



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: 29 January 2025

WHERE MADE: Sydney

THE COURT NOTES THAT:

Toyota Motor Corporation Australia Limited (TMCA) provides an undertaking to the Court on its own behalf and on behalf of its related bodies corporate and solicitors that it will not communicate with Group Members in this proceeding in relation to their rights (or alleged rights) the subject of this proceeding unless the contents of that communication have been approved by the Court, except where such communication occurs in the ordinary course of business in response to a Group Member unilaterally contacting TMCA or an authorised Toyota dealership in relation to a Relevant Vehicle.

THE COURT ORDERS THAT:

Subpoenas to STRAs

1. Pursuant to Rule 24.01 of the Federal Court Rules 2011 (Cth), leave be granted to the applicants 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 A to these Orders:
 - (a) Roads and Maritime Services (NSW);
 - (b) Austroads Limited (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).
2. The subpoenas described in Order 1 above shall be returnable before a Registrar.
 3. The STRAs' costs of responding to the subpoenas are initially to be paid by the applicants, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.

Discovery and information relating to the “practical availability” of the 2020 Field Fix

4. Pursuant to section 37P(2) of the Federal Court of Australia Act 1976 (Cth), by 14 March 2025, the respondent is to provide the applicants with the information described in Annexure B to these orders.
5. Order 25 made on 26 June 2020 suspending the continuing obligation to give standard discovery under rule 20.14 of the Federal Court Rules 2011 (Cth) be vacated insofar as it relates to the “practical availability” of the 2020 Field Fix, and the respondent is to provide further discovery in accordance with that order by 28 March 2025.

Conferral

6. Pursuant to section 37P(2) of the Federal Court of Australia Act 1976 (Cth), by 6 March 2025, counsel briefed to appear on behalf of the parties at the resumed initial trial and the parties' solicitors are to confer in person in relation to the future conduct of the proceeding, including in respect of the following topics:
 - (a) the issues which remain to be determined in the proceeding;
 - (b) the issues which the parties propose be determined at the resumed initial trial;
 - (c) the questions of fact or law common to the claims of Group Members which the parties propose be answered following the resumed initial trial;



- (d) the claims of individual Group Members (if any) which the parties propose be determined at the resumed initial trial;
- (e) the appointment of sample Group Members to assist the Court to determine the respondent's reliance on section 271(6) of the Australian Consumer Law, and any orders the parties propose be made consequent on the appointment of such sample Group Members;
- (f) whether the resumed initial trial is to include an assessment of reduction in value damages payable to Group Members who purchased a Relevant Vehicle in the secondary market in the Relevant Period and retain ownership of the same vehicle on the day of judgment, and if not, which (if any) questions of law or fact pertinent of the entitlement of such Group Members to reduction in value damages will be addressed at the resumed initial trial;
- (g) the topics in respect of which the parties propose to lead lay and/or opinion evidence at the resumed initial trial;
- (h) case management of this proceeding together with any new representative proceeding commenced on behalf of "New Group Members" (as that term is defined in the draft third further amended originating application provided to the respondent on 22 January 2025), including any case management steps required to be taken in any such new representative proceeding;
- (i) settlement of the proceeding.

Group Member Notice

7. Pursuant to section 37P(2) of the FCA Act, by 31 January 2025, the respondent is to provide the applicants with a list identifying, for each owner of a Relevant Vehicle to whom the respondent sent a 2024 Warranty Extension Letter (as defined in the letter from Clayton Utz to Quinn Emanuel dated 19 December 2024):
- (a) the owner's name and contact details, including, where available, the owner's email address, mailing address and phone number;
 - (b) the vehicle identification number of the owner's Relevant Vehicle; and
 - (c) whether the 2024 Warranty Extension Letter was sent to the owner by email, text message or post.



8. Pursuant to sections 33X(5) and 33Y of the FCA Act, the form and content of the correspondence and notice set out in Annexure C to these orders (Group Member Notice) be approved.
9. Pursuant to sections 33X(5) and 33Y of the FCA Act, the Group Member Notice is to be distributed to Group Members according to the following procedure:
 - (a) on or before 21 February 2025, the applicants will cause:
 - (i) a copy of the Group Member Notice to be sent by email with the subject line “An important notice from the Federal Court of Australia about your Toyota diesel vehicle”; or
 - (ii) if an email address is not available but a mobile telephone number is available, a copy of the Group Member Notice to be sent as a link included in an SMS message,to each person who:
 - (iii) has registered with the applicants’ solicitors through the website maintained by the applicants’ solicitors in relation to this proceeding;
 - (iv) registered their interest to receive any money to which they might have been entitled under the orders made on 16 May 2022 in response to the notice distributed pursuant to order 17 made on 16 May 2022;
 - (v) was sent a copy of the notice distributed pursuant to order 17 made on 16 May 2022; and/or
 - (vi) is identified in the list to be provided by the respondent pursuant to order 7 above;
 - (b) on or before 7 March 2025, the applicants will cause a copy of the Group Member Notice to be sent by prepaid ordinary post in an envelope marked “This envelope contains an important notice from the Federal Court of Australia about your Toyota diesel vehicle” to people described in order 9(a)(v) or 9(a)(vi) above for whom:
 - (i) no email address is available; and/or



- (ii) an email or SMS sent pursuant to Order 9(a) above experiences a delivery failure or is not opened within 2 weeks of receipt (with the applicants to cause a copy of the Group Member Notice to be sent to these people as soon as practicable after 7 February 2025);
 - (c) continuously from 21 February 2025 until further Court order, the applicants will cause copies of the Group Member Notice, Third Further Amended Originating Application, TFASOC, Defence, Amended Reply, the judgment delivered by the High Court of Australia on 6 November 2024 in *Toyota Motor Corporation Australia Limited v Kenneth John Williams & Anor* (S155/2023) and *Kenneth John Williams & Anor v Toyota Motor Corporation Australia Limited* (S157/2023) and these Orders to be displayed on the website maintained by the applicants' solicitors in relation to this proceeding;
 - (d) continuously from 21 February 2025 until further Court order, the District Registrar of the New South Wales Registry of the Federal Court of Australia shall cause copies of the Group Member Notice and these Orders to be posted on the class action page of the website of the Federal Court; and
 - (e) continuously from 21 February 2025 until further Court order, the respondent will cause copies of the Group Member Notice and these Orders to be displayed on the respondent's website, together with a link to the Federal Court website references in Order 9(d) above.
10. The costs of and incidental to distributing the Group Member Notice to Group Members pursuant to Order 9 above, including any disbursements and the costs of addressing enquiries by Group Members and members of the public in relation to the Group Member Notice, shall be paid by the applicants and respondent in equal shares, but on the basis that these costs will subsequently fall to be costs in the proceeding.

Case Management

11. The matter be listed for a further case management hearing at 9am on 18 March 2025.

Date orders authenticated: 30 January 2025



Sia Lagos
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



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

Subpoenas to STRA

Form 43B
Rule 24.13(1)(b)

Subpoena to produce documents

No. NSD1210 of 2019

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

KENNETH JOHN WILLIAMS and another named in the schedule
Applicants

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.

You should read all of the Notes set out in this subpoena.

You must complete the Declaration by Addressee (Subpoena Recipient) set out towards the end of this subpoena.

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

Date: X

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

Issued at the request of Kenneth John Williams and Direct Claim Services QLD Pty Ltd (ACN 167 519 968) whose address for service is:

Place Level 15, 111 Elizabeth Street, Sydney NSW 2000

Email: matthewmackenzie@quinnemanuel.com

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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: X

Time: X

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

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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 numbers) of all current and former registered operators of the vehicles with the Vehicle Identification Numbers listed below for the period 24 April 2020 to [31 January 2025] (inclusive):

[To insert]

- 2 The start date and end date (if applicable) of the period during which each current or former registered operator of the vehicles listed at (1) above was (or is) the registered operator of the relevant vehicle.

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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

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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. The copy of a document may be:
- (a) a photocopy;
 - (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; or
 - (c) a digital link through which the documents can be downloaded.

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.

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Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.

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Date:

Signed by [Name of addressee]
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

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Schedule

No. NSD1210 of 2019

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

Applicants

Second Applicant: Direct Claim Services QLD Pty Ltd (ACN 167 519 968)

Date: X

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ANNEXURE B

Information regarding the “practical availability” of the 2020 Field Fix

- 1 The name and a description of each piece of specialist equipment required to implement the 2020 Field Fix in a Relevant Vehicle (**Specialist Equipment**).
- 2 A description of the job title, and any qualifications, which a person must hold to be authorised to implement the 2020 Field Fix in a Relevant Vehicle (**Qualified Employee**).
- 3 An explanation of the number of pieces of Specialist Equipment and Qualified Employees required to implement the 2020 Field Fix in a Relevant Vehicle.
- 4 An excel spreadsheet identifying, for each Dealer open for trade at any time during the Discovery Period:
 - (a) the name and address of the Dealer;
 - (b) the date on which the Dealer commenced trading during the Discovery Period, being 1 January 2020 if the Dealer was already open for business at the beginning of the Discovery Period; and
 - (c) the date on which the Dealer ceased trading during the Discovery Period, being 29 January 2025 if the Dealer remains open for business at the end of the Discovery Period.

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ANNEXURE C

Group Member Notice

This is an important notice issued to you by the Federal Court of Australia regarding a class action relating to certain Toyota Hilux, Prado and Fortuner diesel vehicles

You are receiving this notice because you acquired a Toyota Hilux, Prado or Fortuner vehicle with a 1GD-FTV or 2GD-FTV diesel engine between 1 October 2015 and 23 April 2020 and, as a result, are likely to be a Group Member in a class action concerning these vehicles.

This notice provides important information regarding the class action, especially if you are considering either:

- selling your vehicle (in which case, see paragraph 2(e) below); or
- taking up Toyota's recent invitation to have the DPF system in your vehicle repaired (in which case, see paragraphs 3 to 4 below).

A HIGH COURT DELIVERS JUDGMENT IN THIS CLASS ACTION

- 1 A recent judgment of the High Court of Australia has set out the law as to how the Court is to go about calculating the amount of money you may be entitled to receive in

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this class action. If you are interested, a copy of the High Court's judgment is accessible at: <https://eresources.hcourt.gov.au/showCase/2024/HCA/38>.

2 The legal position is that:

- (a) Toyota Hilux, Prado and Fortuner vehicles with a 1GD-FTV or 2GD-FTV diesel engine acquired between 1 October 2015 and 23 April 2020 (**Relevant Vehicles**) were not of acceptable quality at the time they were initially supplied because they were fitted with a defective diesel particulate filter (**DPF**) system;
- (b) Toyota engaged in misleading or deceptive conduct in connection with marketing and selling the Relevant Vehicles;
- (c) the value of the Relevant Vehicles at the time they were initially supplied was reduced because of their defective DPF systems;
- (d) in calculating the amount of money you may be entitled to be paid by Toyota for that reduction in value, it is necessary for the Court to take into account the fact that, by the time of trial, an effective repair for the defect existed; and
- (e) Group Members who have sold (or who sell) their Relevant Vehicle are **not** entitled to receive money for reduction in value under section 272(1)(a) of the *Australian Consumer Law*, although they may still be entitled to receive money to compensate them for other loss or damage they have suffered because of Toyota's misleading or deceptive conduct and/or as a result of the Relevant Vehicle not being of acceptable quality. **Accordingly, if you sell your Relevant Vehicle, you will lose any entitlement to receive money for reduction in value that you may otherwise have under section 272(1)(a) of the *Australian Consumer Law*.**

B CORRESPONDENCE FROM TOYOTA REGARDING DPF REPAIRS

3 You may have received a letter from Toyota in around October 2024, inviting you to take your Relevant Vehicle to a Toyota Dealer to have the defective DPF system in the vehicle repaired.

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- 4 You should be aware that **if you take up Toyota’s invitation to have the DPF system in the vehicle repaired, Toyota will argue in this class action that you will lose any entitlement to be paid money for reduction in value under section 272(1)(a) of the *Australian Consumer Law*, something which Toyota did not include in their letter.**

C WHAT HAPPENS NEXT?

- 5 The Court still needs to:
- (a) calculate the amount of money you may be entitled to receive in this class action (taking into account the fact that, by the time of trial, an effective repair for the defect existed); and
 - (b) determine the consequences of Toyota’s DPF repair being applied to a Group Member’s Relevant Vehicle for the Group Member’s entitlement to receive money for reduction in value under section 272(1)(a) of the *Australian Consumer Law*.
- 6 You will be advised in due course what the Court determines.
- 7 While these remaining steps are taken, Group Members can continue to register their interest to receive any money to which they may be entitled in the class action at www.toyotaclassaction.deloitte.com.au. If you have any questions about the matters raised in this Notice, you can submit a query at www.TCAquery.deloitte.com.au or call [to be inserted].

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