

ANNEXURE B: OPT OUT NOTICE

SUPREME COURT OF VICTORIA TOYOTA DIESEL EMISSIONS CLASS ACTION

James William Butterworth v Toyota Motor Corporation Australia Ltd & Anor
(Proceeding No. S ECI 2022 00313)



The Supreme Court of Victoria has ordered that you receive this Notice because you may be a group member in the Toyota Diesel Emissions Class Action.

**IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY BECAUSE IT
MAY AFFECT YOUR LEGAL RIGHTS.**

This Notice will also be published online.

This Notice is to any person who acquired one or more **Affected Vehicles** between 7 February 2016 and 19 December 2024 (**Group Member**).

Affected Vehicles are any Landcruiser, Hilux, Landcruiser Prado, Fortuner, RAV-4, Hiace and Granvia diesel vehicle models listed in Section 4 of this Notice. Group Members may have acquired an Affected Vehicle by way of purchase, exchange or taking on a lease or on hire-purchase.

You may do one of three things in response to this Notice (see Section 6 for more details):

- 1. OPTION 1 – REGISTER.** You can register to participate in the class action. You will remain a Group Member and receive ongoing updates about the class action and any mediation or proposed settlement. For more information and to register, please visit: <https://toyotadieselclassaction.com.au/>
- 2. OPTION 2 – OPT OUT.** If you do not want your rights determined by the Toyota Diesel Emissions Class Action, you must opt out by **4pm on 16 July 2026**. If you opt out, you will no longer be a Group Member and will not be entitled to any compensation arising from any settlement or award of damages in the class action. To opt out, you can submit a Notice of Opting Out at: <https://www.supremecourt.vic.gov.au/group-proceedings-class-actions/toyota-diesel-emissions/opting-out>
- 3. OPTION 3 – DO NOTHING.** If you do nothing, you will remain a Group Member. For more information, please visit <https://toyotadieselclassaction.com.au/>



1. Why is this notice important?

A class action has been commenced in the Supreme Court of Victoria by James William Butterworth against Toyota Motor Corporation Australia Ltd (**Toyota Australia**) and Toyota Jidosha Kabushiki Kaisha, trading as Toyota Motor Corporation (**Toyota Japan**) (referred to collectively in this Notice as **Toyota**).

The Supreme Court of Victoria has ordered that you receive this Notice because according to either Toyota's records or the records of Federal and State and Territory Road authorities, you may be a Group Member in this class action. You will also receive this Notice if you have registered your contact details with Maddens Lawyers.

You should read this Notice carefully. Any questions you have concerning the matters contained in this Notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice. Further information about the class action is available on the Maddens Lawyers website: <https://toyotadieselclassaction.com.au/>

2. What is a class action?

A class action is a legal case in which one or more Plaintiffs make a claim for themselves and on behalf of other people against one or more Defendants. The people make a claim together because their claims arise out of the same, similar, or related circumstances. The group of people are referred to as 'Group Members'.

Group Members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Plaintiff is responsible for the costs. Further information regarding the funding of this class action is in Section 5 headed "Will you be liable for legal costs if you remain a Group Member?" below.

If a class action is resolved – either by the Court delivering judgment, or by an agreed settlement that is approved by the Court – the resolution binds all persons who are Group Members unless they have opted-out of the class action. An explanation of how Group Members are able to opt out is found below in the section headed "**Option 2: Opt out of the class action**".

3. What is the Toyota Diesel Emissions Class Action?

The Toyota Diesel Emissions Class Action is brought by the Plaintiff, Mr Butterworth on his own behalf and on behalf of all persons who are Group Members.

The Plaintiff alleges that Toyota supplied certain diesel vehicles in Australia that incorporated elements of design that reduced the effectiveness of the emissions control system causing higher levels of nitrogen oxides to be emitted from the vehicle during normal operation and use. It is alleged that these elements of design are defeat devices and that Toyota has breached the Australian Consumer Law.

The Defendants to the class action, Toyota Australia and Toyota Japan deny the allegations and are defending the class action.



4. Are you a Group Member?

You are a Group Member if you acquired one or more of the following Toyota diesel vehicles between 7 February 2016 and 19 December 2024 (**Affected Vehicles**):

(a) Landcruiser models:

- (i) from 2007, Landcruiser vehicles fitted with a 4.5L 195 kW to 200kW 1VD-FTV engine;
- (ii) from 2015, Landcruiser vehicles fitted with a 2.8L 1GD-FTV engine (Landcruiser Prado);
- (iii) from 2020, Landcruiser vehicles fitted with a 3.3L F33A-FTV engine;

(b) Hilux models:

- (i) From 2015, Hilux vehicles fitted with a 2.4L 2GD-FTV engine;
- (ii) From 2015, Hilux vehicles fitted with a 2.8L 1GD-FTV engine;

(c) RAV-4 models: from 2013, RAV-4 vehicles fitted with a 2.2L 2AD-FHV or 2AD-FTV engine;

(d) Fortuner models: from 2015, Fortuner vehicles fitted with a 2.8L 1GD-FTV engine;

(e) Hiace models: from 2019, Hiace vehicles fitted with a 2.8L 1GD-FTV engine (excepting models with a Gross Vehicle Mass exceeding 3,500 kilograms); and

(f) Granvia models: from 2019, Granvia vehicles fitted with a 2.8L 1GD-FTV engine.

Group Members may have acquired an Affected Vehicle by way of purchase, exchange or taking on a lease or on hire-purchase.

If you have already sold your Affected Vehicle, or sell it before the conclusion of the Toyota Diesel Emissions Class Action, your entitlement to certain monetary damages related to the reduction-in-value damages of your Affected Vehicle may be lost, and therefore your overall entitlement to damages (if any) may be reduced.

If you are unsure whether or not you are a Group Member, you should contact Maddens Lawyers at toyota@maddenslawyers.com.au or seek your own legal advice without delay.

5. Will you be liable for legal costs if you remain a Group Member?

Group Members **are not, and will not be, liable for any “out of pocket” legal costs** by remaining in this class action.

The costs of running the class action are being funded by Woodsford, a litigation funder, and the Plaintiff's lawyers, Maddens Lawyers. If the class action is unsuccessful, Woodsford will pay or procure payment by an insurer of any of the Defendants' costs that the Plaintiff is ordered to pay.

In order to bring the class action, the Plaintiff retained Maddens Lawyers as his solicitor and signed a litigation finance agreement with Woodsford Litigation Funding 11 LLP, Woodsford Group Limited and Woodsford Australia Pty Ltd (**Funding Agreement**). In return for the funding that Woodsford provides under the Funding Agreement for the Plaintiff's 'own side' legal costs (as distinct from the adverse costs risk, which is discussed further below), Woodsford charges a 'Success Fee' if the class action is successful.



Pursuant to the Funding Agreement, the Plaintiff agreed that, if the class action is successful and the Plaintiff obtains money from a settlement or judgment, the Plaintiff will seek an order to repay Woodsford from the settlement or judgment proceeds, any reasonable costs advanced by Woodsford. Reasonable costs include any interim adverse costs, the cost of providing any security for costs, upfront insurance premiums, Woodsford's 'Success Fee', unpaid insurance premiums (including deferred and contingent insurance premiums) due under any After-the-Event (ATE) insurance policy, as well as fees deferred by Maddens Lawyers for recovery from any settlement or judgment, together with an additional 25% uplift on those deferred fees.

The Plaintiff also agreed that if the class action is successful, the Plaintiff will seek an order from the Court that will fairly distribute his obligations under the Funding Agreement (described in the above paragraph) amongst all Group Members who have benefited from the action. This may be by way of what is known as a Common Fund Order, a Funding Equalisation Order, or by another order of the Court.

The Plaintiff has agreed to apply for:

- (a) A Common Fund Order consistent in amount with Woodsford's Success Fee which is defined in the Funding Agreement as the greater of:
- (i) an amount equal to 27.5% of Gross Proceeds (explained below) (**Percentage**); or
 - (ii) 3.5 times the Cash Outlay (explained below) (**Multiple**).

Woodsford's Success Fee may be increased by 0.5% (in relation to the Percentage) or 0.1 times (in relation to the Multiple) for each additional tranche of costs that Woodsford agrees to pay on behalf of the Plaintiff above a certain level; and

- (b) An order that the Cash Outlay, any Adverse Costs, the cost of providing any security for costs, any remaining lawyers' professional fees, any ATE insurer premiums and Adverse Costs paid by the ATE insurer, and the time and costs of the Plaintiff (but not the compensation for his claimed losses), be deducted from the Gross Proceeds.

Gross Proceeds are the total amount received (including any settlement sum, or compensation, costs and damages award by the Court and interest) paid or credited to, in favour of, for the benefit of, or to the order of, the Plaintiff and Group Members, by the Defendants or any third party which relates to the subject matter of the class action.

The Cash Outlay is defined in the Funding Agreement as the total amount of legal and other fees and costs (including GST) advanced by Woodsford plus all other fees and costs relating to the class action reasonably incurred by Woodsford within the scope of the Funding Agreement. Those costs include:

- (a) Maddens Lawyers' fees;
- (b) third party costs, including barristers' fees and expert fees; and
- (c) insurance premiums for ATE insurance (that are not deferred or contingent) and the costs of providing any security for costs.

Adverse Costs and ATE Insurance

If the class action is unsuccessful, the Court may order the Plaintiff (and/or other third parties such as Woodsford) to pay some part of the successful Defendant's costs (known as **Adverse Costs**).

To protect against the risk of Adverse Costs, Woodsford has:

- (a) indemnified the Plaintiff against any liability for any Adverse Costs order made against the



Plaintiff.

- (b) obtained ATE insurance to cover Adverse Costs payable by the Plaintiff (the ATE insurance, provided by an A-rated ATE insurer expressly covers Adverse Costs payable by the Plaintiff) and to enable the Plaintiff to provide security for the Defendants' costs.

If the class action is successful, the Plaintiff has agreed to apply for a Court order that the costs of any such ATE insurance, including deferred and contingent ATE insurance premiums, and the cost of providing any security for costs be payable from Gross Proceeds (in addition to the other costs mentioned above, including Woodsford's Success Fee).

How legal costs and funding fees are paid if the class action is successful

To summarise, and to assist you in understanding the Plaintiff's agreement with Woodsford and Maddens Lawyers, the Plaintiff has agreed to apply for a Court order to have Gross Proceeds obtained from a settlement or judgment distributed as follows:

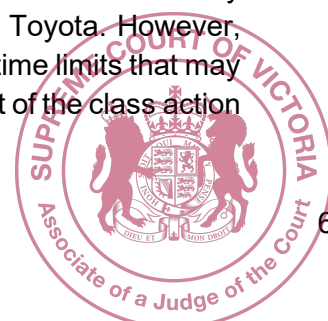
- (a) Firstly, repayment of reasonable costs (Cash Outlay) advanced by Woodsford, any Adverse Costs paid or payable by Woodsford or the ATE Insurer, the cost of any security for costs provided, and payment for the time and costs of the Plaintiff (but not the compensation for his claimed losses);
- (b) Secondly, payment of Woodsford's Success Fee and any unpaid insurance premiums due (including deferred or contingent premiums), as well as Maddens Lawyers' deferred and unfunded fees (fees that were not paid by Woodsford during the running of the class action) and the additional 25% uplift on those deferred fees;
- (c) Thirdly, payment of the balance of the Gross Proceeds between all Group Members (including the Plaintiff) in accordance with a distribution scheme approved by the Court.

All legal costs and funding fees must be approved by the Court as fair and reasonable.

Further information about legal costs and funding fees is also available in the **Updated Funding Information Summary Sheet** available from the Maddens Lawyers' website: <https://toyotadieselclassaction.com.au/>

6. What are your options in response to this Notice?

- (a) **Option 1: Register your interest in the class action.** Registering your interest in the class action will help ensure that you receive up-to-date information about the case and help you participate in any settlement (and payment of compensation). You can register via Maddens Lawyers' website at <https://toyotadieselclassaction.com.au/register-now/>. You will be bound by any settlement or judgment in the class action, and you will not be able to sue Toyota for the same (or possibly related) claims in any future case. If the case is successful, you will be entitled to share in the benefit of any compensation awarded by the Court, although you may have to satisfy certain conditions before your entitlement arises.
- (b) **Option 2: Opt out of the class action.** If you **do not** wish to remain a Group Member, you can opt out. This means that you will not participate in the class action. If you opt out, you will not be included in any compensation or award the Court makes or any settlement. If you opt out, you can still bring your own claim against Toyota. However, you should seek your own legal advice about doing so and about any time limits that may apply. **If you do not wish to remain** a Group Member you must opt out of the class action by **4pm (AEDT) on 16 July 2026**.



If you wish to opt out of the class action you must do so by either:

- (i) completing the online Notice of Opting Out on the Supreme Court of Victoria website at: <https://www.supremecourt.vic.gov.au/group-proceedings-class-actions/toyota-diesel-emissions/opting-out>; or
- (ii) completing a “**Notice of Opting Out by Group Member**” in the form enclosed with this Notice and returning the completed notice to the Registry of the Supreme Court of Victoria by email to toyotadieselclassaction@supcourt.vic.gov.au or by post to the address on the Notice.

IMPORTANT: the Notice must reach the Registry by no later than 4pm (AEDT) on 16 July 2026 otherwise it will not be effective.

Each Group Member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business, please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

- (c) Option 3: Do nothing and remain a Group Member.** Unless you choose to opt out under Option 2 above, you will remain a Group Member. This means you will be bound by any settlement or judgment in the class action, and you will not be able to sue Toyota for the same (or possibly related) claims in any future case. If the case is successful, you will be entitled to share in the benefit of any compensation awarded by the Court, although you may have to satisfy certain conditions before your entitlement arises. You do not have to do anything to remain a Group Member.

7. Where can you obtain copies of important documents?

Copies of the documents may be obtained by:

- (a) downloading them from the Maddens Lawyers’ website: <https://toyotadieselclassaction.com.au/key-documents/> or inspecting them between 9am and 5pm at one of the offices of Maddens Lawyers, contact details for which are available from <https://maddenslawyers.com.au/> or by calling 1800 470 485; or
- (b) downloading them from the Supreme Court of Victoria website: <https://www.supremecourt.vic.gov.au/group-proceedings-class-actions/toyota-diesel-emissions>

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Maddens Lawyers on 1800 470 485 or email toyota@maddenslawyers.com.au, or seek your own legal advice. You should not delay in making your decision.

