



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

No: NSD1210/2019

KENNETH JOHN WILLIAMS
Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 26 June 2020

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Pleadings

- 1 The applicant be granted leave to file an Amended Originating Application by 24 June 2020 in the form set out in Annexure A to these orders.
- 2 The date by which the applicant is to file and serve any reply to the Amended Defence be extended to 29 June 2020.

Mediation

- 3 Pursuant to Rule 28.03 of the *Federal Court Rules 2011* (Cth), the proceeding be referred to mediation (by a mediator to be agreed between the parties) to have commenced by no later than 13 November 2020.

Updated List of Affected Owners & Vehicles

- 4 Pursuant to s 37P(2) of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the respondent is to provide the applicant with the following information in Excel format by 6 July 2020:
 - (a) a list of all models of Toyota motor vehicle in the Hilux, Fortuner and Prado ranges fitted with a 1GD-FTV or 2GD-FTV engine offered for sale, exchange, lease and/or hire-



purchase between 1 October 2015 and 23 April 2020 by the respondent, including through a Toyota dealership located within Australia; and

- (b) as regards any acquisition by a person (including by way of purchase, exchange, or taking on lease or on hire-purchase) of a vehicle described in Order 4(a) above between 1 October 2015 and 23 April 2020, to the extent such information is available to the respondent:
- (i) the name and contact details (including, where available, the email address) of the person who acquired the vehicle;
 - (ii) the date of the acquisition of the vehicle;
 - (iii) the model of the vehicle that was acquired;
 - (iv) the Vehicle Identification Numbers of the vehicle that was acquired; and
 - (v) the price for which the vehicle was acquired.

Subpoena

5 Pursuant to Rule 24.01 of the *Federal Court Rules 2011* (Cth), leave be granted to the applicant to issue a subpoena to the proper officer of the state and territory vehicle registration authorities listed below (**STRAs**) in the form attached at Annexure B to these Orders, save that the Vehicle Identification Numbers provided by the respondent pursuant to Order 4 above may be inserted in the final subpoenas issued to the STRAs:

- (a) Roads and Maritime Services (NSW);
- (b) VicRoads (Victoria);
- (c) Department of Transport and Main Roads (Queensland);
- (d) Motor Vehicle Registry (Northern Territory);
- (e) Access Canberra, Road Transport Authority (ACT);
- (f) Department of Planning, Transport and Infrastructure (South Australia);
- (g) Department of State Growth (Tasmania); and
- (h) Department of Transport (Western Australia).



6 The subpoenas described in Order 5 above shall be returnable on 24 July 2020 before Justice Lee.

7 The STRAs' costs of responding to the subpoenas are initially to be paid by the applicant, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.

Opt-Out Date and Notice

8 Pursuant to ss 33J of the Act, 4:00pm on **30 September 2020 (Opt Out Date)** is fixed as the date on or before which a group member (as defined in the amended statement of claim) may opt out of this proceeding in accordance with these Orders.

9 Pursuant to s 33X of the Act, the form and content of the email correspondence and notice set out in Annexure C to these Orders (**Electronic Notice**) and the form and content of the cover letter and notice set out in Annexure D to these Orders (**Postal Notice**) be approved.

10 Pursuant to ss 33X(5) and 33Y of the Act, the Electronic Notice and the Postal Notice be distributed to Group Members according to the following procedure:

(a) on or before 21 July 2020, the applicant will cause:

(i) a copy of the Electronic Notice to be sent by email; or

(ii) if an email address is not available but a mobile telephone number is available:

(A) a copy of the Electronic Notice to be sent as a link included in an SMS message; and

(B) a copy of the Postal Notice to be sent by prepaid ordinary post,

to each person who has registered with the applicant's solicitors through the website maintained by the applicant's solicitors in relation to this proceeding;

(b) on or before 28 July 2020, the applicant will cause:

(i) a copy of the Electronic Notice to be sent by email; or

(ii) if an email address is not available but a mobile telephone number is available:



- (A) a copy of the Electronic Notice to be sent as a link included in an SMS message; and
 - (B) a copy of the Postal Notice to be sent by prepaid ordinary post,
to the persons identified by the respondent pursuant to Order 4(b)(i) above;
- (c) no later than 14 days following production by an STRA of the documents or things described in the Schedule to the subpoena issued in accordance with Order 5 above, the applicant will cause:
- (i) a copy of the Electronic Notice to be sent by email; or
 - (ii) if an email address is not available but a mobile telephone number is available:
 - (A) a copy of the Electronic Notice to be sent as a link included in an SMS message; and
 - (B) a copy of the Postal Notice to be sent by prepaid ordinary post,
to the persons identified by each of the STRAs in response to the subpoena described in Order 5 above;
- (d) to the extent that:
- (i) no email address or mobile telephone number is available for a group member; or
 - (ii) an email to any email address or SMS to any mobile telephone number referred to in Orders 10(a) to (c) above experiences a delivery failure,
the applicant will cause a copy of the Postal Notice to be sent by prepaid ordinary post to that group member if a postal address is available for that group member;
- (e) continuously through the period 21 July 2020 to the Opt Out Date, the applicant will cause a copy of the Electronic Notice, together with copies of the Amended Originating Application, Amended Statement of Claim, Amended Defence, and any orders of the Court relating to the matters addressed in the Electronic Notice, to be displayed on the website of the applicant's solicitors;
- (f) continuously throughout the period 21 July 2020 to the Opt Out Date, the District Registrar of the New South Wales Registry of the Federal Court of Australia shall cause a



copy of the Postal Notice to be posted on the class action page of the website of the Federal Court; and

- (g) continuously throughout the period 21 July 2020 to the Opt Out Date, the respondent will cause a copy of the Electronic Notice to be displayed on the respondent's website, together with a link to the Federal Court website referenced in Order 10(f) above;
- 11 Pursuant to s 33Y(3)(d) of the Act, the costs of distributing the Electronic Notice and Postal Notice to group members are initially to be paid by the applicant, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.
- 12 Any group member who wishes to opt out of this proceeding must, before the Opt Out Date, deliver a duly completed opt out form to the New South Wales District Registry.
- 13 The solicitors for any party have leave to inspect the Court file and to copy any opt out forms filed.
- 14 If, on or before the Opt Out Date, the solicitors for any party receive a notice purporting to be an opt out form referable to this proceeding, the solicitors must file the notice in the New South Wales District Registry within seven days of receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.

Reference

- 15 Pursuant to s 33ZF and/or 37P(2) and/or s 54A of the *Federal Court of Australia Act 1976* (Cth) that:
- (a) the questions set out in Annexure E to this Order (**Relevant Questions**) be referred to a referee (**Referee**) for the purposes of the Referee conducting an inquiry into the Relevant Questions (**Reference**) and to make a report in writing to the Court on the Relevant Questions stating, with reasons, the Referee's opinion on the Relevant Questions (**Report**);
- (b) the Reference commence within 14 days, or on such other date as ordered by the Referee;
- (c) within 21 days, the parties are to confer with one another to seek to reach agreement, where possible, in respect of a statement of agreed facts (and, if necessary, assumptions) to be provided to the Referee;



- (d) within 28 days, the parties are to provide to the Referee a brief statement of the findings contended by the party in relation to the Relevant Questions (and provide a copy to the other party to the Reference) (see FCR 28.65(7));
- (e) within 28 days, any party may provide any documents to the Referee which the party considers to be material to the Reference, the volume of such documents not to exceed 1 lever-arch folder for each party (with a copy of any such documents to be provided to the other party to the Reference);
- (f) within 28 days, the respondent is to provide to the Referee a statement identifying details as to when any Priority Documents (being the documents described in paragraphs 4 and 5 of the letter of 7 February 2020 sent by Bannister Law to Clayton Utz, and paragraph 11 of the letter dated 27 April 2020 sent by Bannister Law to Clayton Utz) can be provided to the Referee (if he wishes to receive them), together with details as to when any engineering reports, field testing reports and certification materials in respect of the Affected Vehicles can be provided (if he wishes to receive them);
- (g) each party to the Reference must do all things required of the party by the Referee to enable the Referee to form an opinion about the Relevant Questions; and not wilfully do, or cause to be done, any act to delay or prevent the Referee forming an opinion (see FCR 28.65(8));
- (h) the Referee is to consider and implement such manner of conducting the Reference as will, without undue formality or delay, enable a just, efficient, timely and cost-effective resolution of the Reference to allow completion of their Report including, if the Referee thinks fit:
 - (i) the making of enquiries by telephone, videoconference, or in writing;
 - (ii) direct communication without intervention of lawyers of any expert retained on behalf of a party and/or any person who the Referee believes may have information relevant to the Reference;
 - (iii) make such directions as the Referee considers appropriate as to the conduct of the Reference to facilitate the Referee implementing the just, efficient, timely and cost-effective resolution of the Reference;
- (i) without limiting Order 15(h) above, to the extent the Referee considers it is appropriate for the Referee to obtain any expert assistance in the conduct of the Reference, the



Referee may seek such assistance as the Referee thinks fit, including but not limited to, requesting each party to nominate an expert retained at the expense of that party, and the Referee, without intervention of any lawyer for any party, will make such direct enquires as the Referee thinks fit of any such expert;

- (j) without limiting Order 15(h) above, to the extent the Referee considers it is necessary or appropriate for the Referee to obtain any submission from any party, the Referee may make any direction the Referee considers appropriate in relation to such submissions including that any submissions be provided wholly in writing and be limited in length and topic;
 - (k) without limiting Order 15(h) above, to the extent the Referee considers it is necessary or appropriate, the attendance of any person and the production of documents may be compelled by direction of the Referee to a party or, in relation to a non-party, following issue of a subpoena by the Court (on application) returnable before the Referee;
 - (l) except to the extent of providing to the Referee the documents contemplated by these orders, or otherwise as required by the Referee, the parties are to participate in the Reference without any intervention in the Reference by legal representatives and the laws of evidence will not apply in relation to the Reference.
- 16 To assist the Referee in the preparation of the Report, a junior barrister be appointed as counsel assisting (**Counsel Assisting**) and the costs of Counsel Assisting, capped at a sum of \$50,000 (subject to further order), be costs in the Reference and be dealt with in the same way as the fees of the Referee.
- 17 The Referee, in the Report:
- (a) is, to the extent it was necessary for the Referee to make any finding of fact in order to express his opinion, make a statement of the facts found by the Referee from which, following any adoption, the Court may draw such inferences as it thinks fit; and/or
 - (b) may submit any question arising on the Reference for the decision of the Court and provide alternative opinions which depend upon how the Court determines any question submitted to the Court.
- 18 Without affecting the powers of the Court as to costs, the parties are to be jointly and severally liable to the Referee and Counsel Assisting for the fees payable in relation to the conduct of the Reference.



- 19 The parties shall deliver to the Referee within 14 days, a copy of this order, together with a copy of FCR 28 and a copy of the pleadings.
- 20 By 26 June 2020, each of the parties is to provide the Court no more than three names of persons suitable to perform the role of the Referee pursuant to these Orders, being persons who have had no previous involvement in, or related to, this proceeding, who do not have any prior or current commercial relationship with the party who nominated them and with whom the substantive issues in the proceeding have not been discussed.
- 21 The identity of the Referee and Counsel Assisting will be determined by the Court on the papers.
- 22 By 29 July 2020, the Referee is to provide to the Associate to Justice Lee the date by which the Referee considers he could reasonably provide the Report to the Court and a brief explanation of the Referee's reasons for selecting such date.
- 23 The date by which the Referee is to deliver the Report to the Court will be determined by the Court on the papers by 31 July 2020.
- 24 The Referee (without notice to the parties) and the parties have liberty to seek directions with respect to any matter arising upon application made on 24 hours' notice or such other notice ordered by the Court.
- 25 There be no further discovery pursuant to order 5 made on 7 November 2019 or order 1 made on 1 May 2020, except:
- (a) any further offshore Priority Documents (being the documents described in paragraphs 4 and 5 of the letter of 7 February 2020 sent by Bannister Law to Clayton Utz and paragraph 11 of the letter dated 27 April 2020 sent by Bannister Law to Clayton Utz), together with any further offshore engineering reports, field testing reports and certification materials in respect of the Affected Vehicles, which have not yet been discovered, such documents to be produced as soon as reasonably practicable;
 - (b) as directed by the Referee; or
 - (c) pursuant to further order of the Court.
- 26 The proceeding be adjourned for a further case management hearing (including as to directions for any proceeding on the Report pursuant to FCR 28.67) at 9:30am on 12 August 2020.



27 Costs of the case management hearings on 22 and 23 June 2020 be reserved.

Date that entry is stamped: 26 June 2020

Sia Lagos
Registrar

**ANNEXURE A**

Form 19
Rule 9.32

**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



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 (**Affected Vehicles**);
- (b) either:
 - (i) acquired the Affected Vehicle:
 - (A) from a Dealer (as defined in paragraph 5 of the ASOC) or other retailer selling Affected Vehicles, including used car dealers;
 - (B) other than by way of sale by auction; and
 - (C) other than for the purpose of re-supply; or
 - (ii) acquired the Affected Vehicle from a person who acquired the Affected Vehicle in the circumstances described in subparagraph (b)(i) above, other than for the purpose of re-supply; and
- (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.

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: 26 June 2020

Signed by Charles Bannister
Lawyer for the Applicant

**ANNEXURE B****FORM OF SUBPOENA**

Form 43B
Rule 24.13(1)(b)

Subpoena to produce documents

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

No: NSD 1210/2019

KENNETH JOHN WILLIAMS

Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)

Respondent

To: [NAME], [REGISTERED ADDRESS]

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 13 July 2020. *(See Note 1)*

Date: [*] July 2020

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

Issued at the request of Kenneth John Williams, whose address for service is:

Place: Bannister Law Class Actions, Level 1, 107 Pitt Street, Sydney NSW 2000

Email: charles@bl.com.au



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 24 July 2020

Time: 9:30 AM

Place: Law Courts Building, 184 Phillip Street, Queens Square, Sydney, NSW 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
Federal Court of Australia
New South Wales District Registry
184 Phillip Street
Queens Square
Sydney NSW 2000

Schedule of documents

The documents and things you must produce are as follows:

1. The names, mailing addresses, email addresses and telephone numbers (including but not limited to mobile phone numbers) of the current and former registered operators of the vehicles with the Vehicle Identification Numbers listed below for the period 1 October 2015 to 23 April 2020 (inclusive):

[To insert]



Notes

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.



Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:

- .doc and .docx – Microsoft Word documents
- .pdf – Adobe Acrobat documents
- .xls and .xlsx – Microsoft Excel spreadsheets
- .jpg – image files
- .rtf – rich text format
- .gif – graphics interchange format
- .tif – tagged image format

Applications in relation to subpoena

10. You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



ANNEXURE C

ELECTRONIC NOTICE

RE: Class Action against Toyota Motor Corporation Australia Limited RELATING TO CERTAIN HILUX, FORTUNER & PRADO DIESEL VEHICLES

Dear [NAME],

You are receiving this correspondence because, based on information provided to us by Toyota Motor Corporation Australia Limited and/or a state or territory vehicle registration authority pursuant to orders made by the Federal Court of Australia, you may have bought a Toyota Hilux, Fortuner or Prado with a diesel engine between 1 October 2015 and 23 April 2020.

The records provided to us by Toyota Motor Corporation Australia Limited and/or a state or territory vehicle registration authority indicate that you may have purchased the following vehicle(s):

Registered Owner Name

VIN

[NAME]

XXXXXXXXXXXX

If you did, whether or not you still own that vehicle, you may be a group member in a class action against Toyota Motor Corporation Australia Limited which is currently before the Federal Court of Australia.

It is important that you read the notice below carefully. If you have any questions, you may contact Bannister Law Class Actions (solicitors for the Applicant) on (02) 8999 [XXXX] or by requesting a call back using the contact form [here](#).

Kind regards

Charles Bannister
Principal
Bannister Law Class Actions



OPT-OUT NOTICE

TOYOTA CLASS ACTION RELATING TO CERTAIN HILUX, FORTUNER & PRADO DIESEL VEHICLES

THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE FEDERAL COURT OF AUSTRALIA

It is about the TOYOTA CLASS ACTION RELATING TO CERTAIN HILUX, FORTUNER & PRADO DIESEL VEHICLES.

It is sent to you because the Court considers it likely you are a group member.

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

1. **opt-out** of the class action by **30 September 2020** (4:00 PM (Sydney time)) and lose a right to getting any money compensation out of the class action (but keep your right to try to get some money compensation in an action you start yourself);
2. **sign up** to the class action (which you can do in two ways); or
3. **do nothing**.

A. SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

- 1 This class action, the Toyota class action, claims compensation (that is, money) for what are claimed to be defects in the diesel particular filter (**DPF**) system in certain Toyota Hilux, Fortuner and Prado vehicles with a 1GD-FTV or 2GD-FTV diesel engine. It is claimed that these defects cause problems with the vehicles, including the emission of white smoke from the exhaust, blockage of the DPF, increased fuel consumption, and increased wear and tear on the engine.
- 2 The case is brought by Kenneth John Williams on his own behalf and on behalf of other persons who also own or have owned these Toyota vehicles (known as "*group members*"). The firm of solicitors running the case for Mr Williams and the group members is Bannister Law Class Actions, supported by Gilbert + Tobin Lawyers.



- 3 A company called Balance Legal Capital (**Balance**) is currently funding the case. This means that Balance has agreed to pay the costs of bringing this class action against Toyota in return for repayment of those costs plus a funding commission, should the class action be successful (that is, if money compensation is recovered from Toyota).
- 4 If you wish, you may now sign up to the class action in one of two ways:
- (i) by submitting your details to Bannister Law Class Actions, by entering into a retainer agreement with Bannister Law Class Actions and entering into a funding agreement with Balance (which will make you a “**Represented Group Member**”);
or
 - (ii) by only submitting your details to Bannister Law Class Actions but not entering into a retainer agreement with Bannister Law Class Actions or a funding agreement with Balance (which will make you a “**Registered Unrepresented Group Member**”).
- 5 You do not need to sign up at this time to remain a group member. However, an aspect of the funding of this class action by Balance is that it can be withdrawn by Balance. The Court has been told that:
- (i) in considering whether this class action is commercially viable and whether to continue to fund the proceedings, Balance will take into account the number of Represented Group Members and the value of the claims of the Represented Group Members; and
 - (ii) Balance may decide to cease funding the proceeding if there are an insufficient number of Represented Group Members.
- 6 Group members are not, and will not be, liable for any “out of pocket” legal costs by remaining as group members in this class action. At present, the costs of running the class action are being paid by Balance.
- 7 If the class action is unsuccessful (that is, if no money compensation is recovered), group members will have no liability and will not have to pay anything.
- 8 If the class action is successful (that is, if money compensation is recovered), the Court may be asked to distribute the legal and funding expenses of the litigation among all persons who have benefitted from the class action. The effect of any such order, if



made, would be that all group members who benefit from the litigation will pay a share of the legal and funding expenses of the litigation (including a reasonable litigation funding commission). This means that even those who do not sign up to a funding agreement might have to contribute to these expenses out of their share of the compensation to be received. A group member's share of these expenses will be taken out of the money compensation to be paid to that group member by Toyota before that compensation is paid out.

- 9 As Balance's continued involvement may depend on a sufficient number of group members entering into funding agreements, it is important that you take this matter into consideration when choosing between the three options set out below.

B. YOUR THREE OPTIONS

OPTION 1 – OPT OUT AND CEASE TO BE A GROUP MEMBER

- 10 Group members who opt out will not be bound by the outcome of the class action and will not receive any money from the class action if the class action is successful. Group members should seek legal advice before opting out. To opt out is to take a serious step – you should not do it unless you understand what it means.
- 11 To opt out, you must complete the opt out form enclosed with this Notice. Opt out forms must be sent directly to the New South Wales District Registry of the Federal Court of Australia before **4:00pm on 30 September 2020**.

OPTION 2 – SIGN UP TO THE CLASS ACTION

- 12 Group members who sign up provide their details and information about their claims to Bannister Law Class Actions.
- 13 Although you do not have to sign up (see Option 3 below), it is likely that at some point you will need to register your interest – either to get money in any settlement or to take further steps to bring your claim forward.
- 14 If you wish to sign up, it would assist the lawyers for you to register by 28 August 2020. If you have already signed up, you do not need to sign up again.
- 15 As noted above, if you wish to sign up, you may choose whether to sign up as a Represented Group Member or a Registered Unrepresented Group Member.



16 Becoming a Represented Group Member will not require you to pay any “out of pocket” legal costs, but it will mean you agree to pay Balance a share of any money you receive from the class action in return for Balance having paid the legal and other expenses of the litigation (including paying Balance a funding commission). If you want to become a Represented Group Member, what you need to do is to:

- (i) enter into the costs and funding agreements online by clicking the link below;
- (ii) telephone (02) 8999 [XXXX] or email toyotaclassaction@bannisterlaw.com.au; or
- (ii) request a call back here.

<“Sign up as a Represented Group Member” hyperlink>

17 Of course, if you are considering becoming a Represented Group Member, you should read carefully the funding agreements including the retainer and, if you then do not understand everything, you should get legal advice from your own family solicitor or a solicitor you choose.

18 Becoming a Registered Unrepresented Group Member will mean you will not enter into any contract with Balance and Bannister Law Class Actions. However, at the end of the class action, an order may be sought requiring Registered Unrepresented Group Members who benefit from the class action, to contribute to the costs and the funding of the action out of any money they receive. If you want to become a Registered Unrepresented Group Member, what you need to do is to:

- (i) complete the form online by clicking the link below;
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- (iii) request a call back here.

<“Sign up as a Registered Unrepresented Group Member” hyperlink>



OPTION 3 – DO NOTHING

19 Group members who do not opt out by **30 September 2020** or sign up will remain as group members and await the outcome. You will be an Unregistered Group Member but, as noted above, at some point Unregistered Group Members will need to register to get any money out of any settlement (if that happens).

C. FOUR IMPORTANT THINGS TO NOTE

20 *First*, this is not a scam. You can check (and get further information) by:

- (i) visiting the Federal Court of Australia website for the class action at <https://www.comcourts.gov.au/file/Federal/P/NSD1210/2019/actions>;
- (ii) visiting the website for the class action at [XXXX]; and/or
- (iii) contacting Bannister Law Class Actions (the solicitors running the class action) on (02) 8999 [XXXX] or by emailing toyotaclassaction@bannisterlaw.com.au.

21 *Second*, as explained above, if there are not enough Represented Group Members, there is a risk that this class action may not be able to continue.

22 *Third*, if there is anything of which you are unsure and you do not want to speak with Bannister Law Class Actions (or you want to understand their involvement or the funding agreements or retainer better), you should get legal advice from your own family solicitor or another solicitor you choose.

23 *Fourth*, you should also make sure you keep the documents relating to your ownership of your Toyota vehicle, including the purchase contract, any record of your sale of the vehicle, invoices showing the service history of your vehicle, and any communications you may have had with Toyota, dealers, service centres or mechanics about your vehicle.



OPTION 1 – OPT OUT

Form 21
Rule 9.34

Opt out notice

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

No: NSD 1210/2019

KENNETH JOHN WILLIAMS

Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)

Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
184 Phillip Street
Queens Square
Sydney NSW 2000

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

Date:

..... (*signature*)

..... (*print name*)
Group Member / Lawyer for the Group Member

**ANNEXURE D****POSTAL NOTICE**

RE: Class Action against Toyota Motor Corporation Australia Limited RELATING TO CERTAIN HILUX, FORTUNER & PRADO DIESEL VEHICLES

Dear [NAME],

You are receiving this correspondence because, based on information provided to us by Toyota Motor Corporation Australia Limited and/or a state or territory vehicle registration authority pursuant to orders made by the Federal Court of Australia, you may have bought a Toyota Hilux, Fortuner or Prado with a diesel engine between 1 October 2015 and 23 April 2020.

The records provided to us by Toyota Motor Corporation Australia Limited and/or a state or territory vehicle registration authority indicate that you may have purchased the following vehicle(s):

Registered Owner Name

[NAME]

VIN

XXXXXXXXXXXX

If you did, whether or not you still own that vehicle, you may be a group member in a class action against Toyota Motor Corporation Australia Limited which is currently before the Federal Court of Australia.

It is important that you read the notice below carefully. If you have any questions, you may contact Bannister Law Class Actions (solicitors for the Applicant) on (02) 8999 [XXXX] or by emailing toyotaclassaction@bannisterlaw.com.au.

Kind regards

Charles Bannister
Principal
Bannister Law Class Actions



OPT-OUT NOTICE

TOYOTA CLASS ACTION RELATING TO CERTAIN HILUX, FORTUNER & PRADO DIESEL VEHICLES

THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE FEDERAL COURT OF AUSTRALIA

It is about the TOYOTA CLASS ACTION RELATING TO CERTAIN HILUX, FORTUNER & PRADO DIESEL VEHICLES.

It is sent to you because the Court considers it likely you are a group member.

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

1. **opt-out** of the class action by **30 September 2020** (4:00 PM (Sydney time)) and lose a right to getting any money compensation out of the class action (but keep your right to try to get some money compensation in an action you start yourself);
2. **sign up** to the class action (which you can do in two ways); or
3. **do nothing**.

A. SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

- 1 This class action, the Toyota class action, claims compensation (that is, money) for what are claimed to be defects in the diesel particulate filter (DPF) system in certain Toyota Hilux, Fortuner and Prado vehicles with a 1GD-FTV or 2GD-FTV diesel engine. It is claimed that these defects cause problems with the vehicles, including the emission of white smoke from the exhaust, blockage of the DPF, increased fuel consumption, and increased wear and tear on the engine.
- 2 The case is brought by Kenneth John Williams on his own behalf and on behalf of other persons who also own or have owned these Toyota vehicles (known as “*group members*”). The firm of solicitors running the case for Mr Williams and the group members is Bannister Law Class Actions, supported by Gilbert + Tobin Lawyers.



- 3 A company called Balance Legal Capital (**Balance**) is currently funding the case. This means that Balance has agreed to pay the costs of bringing this class action against Toyota in return for repayment of those costs plus a funding commission, should the class action be successful (that is, if money compensation is recovered from Toyota).
- 4 If you wish, you may now sign up to the class action in one of two ways:
- (i) by submitting your details to Bannister Law Class Actions, by entering into a retainer agreement with Bannister Law Class Actions and entering into a funding agreement with Balance (which will make you a “**Represented Group Member**”); or
 - (ii) by only submitting your details to Bannister Law Class Actions but not entering into a retainer agreement with Bannister Law Class Actions or a funding agreement with Balance (which will make you a “**Registered Unrepresented Group Member**”).
- 5 You do not need to sign up at this time to remain a group member. However, an aspect of the funding of this class action by Balance is that it can be withdrawn by Balance. The Court has been told that:
- (i) in considering whether this class action is commercially viable and whether to continue to fund the proceedings, Balance will take into account the number of Represented Group Members and the value of the claims of the Represented Group Members; and
 - (ii) Balance may decide to cease funding the proceeding if there are an insufficient number of Represented Group Members.
- 6 Group members are not, and will not be, liable for any “out of pocket” legal costs by remaining as group members in this class action. At present, the costs of running the class action are being paid by Balance.
- 7 If the class action is unsuccessful (that is, if no money compensation is recovered), group members will have no liability and will not have to pay anything.
- 8 If the class action is successful (that is, if money compensation is recovered), the Court may be asked to distribute the legal and funding expenses of the litigation among all persons who have benefitted from the class action. The effect of any such order, if made, would be that all group members who benefit from the litigation will pay a share



of the legal and funding expenses of the litigation (including a reasonable litigation funding commission). This means that even those who do not sign up to a funding agreement might have to contribute to these expenses out of their share of the compensation to be received. A group member's share of these expenses will be taken out of the money compensation to be paid to that group member by Toyota before that compensation is paid out.

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- (i) complete the form online at [XXXX]; or
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- (ii) visiting the website for the class action at [XXXX]; and/or
 - (iii) contacting Bannister Law Class Actions (the solicitors running the class action) on (02) 8999 [XXXX] or by emailing toyotaclassaction@bannisterlaw.com.au.
- 21 *Second*, as explained above, if there are not enough Represented Group Members, there is a risk that this class action may not be able to continue.
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OPTION 1 – OPT OUT

Form 21
Rule 9.34

Opt out notice

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

No: NSD 1210/2019

KENNETH JOHN WILLIAMS

Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)

Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
184 Phillip Street
Queens Square
Sydney NSW 2000

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

Date:

..... (*signature*)

..... (*print name*)

Group Member / Lawyer for the Group Member



ANNEXURE E

RELEVANT QUESTIONS

(Defined terms in this Annexure have the same meaning as in the Amended Statement of Claim)

1. Does the applicant's Affected Vehicle suffer, and did it during the Relevant Period suffer, from the Vehicle Defects and Vehicle Defect Consequences?
2. Do the Affected Vehicles suffer, and have they suffered during the Relevant Period, from the Vehicle Defects and Vehicle Defect Consequences?
3. During the Relevant Period, did the Affected Vehicles:
 - a. require unusual or abnormal maintenance; and/or
 - b. have a fuel efficiency consistent with the fuel efficiency stated in the promotional and instructional materials relevant to the Affected Vehicle and any fuel consumption label applied to the windscreen of the Affected Vehicle?
4. During the Relevant Period, did the Affected Vehicles have a DPF System that, in its design and manufacturing:
 - a. completed an automatic regeneration every 250 to 300 kilometres of driving, depending on driving conditions and driving style;
 - b. completed a regeneration cycle with sufficient regularity to prevent the DPF from becoming partially or completely blocked;
 - c. prevented the DPF from becoming partially or completely blocked; and/or
 - d. was effective at removing sufficient particulate matter from the DPF to prevent the DPF from becoming or remaining partially or completely blocked.