

ANNEXURE A

SUPREME COURT OF VICTORIA

NOTICE TO GROUP MEMBERS: OPT OUT OR REGISTRATION

DOWNER EDI CLASS ACTION

Justine Lidgett and Cameron Lidgett v Downer EDI Limited and KPMG

Proceeding No. S ECI 2023 01835

IMPORTANT NOTICE

The Supreme Court of Victoria has ordered that you receive this notice because you may be a group member in the Downer EDI Class Action.

If you are a group member, you may do one of three things in response to this Notice:

(a) **OPTION 1 - register** for the class action by **4:00pm AEST on 10 September 2025** in order to be eligible to receive any compensation if there is a settlement reached at the Court Ordered Mediation which must commence by **12 December 2025** or within 12 weeks of the conclusion of the Court Ordered Mediation. To participate in any such settlement, you must register your interest before the deadline.

(b) **OPTION 2 – opt out** of the class action by **4:00pm AEST on 10 September 2025** if you do not want your rights determined by the class action, for example if you wish to bring your own proceeding against Downer EDI and/or KPMG independently. If you opt out, your claim will not be resolved as part of the Downer EDI Class Action but you may pursue such rights as you may have independently.

(c) **OPTION 3 - do nothing** and remain a group member in the class action but, subject to further order of the Court, you **will not** be permitted to participate in any settlement reached at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation.

For further information regarding your options, please see Section 3 of this Notice.

If there is anything in this Notice that you do not understand, you should use the contact information at paragraph 2.10 below to make enquiries or seek independent legal advice.

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA.

**IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY
BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS.**

1. WHY HAVE YOU RECEIVED THIS NOTICE?

- 1.1. You have been sent this Notice because you have been identified as someone who may be a **group member** in the Downer EDI Class Action according to information contained in the share register of Downer EDI Limited (**Downer**) or because you have been identified as someone who may be a group member in the Downer EDI Class Action.
 - 1.2. The purpose of this notice is to inform you of a class action in the Supreme Court of Victoria brought against Downer and KPMG and to provide you with options regarding your participation in the class action.
 - 1.3. You are a group member if you:
 - (a) acquired an interest in ordinary shares in Downer during the period from 23 July 2019 to 24 February 2023 (**Relevant Period**); and
 - (b) you are not:
 - (i) a related party, related body corporate, associated entity, or officer or close associate of Downer;
 - (ii) an officer, employee or other legal practitioner engaged by Maurice Blackburn Pty Ltd in relation to this proceeding; or
 - (iii) the Chief Justice, Justice, Associate Justice, Judicial Registrar, Registrar or Deputy Registrar of the High Court of Australia or the Supreme Court of Victoria.
 - 1.4. If you believe that you meet the above description of a group member, you should read this Notice carefully as it will affect your rights. If you are unsure whether you are a group member, you should seek your own legal advice without delay.
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2. ABOUT THE DOWNER EDI CLASS ACTION

- 2.1. The class action is against Downer EDI Limited (ASX: DOW) and its auditor, KPMG.
- 2.2. The claim arises from accounting irregularities described in two ASX releases published on 8 December 2022 and 27 February 2023 in which Downer disclosed that the company had misreported revenue from a utilities contract and did not expect to meet its earnings guidance.
- 2.3. The plaintiffs allege that Downer made representations about its business which were misleading or deceptive because of those accounting irregularities. The plaintiffs also allege that the company breached its continuous disclosure obligations as a result of its failure to disclose information about the irregularities earlier.
- 2.4. The plaintiffs also allege that KPMG engaged in misleading or deceptive conduct by representing that Downer's financial reports gave a true and fair view of the company's financial position and complied with Australian Accounting Standards.
- 2.5. The plaintiffs allege that these alleged continuous disclosure breaches and misleading representations caused the price of Downer shares to be higher than they otherwise would have been.
- 2.6. Downer and KPMG deny the allegations made against each of them in the Downer EDI Class Action and are each defending the proceeding.

- 2.7. The class action claims compensation on behalf of Downer's shareholders who are group members as defined in paragraph [1.3] above.
- 2.8. The Court has ordered the parties in the Downer EDI Class Action to attend a mediation which must commence by **12 December 2025 (Court Ordered Mediation)**.
- 2.9. The Supreme Court of Victoria has ordered that this Notice be distributed for the information of persons who may be group members in the Downer EDI Class Action.
- 2.10. You should read this Notice carefully. Any questions you have concerning the matters contained in this Notice should not be directed to the Court. If there is anything in it that you do not understand, you should email DownerEDI@mauriceblackburn.com.au or call 1800 571 265.
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3. YOUR OPTIONS

- 3.1. You have the following options that you may elect to take in response to this Notice.

OPTION 1 - REGISTER YOUR INTEREST TO RECEIVE COMPENSATION
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- 3.2. You must register if you wish to be eligible to claim money from any settlement of the Downer EDI Class Action reached between the parties at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation.

What is registration?

- 3.3. You may register your claim by either:
- (a) completing the **online registration process** available at:
 - (i) <https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/downer-edi-class-action/> (**preferred registration method**); or
 - (ii) if you are having difficulty registering on the website, emailing DownerEDI@mauriceblackburn.com.au or calling 1800 571 265 and arranging for the online registration process to be done on your behalf and it being done so; **or**
 - (b) completing and submitting an “**OPTION 1: GROUP MEMBER REGISTRATION FORM**” at **Attachment A** to this Notice.
- 3.4. You must register your claim by **4:00pm AEST on 10 September 2025** to be eligible to participate in any settlement reached at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation.
- 3.5. If you register for the Downer EDI Class Action you will become a **Registered Group Member**. This means that:
- (a) if an in-principle settlement is reached between the parties at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation, you may be eligible to receive compensation as part of the settlement (provided that the settlement is approved by the Court and you satisfy any other eligibility requirements);
 - (b) if an in-principle settlement is not reached at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation, then subject to any further order of the Court you may be eligible to receive compensation

from any future settlement or judgment; and

- (c) you will be bound by any resolution of the class action (meaning that you will not be permitted to bring any future claims related to the subject matter of the class action).

3.6. Becoming a Registered Group Member does not mean that you enter into a contract with the solicitors for the plaintiffs.

3.7 You will under no circumstances be liable to pay any “out of pocket” costs to Maurice Blackburn Lawyers simply by registering for the Downer Class Action. Costs are payable only in the event of a successful outcome, and in the event of a successful outcome will not exceed 21% of any settlement or award of damages.

3.8 If you have already retained Maurice Blackburn Lawyers to act for you in relation to this proceeding you do not need to register again. Maurice Blackburn Lawyers may contact you in order to reconfirm your details or to request further information from you.

OPTION 2 - OPT OUT AND CEASE BEING A GROUP MEMBER
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3.9 If you do not want to remain a group member in the Downer EDI Class Action, you must opt out.

What is opting out?

3.10 Each group member seeking to opt out must either:

- (a) submit the required information in the ‘Online Opt Out Notice’ through the Supreme Court of Victoria website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/downer/opting-out> ; **or**
- (b) complete and submit the **“OPTION 2: OPT OUT FORM”** at **Attachment B** to this Notice. Opt out forms must be returned directly to the Commercial Court Registry of the Supreme Court of Victoria:

- (i) by post to:

Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne, VIC, 3000

- (ii) or by email to downerEDIclassaction@supcourt.vic.gov.au

3.11 You must opt out by **4:00pm AEST on 10 September 2025**. Opt out notices received after the deadline will not be accepted without leave of the Court and you will remain a group member.

What are the consequences of opting out?

3.12 If you opt out of the class action:

- (c) you will cease to be a group member in the Downer EDI Class Action;
- (d) you will not be bound by the outcome of the Downer EDI Class Action and will not be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiffs and group members; and

- (e) you may be at liberty to bring your own claims against Downer and/or KPMG, provided that you file court proceedings within the time limit applicable to your claims.

3.13 If you are unsure how opting out will affect your rights or the applicable time limit prior to opting out, you should seek independent legal advice.

OPTION 3 - DO NOTHING

3.14. If you do nothing following receipt of this Notice (i.e. neither opt out or register), and you are not already a Registered Group Member:

- (a) You will remain an **unregistered** group member in the Downer EDI Class Action.
- (b) **If an in-principle settlement is reached** between the plaintiffs and the defendants at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation, you **will not** be entitled to participate in that settlement. Further, you will be bound by the terms of the settlement including any releases (despite not being eligible to participate in the settlement). This means that your right to bring a claim against Downer and/or KPMG (and potentially their related entities and officers) for matters related to those canvassed in the Downer EDI Class Action may be extinguished, and you will not be able to participate in any settlement;
- (c) **If there is no settlement** at the Court Ordered Mediation or within 12 weeks of the conclusion of the Court Ordered Mediation, you will be bound by any subsequent settlement or final judgment, and you will be entitled to obtain compensation and/or damages (if you satisfy the eligibility criteria set down by the Court) in the event of any subsequent settlement or if the Court finds in favour of the plaintiffs and group members. If the Downer EDI Class Action proceeds to judgment and is unsuccessful or is not as successful as you might have wished, you will be bound by the judgment determined at trial and will not be able to sue on the same claim in any other proceedings;
- (d) It is open to the plaintiffs and the defendants to apply to the Court for a further Court Ordered Mediation to extend the period during which only registered group members are permitted to seek any benefit pursuant to any subsequent settlement. It is unknown whether this will occur, and unknown what further notice, if any, the Court may order to be provided to group members at that point. Accordingly, it is possible that if you remain an unregistered group member, you will not, without leave of the Court, be permitted to seek any benefit pursuant to any settlement of the Downer EDI Class Action even if that settlement occurs more than 12 weeks after the conclusion of the Court Ordered Mediation.

4. FUNDING OF THE DOWNER EDI CLASS ACTION
How is the Downer EDI Class Action funded?

- 4.1. On 6 October 2023, Justice Delany made a group costs order (**GCO**) in the Downer EDI Class Action. A GCO is an order that the legal costs payable to the Plaintiffs' lawyers be calculated as a percentage of any award or settlement amount that may be recovered in the proceeding. In this case, the Court ordered that the GCO percentage be set at 21% inclusive of GST (subject to further order of the court). This means that

currently the total legal and funding costs of the proceeding will be calculated as 21% of any award or settlement amount.

- 4.2. Maurice Blackburn has entered into a Co-Funding and Management Agreement with CASL Funder Pty Ltd as trustee for CASL Fund 1 (CASL), which provides for Maurice Blackburn and CASL to jointly fund the class action and take responsibility for paying adverse costs. All costs associated with the class action will therefore be borne by Maurice Blackburn and CASL, unless there is a successful outcome to the class action (such as a settlement approved by the Court or a judgment of the Court awarding damages to group members). However this co-funding arrangement does not affect the amount payable by group members, which is currently fixed at 21% of any award or settlement amount received on a successful outcome.
- 4.3. In no circumstances will group members be out of pocket by participating in the Downer EDI Class Action – whether the case is successful or unsuccessful. Costs are payable only in the event of a successful outcome, in which case they will be deducted from any settlement or judgment amount, so group members will not be liable to pay any ‘out of pocket’ costs.

How are legal fees and disbursements charged?

- 4.4. If the case is successful, legal costs would be deducted from the settlement sum or a collective damages award, and in this sense would be shared among the plaintiffs and group members. As stated above, the Court has made a GCO, which has currently been determined by the Court as 21% of the amount of any damages award or settlement.
- 4.5. If there is not a successful outcome the Plaintiffs and group members will not be asked to pay any costs or disbursements.

5. FURTHER QUESTIONS

- 5.1. Please consider the above matters carefully.
- 5.2. If there is anything of which you are unsure, or you have any questions or comments about the Notice, in the first instance you should contact Downer EDI Class Actions team at DownerEDI@mauriceblackburn.com.au or alternatively by telephone on 1800 571 265.
- 5.3. You may also seek your own legal advice. You should not delay in making your decision.
- 5.4. Please do not contact the Court for legal advice, as it will be unable to assist you.
- 5.5. Copies of relevant documents, including this notice and other court documents, may be obtained by:
- (a) accessing the Downer EDI Class Action website:
<https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/downer-edi-class-action/>; and/or
 - (b) accessing the Supreme Court of Victoria website:
<https://www.supremecourt.vic.gov.au/areas/group-proceedings/downer>