



Schedule B – New Group Member Notice

Ford DPS6 “PowerShift” Class Action – Important Notice (Notice of Opt Out Deadline)

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 on or after 30 November 2018.

If you purchased your vehicle before 30 November 2018, please read the Existing 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, 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 New Group Members. If you are an Existing Group Member, then please view the Existing Group Member Notice.

This notice describes the class action and the steps you should take if you don’t want to be part of the class action. You should read this notice carefully – in particular, the section concerning your right to opt out of the class action.

If there is anything in this notice that you do not understand, you should seek legal advice.

What is the class action about?

A class action is a claim which is made by one person (**Applicant**) for the benefit of people with similar claims (**Group Members**). The Applicant in this case is Ms Biljana Capic, a consumer who bought a Ford Focus. Ms Capic’s class action is for the benefit of all current and former owners of Ford Focus, Ford Fiesta and Ford EcoSport models with a build year between 2010 to 2016 (inclusive) fitted with a DPS6 “PowerShift” transmission.



The class action claims that Affected Vehicles were not of acceptable quality under the Australian Consumer Law at the time they were supplied, and that current and former owners are entitled to compensation.

The class action has been on foot since 2016. A series of judgments have been delivered, which are detailed in the 'update' section below. If you do not opt out, the Applicant will seek an order that you are bound by the findings already made in the class action.

What do I do if I want to continue to be part of the class action?

You do not need to do anything to stay part of the class action. You will continue to be part of this class action unless you follow the steps in the next section and 'opt out' of the case. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Group Members, although you may have to satisfy certain conditions before your entitlement arises.

All current and former owners of Ford cars who remain as Group Members will be bound by the result of the case in so far as it relates to them. If the class action is unsuccessful, or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against Ford in other legal proceedings.

What do I do if I do not want to be part of the class action (i.e. opt out)?

If you do not want to be part of the case (i.e. you want to 'opt out'), you need to fill out the opt out form contained at **Schedule 2** of this notice and send it to the Registrar of the Federal Court of Australia by **19 March 2025**.

The notice must reach the Registrar by **19 March 2025** to be effective.

If you opt out of the case 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 Ford, provided you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim, you should seek your own legal advice about your claim and the applicable time limit prior to opting out. You should not delay making your decision.

Who pays the lawyers and the funding costs?

The Applicant's lawyers are Corrs Chambers Westgarth. A company called Martin Place Litigation Services Pty Limited (**Funder**) is funding the case, which means it is paying the Applicant's legal costs, including the costs of bringing the claim on behalf of Group Members.

You do not have to pay money in order to participate in this case. If the class action fails, you will not have to pay anything.

If there is a successful judgment or settlement, Group Members should be aware that the Funder intends to seek an order to distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, equitably and fairly amongst all persons who have benefited from the action.



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 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 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 if you remain in the class action. 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.
- (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.

Unless you wish to opt out, you do not need to do anything at this stage.

If you remain in the class action, when the Court reaches stage (2) and/or (3) above, it may be that you are required to provide information. 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



Schedule 2

Form 21
Rule 9.34

Opt out notice

No. NSD 724 of 2016

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

Biljana Capic

Applicant

Ford Motor Company of Australia Pty Ltd (ACN 004 116 223)

Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Locked Bag A6000
Sydney South NSW 1235

_____ (name of group member), a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that _____ (name of group member) is opting out of the class action.

Make, Model and Model year of the Affected Vehicle	
VIN of Affected Vehicle	

Date: _____

_____ (signature)

_____ (print name)

_____ (capacity, eg, group member / lawyer for group member / position in company, if signing on company's behalf)