>

55 The plaintiff proposes that Maurice Blackburn be appointed to administer the distribution. Maurice Blackburn has estimated that the total professional costs and disbursements that it will incur in administering the SDS will be $1,355,915 (inclusive of GST).

56 In considering whether it would be appropriate to appoint Maurice Blackburn to administer the SDS, I have had regard to the costs referee's report. The costs referee is highly qualified and experienced in costs assessments, including in the class action context. At this point, I will accept that the costs referee's costs ($8,415) for producing the report should be paid from the Settlement Sum. The report has assisted the Court in making a decision as to the administration of the settlement and it has been to the benefit of group members in that regard.

57 The plaintiff submits that Maurice Blackburn would be an appropriate administrator for the SDS because:

(a) Maurice Blackburn has experience administering large and complex administrations for class action proceedings;

(b) a dedicated settlement administration team at Maurice Blackburn will handle the distribution and who will have access to staff and expertise with detailed knowledge of this proceeding. The team can also expand or contract where necessary to ensure efficient and effective administration of the settlement; and

(c) the independent costs referee has concluded that Maurice Blackburn's estimate of its likely costs and disbursements for administering the settlement is reasonable.

58 As I noted in *Fuller v Allianz*, there are benefits in having the firm that was running the class action to be appointed to administer the settlement, arising from its detailed background knowledge of the proceeding. Where this background can be leveraged effectively, the administration process can be run most efficiently. The SDS itself is authored by those with responsibility for the day-to-day conduct of the proceeding and the team at Maurice Blackburn which specialises in settlement administration. They are across the finer details of the SDS and are in a position to get quickly started in distributing the settlement.

59 The other question I need to consider is what costs should be paid to Maurice Blackburn from the Settlement Sum for the administration process.

60 The plaintiff seeks approval of Maurice Blackburn's administration costs prospectively. They seek a deduction of $1,364,330 (inclusive GST). This amount consists of $1,355,915 for the likely professional costs and disbursements and $8,415 for the costs referee's report. The plaintiff submits that the costs referee has reviewed Maurice Blackburn's estimated professional costs and disbursements and concluded that the costs are fair and reasonable because:

(a) the scope of the administration was relatively large and towards the higher end of complexity;

(b) the hourly rates proposed to be charged by Maruice Blackburn were fair and reasonable;

(c) the breakdown of work between fee earners appeared to be fair and reasonable for a complex settlement administration; and

(d) the costs and disbursements set out in the estimate appear to be reasonable in light of the nature and number of tasks and assessments that will need to be undertaken as part of this process.

61 Further, I accept the costs referee's assessment that the estimated professional costs and disbursements as a proportion of the Settlement Sum is just under 4%. This is further evidence that the administration costs are not disproportionate to the Settlement Sum, especially considering the issues involved and the amount of work required to be performed to distribute the Settlement Sum.

62 I am content to rely upon the costs referee's report in reaching my decision on whether to approve the likely costs of administering the settlement. The methodology adopted by the costs referee is sound: obtaining an estimate from Maurice Blackburn is an appropriate starting point, and to do so otherwise would really be operating in a vacuum. The costs referee was appointed pursuant to r 50.01 of the Rules as a special referee. Pursuant to r 50.04 of the Rules, the Court, may, as the interests of justice require, adopt the special referee's report to decline to adopt it, in whole or in part, as it sees fit.

M Payment to the plaintiff

63 When approving a settlement, the Court has power pursuant to s 33V(2) of the Act to make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement. This includes payments to a plaintiff in a group proceeding.

64 As part of the settlement, it is proposed that the plaintiff be reimbursed for the burdens of time, inconvenience and stress that she bore in acting as a the vehicle for the prosecution of the whole group's claims. It is proposed that the plaintiff receives a payment of $30,000.

65 I accept that the plaintiff should be paid $30,000 from the settlement. The amount sought is modest in light of the overall quantum of the proposed settlement. It is common for the named plaintiff in group proceedings to be provided with compensation for the time and labour associated with their role. I accept the plaintiff's submissions and evidence in respect of the level of involvement of the plaintiff. The plaintiff's work on this proceeding over a four year period included matters such as: participating in telephone conferences with Maurice Blackburn to receive advice, updates and to provide instructions, identifying and collating documents for use in evidence and providing instructions in relation to mediation and settlement negotiations. I am therefore satisfied that the amount sought to be paid to the plaintiff is an appropriate level of compensation in light of the work that she had to perform. It is fair and reasonable in the interests of group members as a whole for the amount to be ordered. Further, the proposed payment to the plaintiff sits comfortably within the range of payments allowed by courts for such matters.[18]

N Group costs order

66 I now need to consider the GCO for the payment of legal costs, calculated as 25% of any award or settlement, inclusive of GST.

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[18] Vincent Morabito, *Group Costs Orders, Funding Commissions, Volume of Class Action Litigation, Reimbursement Payments and Biggest Settlements* (4 February 2025) 50.

67 On the basis of the GCO as ordered and the proposed Settlement Sum, Maurice Blackburn would be entitled to $8.5 million (subject to GST).

N.1 Applicable law and principles

68 Section 33ZDA(3) of the Act provides that '[t]he 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)'. The Court is therefore empowered to vary the GCO, such as by varying the percentage of the amount in fact obtained which is to be payable to the solicitors. This power to amend allows the Court to ensure that the terms of the GCO remain appropriate, once it has information before it to inform an analysis of whether the percentage to be paid is proportionate.

69 The Court has now had a number of occasions to consider the Court's role at the end of a group proceeding involving a GCO.[19] In *Allen*, Watson J set out the matters of principles in considering whether to exercise the power under s 33ZDA(3) of the Act.[20] I agree with and adopt those principles here.

70 The plaintiff submits that in addition to the principles outlined by Watson J, the following principles can also be distilled from *Allen* and *Fuller v Allianz*:

(a) The power to amend a group costs order only arises in circumstances where the court was satisfied that it was 'appropriate or necessary to ensure that justice is done in the proceeding' to make the original order.

(b) The consideration of whether to exercise the power under s 33ZDA is not an occasion for a hearing *de novo* regarding the appropriateness of the group costs order.

(c) Rather, the power to amend should only be exercised if the court is satisfied that circumstances now mean that an amendment is appropriate or necessary to ensure that justice is done in the proceeding. Whilst the language of

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19 See, for example, *Allen & Anor v G8 Education Ltd (No 4)* [2024] VSC 487 (***Allen***); *Fuller v Allianz* [2025] VSC 160; *Gehrke & Anor v Noumi Ltd & Anor* [2025] VSC 373; *O'Brien v ANZ & Anor* [2025] VSC 389.

20 *Allen*, [63].

s 33ZDA(3) contains no express limitation, such a limitation arises by necessary implication from the structure of s 33ZDA and the conditions on the original exercise of power under s 33ZDA(1).

(d) Close attention should be paid to the reasons for the original group costs order.

(e) The court should ensure that costs payable to the lawyer 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 under the group costs order.[21]

N.2 Consideration

71 The plaintiff submits that the GCO was granted on the basis that:[22]

(a) it would confine the exposure of the plaintiff and group members to legal costs from the outset;

(b) simplicity, transparency, and additional protection for group members were 'more readily obtainable' through a GCO than alternative funding arrangements;

(c) based on the modelling performed at that stage of the proceeding, the GCO would result in the best outcome for group members in almost all scenarios and protect them from disproportionately high legal costs in the event that the sum recovered was low;

(d) the rate of 25% was proportionate to the risks assumed by Maurice Blackburn.

72 The plaintiff submits that taking into account the matters canvassed in the confidential materials, the plaintiff's counsel is not aware of any circumstances to suggest that a reduction to the existing GCO rate is appropriate or necessary to ensure that justice is done in the proceeding. The plaintiff submitted during the hearing that based on the evidence put before the Court, Maurice Blackburn will not recover its full costs it

21 *Fuller v Allianz*, [156], [159], [161], [180]; *Allen*, [62], [85]-[88].
22 By reference to the GCO Reasons, [34], [40], [50], [55]-[58].

incurred in the conduct of this group proceeding. Further, no group member has objected to the GCO rate or sought any change to the rate. While this is not a determinative factor, the plaintiff submits that it is a factor that weighs heavily in favour of leaving the GCO rate unchanged.

73 When Stynes J made the order for the GCO rate to be set at 25%, her Honour said it was appropriate to ensure justice is done for the GCO to be set at that rate for the following reasons:[23]

> (a) It provides a level of certainty as to the legal costs to be incurred.
>
> (b) It engenders simplicity and transparency to the costs payable and returns recoverable by the plaintiff and group members.
>
> (c) It will likely serve to protect the group members, where the sum recovered is low, from disproportionately high legal costs.
>
> (d) The proposed rate is appropriate having regard to the risks confronting the claims made, the risks to be assumed by Maurice Blackburn under the proposed GCO, and the reward it might reasonably expect in return for the assumption of those risks.

74 The GCO rate ensured that the plaintiff and group members receive a fixed percentage of 75% of any award or settlement that is achieved. This was said to be beneficial to the plaintiff and group members because it provided certainty and protection about how legal costs were going to be deducted from any final amount.[24]

75 I note that no objections were made regarding the percentage of the GCO and I have taken this into account in making my decision, but I have not treated it as determinative.

76 I have not described in detail the evidence regarding accrued costs, risks, budgets and the like as provided in Ms Gilsenan's affidavits, as those aspects are confidential. I can say that the information provided on those issues was sufficient enough to allow me to evaluate the evidence and to reach this conclusion. That the GCO results in Maurice Blackburn receiving less than what its fees and disbursements would have been if

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23 GCO Reasons, [59].
24 Ibid, [33(b)].

calculated in the usual way demonstrates that there was risk involved for Maurice Blackburn in agreeing to run this case on the basis of the GCO.

77 I am satisfied that that GCO percentage remains proportionate, having regard to the work and investment by Maurice Blackburn, and the risks it assumed.

O Conclusion

78 For the reasons set out above, I made orders:

(a) approving the proposed settlement;

(b) approving the settlement distribution scheme and appointing Maurice Blackburn as the scheme administrator;

(c) approving payments from the Settlement Sum:

(i) to the plaintiff of $30,000;

(ii) to Maurice Blackburn of $8.5 million for its costs and disbursements, being the amount payable under the GCO;

(iii) to Maurice Blackburn of $1,364,330 for the costs of administering the settlement distribution scheme;

(d) preserving confidentiality over specified material; and

(e) dealing with various other consequential matters.

79 The plaintiffs are requested to inform my Associates whether they seek a further order, as referred to in paragraph 36 above.

SCHEDULE OF PARTIES

S ECI 2021 00930

BETWEEN:

ZOEY ANDERSON-VAUGHAN	Plaintiff
- v -	
AAI LIMITED (ACN 005 297 807)	First Defendant
TAL LIFE LIMITED (ACN 050 109 450)	Second Defendant
MTA INSURANCE PTY LTD (ACN 070 583 701)	Third Defendant

CERTIFICATE

I certify that this and the 28 preceding pages are a true copy of the reasons for ruling of Justice Matthews of the Supreme Court of Victoria delivered on 4 August 2025.

DATED this fourth day of August 2025.

.....

Associate