



## TOYOTA DIESEL EMISSIONS CLASS ACTION

**Butterworth v Toyota Motor Corporation Australia Limited** Case: S ECI 2022 00313

**Supreme Court of Victoria S ECI 2022 00313**

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### THIRD UPDATED GROUP PROCEEDING SUMMARY STATEMENT

#### 1. What is a class action?

A class action is a legal proceeding commenced by a 'representative' plaintiff against one or more defendants seeking to obtain a legal remedy such as compensation. The class action procedure is available in circumstances where there are at least seven persons who have claims against the same defendant(s) which arise out of the same, similar or related circumstances.

The representative plaintiff brings the claim on their own behalf and on behalf of the other persons that have claims. Those other persons are commonly referred to as 'group members'.

In a class action, the plaintiff's claim is used to resolve legal and factual issues that are common to group members' claims. This allows common issues to be considered and determined by the Court and is intended to prevent the need for separate legal proceedings to be commenced on behalf of each person.

#### 2. What is the Toyota Diesel Emissions Class Action about?

This class action is brought on behalf of owners of certain diesel-powered Toyota vehicles.

It is alleged that Toyota supplied vehicles in Australia possessing design elements which under ordinary driving conditions impacted parts of a vehicle's emission control system resulting in the vehicle emitting higher levels of nitrogen oxide. These design elements are commonly known as 'defeat devices'. It is alleged that these defeat devices were contrary to Australian road standards and that in obtaining approval to sell these vehicles in Australia, Toyota breached various provisions of the Australian Consumer Law.

The class action seeks, on behalf of the plaintiff and group members, the difference between the price paid for the vehicle and the true value of the vehicle at the time of acquisition. Compensation for expenses incurred as a consequence of having to rectify affected vehicles is also claimed.

#### 3. Who is eligible to participate in the class action?

If you acquired any of the following Toyota diesel vehicles in the period from 7 February 2016 to 19 December 2024 then you are a group member and eligible to participate in the class action:

- (a) Landcruiser vehicles from 2010 onwards fitted with a 4.5L 195kW to 200kW 1VD-FTV;
- (b) RAV-4 vehicles from 2013 onwards fitted with a 2.2L 2AD-FHV or 2AD-FTV engine;
- (c) Hilux vehicles from 2015 onwards fitted with a 2.4L 2GD-FTV engine or a 2.8L 1GD-FTV engine;
- (d) Fortuner vehicles from 2015 onwards fitted with a 2.8L 1GD-FTV engine;
- (e) Landcruiser vehicles from 2015 onwards fitted with a 2.8L 1GD-FTV engine;
- (f) HiAce vehicles (excepting models with a Gross Vehicle Mass exceeding 3,500 kilograms) and Granvia vehicles from 2019 onwards, fitted with a 2.8L 1GD-FTV engine; and
- (g) Landcruiser vehicles from 2020 onwards fitted with a 3.3L F33A-FTV engine.

You are eligible to participate regardless of whether you acquired one or more of these vehicles in new or secondhand condition.

#### **4. Who is the law firm acting for the plaintiff?**

Maddens Lawyers.

#### **5. What is the role and responsibility of the plaintiff?**

Mr James Butterworth is the plaintiff in this proceeding. The plaintiff is the representative of the group and is responsible for providing instructions to Maddens Lawyers regarding the conduct of the case. The plaintiff may also give evidence in the proceeding.

#### **6. How is the class action being funded?**

Mr Butterworth has entered into a 'litigation finance agreement' with Woodsford in order to advance this class action.

#### **7. How are legal fees and disbursements charged?**

Professional fees are the charges associated with the time spent by lawyers in advancing the class action. Disbursements are monies paid to third parties, such as expert witnesses or barristers, to advance the case. Professional fees and disbursements are collectively referred to as 'legal costs'. In addition, funding fees are the charges associated with the expenses Woodsford incurs in funding the class action. Funding fees include things such as payments towards legal costs, adverse costs, security for costs and after-the-event insurance premiums as well as a 'success fee' on account of having carried a financial risk in running the class action.

In this class action legal costs and funding fees will only be required to be paid by group members in the event there is a successful outcome and any legal costs and funding fees intended to be charged to group members are required to be independently assessed and approved by the Supreme Court as fair and reasonable. It is also likely the defendant will be required to contribute to a large portion of the legal costs in this event.

For further information about legal costs and funding fees please refer to the 'Updated Funding Information Summary Statement.'

In the event there is not a successful outcome in this class action, group members will not be charged any legal costs or funding fees by Maddens Lawyers or Woodsford.

#### **8. Are there any other class actions relating to Toyota Diesel Emissions?**

To the best of the plaintiff's solicitor's knowledge there are no other class actions being advanced against Toyota in relation to some of its diesel vehicles containing defeat devices.

Please be aware that an unrelated claim against Toyota has been commenced in the Federal Court which alleges that there are engine defects in certain Toyota diesel vehicles including defects with the diesel particulate filter. This claim is known as *Williams v Toyota Motor Corporation Australia Limited* NSD 1210/2019 (**Williams**). The *Williams* proceeding does not contain any allegations with respect to the use of defeat devices. Participants in the *Williams* proceeding are also eligible to participate in this class action.

#### **9. Where is further information available?**

For further information about the class action, group members can contact Maddens Lawyers by e-mail at [toyota@maddenslawyers.com.au](mailto:toyota@maddenslawyers.com.au), via our website [www.maddenslawyers.com.au](http://www.maddenslawyers.com.au) or via telephone 1800 815 228.