



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: 23 October 2020

WHERE MADE: Sydney

THE COURT NOTES THAT:

Pursuant to s 37P(2) of the *Federal Court Act 1976* (Cth) (**Act**), the respondent has provided the applicant with a Supplementary List of Relevant Vehicles in the form required by Order 4 of the Orders made on 26 June 2020 (**Supplementary List**).

THE COURT ORDERS THAT:

Subpoena

1. Pursuant to Rule 24.01 of the *Federal Court Rules 2011* (Cth) (**FCR**), 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 the Orders made on 26 June 2020 (**June Orders**), save that the Vehicle Identification Numbers provided by the respondent in the Supplementary List may be inserted in the final subpoenas issued to the STRAs:
 - a. Roads and Maritime Services (NSW);
 - b. Department of Transport and Main Roads (Queensland);
 - c. Motor Vehicle Registry (Northern Territory);



- d. Access Canberra, Road Transport Authority (ACT);
 - e. Department of Planning, Transport and Infrastructure (South Australia);
 - f. Department of State Growth (Tasmania); and
 - g. Department of Transport (Western Australia).
2. Pursuant to Rule 24.01 of the FCR, leave be granted to the applicant to issue a subpoena to Austroads Limited in the form attached at Annexure B to the June Orders, save that the Vehicle Identification Numbers provided by the respondent in the Supplementary List may be inserted in the final subpoenas issued to Austroads Limited and that the production by Austroads Limited be limited to those vehicles registered in Victoria.
 3. The subpoenas described in Order 1 above shall be returnable on 20 November 2020 (or any other date convenient to the Court) before Justice Lee.
 4. The applicant's reasonable costs of issuing the subpoenas and the STRAs' reasonable costs of responding to the subpoenas are to be paid by the respondent, 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

5. Pursuant to ss 33J of the Act, 4:00pm on 22 January 2021 (**Supplementary Opt Out Date**) is fixed as the date on or before which a group member (as defined in the amended statement of claim) who is identified in the Supplementary List (**Group Member**) may opt out of this proceeding in accordance with these Orders.
6. Pursuant to s 33X of the Act, the form and content of the email correspondence and notice set out in Annexure C to of the June Orders (**Electronic Notice**) and the form and content of the cover letter and notice set out in Annexure D to the June Orders (**Postal Notice**) be approved for the purpose of these Orders, save that the Supplementary Opt Out Date is to be inserted into the Electronic Notice and Postal Notice.



7. 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 20 November 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 in the Supplementary List;

b. 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 1 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 1 above;

c. 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 6(a) and (b) 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;
 - d. continuously through the period 20 November 2020 to the Supplementary 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;
 - e. continuously throughout the period 20 November 2020 to the Supplementary 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
 - f. continuously throughout the period 20 November 2020 to the Supplementary 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 6(e) above.
8. Pursuant to s 33Y(3)(d) of the Act, the reasonable costs of distributing the Electronic Notice and Postal Notice to Group Members are initially to be paid by the respondent, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.
 9. Any Group Member who wishes to opt out of this proceeding must, before the Supplementary Opt Out Date, deliver a duly completed opt out form to the New South Wales District Registry.
 10. The solicitors for any party have leave to inspect the Court file and to copy any opt out forms filed.



11. If, on or before the Supplementary 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.

Adoption of the Referee's report

12. Pursuant to s 54A(3) of the Act and r 28.67(1) of the FCR, the report of David Garrett dated 15 October 2020 produced in accordance with the June Orders and the orders dated 30 September 2020 be adopted in whole, save for the "N" notations in the third and fourth row and third column of the table that is Annexure F, with respect to the allegations in paragraphs 39(a) and 39(b) of the Amended Statement of Claim.

13. The costs of each party's application pursuant to s 54A(3) of the Act and r 28.67(1) of the FCR be reserved.

Further Amended Defence

14. Pursuant to r 16.53 of the FCR, the respondent be granted leave to file the Further Amended Defence annexed and marked "AM-01" to the affidavit of Andrew Morrison filed on 23 September 2020.

Evidence in respect of the applicant's loss

15. The applicant is to file and serve any lay evidence on which he intends to rely at trial in respect of the applicant's loss and damage by 27 November 2020.

Mediation

16. Order 3 made on 26 June 2020 be vacated.

Case Management Hearing

17. The matter be listed for a further case management hearing at 9:30 am on 23 December 2020.



Date that entry is stamped: 27 October 2020

Sia Lagos
Registrar