



Schedule A – Existing Group Member Notice

Ford DPS6 “PowerShift” Class Action – Important Notice

Federal Court of Australia Case No. NSD724/2016

Notice Affecting Current and Former Owners of certain Ford Focus, Ford Fiesta and Ford EcoSport cars

This notice applies to you if you purchased an Affected Ford Vehicle between 1 January 2011 and 29 November 2018.

If you purchased your vehicle after 29 November 2018, please read the New Group Member Notice.

The purpose of this notice

This notice provides an update on the status of the class action that was filed in the Federal Court of Australia in relation to certain Ford Focus, Ford Fiesta and Ford EcoSport cars built between 2010 and 2016 fitted with a DPS6 ‘PowerShift’ transmission.

The class action is brought on behalf of the Group Members. The Group Members fall into two categories: (a) Existing Group Members; and (b) New Group Members.

You may be an **Existing Group Member** if you purchased, leased or otherwise acquired an interest in an Affected Vehicle between 1 January 2011 and 29 November 2018 (and you have not opted out of the class action), no matter whether the car was new or used. A list of Affected Vehicles appears at **Schedule 1** of this notice. You may be a **New Group Member** if you purchased, leased or otherwise acquired an interest in an Affected Vehicle after 29 November 2018, no matter whether the car was new or used.

This notice is for Existing Group Members. If you are a New Group Member, then please view the New Group Member Notice.

No steps are required to be taken

You are not required to do anything by this notice. If you wish to be contacted and kept up to date about the class action, you may register online at <https://www.fordclassaction.net/>.

Update on the Class Action

Broadly speaking, the class action has two phases. In the first phase, the Court determines the lead applicant’s claim and questions which are common to that claim and the group members’ claims. Once that phase has been completed, the Court determines the claims of the group members, using the findings it made in phase one, where appropriate.



Phase one has taken longer than anticipated, partly because there have been a number of appeals. However, the High Court of Australia has recently ruled upon the latest appeal, and phase one is now almost complete.

The steps so far are summarised below:

- Initial trial: The initial trial of the class action occurred in 2020, and a judgment was handed down on 29 June 2021. The Court found that the Affected Vehicles as originally supplied were not of “acceptable quality” within the meaning of section 54(1) of the *Australian Consumer Law*, with some vehicles containing more defects than others. The Court ordered Ford to pay the lead applicant the sum of \$17,248.19 (including interest and excess GST, stamp duty and financing costs) in respect of her 2012 Ford Focus Sport. The Court deferred until a later date the assessment of group member entitlements.
- Full Court appeal: Both parties appealed. The appeal was heard in March 2023, and a judgment was handed down on 14 November 2023. Ford’s challenge to the Trial Judge’s finding that the Affected Vehicles were not of “acceptable quality” was unsuccessful, and the Full Court decided that the defects affecting the Affected Vehicles were more extensive than the Trial Judge had found. However, the Full Court ruled that the lead applicant’s damages ought to be assessed differently than they had been assessed by the Trial Judge.
- High Court appeal: The lead applicant then appealed to the High Court of Australia. Her appeal was partly successful, with the Court ruling that her damages should not be assessed in the manner determined by the Full Court, but rather in the manner specified in the High Court’s judgment. A summary of the High Court judgment, prepared by the High Court, is located here: <https://www.hcourt.gov.au/assets/publications/judgment-summaries/2024/hca-39-2024-11-06.pdf>. The High Court sent the matter back to the first judge to assess the lead applicant’s damages in accordance with its judgment.

Important aspects of the High Court’s judgment

When a company fails to comply with the statutory guarantee of acceptable quality – as occurred in this case – ‘affected persons’ may, if they qualify, recover damages for two types of losses: (a) reduction-in-value losses; and (b) consequential losses.

- **Reduction-in-value damages**, being damages for the difference in the value of the Affected Vehicle by reason of the failure to comply with the consumer guarantee at the time of supply to the relevant consumer.
- **Consequential losses**, being losses suffered by the affected person because of the failure to comply with the guarantee (e.g. losses on resale, costs associated with unscheduled service visits, excess financing costs, GST and stamp duty).

The High Court found that the right to claim **reduction-in-value damages** runs with title or ownership of the Affected Vehicle.

The High Court also found that the right to claim for **consequential losses** is not tied to title or ownership and, therefore, consequential losses may be available to all Group Members



who have owned an Affected Vehicle. This means that, even if you have since sold your Affected Vehicle, you may be entitled to recover consequential losses. Consequential losses will depend upon your individual circumstances.

Next steps in the Class Action

Given there is now clarity from the High Court as to the proper approach to assessing damages under the Australian Consumer Law, the Federal Court has made orders to progress the class action before the primary judge.

The damages assessment will proceed in three stages. The Court will:

- (1) redetermine Ms Capic's claim in accordance with the High Court's reasons;
- (2) determine Group Members' entitlement to reduction-in-value damages; and
- (3) determine Group Members' entitlement to consequential loss.

The Federal Court has also made orders for the identification of any outstanding questions that need to be answered in order to resolve the claims of Existing and New Group Members.

You do not need to do anything at this stage.

When the Court reaches stage (2) and/or (3) above, it may be that you are required to provide information. If this is necessary, a further notice will be issued at that time.

Further information?

Please do not direct any questions about the class action or this notice to Ford or any Ford dealer. If you have any questions about this notice, you may contact the lawyers for the Applicant, Corrs Chambers Westgarth, by emailing fordclients@corrs.com.au, or seek independent legal advice.



Schedule 1

Affected Vehicles

Make	Model	Build Year
Focus	Titanium LW	2011 – 2012
	Sport LW	2011 – 2012
	Trend LW	2011 – 2012
	Ambiente LW	2011 – 2012
	Sport LW MKII	2012 – 2015
	Titanium LW MKII	2012 – 2015
	Ambiente LW MKII	2012 – 2015
	Trend LW MKII	2012 – 2015
Fiesta	Zetec WT	2010 – 2013
	LX WT	2010 – 2013
	CL WT	2010 – 2013
	Sport EcoBoost WZ	2012 – 2015
	Trend WZ	2013 – 2016
	Ambiente WZ	2013 – 2016
EcoSport	Titanium BK	2013 – 2016
	Trend BK	2013 – 2016
	Ambiente BK	2013 – 2016