

# FEDERAL COURT OF AUSTRALIA

## NOTICE TO GROUP MEMBERS

### ASR Hip Implants Class Action

Tammy Maree Stanford & Anor v DePuy International Ltd & Anor  
NSD 213 of 2011

#### 1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Tammy Stanford and Jamie Dunsmore (the **Applicants**) against DePuy International Limited (**DePuy**) and Johnson & Johnson Medical Pty Ltd (**JJM**). The action arises out of the alleged loss and harm suffered as a result of allegedly defective hip implants manufactured and distributed by DePuy and JJM.

#### 2. What is a class action?

A class action is a proceeding that is brought by one or more persons (the Applicants) on their own behalf and also on behalf of a group of people (the group members) against one or more other persons (the Respondents) where the Applicants and the group members have similar claims against the Respondents. Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondents in separate legal proceedings unless they have opted out.

#### 3. What is Opt Out?

The Applicants in a class action do not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "How can you opt out of the class action".

#### 4. What is this class action?

This class action, the ASR Hip Implants Class Action, is brought by Tammy Stanford and Jamie Dunsmore (who are the Applicants) on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

The Applicants' allegations in the class action relate to DePuy's ASR Hip Resurfacing System and ASR XL Acetabular System (the **Products**). The Products were manufactured by DePuy and distributed in Australia by JJM.

The Applicants claim that the Products were defective, not fit for purpose and/or not of merchantable quality, in contravention of provisions of the *Trade Practices Act 1974* (Cth) and, in the case of group members who had their primary surgery in South Australia, the *Manufacturers Warranties Act 1974* (SA). The Applicants also allege that DePuy and JJM were negligent in their design, manufacture and supply of the Products.

The Applicants claim that they and group members suffered loss and harm as a result of the alleged defects of the Products and that they are therefore entitled to damages, including exemplary and/or aggravated damages.

DePuy and JJM deny the allegations, are defending the class action and maintain that the Products were carefully designed, manufactured appropriately and that the outcomes for group members were not caused by any defect in the Products, but were the consequence of the usual variability in orthopaedic outcomes associated with this type of surgery.

The class action has been listed for the hearing of a number of “common issues” on 2 June 2014 in the Federal Court, Sydney.

Copies of the Second Further Amended Statement of Claim and other relevant documents (including the Defences to those claims, the orders of the Court regarding this notice and process, and the common issues to be determined at the hearing on 2 June 2014) may be obtained by:

- (a) downloading them from <http://www.depuyclassaction.com.au>;
- (b) inspecting them, by appointment, between 9.00am and 5.00pm at an office of Maurice Blackburn, contact details for which are available from the website above or by calling **1800 625 669** (toll free); or
- (c) inspecting them, by appointment, between 9.00am and 5.00pm at an office of Shine Lawyers, details for which are available by calling **13 11 99**.

## **5. Are you a group member?**

You have received this notice because you may be a group member in the class action against DePuy and JJM.

You are a group member if you are a person who had surgery performed on you in Australia to implant one or both of the Products, namely:

- (a) DePuy ASR Hip Resurfacing System; and/or
- (b) DePuy ASR XL Acetabular System.

You are not a group member if you have already opted out of the class action, including if you have done so in the course of entering into a legally enforceable agreement with DePuy and JJM, to settle a claim relating to one or both of the aforementioned ASR Products, including by way of the De Puy ASR Compensation Programme (discussed below).

If you have not yet entered into such an agreement with DePuy and JJM but subsequently do so, including through the DePuy ASR Compensation Programme, you will cease to be a group member in the class action.

If you are unsure whether or not you are a group member, you should contact the Applicants’ lawyers, Maurice Blackburn or Shine Lawyers (whose contact details are set out below), or seek your own legal advice without delay.

**The Federal Court of Australia has set a date by which group members may opt out of the class action. The date is 24 April 2014. It is important that you consider carefully the options available to group members as set out in this notice.**

## 6. Your Options

Your options are:

- (a) do nothing, and remain a group member;
- (b) opt out of the class action and make no claim against DePuy and/or JJM;
- (c) opt out of the class action and (if desired) pursue a claim against DePuy and/or JJM outside of the class action; or
- (d) opt out of the class action and (if desired) progress a claim through the DePuy ASR Compensation Programme by registering with that Programme prior to the opt out date.

## 7. Will you be liable for legal costs?

You will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common issues. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Applicants' lawyers or other lawyers to do that work for you; and
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from DePuy and JJM.

## 8. What will happen if you choose to remain a group member?

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful, you may benefit from the determination of the common issues listed for hearing, be entitled to claim under a Court approved process or be entitled to share in a settlement in favour of the Applicants and group members. It is likely that you will have to satisfy certain conditions before your entitlement arises.

If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue for compensation for injuries caused by your hip implant in any other proceedings.

## 9. How can you remain a group member?

**If you wish to remain** a group member there is **nothing you need do** at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the group members.

However, if you have not already done so, you are invited to contact the Applicants' lawyers, Maurice Blackburn or Shine Lawyers (whose contact details are below) and register as a group member so that future notices can be sent to your preferred address.

## 10. How can you opt out of the class action?

**If you do not wish to remain** a group member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against DePuy and/or JJM **provided that you issue Court proceedings within the time limit applicable** to your claim. You should seek legal advice about the applicable time limit for your claim and whether opting out of the class action will mean you will be out of time to bring any claim on your own behalf (see section 12 below).

If you opt out of the class action you may be able to seek compensation from DePuy and/or JJM without the need to pursue a claim in the courts (through the Compensation Programme, details of which are set out in section 11 below).

**If you wish to opt out** of the class action you **must** do so by completing an “**Opt out notice**” (enclosed), then returning it to the Registrar of the Federal Court of Australia at the address on the form. Each individual group member that wishes to opt out of the class action should fill out a separate “Opt out notice”. **IMPORTANT: the notice must reach the Registrar by no later than 4:30pm on 24 April 2014** otherwise it will not be effective.

You should submit the Opt out notice if:

- (a) you qualify as a group member and you wish to opt out of the class action; or
- (b) you believe that you have been incorrectly identified as a group member, because you do not meet the criteria set out in the section headed “Are you a group member” above.

## 11. DePuy’s Compensation Programme

Group members who opt out of the class action have the option of registering to participate in the DePuy ASR Compensation Programme (**the Programme**).

Although the Programme has existed for some time, the Programme will be closed shortly after the opt out date (24 April 2014), except to those group members who have registered under the Programme by the opt out date AND opted out of the class action proceedings by the opt out date.

You must register under the Programme by the opt out date (24 April 2014), as well as opt out of the class action proceedings by the opt out date, even if you have already submitted a claim under the Programme, but your claim has not yet been finally resolved (that is, you have signed the Deed).

**If you choose to pursue your claim through the Programme, you must opt out of the class action and register for the Programme by 24 April 2014. Once the opt out date expires, if you have not opted out of the class action and have not registered for the Programme by 24 April 2014, you will no longer be able to participate in the Programme.**

You are eligible to participate in the Programme if you were implanted with the Products in Australia after July 2003 **AND** have had revision surgery for either of the Products.

If you are eligible and decide to participate in the Programme, DePuy will evaluate your claim according to the process set out in the DePuy ASR Compensation Programme Information Guide. Once your claim is evaluated, an offer, if any, may be made to you by DePuy/JJM through Crawford & Company (Australia) Pty Ltd (**Crawford**). DePuy has appointed Crawford to administer the Programme.

The offer may be made to compensate you for pain and suffering, future treatment costs, out of pocket expenses and, if applicable, loss of earnings related to the revision of the Products.

The Programme is not subject to supervision by the Federal Court, which means that the Court has not considered (and will not consider) whether any compensation offered under the Programme is fair and reasonable. There has been an assessment of some aspects of the Programme by senior and experienced lawyers independent of DePuy, Mr Larry King SC and Mr Roger Gyles AO QC. Further information may be found in the DePuy ASR Compensation Programme Information Guides.

An indication of the level of compensation you may receive is set out in the DePuy ASR Compensation Programme Information Guide, or can be obtained by contacting Crawford, the Programme administrator (details below).

The remedies that are available to the Court under the *Trade Practices Act* and under the law of negligence are broader than the compensation and reimbursement offered under the Programme. The Court in the class action has also been asked to order exemplary and/or aggravated damages which are not available under the Programme.

If you opt out of the class action in order to participate in the Programme and if DePuy makes you an offer, it may be for less or more than the amount you may receive if you choose to remain a group member in the class action.

If you opt out of the class action in order to participate in the Programme and do not receive an offer from DePuy or are dissatisfied with any offer that you may receive and you decide to reject it, you will need to bring your own, new proceeding against DePuy and/or JJM in Court. If, by the time you choose to bring your own proceedings the statutory time limit in respect of your claim has expired (see section 12 below), you will not be able to maintain your own proceedings against DePuy and/or JJM.

If you chose to register for the Programme, JJM/DePuy will treat any limitation period which applies to your claim as not re-commencing, unless it had already expired, until 6 months after the day on which you first receive an Offer Letter under the Programme. This is to give you time to submit a claim and consider any offer of compensation without prejudicing your rights.

Full details of the terms of the Programme can be accessed at:

- (a) [www.asrhipinfo.com.au](http://www.asrhipinfo.com.au); or
- (b) by contacting the Programme administrator:

Crawford & Company (Australia) Pty Ltd  
Phone: 1800 684 149  
Fax: (03) 9670 8382  
Email: [depuycomp@crawco.com.au](mailto:depuycomp@crawco.com.au)  
Mail: Crawford & Company (Australia) Pty Ltd  
GPO Box 5065  
Melbourne, VIC 3001

## 12. Limitation Period

Limitation periods are set by statute. If a person with an entitlement to claim does not commence legal proceedings by the time a limitation period expires, they may be barred from making a claim.

The commencement of the ASR Hips class action suspended the limitation period for all group members who have not opted out. Time starts to run again once a person opts out of the class action. If you opt out of the class action and the statutory time limit on your claim expires, or is found to have already expired because you are no longer covered by the class action, you will be barred from bringing proceedings against DePuy and/or JJM in Court (but not from accepting an offer under the Compensation Programme). This will depend on your particular individual circumstances.

Therefore, if you wish to bring your own claim against the DePuy and/or JJM in Court, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

### **Further information**

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact:

- (a) Maurice Blackburn at <http://www.depuyclassaction.com.au> or by calling **1800 625 669** (toll free); or
- (b) Shine Lawyers at [www.shine.com.au/depuy](http://www.shine.com.au/depuy) or by calling **13 11 99**.

Form 21  
Rule 9.34

### OPT OUT NOTICE

No. NSD 213 of 2011

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Tammy Stanford** and Another  
Applicants

**DePuy International Limited** and Another  
Respondents

To:           The Registrar  
              Federal Court of Australia  
              NSW District Registry  
              Queens Square  
              Sydney 2000

I [Name of group member]:....., a  
group member in this representative proceeding, gives notice under section 33J of the *Federal  
Court of Australia Act 1976*, that [Name of group member]: .....  
is opting out of the representative proceeding.

Date: .....

Signed: .....

Name:

Capacity: [eg group member or lawyer]:

\_\_\_\_\_  
Filed on behalf of \_\_\_\_\_  
Prepared by \_\_\_\_\_  
Law firm \_\_\_\_\_  
Tel \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_  
**Address for service** \_\_\_\_\_