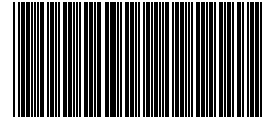




Filed: 10 November 2017 3:45 PM



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Form 3A/B UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2017/00340824

TITLE OF PROCEEDINGS

First Plaintiff	Louise Haselhurst
First Defendant	Toyota Motor Corporation Australia Limited trading as Toyota Australia ABN 64009686097

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Damian Scattini
Legal representative reference	
Telephone	(02)91463888
Your reference	07435-0001

NOTICE OF LISTING

This matter has been listed for Directions (Equity Registrar) at Supreme Court Sydney on 5 February 2018 at 09:30 AM.

AFFIDAVIT

Deponent Name	Louise Haselhurst
Sworn/Affirmed on	10 November 2017

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Statement of Claim (UCPR 3A/3B) (2017.11.10 Haselhurst v Toyota Motor Corporation Australia Limited.pdf)

[attach.]

dscatti001

Form 3A (version 7)

UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	General (Class Action)
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

Plaintiff	Louise Haselhurst
Defendant	Toyota Motor Corporation Australia Limited ABN 64 009 686 097

FILING DETAILS

Filed for	Louise Haselhurst
Legal representative	Damian Scattini, Quinn Emanuel Urquhart & Sullivan LLP
Legal representative reference	07435-00001
Contact name and telephone	Damian Scattini 02 9146 3888
Contact email	damianscattini@quinnemanuel.com

TYPE OF CLAIM

Other (Equity General List)

Representative proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW)

RELIEF CLAIMED

- 1 An order pursuant to section 87 of the TPA and/or section 237 of the ACL that the Defendant is obliged to compensate any Group Member who transfers their Defective Vehicle to it by paying to any such Group Member the purchase price of the Defective Vehicle, together with the amount of any out of pocket expenses;
- 2 Further or in the alternative, damages pursuant to section 82 of the TPA and/or section 236 of the ACL;

- 3 Further or in the alternative, compensation pursuant to section 74D(1) of the TPA;
- 4 Further or in the alternative, compensation pursuant to section 74B of the TPA;
- 5 Further or in the alternative, compensation pursuant to section 271 of the ACL;
- 6 Interest in accordance with s 100 of the *Civil Procedure Act 2005* (NSW);
- 7 Costs;
- 8 Any other orders the Court considers appropriate.

COMMON QUESTIONS, PLEADINGS AND PARTICULARS

A. COMMON QUESTIONS

The questions of law or fact common to the claims of group members, or to potential sub-group members, in this proceeding are:

1. Whether the Defendant supplied:
 - (a) Re-Supplied Defective Vehicles (as defined at paragraph 4(h)(i) of the Pleadings); and/or
 - (b) Manufacturer Supplied Defective Vehicles(as defined at paragraph 4(h)(ii) of the Pleadings);
2. Whether the Defective Vehicles are of a kind which are commonly bought and commonly supplied for the purpose of:
 - (a) driving the Defective Vehicle or having the Defective Vehicle driven; and/or
 - (b) driving the Defective Vehicle or having the Defective Vehicle driven without any danger inherent in its construction;
3. Whether the Defective Vehicles are not safe to drive;
4. Whether the Defendant did not take any or adequate steps to:
 - (a) warn members of the public that the Defective Vehicles were not safe to drive;
 - (b) prevent the Defective Vehicles being driven;

- (c) ensure that Defective Vehicles were not sold as second-hand vehicles.
5. Whether the Defendant breached the Merchantable Quality Implied Condition (as defined at paragraph 13 of the Pleadings) provided for in s71(1) of the TPA in respect of Manufacturer Supplied Defective Vehicles supplied by the Defendant before 1 January 2011;
 6. Whether the Defendant breached the Fit For Purpose Implied Condition (as defined at paragraph 18 of the Pleadings) provided for in s 71(2) of the TPA in respect of any Manufacturer Supplied Defective Vehicles supplied by the Defendant before 1 January 2011;
 7. Whether or not the Defendant is liable for loss and damage arising from the breach of the Merchantable Quality Implied Condition and/or the Fit For Purpose Implied Condition and, if so, the proper method for calculation of such loss and damage;
 8. Whether any Re-Supplied Vehicles acquired by Group Members before 1 January 2011 were not of merchantable quality within the meaning of s74D of the TPA;
 9. Whether the Defendant is liable pursuant to s 74D of the TPA to compensate any Group Members who acquired a Re-Supplied Defective Vehicle before 1 January 2011;
 10. Whether any Re-Supplied Vehicles acquired by Group Members before 1 January 2011 were not fit for purpose within the meaning of s74B of the TPA;
 11. Whether the Defendant is liable pursuant to s 74B of the TPA to compensate any Group Members who acquired a Re-Supplied Defective Vehicle before 1 January 2011;
 12. Whether:
 - (a) a reasonable consumer fully acquainted with the state and condition of the Defective Vehicles would not regard the Defective Vehicles as:
 - (i) acceptably fit for all the purposes for which goods of that kind are commonly supplied.
 - (ii) free from defects;
 - (iii) safe.

- (b) the Defendant breached the Acceptable Quality Guarantee (as defined at paragraph 30 of the Pleadings) provided for in s 54(1) of the ACL in respect of any Defective Vehicles supplied to Group Members on or after 1 January 2011;
13. Whether, in respect of any Defective Vehicles supplied to Group Members on or after 1 January 2011:
- (a) the Defendant represented that the Defective Vehicles were reasonably fit for the purpose of:
 - (i) driving the Defective Vehicle or having the Defective Vehicle driven; and/or
 - (ii) driving the Defective Vehicle or having the Defective Vehicle driven without any danger inherent in its construction;
 - (b) the Defective Vehicles were not fit for the purpose described in (a) above;
 - (c) the Defendant failed to comply with the Fit For Purpose Guarantee (as defined at paragraph 34 of the Pleadings) provided for in s 55 of the ACL;
 - (d) the Defective Vehicles would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure to comply with the Fit For Purpose Guarantee;
 - (e) the Defective Vehicles are not of acceptable quality because they are unsafe;
 - (f) it was reasonably foreseeable that any Group Member who acquired a Manufacturer Supplied Defective Vehicle on or after 1 January 2011 would suffer loss or damage as a result of the failure to comply with the Fit For Purpose Guarantee.
14. Whether the Defendant is liable to pay damages pursuant to section 271 of the ACL to Group Members to whom it supplied Defective Vehicles on or after 1 January 2011;
15. Whether, during the Relevant Period, the Defendant made Representations (as defined at paragraph 41 of the Pleadings) to prospective purchasers (including the Group Members) that the Defective Vehicles were safe to drive.

16. Whether the Representation was:
- (a) false or misleading in contravention of section 53(a) of the TPA and/or section 29(1)(a) of the ACL;
 - (b) misleading or deceptive, or likely to mislead or deceive, in contravention of section 52 of the TPA and/or section 18 of the ACL;
 - (c) misleading as to the nature, the characteristics and/or the suitability for purpose of the Defective Vehicles in contravention of section 55 of the TPA and/or section 33 of the ACL.
17. Whether the Defendant engaged in unconscionable conduct in connection with the supply or possible supply of goods to a person in contravention of section 51AB of the TPA and/or section 21 of the ACL.
18. Whether the Group Members are entitled to recover from the Defendant:
- (a) compensation pursuant to section 87 of the TPA and/or section 237 of the ACL; and/or
 - (b) loss or damage pursuant to section 82 of the TPA and/or section 236 of the ACL.

B. PLEADINGS

THE PROCEEDING AND THE PARTIES

1. The Plaintiff brings this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):
- (a) in her own right;
 - (b) on behalf of:
 - (i) consumers (within the meaning of section 4B of the *Trade Practices Act 1974* (Cth) (TPA) or section 3 of the Australian Consumer Law, being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (ACL));
 - (ii) who at any time during the period April 2001 to September 2017 inclusive (**Relevant Period**) acquired (within the meaning of section 4 of the TPA or section 2 of the ACL) in Australia a Toyota

or Lexus motor vehicle fitted with a front driver or passenger airbag manufactured or supplied by Takata Corporation (**Takata Airbag**), and which has been the subject of an airbag-related product safety recall (**Defective Vehicles**)

(Group Members).

2. The Plaintiff:

- (a) purchased, in January 2011, a Defective Vehicle, being a Corolla Sedan manufactured in 2010 (**Plaintiff's Vehicle**);
- (b) purchased the Plaintiff's Vehicle new at Phil Gilbert Toyota in Croydon, New South Wales;
- (c) paid \$24,600 for the Plaintiff's Vehicle;
- (d) acquired the Plaintiff's Vehicle for personal use;
- (e) acquired the Plaintiff's Vehicle for the purpose of:
 - (i) driving the Plaintiff's Vehicle or permitting the Plaintiff's Vehicle to be driven; and/or
 - (ii) driving the Plaintiff's Vehicle or permitting the Plaintiff's Vehicle to be driven without being exposed to unnecessary danger or harm attributable to its construction;

which purpose or purposes was or were expressly or impliedly known to the Defendant;

- (f) is included in any reference to Group Members in the remainder of this pleading.

3. Each Group Member:

- (a) acquired a Defective Vehicle by:
 - (i) purchasing a new Defective Vehicle;
 - (ii) purchasing a second-hand Defective Vehicle; or

- (iii) taking on a lease in respect of a new Defective Vehicle on hire or on hire-purchase;
- (b) acquired a Defective Vehicle for less than \$40,000;
- (c) did not acquire a Defective Vehicle, or hold themselves out as acquiring a Defective Vehicles for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land;
- (d) acquired a Defective Vehicle for the purpose of:
 - (i) driving the Plaintiff's Vehicle or permitting the Plaintiff's Vehicle to be driven; and/or
 - (ii) driving the Plaintiff's Vehicle or permitting the Plaintiff's Vehicle to be driven without being exposed to unnecessary danger or harm attributable to its construction;

which purpose or purposes was or were expressly or impliedly known to the Defendant;

- (e) by reason of the matters pleaded in:
 - (i) paragraph 2(c) and 3(b) above;
 - (ii) paragraph 10(a) below,

acquired a Defective Vehicle as a consumer within the meaning of section 4B of the TPA or section 3 of the ACL;
- (f) acquired a Defective Vehicle from a person other than by way of sale by auction.

4. The Defendant:

- (a) is a company duly incorporated in Australia;
- (b) is a trading corporation within the meaning of section 4 of the TPA;
- (c) is and was at all material times a wholly owned subsidiary of Toyota Motor Corporation, which

- (i) is a Japanese company;
 - (ii) has no place of business in Australia;
 - (iii) manufactured those of the Defective Vehicles, which were not in fact manufactured by the Defendant (**Imported Defective Vehicles**);
- (d) manufactured some of the Defective Vehicles (**Toyota Australia Manufactured Defective Vehicles**);
 - (e) did not manufacture the Imported Defective Vehicles;
 - (f) imported the Imported Defective Vehicles into Australia;
 - (g) by reason of the matters pleaded in (c), (e) and (f) above, manufactured the Imported Defective Vehicles within the meaning of section 74A of the TPA or section 7 of the ACL;
 - (h) supplied, other than by way of sale by auction, in the course of business, and in trade or commerce:
 - (i) Defective Vehicles to retailers who acquired the goods for re-supply (**Re-Supplied Defective Vehicles**); and/or
 - (ii) Defective Vehicles to consumers who, by reason of paragraphs 2(c) and 3(b) above and 10(a) below, were consumers within the meaning of section 4B of the TPA or section 3 of the ACL (**Manufacturer Supplied Defective Vehicles**).
5. The Re-Supplied Defective Vehicles were supplied to Group Members in trade or commerce other than by way of sale by auction.
6. As at the date of the commencement of this proceeding, seven or more Group Members have claims in the nature of those described in this Statement of Claim.

THE DEFECTIVE VEHICLES

7. Takata Airbags:
- (a) use ammonium nitrate as the propellant with the consequence that the inflators within the Takata Airbags had a propensity to explode thereby propelling metal shrapnel towards the occupants of the Defective Vehicles;

(b) were the subject of a safety warning to the public published on 6 August 2017 by the Commonwealth of Australia Minister for Small Business pursuant to paragraphs 129(1)(a) and 129(1)(b) of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) which:

(i) stated, amongst other things:

Warning

Pursuant to s 129(1)(b), the Minister warns of the possible risks involved in the use of motor vehicles containing Takata airbags supplied in Australia.

This Safety Warning has been issued because there have been serious injuries and deaths caused by faulty Takata airbags installed in motor vehicles, both in Australia and overseas.

The inflator components in Takata airbags may deteriorate and subsequently misdeploy in an incident, with the result that metal fragments from the inflator housing may propel out of the airbag, causing injury or death to the drivers/riders or passengers.

Investigation

The Australian Competition and Consumer Commission (ACCC) is investigating whether motor vehicles containing a Takata airbag will or may cause injury to any person, or a reasonably foreseeable use (or misuse) of those goods will or may cause injury to any person."

(ii) related to all of the motor vehicles containing a Takata Airbag which were then currently subject to a product safety recall;

(iii) related to the Defective Vehicles.

(c) have caused approximately 100 million vehicles to be subject of product safety recalls worldwide, including 2.2 million vehicles in Australia, fitted with Takata Airbags;

(d) have caused at least 200 documented injuries as a result of Takata Airbags exploding during their deployment and propelling shrapnel and metal fragments within the vehicle in which they were contained;

- (e) have caused at least 17 documented deaths worldwide as a result of Takata Airbags exploding during their deployment and propelling shrapnel and metal fragments within the vehicle in which they were contained;
 - (f) have caused at least one death in Australia.
8. Each of the Defective Vehicles was fitted with at least one Takata Airbag.
9. The Defective Vehicles included the following models:
- (a) Toyota Echo Hatch manufactured between December 2002 and October 2005;
 - (b) Toyota RAV4 manufactured between July 2003 and October 2005;
 - (c) Toyota Corolla manufactured between November 2000 and December 2012;
 - (d) Toyota Yaris manufactured between August 2005 and December 2012;
 - (e) Toyota Avensis manufactured between April 2001 and December 2009;
 - (f) Toyota Rukus manufactured between February 2010 and December 2012;
 - (g) Lexus SC430 manufactured between January 2001 and June 2010;
 - (h) Lexus IS250 manufactured between August 2005 and December 2012;
 - (i) Lexus IS250C manufactured between April 2009 and December 2012;
 - (j) Lexus IS350 manufactured between August 2010 and December 2012;
 - (k) Lexus IS F manufactured between August 2008 and December 2012;
 - (l) Lexus LFA manufactured between February 2011 and June 2012.
10. The Defective Vehicles:
- (a) are of a kind ordinarily acquired for, intended to be used, or likely to be used, for personal, domestic or household use or consumption;
 - (b) are of a kind which are commonly bought and commonly supplied for the purpose of:

- (i) driving the Plaintiff's Vehicle or permitting the Plaintiff's Vehicle to be driven; and/or
 - (ii) driving the Plaintiff's Vehicle or permitting the Plaintiff's Vehicle to be driven without being exposed to unnecessary danger or harm attributable to its construction;
 - (c) by reason of the matters pleaded in paragraphs 7 and 8 above and 11 below, are not safe to drive;
 - (d) are goods within the meaning of:
 - (i) by reason of paragraph 8(a) above, section 74A(2)(a) of the TPA;
 - (ii) section 4 of the TPA;
 - (iii) section 2 of the ACL.
11. Each of the Defective Vehicles was subject to at least one of the following product safety recalls issued to the Department of Infrastructure and Regional Development by Toyota pursuant to section 128 of the ACL
- (a) Product Recall Australia Number 2013/13544 which:
 - (i) was issued on 12 Apr 2013;
 - (ii) was in respect of Corolla ZZE122 & Avensis Verso ACM20 models;
 - (iii) was issued on the ground that the *"front passenger air bag inflator may have been assembled with improperly manufactured propellant wafer"* such that, *"in the event of a crash, the inflator may rupture and cause the front passenger air bag to deploy abnormally, increasing the risk of injury to the occupant"*;
 - (iv) advised consumers that *"consumers should take extra care when driving. Toyota Australia is currently preparing additional parts for rectification. Affected customers who have not had their passenger air replaced will be re-notified by mail instructing them to take their vehicle to their preferred Toyota Dealer to replace the passenger side airbag once parts become available. This will be performed at no cost to the owner. Customers who have already had their*

passenger airbag replaced are not impacted by this re-announcement."

- (b) Product Recall Australia Number 2014/14456 which:
 - (i) was issued on 28 Nov 2014;
 - (ii) was in respect of Toyota Echo NCPI & RAV4 ACA2 models;
 - (iii) was issued on the ground that "*there is a potential concern with the propellant wafers contained within the driver's side front airbag inflator*" such that, "*during airbag deployment, the inflator could rupture resulting in metallic projectile fragments that could increase the risk of injuries*";
 - (iv) advised consumers that "*affected customers will be notified of the recall by mail and asked to make an appointment at their preferred Toyota dealer as soon as parts become available.*"

- (c) Product Recall Australia Number 2015/14700 which:
 - (i) was issued on 18 May 2015;
 - (ii) was in respect of Toyota ECHO & RAV4 models;
 - (iii) was issued on the ground that the "*driver's front airbag inflator propellant wafers may have an increased potential for moisture intrusion overtime. Moisture intrusion could potentially make the inflator assembly more susceptible to rupture during airbag deployment*" such that, "*the ruptured inflator may create metallic fragments that could contact an occupant, increasing the risk of injury*";
 - (iv) advised consumers that "*owners will be contacted by mail as soon as parts become available to present their vehicle to their preferred Toyota Dealer for the replacement of the driver's side airbag inflator at no charge.*"

- (d) Product Recall Australia Number 2015/14701 which:
 - (i) was issued on 18 May 2015;

- (ii) was in respect of Toyota Corolla, Avensis Verso & Yaris models;
 - (iii) was issued on the ground that the *"passenger's front side airbag inflator propellant wafers may have an increased potential for moisture intrusion overtime. Moisture intrusion could potentially make the inflator assembly more susceptible to rupture during airbag deployment"* such that, *"the ruptured inflator may create metallic fragments that could contact an occupant, increasing the risk of injury"*;
 - (iv) Advised consumers that *"owners will be contacted by mail as soon as parts become available to present their vehicle to their preferred Toyota Dealer for the replacement of the passenger's front side airbag inflator at no charge."*
- (e) Product Recall Australia Number 2015/14794 which:
- (i) was issued on 30 June 2015;
 - (ii) was in respect of Avensis Verso ACM21, Yaris NCP90, NCP91 and NCP93 models;
 - (iii) was issued on the ground that the *"passenger's front airbag inflator propellant wafers may have an increased potential for moisture intrusion over time. Moisture intrusion could potentially make the inflator assembly more susceptible to rupture during airbag deployment"* such that, *"in the event of a crash, should the passenger front airbag deploy abnormally this may increase the risk of injury to the occupant"*;
 - (iv) advised consumers that *"owners will be contacted by mail as soon as parts become available to present their vehicle to a Toyota Dealer."*
- (f) Product Recall Australia Number 2016/15709 which:
- (i) was issued on 31 Oct 2016;
 - (ii) was in respect of Corolla (model ZRE152), Yaris (models NCP90, NCP91 and NCP93) and Avensis Verso (model ACM21) models;

- (iii) was issued on the ground that the *"front passenger's airbag inflator may be susceptible to moisture intrusion over time resulting in degradation of the inflator propellant"* such that, *"if this happens, this could potentially make the inflator assembly prone to rupture during an accident, increasing the risk of injury to the vehicle occupants"*;
 - (iv) advised consumers that *"owners will be contacted inviting them to make an appointment with their preferred Toyota Dealer to have the recall carried out free of charge, once parts become available."*
- (g) Product Recall Australia Number 2017/15950 which:
- (i) was issued on 3 March 2017;
 - (ii) was in respect of Toyota Corolla ZZE122 & ZZE123 models;
 - (iii) was issued on the ground that the *"front driver's air bag inflator have been assembled with propellant wafers that are subject to density reduction, caused by repeated volume change, which occurs after prolonged exposure to high temperatures"* such that, *"in the event of driver's airbag deployment during a collision, the inner pressure of the inflator assembly could increase abnormally and the inflator body could rupture, increasing the risk of injury to the occupant"*;
 - (iv) advised consumers that *"owner's will be contacted, inviting them to make an appointment with their preferred Toyota Dealer to have the recall carried out free of charge, once parts become available."*
- (h) Product Recall Australia Number 2017/16010 which:
- (i) was issued on 5 April 2017;
 - (ii) was in respect of Toyota Corolla (ZRE152), Yaris (NCP93) & Rukus (AZE151) models;
 - (iii) was issued on the ground that the *"front passenger's airbag inflator may be susceptible to moisture intrusion overtime resulting in degradation of the inflator propellant"* such that, *"in the event of an accident requiring front passenger airbag deployment, abnormal*

inflator deployment and rupture may occur resulting in metallic projectile fragments increasing the risk of injury to occupants”;

- (iv) *advised consumers that “owners will be contacted, inviting them to make an appointment with their preferred Toyota Dealer to have the recall carried out free of charge, once parts become available.”*
- (i) Product Recall Australia Number 2017/16014 which:
 - (i) *was issued on 10 April 2017;*
 - (ii) *was in respect Toyota Echo (NCPIO/13) & RAV4 (ACA22/23) models;*
 - (iii) *was issued on the ground that the “front driver’s airbag inflator may be susceptible to moisture intrusion overtime resulting in degradation of the inflator propellant” such that, “in the event of an accident requiring front driver’s airbag deployment, abnormal inflator deployment and rupture may occur resulting in metallic projectile fragments increasing the risk of injury to occupants”;*
 - (iv) *advised consumers that “once parts become available, owners will be re-notified inviting them to make an appointment with their preferred Toyota Dealer to have the driver’s side front airbag inflator replaced for a second time, as the original airbag inflator did not contain a desiccant (drying agent).”*
 - (j) Product Recall Australia Number 2013/13545 which:
 - (i) *was issued on 12 Apr 2013;*
 - (ii) *was in respect of Lexus SC430 models;*
 - (iii) *was issued on the ground that the “front passenger-side airbag inflator may have been assembled with improperly manufactured propellant wafers” such that, “in the event of a crash, the inflator may rupture and cause the front passenger airbag to deploy abnormally, increasing the risk of injury to the occupant”;*
 - (iv) *advised consumers that “consumers should take extra care when driving. Lexus Australia is currently preparing additional parts for rectification. Affected customers who have not had their*

passenger air replaced will be re-notified by mail instructing them to take their vehicle to their preferred Toyota Dealer to replace the passenger side airbag once parts become available. This will be performed at no cost to the owner."

- (k) Product Recall Australia Number 2016/15425 which:
- (i) was issued on 2 Jun 2016;
 - (ii) was in respect of Lexus IS 250, IS 250C, IS 350 & IS F models;
 - (iii) was issued on the ground that the *"front passenger's airbag inflator may be susceptible to moisture intrusion over time resulting in degradation of the inflator propellant"* such that, *"in the event of an accident requiring front passenger airbag deployment, abnormal inflator deployment and rupture may occur resulting in metallic projectile fragments increasing the risk of injury to occupants"*;
 - (iv) advised consumers that *"owners will be contacted by mail as soon as parts become available. After contact, consumers should present their vehicle to a Lexus Dealer."*
- (l) Product Recall Australia Number 2017/15846 which:
- (i) was issued on 18 Jan 2017;
 - (ii) was in respect of Lexus IS 250, IS 250C, IS 350, IS F & LFA models;
 - (iii) was issued on the ground that the *"front passenger's airbag inflator may be susceptible to moisture intrusion over time resulting in degradation of the inflator propellant"* such that, *"in the event of an accident requiring front passenger airbag deployment, abnormal inflator deployment and rupture may occur resulting in metallic projectile fragments increasing the risk of injury to occupants"*;
 - (iv) advised consumers that *"owners will be contacted directly by Lexus Australia and/or by mail. Once parts are available, owners*

will contacted inviting them to present their vehicle to a Lexus Dealer for rectification."

12. The Defendant:

- (a) marketed, distributed and promoted Defective Vehicles within Australia at various times during the Relevant Period;


Particulars

The Defendant marketed its vehicles using print and electronic media, sponsorship and other forms of advertising targeted at consumers. By way of example:

- (I) *The following appeared on the Defendant's website in 2011:*

✓ **Advanced safety features**
 The Corolla exceeds the world's toughest crash safety standards.

The Toyota Corolla boasts seatbelt and up to seven SRS airbags. All models are equipped with Toyota's advanced AB-i braking system, which combines Anti-skid Braking System (ABS), Brake Assist (BA) and Electronic Brake-Force Distribution (EBD) to deliver uncompromising stopping power.



Occupant protection +

[see:<https://web.archive.org/web/20110319025132/http://www.toyota.com.au:80/corolla/features/sedan-performance>];

- (II) *In or about November, 2012, the Defendant promoted the safety of its Toyota Corolla on its website as having an "ANCAP 5-Star safety rating and is packed with an impressive list of safety features to help keep you and your passengers safe whilst on the road"*

[see:<https://web.archive.org/web/20121101063146/http://www.toyota.com.au/corolla>];

- (III) *Further particulars will be provided following discovery.*

- (b) held the Defective Vehicles out as being safe to drive;

Particulars

The particulars to (a) above are repeated.

- (c) did not take any or adequate steps to:
 - (i) warn members of the public that the Defective Vehicles were not safe to drive;
 - (ii) prevent the Defective Vehicles being driven;
 - (iii) ensure that Defective Vehicles were not sold as second-hand vehicles.

IMPLIED UNDERTAKINGS – TPA s71

Merchantable quality

13. By reason of the matters pleaded in paragraphs 4(h)(ii), there is an implied condition in the contract of supply between any Group Member who acquired a Manufacturer Supplied Defective Vehicle on the one hand, and the Defendant on the other, that any Manufacturer Supplied Defective Vehicles supplied by the Defendant before 1 January 2011 is of merchantable quality within the meaning of section 71(1) of the TPA (**Merchantable Quality Implied Condition**).
14. By reason of the matters pleaded in paragraphs 7, 10(b) and 11 above, the Manufacturer Supplied Defective Vehicles were not of merchantable quality within the meaning of sections 66(2) and 71(1) of the TPA in that they were not fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect.
15. By reason of the matters pleaded in paragraphs 13 and 14 above, the Defendant breached the Merchantable Quality Implied Condition in respect of any Manufacturer Supplied Defective Vehicles supplied by the Defendant before 1 January 2011.
16. Any Group Member who was supplied with a Manufacturer Supplied Defective Vehicle before 1 January 2011 suffered loss or damage by reason of the breach referred to in paragraph 15 above.

Particulars of loss and damage

Each Group Member suffered loss and damage including:

- (I) in the case of Group Members who have not had the Takata Airbag in their Defective Vehicle replaced, the amount paid for their Defective Vehicle or, in the alternative, the difference between the amount paid for the Defective Vehicle and its true value having regard to the matters pleaded in paragraphs 7, 8, 9 and 11 above;*
- (II) in the case of Group Members who have had the Takata Airbag in their Defective Vehicle replaced with another Takata Airbag, or any other airbag which uses ammonium nitrate as the propellant, the amount paid for their Defective Vehicle, or, in the alternative, the difference between the amount paid for the Defective Vehicle and its true value having regard to the matters pleaded in paragraphs 7, 8, 9 and 11 above;*
- (III) in the case of Group Members in whose Defective Vehicle an airbag which does not use ammonium nitrate as the propellant cannot be fitted, the amount paid for their Defective Vehicle or, in the alternative, the difference between the amount paid for the Defective Vehicle and its true value having regard to the matters pleaded in paragraphs 7, 8, 9 and 11 above;*
- (IV) in the case of Group Members who have had, or will have in the future, the Takata Airbag in their Defective Vehicle replaced, any:*
 - (A) amount paid or to be paid for the replacement of the Takata Airbag;*
 - (B) amount paid or to be paid in connection with the replacement of the Takata Airbag, including transport costs (such as taxi, private hire car and public transport fares) and other out of pocket expenses;*
- (V) other out of pocket expenses arising from:*
 - (A) the fact that those Group Members could not safely drive the Defective Vehicles;*

(B) *the time, cost and inconvenience of attending at a service centre or other place to have a replacement airbag fitted;*

(VI) *in the case of Group Members who have not, or will not in the future, drive their Defective Vehicle having regard to the matters pleaded in paragraph 7, 8, 9 and 11 above, any out of pocket expenses arising therefrom, including:*

(A) *amounts paid for car hire;*

(B) *amounts paid for transport costs (such as taxi, private hire car and public transport fares).*

17. By reason of the matters pleaded in paragraphs 13 to 15 above, the Defendant is liable for the loss and damage referred to in paragraph 16 above.

Fit for purpose

18. By reason of the matters pleaded in paragraphs 4(h)(ii) above, there is an implied condition in the contract of supply between any Group Member who acquired a Manufacturer Supplied Defective Vehicle on the one hand, and the Defendant on the other, that any Manufacturer Supplied Defective Vehicles supplied by the Defendant before 1 January 2011 is reasonably fit for the purpose described in paragraphs 2(e) and 3(d) above within the meaning of section 71(2) of the TPA (**Fit For Purpose Implied Condition**).

Particulars

The purpose described in paragraphs 2(e) and 3(d) above were made known to the Defendant by implication.

19. By reason of the matters pleaded in paragraphs 7, 10(b) and 11 above, the Manufacturer Supplied Defective Vehicles were not fit for the purpose described in paragraphs 2(e) and 3(d) above.
20. By reason of the matters pleaded in paragraphs 18 and 19 above, the Defendant breached the Fit For Purpose Implied Condition in respect of any Manufacturer Supplied Defective Vehicles supplied by the Defendant before 1 January 2011.
21. Any Group Member who was supplied with a Manufacturer Supplied Defective Vehicle before 1 January 2011 suffered loss or damage by reason of the breach referred to in paragraph 20 above.

Particulars of loss and damage

The Particulars to paragraph 16 above are repeated.

22. By reason of the matters pleaded in paragraphs 18 to 20 above, the Defendant is liable for the loss and damage referred to in paragraph 21 above.

FAILURE TO SUPPLY GOODS OF MERCHANTABLE QUALITY – TPA s74D

23. By reason of the matters pleaded in paragraphs 7, 10(b) and 11 above, the Re-Supplied Defective Vehicles were not of merchantable quality within the meaning of section 74D(3) of the TPA.
24. Any Group Member who acquired a Re-Supplied Defective Vehicle before 1 January 2011 suffered loss or damage by reason that the Re-Supplied Defective Vehicles they acquired were not of merchantable quality.

Particulars of loss and damage

The Particulars to paragraph 16 above are repeated.

25. By reason of the matters pleaded in sub-paragraphs of paragraphs 3(e), 4(h)(i), 5, 10(d), 23 and 24 above, the Defendant is liable, pursuant to section 74D(1) of the TPA, to compensate any Group Members who acquired a Re-Supplied Defective Vehicle before 1 January 2011 for the loss and damage referred to in paragraph 24 above.

FIT FOR PURPOSE – TPA s74B

26. The Re-Supplied Defective Vehicles were acquired for the purpose referred to in paragraph 3(d) above.

Particulars

The purpose described in paragraphs 2(e) and 3(d) above were made known to the Defendant by implication.

27. By reason of the matters pleaded in paragraphs 7, 10(b) and 11 above, the Re-Supplied Defective Vehicles were not reasonably fit for the purpose referred to in paragraph 25 above.

28. Any Group Members who acquired a Re-Supplied Defective Vehicle before 1 January 2011 suffered loss or damage by reason of the matters pleaded in paragraph 27 above.

Particulars of loss and damage

The Particulars to paragraph 16 above are repeated.

29. By reason of the matters pleaded in paragraphs 3(e), 4(h)(i), 5, 10(d), 26, 27 and 28 above, the Defendant is liable to compensate any Group Member who acquired a Re-Supplied Defective Vehicle before 1 January 2011 for the Loss or Damage pursuant to section 74B of the TPA.

FAILURE TO SUPPLY GOODS OF ACCEPTABLE QUALITY – ACL s54

30. By reason of the matters pleaded in paragraphs 3(e), 4(h)(ii) and 5 above, there is a guarantee that the Defective Vehicles supplied to Group Members on or after 1 January 2011 are of acceptable quality pursuant to section 54(1) of the ACL (**Acceptable Quality Guarantee**).
31. By reason of the matters pleaded in paragraphs 7, 10(b), 10(c) and 11 above, a reasonable consumer fully acquainted with the state and condition of the Defective Vehicles would not regard the Defective Vehicles as:
- (a) acceptably fit for all the purposes for which goods of that kind are commonly supplied.
 - (b) free from defects;
 - (c) safe.
32. By reason of the matters pleaded in paragraph 31 above, the Defective Vehicles did not comply with the Acceptable Quality Guarantee.
33. By reason of the matters pleaded in paragraph 4(d), 4(g), 8(c), 7, 11, 30 and 32 above, Group Members who acquired a Defective Vehicle on or after 1 January 2011 are entitled under section 271 of the ACL to recover damages from the Defendant.

Particulars of loss and damage

The Particulars to paragraph 16 above are repeated.

The Plaintiff suffered loss and damage in the amount of:

- (I) \$24,600 in respect of (I) or (II) in the particulars to paragraph 16 above; and*
- (II) further, in respect of (IV) of the particulars to paragraph 16 above, any future cost associated with attending at one of the Defendant's authorised dealerships to have a replacement airbag fitted.*

NOT FIT FOR PURPOSE – ACL s55

- 34. By reason of the matters pleaded in paragraphs 3(e), 4(h)(ii) and 5 above, there is a guarantee that the Defective Vehicles supplied to Group Members on or after 1 January 2011 are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit, pursuant to section 55(1) of the ACL (**Fit For Purpose Guarantee**).
- 35. By reason of the matters pleaded in paragraphs 4(d), 4(f), 4(h), 10(b) and 12 above, the Defendant represented that the Defective Vehicles were reasonably fit for the purpose referred to in paragraph 10(b) above.
- 36. By reason of the matters pleaded in paragraphs 7, 10(c) and 11 above, the Defective Vehicles are not fit for the purpose referred to in paragraph 10(b) above.
- 37. By reason of the matters pleaded in paragraphs 35 and 36 above, the Defendant failed to comply with the Fit For Purpose Guarantee in respect of Manufacturer Supplied Defective Vehicles supplied to Group Members on or after 1 January 2011 (**Failure to Comply**).
- 38. By reason of the matters pleaded in paragraphs 7, 8, 10(c) and 11 above:
 - (a) the Defective Vehicles would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the Failure to Comply;
 - (b) the Defective Vehicles are not of acceptable quality because they are unsafe.
- 39. By reason of the matters pleaded in paragraphs 35, 36, 37 and 38 above, the Failure to Comply was a major failure within the meaning of section 260 of the ACL.

40. By reason of the matters pleaded in paragraphs 7, 8, 10 and 11 above, it was reasonably foreseeable that any Group Member who acquired a Manufacturer Supplied Defective Vehicle on or after 1 January 2011 would suffer loss or damage as a result of the Failure to Comply.
41. By reason of the matters pleaded in paragraph 38, 39 and 40 above, any Group Member who acquired a Manufacturer Supplied Defective Vehicle on or after 1 January 2011 is entitled under section 259(4) of the ACL to recover loss and damage from the Defendant.

Particulars of loss and damage

The Particulars to paragraph 33 above are repeated.

MISLEADING OR DECEPTIVE CONDUCT

42. By the conduct pleaded in paragraphs 4(d), 4(f), 4(h), 10(b) and 12 above the Defendant engaged in conduct which was:
- (a) false or misleading in contravention of section 53(a) of the TPA and/or section 29(1)(a) of the ACL;
 - (b) misleading or deceptive, or likely to mislead or deceive, in contravention of section 52 of the TPA and/or section 18 of the ACL;
- (Misleading Conduct)**
- by reason of the matters pleaded in paragraphs 7, 8, 10(c) and 11 above.
43. The Misleading Conduct was conduct engaged in by the Defendant in trade or commerce, within the meaning of:
- (a) section 52 of the TPA; and/or
 - (b) section 18 of the ACL.
44. Further or in the alternative to the matters pleaded in paragraphs 42 and 43 above, the Misleading Conduct was conduct which was, by reason of the matters pleaded in paragraphs 7, 8, 10(c) and 11 above, misleading as to:
- (a) the nature;
 - (b) the characteristics;

(c) the suitability for purpose

of the Defective Vehicles in contravention of section 55 of the TPA and/or section 33 of the ACL.

45. Each Group Member, including the Plaintiff, relied on the Representation in purchasing their respective Defective Vehicles.
46. By reason of the matters pleaded in paragraphs 2, 3, 42 to 45 above, each of the Group Members suffered loss and damage.

Particulars of loss and damage

The Particulars to paragraph 33 above are repeated.

47. By reason of the matters pleaded in paragraphs 42 to 46 above, each Group Member, including the Plaintiff, is entitled to recover from the Defendant:
- (a) an order pursuant to section 87 of the TPA and/or section 237 of the ACL that the Defendant is obliged to compensate any Group Member who transfers their Defective Vehicle to it by paying to any such Group Member the purchase price of the Defective Vehicle, together with the amount of any out of pocket expenses of the kind referred to in the particulars to paragraph 16 above;
- (b) further or in the alternative, the loss or damage referred to in paragraph 46 above pursuant to section 82 of the TPA and/or section 236 of the ACL.

UNCONSCIONABLE CONDUCT

48. By no later than November 2008 the Defendant knew or ought to have known of the matters referred to in paragraphs 7, 8 and 10(c) above.

Particulars

- (l) *In November 2008, Honda issued the first recall for Takata driver side inflators with improperly manufactured propellant wafers. Due to manufacturing errors, these inflators could rupture when activated. Honda expanded these recalls in 2009, 2010 and 2011. The fact of these recalls was public knowledge.*

- (II) *In April 2013, Takata filed a defect report in the USA stating that certain passenger side airbag modules may rupture as a result of manufacturing errors that are aggravated by exposure to hot and humid environments. This was public knowledge, or was information which was reasonably available to the Defendant.*
- (III) *On 12 April 2013, the Defendant issued at least two product safety recalls to the Department of Infrastructure and Regional Development by Toyota pursuant to section 128 of the ACL, namely Product Recall Australia Number 2013/13544, and Product Recall Australia Number 2013/13545.*
- (IV) *In June 2014, the USA National Highway Traffic Safety Administration asked 10 vehicle manufacturers, including Toyota, to recall vehicles with Takata airbags in hot and humid regions because of airbag ruptures.*
- (V) *Further particulars will be provided following discovery.*

49. By reason of the matters pleaded in paragraphs 4(d), 4(f), 4(h), 7, 8, 10(b), 10(c), 11 and 12 above, the Defendant engaged in:
- (a) unconscionable conduct in connection with the supply or possible supply of goods to a person in contravention of section 51AB of the TPA; and/or
 - (b) unconscionable conduct in connection with the supply or possibly supply of goods to a person in contravention of section 21 of the ACL.

(Unconscionable Conduct).

50. By reason of the matters pleaded in paragraphs 2, 3 and 49 above, each of the Group Members suffered loss and damage by reason of the Unconscionable Conduct.

Particulars of loss and damage

The Particulars to paragraph 33 above are repeated.

51. By reason of the matters pleaded in paragraphs 49 and 50 above, Group Members are entitled to recover from the Defendant:

- (a) an order pursuant to section 87 of the TPA and/or section 237 of the ACL that the Defendant is obliged to compensate any Group Member who transfers their Defective Vehicle to it by paying to any such Group Member the purchase price of the Defective Vehicle, together with the amount of any out of pocket expenses of the kind referred to in the particulars to paragraph 16 above;
- (b) further or in the alternative, the loss or damage referred to in paragraph 50 above pursuant to section 82 of the TPA and/or section 236 of the ACL.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Janine Cottini

Capacity

Solicitor on the record

Date of signature

10 November 2017

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address Supreme Court of NSW
 Law Courts Building
 184 Phillip Street
 SYDNEY NSW 2000

Postal address GPO Box 3
 SYDNEY NSW 2001

AFFIDAVIT VERIFYING

Name Louise Haselhurst
 Address 34 Fountain Ave, Croydon Park NSW 2133
 Occupation Cleaner
 Date 10 November 2017
 Telephone (02) 9146 3548

I say on oath:

- 1 I am the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.



SWORN at CROYDON PARK

Signature of deponent

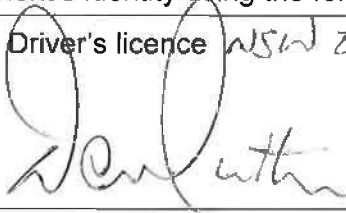
Name of witness Damian Scattini
 Address of witness Level 15, 111 Elizabeth Street, Sydney NSW 2000
 Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

Driver's licence NSW 2039 787 544

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name Louise Haselhurst
Address 34 Fountain Ave,
Croydon Park, NSW 2133

Legal representative for plaintiff

Name Damian Scattini
Practising certificate number 83237
Firm Quinn Emanuel Urquhart & Sullivan
Address Level 15, 111 Elizabeth Street,
Sydney NSW 2000

Telephone 02 9146 3500
Fax 02 9146 3600
Email damianscattini@quinnemanuel.com
Electronic service address damianscattini@quinnemanuel.com

DETAILS ABOUT DEFENDANT**Defendant**

Name **Toyota Motor Corporation Australia Limited**
ABN 64 009 686 097
Address 155 Bertie Street
Port Melbourne, Victoria 3207

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