

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
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File Title:	MARDY ROBERT JOHN TAYLOR v TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED ACN 009 686 097
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



**Originating Application starting a representative proceeding under
Part IVA of the *Federal Court of Australia Act 1976 (Cth)***

No. NSD of 2025

Federal Court of Australia
District Registry: NSW
Division: General

Mardy Robert John Taylor

Applicant

Toyota Motor Corporation Australia Limited (ACN 009 686 097)

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this 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 application be abridged to:

[Date]

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

Filed on behalf of
Prepared by
Law firm
Tel
Email
Address for service
13226-00001/17186020.1

The Applicant
Matthew Mackenzie
Quinn Emanuel Urquhart & Sullivan
(02) 9146 3900
matthewmackenzie@quinnemanuel.com
Level 15, 111 Elizabeth Street, Sydney NSW 2000



Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*.

The **New Group Members** to whom this proceeding relates are described in paragraph 1 of the accompanying Statement of Claim (**SOC**), being persons who:

- (a) at any time during the period from (and including) 24 April 2020 until (and including) the date on which the accompanying SOC was filed (**Subsequent Relevant Period**), in Australia, acquired a Toyota motor vehicle in the Hilux, Fortuner or Prado ranges fitted with a 1GD-FTV engine or a 2GD-FTV engine (**Relevant Vehicles**), other than for the purpose of re-supply, from a person (**Initial Acquirer**) who:
 - (i) at any time during the period between 1 October 2015 and 23 April 2020 (**Initial Relevant Period**), in Australia, acquired the Relevant Vehicle new:
 - (A) from a Dealer (as defined in paragraph 6 of the SOC) or other retailer selling Relevant Vehicles;
 - (B) other than by way of sale by auction; and
 - (C) other than for the purpose of re-supply; and
 - (ii) was not:
 - (A) a person described in subsection 33E(2) of the FCA Act;
 - (B) a Justice of the Federal Court of Australia or the High Court of Australia; or
 - (C) in selling the Relevant Vehicle, acting as a Dealer or other retailer of vehicles in trade or commerce;
- (b) retain ownership of their Relevant Vehicle; 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 SOC, the Applicant claims the following relief on his own behalf and on behalf of the New Group Members:

1. an order or orders that:
 - 1.1 the Respondent pay damages pursuant to sections 271 and 272 of the ACL for:
 - (a) the reduction in the value of the Relevant 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 New Group Members because of the failure to comply with the guarantee as to acceptable quality in section 54 of the ACL,including, at the conclusion of the resumed initial trial:
 - 1.2 pursuant to subsection 33Z(1)(e) of the ACL, an award or awards of damages for New Group Members, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies, in respect of all of the damages described in Prayer 1.1(a) above to which New Group Members are entitled;
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 and New Group Members are set out in Schedule 1 hereto.

Applicant's address

The Applicant's address for service is:

Place: Quinn Emanuel Urquhart & Sullivan
Level 15, 111 Elizabeth Street
Sydney NSW 2000



Email: matthewmackenzie@quinnemanuel.com

The Applicants' address is 7 Cypress Street, Park Ridge, Qld, 4125

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 31 July 2025

A handwritten signature in blue ink that reads "Matt Mackenzie". The signature is written in a cursive, slightly slanted style.

Signed by Matthew Mackenzie, Lawyer for the Applicant



Schedule 1

Questions common to claims of Group Members

Characteristics of the Relevant Vehicles

1. Throughout the Initial Relevant Period, was it the case that:
 - (a) the DPF System in the Relevant Vehicles was not designed to function effectively during all reasonably expected conditions of normal operation and use in the Australian market, including the High Speed Driving Pattern;
 - (b) in the event that the Relevant Vehicles were exposed to the High Speed Driving Pattern or the Earlier Countermeasures the DPF System was ineffective in preventing the formation of deposits on the DOC surface or coking within the DOC, which in turn prevented the DPF from regeneration effectively;
 - (c) if the Relevant Vehicles were exposed to the High Speed Driving Pattern and/or the Earlier Countermeasures:
 - 1.c.1 the DOC became blocked by deposits forming on the face of the DOC;
 - 1.c.2 regeneration events failed to remove sufficient particulate matter from the DPF to prevent the DPF from becoming or remaining 'full' or blocked;
 - 1.c.3 the DPF System failed to prevent the DPF from becoming 'full' or blocked;
 - 1.c.4 the DOC and DPF did not function effectively;
 - 1.c.5 the catalytic efficiency of the DOC was diminished;
 - 1.c.6 the exhaust in the DPF did not reach a sufficiently high temperature to effect thermal oxidation;
 - (d) if a Relevant Vehicle was exposed to the High Speed Driving Pattern, the Relevant Vehicles would experience one or more of the following consequences by reason of the Core Defect:
 - 1.d.1 damage to the DOC;
 - 1.d.2 the flow of unoxidized fuel through the DPF and the emission of white smoke from



the vehicle's exhaust during and immediately following regeneration;

1.d.3 the emission of excessive white smoke and foul-smelling exhaust from the vehicle's exhaust during regeneration;

1.d.4 partial or complete blockage of the DPF;

1.d.5 the emission of foul-smelling exhaust from the exhaust pipe when the engine was on during and immediately following Automatic Regeneration;

1.d.6 the need to have the Relevant Vehicle inspected, serviced and/or repaired by a service engineer for the purpose of cleaning, repairing or replacing the DPF, the DPF System (or components thereof);

1.d.7 the need to have the Relevant Vehicle inspected, serviced and/or repaired more regularly than would be required absent the Core Defect;

1.d.8 the need to program the ECM more often than would be required absent the Core Defect; or

1.d.9 the display of DPF Notifications on an excessive number of occasions and/or for an excessive period of time;

1.d.10 blockage of the Additional Injector due to carbon deposits on its tip;

1.d.11 the Additional Injector causes deposits forming on the face of the DOC, causing white smoke; and

1.d.12 an increase in fuel consumption and decrease in fuel economy;

(e) by reason of the fact that the Core Defect was present in each Relevant Vehicle at the time it was supplied to an Initial Acquirer (as defined in paragraph 1 of the SOC) in the circumstances pleaded in paragraph 1(a) of the SOC, each Relevant Vehicle had a propensity to experience one or more of the Defect Consequences?

2. Were all Relevant Vehicles subject to the statutory guarantee as to acceptable quality in s 54(1) of the *Australian Consumer Law* at the time they were supplied to an Initial Acquirer in the circumstances pleaded in paragraph 1(a) of the SOC?

3. Can the question of whether the Relevant Vehicles were not of acceptable quality within the meaning of s 54(2) of the *Australian Consumer Law* at the time they were supplied to an Initial



Acquirer in the circumstances pleaded in paragraph 1(a) of the SOC be determined on a common basis?

4. Were the Relevant Vehicles not of acceptable quality within the meaning of s 54(2) of the *Australian Consumer Law* at the time they were supplied to an Initial Acquirer in the circumstances pleaded in paragraph 1(a) of the SOC?
5. Was the 2020 Field Fix effective in, and will it continue to be effective in, remedying the Core Defect and its consequences in all Relevant Vehicles to which the 2020 Field Fix has been applied?

Vehicle Representations

6. During the Initial Relevant Period, did TMCA represent to the public at large that the Relevant Vehicles:
 - (a) were, or were part of model lines that were, in their design and manufacturing:
 - 6.a.1 not defective;
 - 6.a.2 of good quality;
 - 6.a.3 reliable;
 - 6.a.4 durable;
 - 6.a.5 suitable for use in any driving environment; and
 - (b) provided, or were part of model lines that provided, a driving and/or passenger experience that was comfortable?
7. Was each Vehicle Representation made continuously by TMCA throughout the Initial Relevant Period?
8. Did TMCA fail to correct or qualify the Vehicle Representations at any time during the Initial Relevant Period?
9. Were the Vehicle Representations:
 - (a) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the *Australian Consumer Law*;



- (b) false and misleading representations in contravention of ss 29(1)(a) or 29(1)(g) of the *Australian Consumer Law*;
- (c) liable to mislead the public as to the nature, characteristics, and/or suitability for purpose of the Relevant Vehicles, in contravention of s 33 of the *Australian Consumer Law*?

Future Vehicle Representations

10. During the Initial Relevant Period, did TMCA represent to the public at large that the Relevant Vehicles:
 - (a) would be, or were part of model lines that would be, in their design and manufacturing:
 - 10.a.1 not defective;
 - 10.a.2 of good quality;
 - 10.a.3 reliable;
 - 10.a.4 durable;
 - 10.a.5 suitable for use in any driving environment; and
 - (b) would provide, or were part of model lines that would provide, a driving and/or passenger experience that as comfortable?
11. Was each Future Vehicle Representation made continuously by TMCA throughout the Initial Relevant Period?
12. Did TMCA have reasonable grounds for making the Future Vehicle Representations?
13. Did TMCA fail to correct or qualify the Future Vehicle Representations at any time during the Initial Relevant Period?
14. Were the Future Vehicle Representations:
 - (a) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the *Australian Consumer Law*;
 - (b) false and misleading representations in contravention of ss 29(1)(a) or 29(1)(g) of the *Australian Consumer Law*;



- (c) liable to mislead the public as to the nature, characteristics, and/or suitability for purpose of the Relevant Vehicles, in contravention of s 33 of the *Australian Consumer Law*?

DPF Systems Representations

- 15. During the Initial Relevant Period, did TMCA represent to the public at large that the Relevant Vehicles contained, or were part of model lines that contained, a DPF System that, in its design and manufacturing:
 - (a) was not defective;
 - (b) was of good quality;
 - (c) was reliable;
 - (d) was durable;
 - (e) did not have a propensity to fail;
 - (f) completed a regeneration cycle with sufficient regularity to prevent the DPF from becoming partially or completely blocked?
- 16. Was each DPF System Representation made continuously by TMCA throughout the Initial Relevant Period?
- 17. Did TMCA fail to correct or qualify the DPF System Representations at any time during the Initial Relevant Period?
- 18. Were the DPF System Representations:
 - (a) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the *Australian Consumer Law*;
 - (b) false and misleading representations in contravention of ss 29(1)(a) or 29(1)(g) of the *Australian Consumer Law*;
 - (c) liable to mislead the public as to the nature, characteristics, and/or suitability for purpose of the Relevant Vehicles, in contravention of s 33 of the *Australian Consumer Law*?



Future DPF Representations

19. During the Initial Relevant Period, did TMCA represent to the public at large that the Relevant Vehicles contained, or were part of model lines that contained, a DPF System that:
 - (a) would not be defective;
 - (b) would be of good quality;
 - (c) would be reliable;
 - (d) would be durable;
 - (e) would not have a propensity to fail;
 - (f) would complete a regeneration cycle with sufficient regularity to prevent the DPF from become partially or completely blocked?
20. Was each Future DPF System Representation made continuously by TMCA throughout the Initial Relevant Period?
21. Did TMCA have reasonable grounds for making the Future DPF System Representations?
22. Did TMCA fail to correct or qualify the Future DPF System Representations at any time during the Initial Relevant Period?
23. Were the Future DPF System Representations:
 - (a) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the *Australian Consumer Law*;
 - (b) false and misleading representations in contravention of ss 29(1)(a) or 29(1)(g) of the *Australian Consumer Law*;
 - (c) liable to mislead the public as to the nature, characteristics, and/or suitability for purpose of the Relevant Vehicles, in contravention of s 33 of the *Australian Consumer Law*?

Omissions conduct

24. During the Initial Relevant Period, did TMCA fail to disclose, or disclose adequately, to prospective purchasers of, or persons acquiring, a Relevant Vehicle:



- (a) the existence, nature and extent of the Core Defect in the Relevant Vehicles;
- (b) the Defect Consequences;
- (c) that the Core Defect had not been remedied; and
- (d) from February 2016, TMCA knew of the Core Defect and its consequences?

25. Was the Omissions Conduct:

- (a) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the *Australian Consumer Law*;
- (b) liable to mislead the public as to the nature, characteristics, and/or suitability for purpose of the Relevant Vehicles, in contravention of s 33 of the *Australian Consumer Law*?

Damages under ACL s 272(1)(a)

26. If the Relevant Vehicles failed to comply with the guarantee of acceptable quality under s 54 of the *Australian Consumer Law* at the time they were supplied to an Initial Acquirer in the circumstances pleaded in paragraph 1(a) of the SOC, did that failure result in a reduction in the value of those vehicles at that time?

27. *Question deliberately left blank.*

27A. On the proper construction of s 272(1)(a) of the *Australian Consumer Law* and assuming the supply to them was not in trade or commerce, are New Group Members entitled to recover damages of the kind described in s 272(1)(a) of the *Australian Consumer Law* (**Reduction in Value Damages**) assessed by reference:

- (a) only to the reduction in value of the Relevant Vehicle at the time of supply to the corresponding New Vehicle Seller; or
- (b) to the reduction in value of the Relevant Vehicle at the time of the subsequent supply of the Relevant Vehicle as a used vehicle to the New Group Member (as applicable)?

27B. On the proper construction of s 272(1)(a) of the *Australian Consumer Law*, where a New Group Member purchased their Relevant Vehicle from a person who did not supply that vehicle in trade or commerce:



- (a) is “the value of the goods” referred to in s 272(1)(a) the value of the used Relevant Vehicle in its condition when purchased by the New Group Member or the value of the Relevant Vehicle at some earlier point in time (and if so, at what point in time)?
 - (b) is “the price” referred to in s 272(1)(a)(i) the price paid or payable by the New Group Member or the price paid or payable by another person (and if so, which person)?
 - (c) is “the average retail price of the goods at the time of supply” referred to in s 272(1)(a)(ii) the average price of a used vehicle in the same condition as the Relevant Vehicle when purchased by the New Group Member or the average price of the Relevant Vehicle at some earlier point in time (and if so, at what point in time)?
28. In respect of any Reduction in Value Damages that New Group Members are entitled to recover from TMCA, is it appropriate to make an award of damages for New Group Members pursuant to s 33Z(1)(e) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**)?
29. If it is appropriate to make an award of damages pursuant to s 33Z(1)(e) of the FCAA in respect of any damages of the kind described in s 272(1)(a) of the *Australian Consumer Law* that New Group Members may be entitled to recover from TMCA:
- (a) what is the appropriate form of the order awarding damages;
 - (b) what is the appropriate quantum of damages to be awarded?
30. *Question deliberately left blank.*
31. *Question deliberately left blank.*
32. *Question deliberately left blank.*
33. *Question deliberately left blank.*

Pre-judgment interest

34. Are New Group Members entitled to recover pre-judgment interest on any damages awarded?
35. Is it appropriate to make an order or orders pursuant to s 33Z(1)(e) of the FCAA that includes pre-judgment interest in respect of any Reduction in Value Damages?



Mitigation

36. Do New Group Members have a duty to mitigate their losses in respect of damages of the kind described in s 272(1)(a) and/or 272(1)(b) of the *Australian Consumer Law*?
37. Even assuming that New Group Members did have some obligation to “mitigate” damage, was it unreasonable for New Group Members not to take up the invitation to have the 2020 Field Fix applied in circumstances where TMCA asserts that to take up that invitation has the effect, under s 271(6) of the *Australian Consumer Law*, of extinguishing altogether any entitlement to damages under s 272(1)(a) of the *Australian Consumer Law*?