



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:** 11 August 2020

**WHERE MADE:** Sydney

#### THE COURT ORDERS THAT:

1. Pursuant to s 33X of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the email correspondence and notice set out in Annexure A to these orders (**Corrected Notice**) be approved.
2. Pursuant to ss 33X(5) and 33Y of the Act, the Corrected Notice be distributed to Group Members that previously received a copy of the opt out notice issued pursuant to Order 10(b)(i) of the orders made on 26 June 2020.
3. The Corrected Notice be issued within 5 days of the making of these orders.
4. The time for compliance with Order 10(c) of the orders made on 26 June 2020 be extended to the date being 10 days following the date of these orders.
5. The costs of the interlocutory application and the costs thrown away by reason of the issuing of incorrect opt-out notices the subject of the interlocutory application be borne, in the first instance, by the solicitors for the applicant on an indemnity basis, save for any application that those solicitors wish to make to seek indemnity in either whole or part against their third-party contractor Law Task Pty Ltd (**Law Task**).
6. In the event that the solicitors for the applicant seek indemnity in either whole or part from Law Task they are to notify the Associate to Justice Lee of that intention within 7 days and, in the event that such a notification is received, then directions will be made for the exchange of submissions and for such an application to be determined on the papers, subject to any application that Law Task wishes to make for the matter to be dealt with in some other way.



Date that entry is stamped: 12 August 2020

*Sia Lagos*  
Registrar



**ANNEXURE A  
ELECTRONIC NOTICE**

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

Dear [NAME],

**CORRECTED NOTICE**

ON 27 OR 28 JULY 2020, YOU RECEIVED AN OPT OUT NOTICE WITH INCORRECT VEHICLE IDENTIFICATION NUMBER (VIN) DETAILS FOR YOUR VEHICLE(S). THIS WAS DUE TO A TECHNICAL ISSUE IN THE PREPARATION OF THE NOTICE, AND WE APOLOGISE FOR ANY CONFUSION CAUSED. NO PERSONAL IDENTIFICATION DATA HAS BEEN INCORRECTLY CIRCULATED. YOU ARE NOW BEING SENT THE FOLLOWING CORRECTED NOTICE WHICH CONTAINS THE CORRECT VIN.

IF YOU TOOK ANY STEPS IN RESPONSE TO THE PREVIOUSLY ISSUED NOTICE BASED ON THE INCLUSION OF AN INCORRECT VIN, AND NOW WISH TO DO SOMETHING DIFFERENT, PLEASE CONTACT THE SOLICITORS FOR THE APPLICANT, BANNISTER LAW CLASS ACTIONS ON (02) 7904 5470 OR BY EMAILING [toyotaclassaction@bannisterlaw.com.au](mailto:toyotaclassaction@bannisterlaw.com.au).

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) 7904 5470 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 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.

- 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) 7904 5470 or email [toyotaclassaction@bannisterlaw.com.au](mailto:toyotaclassaction@bannisterlaw.com.au); or
- (iii) 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;
- (ii) telephone (02) 7904 5470 or email [toyotaclassaction@bannisterlaw.com.au](mailto:toyotaclassaction@bannisterlaw.com.au); or
- (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 <https://www.toyotaclassaction.com.au/>; and/or
  - (iii) contacting Bannister Law Class Actions (the solicitors running the class action) on (02) 7904 5470 or by emailing [toyotaclassaction@bannisterlaw.com.au](mailto: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