

## NOTICE OF PROPOSED SETTLEMENT

### DePuy ASR Class Action in the Federal Court of Australia

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On 31 March 2016, the parties in the DePuy ASR class action agreed on terms for a provisional **settlement** of the case for **\$250 million** plus interest, without admission of liability. The settlement is subject to approval by the Federal Court of Australia.

This notice contains important information about the proposed settlement. It also explains what Group Members must do to **claim compensation** in the settlement. If you are a Group Member in the class action, your legal rights will be affected by the settlement. More information about the ASR class action and the proposed settlement are contained in the attached overview.

**Please read this notice carefully.** If you do not understand the notice or you have any questions, you should contact the lawyers for the applicants in this class action, Maurice Blackburn or Shine, or seek independent legal advice. The Federal Court is not able to answer questions about the settlement.

#### WHAT GROUP MEMBERS NEED TO DO

Group Members who want to claim compensation in the settlement must **register online** at the following website: [www.depuyclassaction.com.au](http://www.depuyclassaction.com.au)

Under the proposed settlement, Group Members will be eligible to receive compensation if they satisfy certain eligibility criteria that are outlined in the attached overview. The most important of these is that Group Members must have had (or in the future have) revision of their ASR hip implant within ten years of it being implanted.

The **deadlines** for online registration are as follows. Failure to comply with these deadlines may result in rejection of your claim.

Date of revision	Deadline for registration
30 April 2016 or earlier	31 October 2016
1 May 2016 or later	No later than six months after the date of the revision surgery

#### COURT APPROVAL OF THE PROPOSED SETTLEMENT

On 24 June 2016, the Federal Court will be asked to approve the proposed settlement. Group Members may attend this hearing if they wish, although they are not required to do so. The application will be heard at the Federal Court of Australia in Sydney, in the Law Courts Building at Queens Square.

If you wish to oppose or object to the proposed settlement, you:

- a) must, by 10 June 2016, send written notice to Maurice Blackburn or Shine explaining the reasons why you oppose the settlement;
- b) may, on 24 June 2016, attend (or send a representative to attend) the settlement approval hearing in the Federal Court and explain why you think that the settlement should not be approved.

#### CONTACT DETAILS

Contact details for Maurice Blackburn or Shine are as follows:

**Maurice Blackburn Lawyers**  
[www.mauriceblackburn.com.au](http://www.mauriceblackburn.com.au)  
1800 625 669 (toll free)

**Shine Lawyers**  
[www.shine.com.au](http://www.shine.com.au)  
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## OVERVIEW OF THE ASR CLASS ACTION AND PROPOSED SETTLEMENT

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### What is the ASR class action?

The ASR class action was brought by Tammy Stanford and Jamie Dunsmore (the **Applicants**) in their own right and on behalf of all “**Group Members**” in relation to alleged defects of the ASR hip implants.

The ASR class action was brought against two companies (the **Respondents**):

1. DePuy International Ltd (**DePuy**), which designed and manufactured the ASR hip implants; and
2. Johnson & Johnson Medical Pty Ltd (**JJM**), which distributed the ASR hip implants in Australia.

The Applicants claimed that the ASR hip implants were defective, not fit for purpose and/or not of merchantable quality, in contravention of the *Trade Practices Act*. The Applicants also alleged negligence in the design, manufacture and supply of the ASR hip implants. As a result of these allegations, the Applicants claimed compensation for themselves and for Group Members who suffered loss or damage as a result of the ASR hip implants.

Both Respondents denied the allegations and defended the ASR class action, which culminated in a 17 week trial in the Federal Court of Australia in the first half of 2015. As at 31 March 2016, the Federal Court had not handed down a judgment.

Copies of the statement of claim and defences in the class action can be downloaded from [www.depuyclassaction.com.au](http://www.depuyclassaction.com.au) or from the websites of Maurice Blackburn or Shine.

On 31 March 2016, the parties in the ASR class action agreed on terms for a provisional settlement on a “no admissions” basis.

### Who are Group Members?

You are a Group Member if you had surgery in Australia to implant one or more ASR hip implants. There are two types of ASR hip implants:

1. the DePuy ASR Hip Resurfacing System (used in hip resurfacing);
2. the DePuy ASR XL Acetabular System (used in total hip replacement).

You are no longer a Group Member if you opted out of the class action.

If you are unsure whether you are a Group Member, you should contact Maurice Blackburn or Shine or seek independent legal advice.

### Proposed settlement of the ASR class action

The parties and lawyers involved in the ASR class action have reached an agreement for the settlement of the class action. The proposed settlement will not take effect unless and until after it is approved by the Federal Court and there is no appeal against the settlement approval.

If the proposed settlement is approved, DePuy and JJM will pay an amount of \$250 million plus interest. In addition, the Respondents will be responsible for paying certain categories of “liens”, which are claims against Group Members by third parties (such as private health insurers or Medicare) for recoupment of health care costs that were paid by the third parties for the benefit of Group Members who had revision surgery and other medical treatment.

If the Federal Court approves the proposed settlement, the settlement sum will be distributed as follows:

1. first, reimbursement payments to the Applicants, Mary Beentjes and Robert Webb will be deducted from the settlement sum – these payments are for modest amounts that are intended to reimburse the Applicants, Ms Beentjes and Mr Webb for the time they spent in prosecuting and pursuing the ASR class action for the benefit of Group Members; and
2. next, the Applicants' legal costs will be deducted from the settlement sum – these legal costs are currently estimated to be \$36m, and will only be paid to the extent that they are both verified by an independent costs expert as being reasonable and they are approved by the Federal Court;
3. the balance of the settlement sum will be used to compensate Group Members in accordance with the Settlement Scheme, to pay any liens that are not the responsibility of the Respondents, and to pay for the costs of administering the settlement scheme.

The settlement sum of \$250 million, plus interest, will be held in an interest earning bank account until payments need to be paid. Interest that is earned on the settlement sum will increase the amount of funds available to compensate Group Members and to pay administration costs.

Maurice Blackburn and Shine, will be the “**administrators**” of the settlement. Both firms will be responsible for the administration of the Settlement Scheme.

The Settlement Scheme is a document that sets out the process for Group Members to claim compensation and for claims to be assessed, quantified and paid. The Settlement Scheme is available to download from the websites of Maurice Blackburn, Shine, Duncan Basheer Hannon and Lempriere Abbott McLeod, or from the following website:

[www.depuyclassaction.com.au](http://www.depuyclassaction.com.au)

Group Members may also request a copy of the Settlement Deed from Maurice Blackburn or Shine.

#### **Is the settlement an admission by DePuy or JJM?**

The settlement was agreed by the parties on the basis that DePuy and JJM did not admit any liability or wrongdoing.

#### **Who is eligible to be compensated?**

Not all Group Members will be eligible to receive compensation under the proposed settlement. The most important factor is that Group Members will only be compensated if they have had revision (or in the future need to have revision) of their ASR hip implant.

The Settlement Scheme sets out the eligibility criteria that must be met before a Group Member will be assessed as eligible to receive compensation. These eligibility criteria are as follows:

1. the Group Member was **implanted** with one or more ASR hip implants in Australia;
2. the Group Member has had a **revision** of an ASR hip implant involving removal of the acetabular cup;
3. the revision surgery occurred **within 10 years** of the Group Member's ASR hip implant being surgically implanted;
4. the revision surgery was not performed due the following factors that are unrelated to the design or functionality of the ASR hip implants:
  - (a) **fracture of the femoral neck** within 6 months of an ASR hip resurfacing implant being implanted, unless the fracture was caused by an adverse reaction to metal debris; or
  - (b) **infection** within 18 months of an ASR hip implant being implanted, unless the revision would have been needed anyway; or

- (c) **trauma** (such as a car accident) affecting the alignment or position of an ASR hip implant, unless the revision would have been needed anyway; and
5. the Group Member has not:
- (a) **opted out** of the ASR class action; or
  - (b) previously accepted a final offer of compensation from the Respondents, including a settlement offer made through its Compensation Programme, administered by **Crawford & Co**. This does not include payments by Crawford & Co for reimbursement of medical expenses under the Reimbursement Programme.

If Group Members do not yet satisfy these eligibility criteria, they can still make a claim in the future, if they satisfy these eligibility criteria in the future. For example, if a Group Member's ASR hip implant surgery occurred on 1 March 2009, and she then undergoes revision eight years later on 1 March 2017, the Group Member will become eligible to receive compensation (assuming that she also satisfies the other eligibility criteria). In this example, she will need to register her claim no later than 1 September 2017.

### **How many Group Members are likely to make a claim?**

After taking into account the number of ASR patients who have already opted out of the ASR class action, it is estimated that there are approximately 1,400 Group Members who have already had revision surgery to remove their ASR hip implant.

It is estimated that another 300 or so Group Members will become eligible to receive compensation as a result of revisions in the future.

### **What is the process for making a claim and receiving compensation?**

The Settlement Scheme sets out the process for making and assessing claims by Group Members. Broadly, claims will be assessed pursuant to a streamlined, non-adversarial process involving the following steps:

1. Group Members will need to **register** their claim within the time limits specified on the first page of this notice. The deadlines vary depending on when Group Members underwent revision. Claims can be registered at any time provided that they comply with the deadlines.
2. The settlement administrators will obtain medical records and other documents relevant to the **eligibility criteria**.
3. The settlement administrators will determine eligibility and notify Group Members of this determination.
4. Eligible Group Members will then have **two options**:
  - (a) **Option 1** – accept a “**fast track resolution**”, being a fixed lump sum payment of \$55,000 – Group Members who accept this option will avoid the need to undergo individual assessment of their compensation entitlements, and will therefore be paid more quickly; or
  - (b) **Option 2** – proceed to **individual assessment** as outlined in steps 5 and 6 below – Group Members who choose this option might be entitled to more (or less) than \$55,000. The assessment process will be slower and it will take longer for these Group Members to be paid their compensation.
5. If a Group Member chooses Option 2, the Group Member will be asked to provide information to the settlement administrators about their personal circumstances, and the settlement administrators will also obtain medical and other documents relating to an eligible Group Member's claim. The settlement administrators will prepare a “claim book”, which is a package of materials that will enable an **assessment of the amount of compensation** payable to that Group Member, taking into account her or his personal circumstances and experiences.

6. The claim book will be allocated to a lawyer on a **panel of assessors**. The panel of assessors will consist of lawyers with significant experience in personal injury litigation. The assessor will be asked to **make a determination regarding the amount of compensation** payable to that Group Member.
7. At around the same time as steps 4, 5 and 6, the payment of **liens** for each Group Member will be determined and resolved. For some Group Members, the Respondents will be responsible for the payment of all of their liens, whereas for other Group Members, liens will be partly paid by the Respondents and partly paid from the pool of settlement funds, or alternatively paid entirely from the pool of settlement funds. This will depend on the types of health care treatment for which payments were made by third parties. A Group Member's liens will need to be resolved before the Group Member can be paid his or her compensation.
8. If a Group Member is dissatisfied with the initial assessment of their compensation entitlements, she or he can seek a **review** of the assessment by a more senior lawyer.
9. Claims will be either proportionately increased or reduced depending on whether there are surplus settlement funds or whether the total value of all claims is anticipated to be greater than the available settlement funds.
10. The settlement administrators may make **payments in several instalments**, and the settlement administrators may also make payments at different times in **tranches** to groups of Group Members as their claims are assessed and finalised. Other than in the resolution of liens, the Respondents will have no active role in assessing and determining eligibility of a Group Member or the amount of their compensation.

#### **How much will Group Members receive under the settlement?**

Unless a Group Member accepts the fast track resolution, the amount of compensation payable to any one Group Member is not yet known because each person's claim will be individually assessed according to their personal circumstances. A Group Member's individual circumstances will have an impact on the assessment of compensation under various categories of loss:

1. **general damages** or "non-economic loss", which is compensation for pain and suffering, loss of amenities of life and loss of enjoyment of life;
2. compensation for domestic **care** and assistance;
3. compensation for lost **income** or leave entitlements and lost superannuation entitlements associated with lost income, and compensation for loss of income due to any ongoing incapacity for work;
4. compensation for out-of-pocket **expenses** such as medical or hospital, pharmaceutical, aids and equipment, travel and accommodation, physiotherapy and commercial care expenses.

For example, a Group Member who had a straightforward revision experience with little or no ongoing pain is likely to receive less than a person who suffered post-operative complications or a relatively young person whose ASR revision had an impact on their capacity to work and earn a living.

#### **Do Group Members need to pay legal fees in order to make a claim?**

No.

If the settlement is approved, the Applicants' legal costs in conducting the ASR class action (including the costs of running the trial in 2015) will be paid from the settlement sum. Group Members do not need to make a contribution to these legal costs.

The settlement administrators' costs of administering the Settlement Scheme and processing claims by Group Members will be paid from the settlement sum. Again, Group Members do not need to make a contribution to these legal costs, except that Group Members may be requested to pay the costs of a review if the review is unsuccessful.

**Other important features of the proposed settlement**

As part of the agreement to settle the ASR class action, the Applicants and all Group Members will release and discharge certain “**released parties**” from all legal claims relating to the ASR hip implants. The released parties include not only DePuy and JJM but also their related companies (such as subsidiaries) as well as their insurers, Crawford & Co, employees and others involved in designing the ASR hip implants. The released parties also include doctors and hospitals involved in implanting or revising ASR hip implants. If the settlement is approved, it will have the effect that the Applicants and Group Members promise not to sue any of the released parties, including surgeons and hospitals.

If a Group Member decides to sue a third party (for example a surgeon), and the third party then makes a cross-claim against one of the Respondents or its related parties (for example, DePuy), the settlement provides that the Group Member indemnifies DePuy in relation to that cross-claim (except that the indemnity does not cover legal costs).

The reason for these provisions is to bring to an end all Australian litigation involving Group Members arising from the use of the ASR hip implants and to resolve all Group Members’ legal claims relating to the ASR hip implants by means of this proposed settlement.