

NOTICE OF PROPOSED SETTLEMENT

Volkswagen, Audi and Skoda Class Actions in the Federal Court of Australia

This notice contains important information about the proposed settlement of the Volkswagen, Audi and Skoda Australian diesel emissions class actions – please read it carefully. If you are a Group Member in any of the class actions, your legal rights will be affected by the proposed settlement.

If you do not understand the notice or you have any questions, you should contact the lawyers for the applicants in the class actions, Maurice Blackburn or Bannister Law, or seek independent legal advice. The Federal Court is not able to answer questions about the proposed settlement.

PROPOSED SETTLEMENT (SEE SECTIONS 1 AND 2 BELOW)

In early December 2019 the parties in the Volkswagen, Audi and Skoda class actions agreed on terms for the proposed settlement of the class actions. If the settlement is approved by the Federal Court, between \$87 million and \$127.1 million¹ will be available for eligible Group Members, plus legal costs and other payments. The method by which this amount is to be divided amongst group members will be determined by the lawyers acting for the applicants subject to the approval of the Court.

You may be eligible to receive a settlement payment if you owned an affected diesel vehicle or had certain types of vehicle leases as at **18 September 2015** or **3 October 2015**. Details of the affected vehicles are set out below, as is more information about the eligibility criteria.

WHAT GROUP MEMBERS NEED TO DO (SEE SECTION 4 BELOW)

If you want to claim a settlement payment you must **register online** at the following registration portal: www.vwsettlement.com.au

The deadline for registration in the proposed settlement is 10 March 2020

If you fail to register before the deadline you will lose your right to receive a settlement payment

At the time of registration, you may be asked to upload documents in support of your claim. If you are asked to upload documents, you must do this **within 28 days** of registering your claim. If your vehicle was leased or subject to a hire purchase agreement, you may also need to provide paperwork in relation to the lease contract. Further details about the paperwork which may need to be provided is outlined in **Section 4 below**.

COURT APPROVAL OF THE PROPOSED SETTLEMENT

On 26 March 2020, the Federal Court will be asked to approve the proposed settlement. You may attend this hearing if you wish, although you 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 must lodge a written statement of your concerns by 10 March 2020 at the following website: www.vwsettlement.com.au/objections. You may also (but do not need to) attend the hearing in the Federal Court on 26 March 2020.

CONTACT DETAILS

You can contact Maurice Blackburn or Bannister Law for further information including a copy of the Settlement Scheme or if you have any questions:

Maurice Blackburn

www.mauriceblackburn.com.au

Phone: 1800 517 397

Email: vw@mauriceblackburn.com.au

Bannister Law

www.bannisterlaw.com.au

Phone: 1300 728 760

Email: vwclients@bannisterlaw.com.au

¹ Figures are in Australian Dollars (AUD)

SECTION 1: OVERVIEW OF THE CLASS ACTIONS

In 2015 five class actions were commenced in relation to the diesel emissions issue concerning approximately 100,000 Volkswagen, Audi and Skoda diesel vehicles in Australia. Two class actions were commenced by Bannister Law (the **Bannister class actions**) and three class actions were commenced by Maurice Blackburn (the **MB class actions**).

What are the class actions about?

In October 2015, Volkswagen, Audi and Skoda announced a voluntary recall of certain vehicles sold in Australia between 2008 and 2015 that have the “EA189” diesel engine. The announcement disclosed that the affected vehicles contained software that caused the vehicles to operate in two different modes: one mode during the NEDC laboratory test cycle for testing emissions, and a second mode outside of NEDC testing conditions, for example when on the road.

The applicants alleged that the dual mode software was a “defeat device”. They claim the respondents acted in breach of Australian consumer protection law and did not comply with applicable safety standards. Other legal claims were also made. Both the Bannister class actions and the MB class actions sued Volkswagen Group Australia and Audi Australia, and in the MB class actions the European parent companies were also sued.

The applicants sought compensation from the respondents, claiming the true value of the affected vehicles was less than the price paid for them, or that there was a reduction in the second-hand value of the affected vehicles after October 2015.

Volkswagen, Audi and Skoda denied that their conduct was unlawful, and also denied that the applicants and Group Members suffered any financial losses at all as a result of this issue.

Who are Group Members?

Group Members in the Bannister class actions are people who held an interest in an affected vehicle as at 18 September 2015. Group Members in the MB class actions are people who held an interest in an affected vehicle as at 3 October 2015.

These two dates (18 September 2015 and 3 October 2015) are referred to in this notice as the “**Qualifying Dates**”. You qualify to participate in the settlement only if you held an interest in an affected vehicle as at **one or both of the Qualifying Dates**. See Section 2 below for more details.

Which vehicles are affected?

A list of the affected Volkswagen, Audi and Skoda diesel vehicle models appears on the last page of this notice. The easiest way to check whether your vehicle is affected is to enter your vehicle identification number (**VIN**) in the class actions registration portal (see below for details). The registration portal will only accept registration of VINs for affected vehicles.

A VIN is a 17 digit serial number which is unique to your vehicle. It can usually be found under the bonnet near the engine, or inside the passenger side of the vehicle near the dash, in your service manual or on your certificate of registration.

SECTION 2: THE PROPOSED SETTLEMENT

On 16 September 2019 the parties in the class actions announced that they had reached an agreement to settle the proceedings. In early December 2019, the parties formalised that agreement by signing a settlement deed. Before it can take effect, the proposed settlement must be approved by the Federal Court.

If the Court approves the settlement the Volkswagen Group will pay between \$87 million and \$127.1 million to Group Members. The amount they will have to pay depends on how many affected vehicles participate in the proposed settlement. See Section 4 below for information about how to register.

In addition to the amount that will be available to pay Group Members, the Volkswagen Group has also agreed to pay the applicants’ legal costs in the amount that is assessed as reasonable by an

independent costs expert and approved by the Federal Court. The Volkswagen Group has also agreed to make a number of other payments, if approved by the Court, relating to the conduct of the class actions as well as the costs of administering the settlement. None of these costs and other payments will reduce the amount of the fund available to pay Group Members.

The proposed settlement will be administered in accordance with an agreed Settlement Scheme. The Settlement Scheme is a document which sets out the process for Group Members to register and claim a settlement payment and the method by which those claims are to be assessed and paid. The Settlement Scheme is available for download from the websites of Maurice Blackburn and Bannister Law, or from the registration portal, or on request from either law firm.

If you wish to claim a settlement payment for your affected vehicle, you must register at the registration portal no later than **10 March 2020**. **If you fail to register by that date, you will not be entitled to receive any settlement payment.**

Who is eligible to receive a settlement payment?

If the settlement is approved by the Federal Court, then you must satisfy three criteria to be eligible for a settlement payment. You must have:

1. acquired an “interest” in an affected vehicle; and
2. held that interest as at either of the Qualifying Dates; and
3. not “opted out” of both the Bannister class actions and MB class actions.

What is an “interest” in an Affected Vehicle?

There are several different types of legal interests that people can have in a car. The most common is legal ownership. Under the proposed settlement, you have an “interest” in an affected vehicle if, on either of the Qualifying Dates (18 September or 3 October 2015) you were:

1. the **owner** of an affected vehicle;
2. the **lessee** of an affected vehicle pursuant to an operating lease, finance lease or novated lease; or
3. the **lessor** of an affected vehicle under an operating lease.

Examples of these types of interests and how they interact with the Qualifying Dates are included as Schedule 1 to this notice.

Under the proposed settlement you **will not qualify** for a settlement payment if:

1. you were the **lessor** of an affected vehicle under a finance or novated lease;
2. you were the **lender** or credit provider in relation to any type of secured or unsecured loan that was used by someone else to finance the acquisition of an affected vehicle (for example under a loan or hire purchase agreement), unless you repossessed the vehicle after the borrower defaulted on their loan or hire purchase agreement;
3. you are an **authorised dealer** of Volkswagen, Audi or Skoda vehicles, are a company that is related to the Volkswagen Group or had an interest limited to the right to use as affected vehicle owned by the respondents (for example employees or contractors); or
4. your affected vehicle was **written off** before the Qualifying Dates.

How much will Group Members receive under the settlement?

Maurice Blackburn and Bannister Law will determine how individual settlement payments are calculated, subject to Court approval. The amounts that will be paid to individual Group Members are not yet known. The following general information can be provided at this time. Under the proposed settlement, payments to eligible Group Members will vary depending on a number of

factors, including the number of affected vehicles of eligible Group Members who register to participate in the Settlement Scheme.

The participation rate will only be known after the completion of the registration process and after all registered claims have been assessed. In the unlikely event that every affected vehicle is registered to participate by an eligible Group Member the **estimated average** payment across all affected vehicles would be approximately \$1,400 for each affected vehicle, with average payments increasing if participation rates are lower.

The way that Maurice Blackburn and Bannister Law propose to determine individual payments will, for reasons of efficiency, broadly reflect the way they put the applicants' case (noting that the Volkswagen Group disputed this). This means that settlement payments will also vary for different vehicle models depending on their "as new" price when purchased and their estimated second hand value immediately before the Qualifying Date.

By way of example, the owner of a 2015 model year Audi Q5 will receive a higher settlement payment than the owner of a 2009 model year Audi Q5 because the older 2009 model has depreciated more. Similarly, the owner of a 2014 model year Audi A6 will receive a higher settlement payment than the owner of a 2014 model year Volkswagen Polo because the new vehicle price of an Audi A6 is higher.

For reasons of efficiency in the administration of the settlement, and because this is a pragmatic commercial settlement, the Settlement Scheme does not involve assessment of the value of any individual vehicle and cannot do so given that it will not take into account *all* factors that may be relevant to vehicle values.

Finally, the amount of each settlement payment will also depend on the type of interest held by the eligible Group Member. The Settlement Scheme provides that a single payment amount will be available for each affected vehicle:

- owners and lessees under a finance lease or a novated lease will receive 100% of the payment;
- where there was an operating lease, part of the payment will be available for the lessee (50%) and the remainder for the lessor (50%), with those proportions reflecting the economic risks and benefits assumed by lessees and lessors and taking into account the types of legal claims made by the applicants.

Is the proposed settlement an admission of liability by Volkswagen, Audi and Skoda?

No. The respondents deny the allegations made in the class actions and the proposed settlement was agreed without any admission of liability by the Volkswagen Group. In particular, the Volkswagen Group denies that Group Members suffered any loss or that the value of their vehicles was affected by the diesel issue. This settlement represents a negotiated commercial outcome. Settlement without any admission of liability is common in Australian class actions.

Will Group Members be required to pay any legal fees?

No. You will not need to pay or make any contribution to the payment of any legal costs relating to the class actions or the administration of the proposed settlement.

If the proposed settlement is approved, as set out above, the applicants' reasonable legal costs (an amount that will be determined by the Court) will be paid by the Volkswagen Group **on top of the settlement sum**.

The reasonable, Court-approved costs of administering the proposed settlement will also be paid by the Volkswagen Group on top of the settlement sum.

As a result, no amounts will be deducted from eligible Group Members' settlement payments in order to pay or contribute to the payment of the applicants' legal costs or the costs of administering

the settlement. The potential for deductions from settlement payments in order to pay the Funder in the BL class actions is explained below.

SECTION 3: FUNDING APPLICATION

Bannister Law litigation funding arrangements

The Bannister class actions are funded by a litigation funder, Grosvenor Litigation Services Pty Ltd (the **Funder**). The applicants in the Bannister class actions have entered into litigation funding agreements with the Funder. Some Group Members in the Bannister class actions have also entered into litigation funding agreements with the Funder.

Throughout the Bannister class actions, the Funder has:

- paid approximately \$5 million towards the applicants' legal costs in the Bannister class actions; and
- given an indemnity up to the amount of \$2.1 million to the applicants to protect them against an adverse costs order made against them.

In return, the Funder claims an entitlement to receive a 30% commission from the settlement payments to Group Members who have entered into a litigation funding agreement with the Funder.

Application for a "funding order"

The applicants in the Bannister class actions have applied to the Court for a "funding order". If the Court makes this order, the funding order will affect all Group Members who register to participate in the proposed settlement except those who have:

- signed a retainer agreement with Maurice Blackburn on or before 3 September 2019; or
- opted out of the Bannister class actions, but not the MB class actions.

If granted, the funding order will require those affected by it to pay up to a 10% commission from their settlement payments to the Funder. This would mean that:

- people who have signed litigation funding agreements with the Funder would pay up to 10%, rather than 30% commission; and
- people who have not signed litigation funding agreements with the Funder would pay up to 10% commission, rather than nothing.

The purpose of the funding order would be to compensate the Funder for funding the Bannister class actions for the benefit of those group members, and spread the commission payable to the Funder equally amongst them.

Application for a "funding equalisation order"

If the Court does make a funding order, then the applicants in the Bannister class actions will apply for a "funding equalisation" order. This order would seek to equalise the difference between the settlement payments of Group Members who are required to contribute as a result of the funding order and those Group Members (including clients of Maurice Blackburn) who would not be required to contribute as a result of the funding order.

The effect of this order would not increase the amount paid to the Funder. Instead it would distribute the contribution to the Funder in equal proportion among all eligible Group Members, so that all eligible Group Members receive proportionately the same amount, regardless of whether they are Group Members in the Bannister class actions.

Alternatively, if the Court does not make a funding order, then the applicants in the Bannister class actions will apply for a “funding equalisation” order limited to Group Members in the Bannister class actions (excluding clients of Maurice Blackburn).

The effect of this order would not increase the amount paid to the Funder. Instead it would equalise the amounts to be received by clients of Bannister Law who have signed funding agreements with the Funder and the amounts to be received by all other Group Members in the Bannister class actions so that each would receive proportionately the same amount.

When will the “funding application” and “funding equalisation application” be determined, and can I support or object to them?

The Federal Court will be asked to approve the funding order and funding equalisation order on **26 March 2020**.

You do not need to support or object to the funding order or the funding equalisation order. However, if you do wish object to either of those orders being made, you must lodge a written statement of your concerns by 10 March 2020 at the following website: www.vwsettlement.com.au/objections.

You may also (but do not need to) attend the hearing in the Federal Court on 26 March 2020.

If you have any questions in relation to the funding equalisation order you should contact Bannister Law on 1300 728 760.

SECTION 4: PROCESS FOR MAKING AND ASSESSING CLAIMS

The Settlement Scheme sets out the process for Group Members to register their claims and for their claims then to be assessed and final payments made to eligible Group Members.

If a Group Member does not register their claim before the registration deadline on 10 March 2020, they will not be entitled to receive a settlement payment but will nevertheless be bound by the outcome of the class actions and will be unable to bring separate legal action against the Volkswagen Group.

Process for registration of claims

Group Members who wish to make a claim for a settlement payment must register their claim by **10 March 2020**. Except for fleet operators (discussed below), all claims must be registered using the online registration portal: www.vwsettlement.com.au

Please note: if you are a **client of Maurice Blackburn or Bannister Law** and you had previously supplied a valid VIN for an affected vehicle, your claim will be **partially registered** on your behalf. Maurice Blackburn and Bannister Law will write to their clients in order to notify them whether their claims were partially registered on their behalf. However even if your claim is partially completed on your behalf, you must still log-in to the registration portal in order to **complete your registration** and in order to supply any relevant documents as set out below. You must complete your registration before the deadline on **10 March 2020**.

Initial registration

In order to register your claim, you will need to provide the following:

- VIN for your vehicle
- Personal details such as your name and contact details
- Answers to questions about whether or not your vehicle was subject to a lease
- If you are making a claim on behalf of someone else or in the name of a company, details of the company or other person and your relationship to the company or other person

The registration portal will **only permit you to register if you enter a valid VIN** for an affected Volkswagen, Audi or Skoda vehicle. If the registration portal does not allow you to register, please check that you correctly entered the VIN, including checking that:

- the number “0” was not mistyped as the letter “O” (or vice versa)
- the number “1” was not mistyped as the letter “I” (or vice versa)
- the number “2” was not mistyped as the letter “Z” (or vice versa)
- any sequence of the letters “W” and “V” (for example “WVW”) was typed correctly

Documents to be provided

Once you have entered your initial registration information, your details will be automatically checked against any data from the National Exchange of Vehicle and Driver System (**NEVDIS**). NEVDIS data records the details of registered drivers as at October 2015.

If your details do not match the NEVDIS data, you may be asked to provide additional documents in order to confirm that you held an interest in an affected vehicle as at the Qualifying Dates. If you are asked to provide additional documents, you **must** do this **within 28 days** of registering your claim (and in any event, no later than 23 March 2020).

Schedule 2 provides some examples of documents that group members may be asked to provide.

Fleet operators

If you propose to register a claim in relation to ten (10) or more vehicles, you will be treated as a “**fleet operator**” under the Settlement Scheme and, if so, you may use an alternative procedure in order to register numerous vehicles *en masse*.

Instead of using the registration portal, fleet operators must register by contacting the settlement administrator in writing at the following email address: vwfleets@mauriceblackburn.com.au. More information about the alternative registration procedure is set out in the Settlement Scheme.

Assessment and payment of claims

After you register a claim and, if required, provide supporting documents, the claim will be assessed in order to determine whether it meets the eligibility criteria to receive a settlement payment. After a determination is made, you will be sent a “Notice of Assessment” – please note that this may take several weeks from the time that your registration has been completed.

If you are assessed as ineligible you may request a review by an independent lawyer who will be appointed as a “review assessor”.

Once all claims have been finally assessed and the total number of eligible Group Members has been determined, the Volkswagen Group will pay the final settlement sum that is then able to be calculated in light of the total number of affected vehicles owned by Group Members who are assessed as eligible to receive a settlement payment. As was noted above, the settlement sum will range between \$87 million and \$127.1 million.

Once the final settlement sum is known, the settlement administrator will notify each eligible Group Member of the amount of their individual settlement payment. Before receiving payment, Group Members will need to indicate their agreement to release the Volkswagen Group from all future claims relating to the diesel emissions issue and they will also need to agree to keep the amount of their settlement payment confidential.

In due course, the Court-appointed settlement administrator will distribute the settlement payments to eligible Group Members by electronic funds transfer. This will not occur until after the settlement approval hearing in the Federal Court on 26 March 2020 and until after all appeal periods have expired.

LIST OF AFFECTED DIESEL VEHICLES

| Make | Model (Diesel) | Model Year |
|-------------------|-----------------------|-------------------|
| Volkswagen | Golf | MY 2009 - 2013 |
| | Polo | MY 2010 - 2014 |
| | Jetta | MY 2009 - 2016 |
| | Passat | MY 2009 - 2015 |
| | Passat CC | MY 2009 - 2012 |
| | Volkswagen CC | MY 2012 - 2016 |
| | Eos | MY 2009 - 2014 |
| | Tiguan | MY 2008 - 2016 |
| | Caddy | MY 2010 - 2016 |
| | Amarok | MY 2011 - 2012 |
| Skoda | Octavia | MY 2008 - 2013 |
| | Yeti | MY 2012 - 2016 |
| | Superb | MY 2009 - 2015 |
| Audi | A1 | MY 2010 - 2015 |
| | A3 (1.6L) | MY 2009 - 2013 |
| | A3 (2.0L) | MY 2011 - 2013 |
| | A4 | MY 2008 - 2015 |
| | A5 | MY 2012 - 2016 |
| | A6 | MY 2009 - 2015 |
| | Q3 | MY 2012 - 2014 |
| Audi | TT | MY 2009 - 2014 |
| | Q5 (CAH Engine) | MY 2009 - 2011 |
| | Q5 (CGL Engine) | MY 2009 - 2016 |

SCHEDULE 1

EXAMPLES OF DIFFERENT INTERESTS AT THE TIME OF THE QUALIFYING DATES

Note that the Qualifying Dates are 18 September 2015 and 3 October 2015.

Ownership

If you bought an affected vehicle in December 2012 and you still own it today, you may be entitled to a settlement payment.

Similarly, if you bought an affected vehicle in December 2012 and you later sold it after 3 October 2015, you may be entitled to a settlement payment.

On the other hand, if you bought an affected vehicle in December 2012 and you sold it in June 2015, you will not be entitled to a settlement payment.

Operating leases

If an affected vehicle was subject to an operating lease for a period of three years starting in July 2013 and ending in July 2016, both the lessee and the lessor may be entitled to a settlement payment.

On the other hand, if an operating lease had expired before 18 September 2015, the lessee will not be entitled to a settlement payment, and the lessor would only be entitled to a settlement payment if they had not disposed of the vehicle before 18 September 2015.

Finance leases and novated leases

If an affected vehicle was subject to a finance lease or a novated lease for a period of three years starting in July 2013 and ending in July 2016, the lessee may be entitled to a settlement payment, and as discussed below the lessor would not be entitled to a settlement payment.

If a lessee made a residual value payment or "balloon payment" before September 2015, they will be treated as an owner of the vehicle.

SCHEDULE 2

Examples of some of the documents which you may need to provide include:

- one **registration certificate before and after** either of the Qualifying Dates (18 September 2015 or 3 October 2015); or
- certificates of insurance **before and after** either of the Qualifying Dates (18 September 2015 or 3 October 2015); or
- other documents that demonstrate that you held an interest in an affected vehicle as at the Qualifying Dates (18 September 2015 or 3 October 2015) provided that those documents identify the VIN of the affected vehicle.

If you no longer have registration certificates for your vehicle, copies can usually be obtained from the motor vehicle registry in your state or territory.

If you leased or hired an affected vehicle as at the Qualifying Dates (18 September 2015 or 3 October 2015) you will be asked to provide a copy of your lease or hire purchase contract. Instead of providing your lease or hire purchase contract, you may alternatively provide written confirmation from the organisation that leased the vehicle to you, provided that this confirmation sets out:

- the name of the lessee or hirer;
- VIN of the Affected Vehicle;
- the type of lease or agreement; and
- the start and end dates of the lease or agreement.

If you are asked to provide documents in support of your claim, you must **upload these documents onto the registration portal**. Unless you are a fleet operator (see below), do **not** send documents to Maurice Blackburn or Bannister Law by email, fax or post. You may use a smartphone or tablet device in order to take photographs of relevant documents, provided that all words and numbers are clearly legible in the photographs. The photographs can then be uploaded onto the registration portal.