

## NOTICE TO GROUP MEMBERS

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

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In late April or early May 2016 you received a Notice of Proposed Settlement, which explained that the parties in the DePuy ASR class action had agreed on terms for a provisional **settlement** of the case for **\$250 million** plus interest, subject to approval by the Federal Court of Australia.

On 29 June 2016, the Court **approved the settlement**. Importantly, the settlement was approved on the basis of an **Amended Settlement Scheme**. This means that the Amended Settlement Scheme (and not the Original Settlement Scheme) will apply to Group Members' claims. This notice contains important information about the approved settlement, including details of the main aspects of the settlement that have changed as a result of the Amended Settlement Scheme. It also reminds Group Members what they must do to claim compensation.

**Please read this notice carefully. It sets out important changes to the Eligibility Criteria that apply to Group Members seeking compensation under the approved settlement.** If you do not understand the notice or you have any questions about the approved settlement or the Amended Settlement Scheme, you should contact Maurice Blackburn or Shine Lawyers. The Amended Settlement Scheme is available to download from the websites of Maurice Blackburn, Shine, Duncan Basheer Hannon and Lempriere Abbott McLeod and from the following website: [www.depuyclassaction.com.au](http://www.depuyclassaction.com.au).

#### AMENDMENTS TO THE SETTLEMENT

A number of Group Members lodged written objections to the settlement, raising a range of concerns about certain aspects of the settlement and the Original Settlement Scheme.

After reviewing and considering Group Members' concerns, Maurice Blackburn and Shine Lawyers prepared the Amended Settlement Scheme, which replaces the Original Settlement Scheme. In making the changes that are in the Amended Settlement Scheme, Maurice Blackburn and Shine Lawyers also took into account expert evidence from a number of experts (including an orthopaedic surgeon, a biostatistician and an actuary).

The main changes in the Amended Settlement Scheme are summarised below. These changes relate to the **Eligibility Criteria** that Group Members must satisfy in order to be eligible to receive compensation.

#### Definition of ASR revision

Original Settlement Scheme: Under the terms of the Original Settlement Scheme, Group Members would only have been eligible for compensation if they had revision of an ASR hip implant, which was defined as the surgical removal of the acetabular cup of an ASR Implant. Some Group Members raised a concern that this definition was too restrictive.

Amended Settlement Scheme: The definition of revision has now been expanded to include the surgical removal of one or more components of an ASR Implant. In other words, the new definition is not limited to surgery involving removal of the acetabular cup, and it now includes removal of other components such as the femoral component. Group Members who would not have been eligible for compensation under the Original Settlement Scheme because they had not had the acetabular cup of an ASR Implant removed in the course of revision surgery may now be eligible for compensation.

#### Non-revision cases

Original Settlement Scheme: Under the terms of the Original Settlement Scheme, Group Members would not have been eligible for compensation unless they had actually had a revision operation. Some Group Members said that this was unfair to Group Members who require revision but are unable safely to undergo revision surgery.

Amended Settlement Scheme: Changes to the Scheme mean that Group Members will now be eligible to apply for compensation if they have had a “Deemed ASR Revision”. A Group Member has had a Deemed ASR Revision if:

1. the surgical removal of one or more components of their ASR Implant is reasonably necessary to alleviate the Group Member’s symptoms or due to abnormal diagnostic test results;
2. the Group Member is suffering from additional medical conditions (comorbidities) and, as a result, the performance of revision surgery poses an unacceptable risk of death or substantial deterioration of the Group Member’s health;
3. it is highly likely that the group member would have undergone revision surgery if they did not suffer from those additional medical conditions (comorbidities); and
4. the above circumstances are unlikely to change before the 13<sup>th</sup> anniversary of the Group Member having been implanted with the ASR Implant.

Group Members who would not have been eligible for compensation under the Original Settlement Scheme because they had not undergone revision surgery may now be eligible for compensation if they meet these four criteria.

#### **Time limit for ASR revision**

Original Settlement Scheme: Under the terms of the Original Settlement Scheme, Group Members would only have been eligible for compensation if their ASR revision was carried out earlier than 10 years after they were implanted with the ASR Implant. Some Group Members raised a concern that the 10 year time limit was too short.

Amended Settlement Scheme: The time limit for revisions has been extended from 10 years to 13 years.

Group Members who would not have been eligible for compensation under the Original Settlement Scheme because they had undergone revision surgery more than 10 years but less than 13 years after they were implanted with an ASR Implant may now be eligible for compensation.

However, the Amended Settlement Scheme no longer gives the Administrators a discretion to allow a late revision (that is, later than 13 years) if a medical contraindication delayed the revision operation. In other words, under the Amended Settlement Scheme, the 13 year time limit is final and not able to be extended in any way.

#### **How many group members are likely to make a claim?**

The Notice of Proposed Settlement said that it was estimated that around 1,700 Group Members were likely to make a claim under the settlement.

As a result of the amendments to the Settlement Scheme set out above, it is now estimated that approximately 2,000 Group Members will be eligible to apply for compensation under the Amended Settlement Scheme. This estimate is based on the expert opinion of an actuary, who provided his best estimate taking into account, amongst other things, the number of ASR patients who had previously opted out of the DePuy ASR class action.

#### **WHAT GROUP MEMBERS NEED TO DO**

The settlement has now been approved by the Court on the basis of the Amended Settlement Scheme. The registration requirements set out in the Notice of Proposed Settlement still apply to all Group Members. As such, if you want to claim compensation in the settlement *but have not yet registered*, you must register your claim. You can register your claim online at the following website:

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

If you wish to register a claim but you are having difficulties completing an online registration form, you should contact Maurice Blackburn or Shine Lawyers. Contact details are set out below.

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

<b>Date of revision</b>	<b>Deadline for registration</b>
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

#### **CONTACT DETAILS**

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