

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/06/2020 6:37:43 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD1210/2019
File Title:	KENNETH JOHN WILLIAMS v TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 26/06/2020 8:49:04 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

No. NSD 1210 of 2019

Federal Court of Australia
District Registry: NSW
Division: General

Kenneth John Williams

Applicant

Toyota Motor Corporation Australia Limited (ACN 009 686 097)

Respondent

To the Respondent

The Applicant applies for the relief set out in this amended application.

The Court will hear this amended application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: 184 Phillip Street, Sydney NSW 2000

The Court ordered that the time for serving this amended application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of	The Applicant		
Prepared by	Charles Bannister		
Law firm	Bannister Law		
Tel	(02) 8999 2888	Fax	(02) 8088 0731
Email	charles@bl.com.au		
Address for service	Bannister Law Class Actions, Level 1, 107 Pitt Street, Sydney, 2000		



Representative action

The Applicant brings this amended application as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*.

The Group Members to whom this proceeding relates are described in paragraph 1 of the accompanying Amended Statement of Claim (ASOC), being persons who:

(a) at any time during the period from (and including) 1 October 2015 until (and including) the date upon which the ASOC was filed (**Relevant Period**), in Australia, acquired (including by way of purchase, exchange or taking on lease, or on hire-purchase) one or more models of Toyota motor vehicle in the Hilux, Fortuner and Prado ranges fitted with a 1GD-FTV engine or 2GD-FTV engine~~diesel particulate filter (DPF)~~ (**Affected Vehicles**);

(b) either:

~~(b)~~(i) acquired the Affected Vehicle:

~~(i)~~(A) from a Dealer (as defined in paragraph 5 of the ASOC) or other retailer selling Affected Vehicles, including used car dealers;

~~(ii)~~(B) other than by way of sale by auction; and

~~(iii)~~(C) other than for the purpose of re-supply; or

~~(e)~~(ii) in the alternative to subparagraph (b) above, acquired the Affected Vehicle from a person who acquired the Affected Vehicle in the circumstances described in subparagraph ~~(b)~~(b)(i) above, other than for the purpose of re-supply; and

~~(d)~~(c) are not:

(i) a person described in subsection 33E(2) of the FCA Act; or

(ii) a Justice of the Federal Court of Australia or the High Court of Australia.

Details of claim

On the grounds stated in the ASOC, the Applicant claims the following relief on his own behalf and on behalf of Group Members:



Final Relief

1. An order that the Respondent pay to the Applicant and Group Members damages:
 - 1.1 pursuant to section 236 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), being the Australian Consumer Law (**ACL**), for loss and damage suffered by the Applicant and Group Members because of the Respondent's contraventions of sections 18, 21, 29 and/or 33 of the ACL;
 - 1.2 pursuant to sections 271 and 272 of the ACL for:
 - (a) the reduction in the value of the Affected Vehicles resulting from the failure to comply with the guarantee as to acceptable quality in section 54 of the ACL; and
 - (b) other reasonably foreseeable loss or damage suffered by the Applicant and Group Members because of the failure to comply with the guarantee as to acceptable quality in section 54 of the ACL; and/or
 - 1.3 pursuant to subsections 33Z(1)(e) and (f) of the FCA Act, in respect of some or all of the damages suffered by Group Members, in an aggregate amount;
2. Interest pursuant to section 51A of the FCA Act;
3. Costs; and
4. Such other orders as the Court thinks fit.

Interim relief

- ~~4. A common fund order, in terms to be lodged with the Court at or before the initial case management conference, pursuant to section 23 of the FCA Act, section 33ZF of the FCA Act, and/or rule 1.32 of the *Federal Court Rules 2011*, and subject to the provision of satisfactory undertakings from each of Balance REV Ltd (**Balance**), the funder managed by Balance Legal Capital LLP, the Applicant and Bannister Law Class Actions.~~

Questions common to claims of Group Members

The questions of law or fact common to the claims of the Group Members are:

1. Whether the Affected Vehicles suffer from the Vehicle Defects.



2. Whether, by reason of the Vehicle Defects, the Affected Vehicles suffer from one or more of the Vehicle Defect Consequences.
3. Whether the Respondent has known, since at least February 2016, of the existence of the Vehicle Defects and the Vehicle Defect Consequences in the Affected Vehicles.
4. Whether the Affected Vehicles were of an acceptable quality, within the meaning of section 54 of the ACL.
5. Whether the Respondent made:
 - 5.1 the Vehicle Representations;
 - 5.2 the Future Vehicle Representations;
 - 5.3 the DPF System Representations; and
 - 5.4 the Future DPF System Representations,

(Alleged Representations).
6. Whether the Alleged Representations were misleading or deceptive.
7. Whether the Respondent engaged in the Omissions Conduct.
8. Whether the Omissions Conduct was misleading or deceptive.
9. Whether, in making the Alleged Representations and engaging in the Omissions Conduct, the Respondent engaged in conduct that was, in all the circumstances, unconscionable.
10. Whether there has been a reduction in value of the Affected Vehicles resulting from the failure to comply with the guarantee as to acceptable quality in section 54 of the ACL.
11. Whether Group Members have suffered loss or damage as measured by a reduction in value resulting from the failure of the Affected Vehicles to comply with the guarantee as to acceptable quality, below whichever of the following prices is lower:
 - 11.1 the price paid or payable by the Group Member for the Group Member's Affected Vehicle(s); and
 - 11.2 the average retail price of the Affected Vehicle at the time of supply.



12. Whether, by reason of the Vehicle Defects, the Affected Vehicles consumed fuel in excess of that which the Affected Vehicles would have consumed, but for the Vehicle Defects.
13. Whether, by reason of such excess fuel consumption, the Applicant and Group Members have suffered loss, and if so, what is the appropriate measure of loss.

Applicant's address

The Applicant's address for service is:

Place: Bannister Law Class Actions

Level 1, 107 Pitt Street

Sydney NSW 2000

Email: charles@bl.com.au

The Applicant's address is 14 Sycamore St, Redland Bay QLD 4165

Service on the Respondent

It is intended to serve this amended application on the Respondent.

Date: 24 June 2024 ~~July 2019~~

A handwritten signature in black ink, appearing to read 'Charles Bannister'.

Signed by Charles Bannister
Lawyer for the Applicant