



DOWNER EDI CLASS ACTION

Justine Lidgett & Cameron Lidgett v Downer EDI Limited (ACN 003 872 848) and others
Supreme Court of Victoria

Case: S ECI 2023 01835

AMENDED GROUP PROCEEDING SUMMARY STATEMENT Filed on: 01/04/2025 02:40 PM

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 or similar 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) and its auditor, KPMG.

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 plaintiffs also allege that KPMG engaged in misleading or deceptive conduct by representing that Downer’s financial reports gave a true and fair view of the company’s financial position and complied with Australian Accounting Standards.

The plaintiffs allege that misleading representations by Downer and KPMG, and Downer’s breaches of its continuous disclosure obligations, caused the price of Downer shares to be higher than they otherwise would have been.

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 Amended Consolidated Statement of Claim.

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

Maurice Blackburn is the solicitor on the record acting for the plaintiffs. Maurice Blackburn has also retained another law firm, William Roberts Lawyers, to act as its agent in this proceeding. William Roberts is therefore assisting in the conduct of the proceeding.

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?

Maurice Blackburn has entered into a Co-Funding and Management Agreement with William Roberts Lawyers and CASL Funder Pty Ltd as trustee for CASL Fund 1 (**CASL**), which provides for both Maurice Blackburn and CASL to fund the class action.

On 6 October 2023, Justice Delany made a group costs order (**GCO**) in the class action. A GCO is an order that the legal costs payable to the plaintiffs' lawyers be calculated as a percentage of any award or settlement amount that may be recovered in the proceeding. In this case, the Court ordered that the GCO percentage be set at 21%. This means that the total legal and funding costs for running the case will be set at 21% of any award or settlement amount.

Costs are payable only in the event of a successful outcome, in which case they will be deducted from any settlement or judgment amount, so group members will not be liable to pay any 'out of pocket' costs.

Further information with respect to the funding of the proceeding can be found in the Funding Information Summary Statement.

7. How are legal fees and disbursements charged?

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. As stated above, the Court has made a GCO, which has been determined by the Court as 21% of the amount of any damages award or settlement.

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?

Between 30 March and 7 June 2023, four law firms (including Maurice Blackburn and William Roberts) commenced class actions against Downer making overlapping claims. An agreement was reached between Maurice Blackburn, William Roberts and a third law firm to consolidate their respective class actions into one single class action, with Maurice Blackburn as the solicitor on the record in the consolidated class action and with William Roberts as its agent. It was also agreed that the third law firm would cease to play a role in the consolidated class action. This left only one competing proceeding conducted by the fourth law firm (the Kajula proceeding, *Kajula Pty Ltd v Downer EDI Ltd*, Federal Court of Australia proceeding NSD520/2023).

On 27 September 2023, the Court decided that the consolidated proceeding should continue in preference to the Kajula proceeding. Accordingly, the Court made an order permanently staying the Kajula proceeding. Kajula applied to appeal that decision. The application was heard on 8 May 2024. On 15 October 2024, the Court of Appeal refused leave to appeal, ultimately deciding that none of Kajula's proposed grounds had a real prospect of success. The relevant judgment can be located [here](#).

This means that the consolidated class action being conducted by Maurice Blackburn with William Roberts is the only case that is proceeding against Downer.

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 PO Box A266 Sydney South 1235
Phone	1800 571 265		