

## Important Legal Notice

### OPT OUT NOTICE

Federal Court of Australia Case No. NSD1109/2024 (“**ISUZU CLASS ACTION**”)

**This is an important notice issued to you by the Federal Court of Australia regarding a class action about certain Isuzu D-Max and MU-X vehicles**

This Notice will be published online and through newspapers as well as being distributed through sms messaging and email.

This Notice provides important information regarding the Isuzu Class Action.

This Notice relates to any person who acquired a MY2017 or later **Isuzu D-Max**, or a MY2016.5 or later **Isuzu MU-X** vehicle, between 1 January 2016 and 14 August 2024 (**Affected Vehicles**), from Isuzu Ute Australia Pty Ltd or its retailers or dealers in Australia and who retained title to that Affected Vehicle as at 14 August 2024, or otherwise persons who acquired title to one of these vehicles from, through, or under a person who made such a first-hand purchase, for example, in the second-hand market, or as beneficiary of a trust (**Group Member**).

As a result, you may be a Group Member in a class action brought against the Respondent, Isuzu Motors Limited (**Isuzu**), and may be entitled to monetary damages.

As explained below, you may do one of three things in response to this notice:

1. Do nothing – you will remain a Group Member;
2. Register to participate in the class action – you will remain a Group Member and receive ongoing updates in the class action; or
3. Return the Opt out form at Schedule 2 by **8 April 2026** – you will no longer be a Group Member.

**This Notice is also especially important if you are considering selling or otherwise disposing of your Affected Vehicle, as doing so may affect your claim to monetary damages (see Page 5).**

### Why is this Notice important?

The Federal Court of Australia has ordered that this notice be published for the information of people who are part of the group on whose behalf this case has been brought and who are affected by the action. It is also to inform you that selling your Affected Vehicle may mean that you will receive less, or no, monetary damages, even if the Isuzu Class Action is successful (see **Page 5**).

You have been identified as a potential group member. **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 that you do not understand you should seek legal advice.

### What is a class action?

A class action is an action that is brought by one person/s (the **Applicant**) on their own behalf and on behalf of a class of people (the **Group Members**) against another person/s (the **Respondent**) where the Applicant and the Group Members have similar claims against the Respondent. In this class action, there is more than one Applicant, and one Respondent.

Group Members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

Group Members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways, being either a judgment following a trial, or a settlement at any time. If there is a judgment or a settlement of a class action, Group Members will not be able pursue the same claims and may not be able to pursue similar or related claims against the Respondent in other legal proceedings.

If you consider that you have claims against the respondent which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

### What is the Isuzu class action?

The Isuzu class action is brought by the **Applicants**, Geoffrey Fisher and CDR Geotechnical & Environmental Services Pty Ltd against Isuzu, who has been held out as the manufacturer of Isuzu D-Max and MU-X vehicles supplied in Australia. The Applicants sue Isuzu on their own behalf and on behalf of all persons who are Group Members as defined in the proceeding.

The Applicants allege that the Affected Vehicles were manufactured with illegal “defeat devices”, which caused them to emit vehicle emissions higher than Australian regulations allowed them to emit. Isuzu denies those allegations.

The Applicants seek damages (that is money) from Isuzu, on the basis that:

- (a) Isuzu misrepresented that the Affected Vehicles complied with national vehicle standards;
- (b) the Affected Vehicles were not of an acceptable quality and so did not comply with statutory guarantees contained in the Australian Consumer Law; and/or
- (c) Isuzu has engaged in unconscionable conduct.

Isuzu denies the allegations and says that the Affected Vehicles complied with all applicable Australian emissions regulations. It is defending the Isuzu Class Action.

### What does it mean to 'Opt out'?

The Applicant (or Applicants) in a class action does not need to seek the consent of the Group Members to commence a class action on their behalf or to choose how to describe the class in a way that includes specific Group Members. However, after the commencement of a class action, Group Members can cease to be Group Members by opting out of the class action. An explanation of how Group Members can opt out is found below.

### **I am a Group Member, what are my options?**

You are a Group Member if you acquired a MY2017 or later Isuzu D-Max, or a MY2016.5 or later Isuzu MU-X vehicle, between 1 January 2016 and 14 August 2024 (Affected Vehicles), from Isuzu Ute Australia Pty Ltd or its retailers or dealers in Australia and who retained title to that Affected Vehicle as at 14 August 2024, or otherwise persons who acquired title to one of these vehicles from, through, or under a person who made such a first-hand purchase, for example, in the second-hand market, or as beneficiary of a trust.

**Option 1 – Do nothing and remain a Group Member.** Unless you choose Option 3 below, you will remain a Group Member. This means that you will be bound by any settlement or judgment in the class action, and you will not be able to sue Isuzu for the same (or possibly related) claims in any future case. If the case is successful, you will be entitled to share in the benefit of any compensation that the Court awards although you may have to satisfy certain conditions before your entitlement arises. However, if the case is not successful (or less successful than you would have liked), you will not be able to sue Isuzu later for the same claims, or possibly even related claims. You do not have to do anything to remain a Group Member.

**Option 2 – Register your interest in the class action.** You do not need to do this to remain a Group Member, but it will help to ensure you receive up-to-date information about the case, and help you to participate in any settlement. You can register via Piper Alderman's webpage at <https://piperalderman.com.au/class-actions/isuzu-class-action/>

**Option 3 – Opt Out of the class action.** If you do not wish to remain a Group Member you can Opt out. This means that you will not participate in the class action. If you Opt out you will not be included in any compensation or award the Court makes or any settlement. If you Opt out you can still bring your own claim against Isuzu. You should seek your own legal advice about that and any time limits that may apply.

If you wish to Opt out you must complete the form which is at **Annexure A** and return it to the Registrar of the Federal Court of Australia at the address on the form by no later than 4:00pm on **8 April 2026**.

You should submit the form to opt out if:

- (i) you qualify as a class member and you wish to opt out of the class action; or
- (ii) you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out above, and you do not want to receive any further information about this class action.

Each class member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

### **If I remain a Group Member or register for more information will I be liable for legal costs?**

You will **not become liable for any "out of pocket" legal expenses** simply by remaining as a Group Member. Group Members are not, and will not be, liable for any "out of pocket" legal costs by remaining in this class action. The costs of running the class action are being funded by Woodsford, a litigation funder, and the Applicants' lawyers, Piper Alderman.

The costs of running the class action are being funded by Woodsford and the lawyers Piper Alderman, and, if the class action is unsuccessful, Woodsford will pay or procure payment by an insurer of any of the Respondent's costs that the Applicants are ordered to pay. If the class action is unsuccessful, you will not be liable for any legal costs.

In order to bring the class action, the Applicants signed a litigation finance agreement with Woodsford (**Funding Agreement**). In doing so, the Applicants agreed that **if** the class action is successful, and the Applicants obtain money from a settlement or judgment, they will repay to Woodsford from those proceeds any reasonable costs advanced by Woodsford (including any interim adverse costs, security, or upfront insurance premiums), Woodsford's 'Success Fee', unpaid insurance premiums (including deferred and contingent insurance premiums) due under any After-the-Event insurance policy, as well as fees deferred by Piper Alderman for recovery from any settlement or judgment, together with an additional 25% on those deferred fees.

Pursuant to the Funding Agreement, the Applicants have also agreed to apply for an order that will fairly distribute their obligations under the Funding Agreement amongst all people who have benefited from the action. This may be by way of what is known as a Common Fund Order, a Funding Equalisation Order, or may be by another order of the Court.

### **Applicants' costs and Woodsford's Success Fee**

As noted above, if the class action is successful, the Applicants intend to seek an order that you contribute to the costs out of/from any settlement or judgment received by you in respect of your claim. Subject to the Court's approval, these costs will be deducted from any recovery before you receive any award or compensation.

In return for the funding that Woodsford provides under the Funding Agreement for the Lead Applicant's 'own-side' costs (as distinct from the adverse costs risk, which is discussed further below), Woodsford charges a 'Success Fee' payable from any Gross Proceeds.

The Applicants have agreed to apply for:

- a Common Fund Order consistent in amount with Woodsford's Success Fee. Woodsford's Success Fee, defined in the Funding Agreement, means the amount equal to twenty-seven point five per cent (27.5%) of Gross Proceeds which may be amended up to a maximum of thirty-five per cent (35%) if the costs paid by Woodsford exceed a certain level; and
- an order that the Cash Outlay, Adverse Costs, the Woodsford Security Fee and any security paid by the Funder, any remaining Lawyers' professional fees, any ATE Insurer premiums and Adverse Costs paid by the ATE Insurer, and the time and cost of the Representatives (but not compensation for its claimed losses), be deducted from the Gross Proceeds.

Gross Proceeds are the total amount received (including any settlement sum, or compensation, costs and damages award by the Court and interest) paid or credited to, in favour of, for the benefit of, or to the order of, the Applicants or Group Members, by the Respondent or any third party which relates to the subject matter of the class action.

The Cash Outlay is defined in the Funding Agreement as the total amount of legal and other fees and costs (incl. GST) advanced by Woodsford plus all other fees and costs relating to the class action reasonably incurred by Woodsford within the scope of the Funding Agreement. Those costs include:

- Piper Alderman's fees;
- Third party costs, including barristers' fees; and

- Upfront (but not deferred and contingent) premiums for after-the-event (ATE) insurance and the costs of any deeds of indemnity purchased from the ATE insurers to satisfy the Respondent's requests and/or applications for security for costs.

### **Adverse Costs and ATE Insurance**

If the class action is unsuccessful, the Court may order the Applicants (and/or other third parties such as Woodsford) to pay some part of a successful Respondent's costs (known and **Adverse Costs**).

To protect against the risk of Adverse Costs, Woodsford has:

- Indemnified the Applicants (and Group Members who participate) against liability for any Adverse Costs order made against the Applicants; and
- Obtained ATE insurance to:
  - Provide the Applicants and Group Members with additional protection against the risk of adverse costs (the ATE insurance, provided by an A-rated ATE insurer, expressly covers Adverse Costs payable by the Applicants); and
  - Enable the Applicants to provide security for the Respondent's costs (for example by purchasing deeds of indemnity from the ATE insurer).

In return for this protection against the Adverse Costs risk, the Applicants have agreed to apply for a Court order that the costs of any such ATE insurance, including any deferred and contingent ATE insurance premiums, be payable from the Gross Proceeds (in addition to the other costs mentioned above, including Woodsford's Success Fee).

To summarise, and to assist you in understanding the effect of the Applicant's agreement with Woodsford and Piper Alderman, strictly subject to the Court's approval, the Applicants will apply for a Court order to have Gross Proceeds obtained from a settlement or judgment is expected to be distributed as follows:

- First, repayment of reasonable costs (Cash Outlay) advanced by Woodsford, as described above;
- Secondly, payment of Woodsford's Success Fee, Piper Alderman's deferred fees and the additional 25% on those deferred fees, and any unpaid insurance premiums due (including any deferred and contingent premiums); and
- Thirdly, payment of the balance of the settlement money between all Group Members (including the Applicants) in accordance with a distribution scheme approved by the Court.

The Applicants also intend to apply to have any fees incurred for their own time involved in the class action paid from any proceeds obtained from a settlement or successful judgment.

### **Selling your Affected Vehicle may affect your claim to damages**

If you currently own an Affected Vehicle and you sell it before the conclusion of the Isuzu Class Action, your entitlement to certain monetary damages (called "Reduction-in-Value Damages", explained below) will most likely be lost, and therefore your overall entitlement to damages (if any) will potentially be significantly reduced.

The Applicants allege that the sale of the Affected Vehicles did not comply with the consumer guarantees in the Australian Consumer Law (**Law**), and so Isuzu must pay Group Members damages.

The Applicants are asking the Court to order Isuzu to pay Group Members two types of damages:<sup>1</sup>

- **Reduction in Value Damages** (i.e. damages for the reduction in value of goods as a result of the manufacturer's failure to comply with the Law); and
- **Compensatory Damages** (i.e. damages to compensate for any actual losses suffered by a consumer as a result of the manufacturer's failure to comply with the Law).

In cases such as the Isuzu Class Action, Reduction in Value damages may be significantly higher than any available Compensatory Damages.

Reduction in Value Damages **will only be available** to consumers in a class action like the Isuzu Class Action if, at the time a Court delivers a judgment (i.e. makes its decision after the conclusion of a hearing), the consumer **still retains title to the relevant vehicle**.

Accordingly, if you choose to sell or dispose of your Affected Vehicle, you may lose some or all of the money that you might otherwise have received from a judgment or successful settlement in the Isuzu Class Action.

Group Members will need to take their own financial and legal advice to ensure that any decision they make is right for them.

### **Where can you obtain copies of relevant documents?**

Copies of the relevant documents may be obtained by contacting a District Registry of the Federal Court (contact details are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee.

The Applicants' Amended Statement of Claim (**ASOC**), which sets out the allegations against the Respondent is available here: <https://piperalderman.com.au/class-actions/isuzu-class-action/>

The Respondent's Defence to the ASOC is available here: <https://piperalderman.com.au/class-actions/isuzu-class-action/>

A copy of the Applicants' Funding Agreement can be inspected at Piper Alderman's offices.

### **What do I do if I have further questions?**

You can get more information by:

- visiting <https://piperalderman.com.au/class-actions/isuzu-class-action/>;
- emailing [isuzuclassaction@piperalderman.com.au](mailto:isuzuclassaction@piperalderman.com.au); or
- seeking your own legal advice.

If you wish to opt out, you should not delay in making your decision.

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<sup>1</sup> For more information, read the High Court of Australia's decisions in *Williams v Toyota Motor Corporation Australia Ltd* [2024] HCA 38 and *Capic v Ford Motor Company of Australia Pty Ltd* [2024] HCA 39.

You should only fill out this form if you wish to opt out of, and thus cease to participate in, the Isuzu Class Action. If you do wish to opt out, please complete and return this form to the New South Wales Registry of the Federal Court of Australia at the 'Registry Address' shown below, so that it is received by no later than 4:00pm AEST on 8 April 2026. If you wish to register for the Isuzu Class Action, you should NOT fill out this form, but should instead follow the steps for registration set out in the notice above.

Form 21  
Rule 9.34

### Opt out notice

No. NSD1109/2024

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

**GEOFFREY FISHER** and another named in the schedule

Applicants

**ISUZU MOTORS LIMITED (JAPANESE PUBLIC COMPANY LIMITED BY SHARES)**

Respondent

To: The Registrar  
Federal Court of Australia  
NSW District Registry  
Level 17; Law Courts Building  
184 Phillip St; Queens Square,  
Sydney NSW 2000

..... [insert name], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that  
..... [insert name] is opting out of the representative proceeding.

Date: .....

Signature: .....

Full name: .....

Vehicle Identification Number (VIN) (if known): .....

If you are signing as the solicitor or representative of the group member:

Signature: .....

Full name: .....

Capacity in which you are signing: .....