



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1210/2019

**KENNETH JOHN WILLIAMS** and another named in the schedule  
Applicant

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

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 07 May 2021

**WHERE MADE:** Sydney

#### THE COURT NOTES THAT:

Unless otherwise defined below, capitalised terms used in these orders bear the meaning given to them in the orders made by Lee J on 19 January 2021.

#### THE COURT ORDERS THAT:

##### Supplementary Reference

1. Any application pursuant to r 28.67 of the *Federal Court Rules 2011* (Cth) (**FCR**) in respect of the Supplementary Report (**Adoption Application**) is to be filed and served within 14 days of the Supplementary Report provided to the Court being provided to the parties, together with any submissions and/or evidence in support of such application (**Submissions in Chief**).
2. Within 7 days of being served with an Adoption Application and Submissions in Chief, the respondent to any such application is to file and serve any submissions and/or evidence in response (**Submissions in Response**).



3. Order 13 made by Lee J on 19 January 2021 be vacated and the proceeding be listed for hearing of any Adoption Application at 10am on 27 August 2021 (**Second Adoption Hearing**).

#### **Further information**

4. Pursuant to s 37P(2) of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the respondent is to provide to the applicants the information set out in Annexure A to this Order as follows:
  - (a) item 1 by 4pm on 21 May 2021; and
  - (b) items 2 and 3 by 4pm on 14 May 2021.

#### **Conjoint Analysis**

5. By 21 May 2021, the applicants serve on the respondent a Survey Notice pursuant to paragraph 3.2 of the Survey Evidence Practice Note (**GPN-SURV**) in respect of any conjoint survey proposed to be conducted by the applicants' expert.
6. By 28 May 2021, the respondent serve on the applicants a Responding Notice pursuant to paragraph 3.3 of GPN-SURV.
7. By 4 June 2021, the parties' legal representatives and experts are to confer to attempt to resolve contentions raised in the Responding Notice.

#### **Common Questions**

8. By 8 September 2021, the applicants are to notify the respondent of the questions of fact and/or law they say are common to the claims of the applicants and the group members in the proceeding and which they wish to have determined at the Initial Trial (**Common Questions**).
9. By 22 September 2021, the respondent is to notify the applicants of its position in respect of the applicants' proposed Common Questions.



10. By 29 September 2021, the parties' counsel are to confer in relation to the proposed Common Questions to attempt to resolve any differences in the parties' positions.
11. If the parties are able to reach agreement in relation to the Common Questions, they are to file and serve agreed orders setting out the Common Questions by 12 noon on 1 October 2021.
12. Where the parties are unable to reach agreement in relation to the Common Questions:
  - (a) by 12 noon on 5 October 2021, the parties are to file and serve submissions limited to 10 pages regarding each party's proposed Common Questions (to the extent that the questions are not agreed); and
  - (b) the proceedings be listed for hearing in respect of the Common Questions to be determined at the Initial Trial at 9.30am on 8 October 2021.

### **Lay and Expert Evidence**

13. By 4pm on 16 July 2021, the applicants are to file and serve any lay and expert evidence on which they intend to rely at the Initial Trial.
14. By 4pm on 1 October 2021, the respondent is to file and serve any lay and expert evidence on which it intends to rely at the Initial Trial.
15. By 4pm on 22 October 2021, the applicants are to file and serve any lay and expert evidence in reply on which they intend to rely at the Initial Trial.
16. If the parties file any expert evidence:
  - (a) By 29 October 2021, conferences shall be held between experts with the same expertise who are providing evidence in respect on the same topics; and
  - (b) By 5 November 2021, for any conference of experts conducted, the experts who participated are to provide to the parties and the Court a joint report on the outcome of the conference.



### **Court Book and e-Trial**

17. Pursuant to Part 4 of the Technology and the Court Practice Note (GPN-TECH), the Initial Trial be conducted as an e-trial.
18. By 4pm on 19 October 2021, the applicants are to serve on the respondent a proposed draft electronic index for the Court Book which is to individually identify each document which is proposed to be included in the Court Book, cross-referenced to the affidavit or exhibit where the document is located, including all documents they propose to tender at the Initial Trial.
19. By 4pm on 26 October 2021, the respondent is to provide the applicants with any comments and/or suggested changes to the draft electronic index for the Court Book, including any documents not included in the applicants' index that the respondent proposes to tender at the Initial Trial.
20. By 4pm on 9 November 2021, the parties are to notify each other of the objections which the notifying party has to material contained in Parts C, D and E of the Court Book and, in respect of each objection, the grounds for the objection.
21. By 4pm on 16 November 2021, counsel for each party are to confer and endeavour to resolve all objections.
22. By 4pm on 19 November 2021, the applicants are to file and serve a Consolidated List of Objections that contains a list of those objections that are pressed and, in respect of each such objection, the grounds of the objection and the response to those grounds provided by the counter-party.
23. By 4pm on 22 November 2021, the parties deliver to the Associate to Justice Lee a Court Book which:
  - (a) as *Part A*, contains the final version only of the pleadings relied upon by the parties, a consolidated pleadings document (which in schedule format identifies each pleaded allegation and any corresponding defence or reply), any particulars



not included in the pleadings, and the final versions of the Agreed Background Facts;

- (b) as *Part B*, contains the final versions of the opening submissions of each party (updated to contain cross references to Part C of the Court Book to the extent a document is the subject of reference);
  - (c) as *Part C*, contains, in chronological order, one paginated copy only of the documents for tender notified by each party (being only documents to which a party proposes to refer in submissions) and, in this regard, if only part of a document is to be relied upon, only part of the document should be reproduced (additionally, in relation to any email, the email “chain” should not be reproduced but only one copy of each individual email communication should be extracted and then placed in the bundle chronologically by reference to when it was sent);
  - (d) as *Part D*, contains any of the lay affidavit material proposed to be relied upon by any party (without any annexures or exhibits) and, to the extent the affidavit refers to any document, a cross reference to Part C of the Court Book;
  - (e) as *Part E*, contains any of the expert affidavit and report material proposed to be relied upon by any party (without any annexures or exhibits) and, to the extent the affidavit and report material refers to any document which is to be referred to by a party in submissions, a cross reference to Part C of the Court Book; and
  - (f) as *Part F*, contains the reference report of David Garrett dated 15 October 2020, as adopted by the Court pursuant to s 54A of the Federal Court Act (including annexures) (**Referee’s Report**), and any supplementary report of David Garrett, if and as that report has been adopted by the Court pursuant to s 54A of the Act (including annexures) (**Supplementary Report**).
24. The hard copy version of the specified parts of the Court Book contain double sided printing and, to the extent filed Court documents are reproduced, the Notice of Filing form is to be reproduced at the end of the relevant Court document.



## Agreed Background Facts and Opening Submissions

25. By 21 October 2021, the parties confer and attempt to agree on and produce:
- (a) to the extent that it is necessary to supplement the Statement of Agreed Facts which is Annexure E to the Referee’s Report, a further agreed background facts document (**Supplementary Statement of Agreed Facts**) which, in narrative form, identifies additional relevant facts that the parties have agreed are not, for the purposes of the Initial Trial, to be disputed; and
  - (b) a document entitled “Factual and Legal Issues for Determination” (**Issues Document**) which document:
    - i. identifies each substantive contested factual issue in respect of which the parties consider it is necessary for the Court to make findings at the Initial Trial (**Principal Contested Facts in Issue**);
    - ii. identifies each contested legal issue in respect of which the parties consider it is necessary for the Court to determine at the Initial Trial, cross referenced to the pleadings (**Contested Legal Issues**);
  - (c) a template for opening submissions for the Initial Trial (**Submissions Template**), which document, when completed will:
    - (i) provide an overview of each party’s case in summary form (*Part A*);
    - (ii) identify that party’s summary contentions in relation to each of the Principal Contested Facts in Issue to the extent they relate to that party (*Part B*); and
    - (iii) identify that party’s summary contentions in relation to each of the Contested Legal Issues to the extent they relate to that party (*Part C*).
26. By 4pm on 28 October 2021, the parties provide to the Associate to Justice Lee:
- (a) the agreed documents prepared in accordance with Order 25 above; or



- (b) in the event the parties are unable to reach agreement as to the contents of any of the documents to be prepared in accordance with Order 25 above, one version of the draft agreed document with the extent of the disagreement identified in mark-up together with brief submissions explaining the reasons for the disagreement.
27. By 4pm on 15 November 2021, the applicants file and serve their opening submissions.
28. By 4pm on 22 November 2021, the respondent file and its opening submissions.
29. By 4pm on 25 November 2021, the applicants provide their reply to the respondent's opening submissions by way of including, in a revised opening submission, any material in reply, and file and serve the revised opening submissions.
30. The submissions filed by the parties in accordance with these Orders are to follow the Submissions Template.
31. The submissions are to be in Times New Roman, 12 font type, are to refer to any authorised report of any cases referred to or cited (or in the absence of an authorised report, any unauthorised report and the medium neutral citation), and are not to include footnotes and, in addition to being filed, are to be provided in Microsoft Word format to the Associate to Justice Lee.

### **Case Management Hearing**

32. The matter be listed for a case management hearing at 9.30 am on 17 September 2021.

### **Other orders**

33. Costs be reserved.
34. The parties have liberty to apply.



Date that entry is stamped: 7 May 2021

*Sia Lagos*  
Registrar





**Schedule**

No: NSD1210/2019

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant

DIRECT CLAIM SERVICES QLD PTY LTD ACN 167 519 968



## ANNEXURE A

### Information to be provided by the respondent

#### Conjoint information

1. The respondent is to provide the applicants with all documents in its possession custody or control created in the period of 1 January 2013 to the present that contain information about the attributes deemed important to the purchasers of Affected Vehicles and comparable vehicles from internal (or commissioned) Toyota marketing surveys.

#### WINPAQ data

2. The respondent is to provide the applicants with an Excel spreadsheet (in the same form as TAL.800.101.1000, TAL.800.103.0001, TAL.800.105.0001 and TAL.100.119.0001) containing extracts from the respondent's WINPAQ database for all reimbursement claims for DPF related claim codes made by Dealers in respect of Affected Vehicles in the period since 1 May 2020.
3. The respondent is provide the applicants with a version of TAL.100.018.0001 containing the same categories of data as TAL.800.101.1000, TAL.800.103.0001, TAL.800.105.0001 and TAL.100.119.0001.