

ATGM Notice

Important Legal Notice

Takata Airbag Class Action against Toyota

This notice relates only to certain individuals who owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice PRA 2020/18579 issued in September 2020.

If you do not/did not own a vehicle affected by recall PRA 2020/18579, you should visit the general settlement notice at www.airbagclassaction.com.

1. Summary

This notice contains important information about the rights of a certain subgroup of group members to Toyota Proceedings (defined below), including the **right to opt out** of the Toyota Proceedings and **rights relating to a proposed settlement** that has been reached between the parties to the Takata Airbag Class Actions (defined below).

Who does this notice relate to? This notice **ONLY** relates to you if, as of 27 February 2018, you owned or leased a recalled Toyota Corolla vehicle (Model Years 2003-2005) fitted with a Takata airbag/s that was subject to recall notice PRA 2020/18579 issued on 29 September 2020. If you fall within this subgroup of group members to the Toyota Proceedings, you should **read this notice carefully as it contains important information that may affect your legal rights**. If you do not understand this notice or you have any questions, you should contact the lawyers for the plaintiff in the Toyota Proceedings, Quinn Emanuel, or seek independent legal advice. The Court is not able to answer questions about the proposed settlement.

Defined terms:

In this notice:

“**Takata Airbag Class Actions**” refers collectively to the separate class action proceedings filed in the Supreme Court of New South Wales in relation to approximately 2 million Toyota (including Lexus), Subaru, Honda, BMW, Nissan and Mazda branded vehicles on behalf of consumers affected by Takata airbag recalls.

“**Toyota Proceedings**” refers to a subset of the Takata Airbag Class Actions filed in relation to Toyota and Lexus branded vehicles only.

RIGHT TO OPT OUT

Group members of the Toyota Proceedings whose vehicles were subject to PRA 2020/18579 issued on 29 September 2020 have the right to **opt out** of the Toyota Proceedings. Information about your right to opt out appears at section 8 of this notice.

PROPOSED SETTLEMENT

A proposed settlement has been reached in respect of the Takata Airbags Class Actions for **\$52 million**.

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The parties to the Takata Airbag Class Actions intend to shortly apply to the Court for approval of that settlement on behalf of the plaintiffs and group members (who have not exercised their right to opt out). If the Court approves the settlement, eligible group members will be entitled to receive a settlement payment from the approved settlement sum after deduction of legal fees, administration costs and litigation funder's remuneration.

WHAT GROUP MEMBERS NEED TO DO

If you are a group member whose vehicles were subject to PRA 2020/18579 and want to:

(a) **opt out**, you must do so before **4:00pm AEDT on 18 February 2022**. Instructions about how to opt out appear at section 8 below.; or

(b) **claim a settlement payment**, you must **register before 4:00pm AEDT on 18 February 2022**. Instructions about how to register appear at section 7 below.

If you fail to register before the deadline and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment and (b) any rights you may have in relation to the circumstances giving rise to the Toyota Proceedings.

CONTACT DETAILS

You can contact Quinn Emanuel for further information at takata@quinnemanuel.com

2. What are the Toyota Proceedings about?

In summary, the plaintiff alleges that, in importing, marketing and supplying certain Toyota and Lexus vehicles fitted with specific Takata airbag/s in Australia, the defendant:

- (a) failed to comply with the merchantable quality guarantee in the *Trade Practices Act 1974* (Cth) or acceptable quality guarantee in the Australian Consumer Law;
- (b) engaged in misleading or deceptive conduct; and
- (c) engaged in unconscionable conduct,

as a result of which the plaintiff says that group members suffered economic loss, including out of pocket expenses.

The defendant denies these allegations.

The key court documents filed in the Toyota Proceedings can be found here: https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

3. Overview of proposed settlement

Before the proposed settlement can take effect, it must be approved by the Supreme Court of New South Wales.

Under the proposed settlement and with no admissions as to liability, the defendants will pay \$52 million (**settlement sum**) to settle the Takata Airbag Class Actions inclusive of legal costs, expenses, disbursements, interest and any funding commission approved by the Court.

As part of the proposed settlement:

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- (a) Regency intends to seek orders from the Court that it be paid \$13 million out of the settlement sum for funding the six separate representative proceedings (comprising the Takata Airbag Class Actions), being 25% of the settlement sum (see **section 5**) ;
- (b) the plaintiffs intend to seek an order for reimbursement of the reasonable legal costs incurred in the Takata Airbag Class Actions, estimated at approximately \$15,300,000 (see **section 6**);
- (c) the plaintiffs intend to apply to the Court for an order that the costs of administering the settlement be payable from the settlement sum (see **section 6**); and
- (d) the plaintiffs intend to apply to the Court for an order that they each be paid an amount of \$20,000.00 as reimbursement for the time and expenses incurred in their role as lead representatives in the Takata Airbag Class Actions.

It is proposed that the amounts set out above be deducted from the settlement sum prior to distribution of compensation to eligible group members. The effect of this is that the Court-approved funding commission and legal costs will be shared on a pro-rata basis by all eligible group members.

4. What settlement payment will you be entitled to?

The amount of the settlement payment to be paid to each individual group member cannot be determined at this stage as it will depend on a number of factors, including the amount of legal fees and the funding commission ultimately approved by the Court to be paid from the settlement sum, and how many group members register to take part in the proposed settlement. Group member eligibility will be assessed in accordance with the court-approved scheme for determining group member entitlements (**settlement scheme**). If approved by the Court, the amount paid in respect of each eligible vehicle will be the same for the Takata Airbag Class Actions, regardless of brand or model of vehicle.

5. Payment to litigation funder

The plaintiff in the proceeding is funded by a litigation funder, Regency Funding Pty Ltd (**Regency**). Regency intends to apply to the Court for an order for Regency to be paid \$13 million, being 25% of the settlement sum, or a lesser amount that the Court considers to be just. The purpose of this type of order (known as a 'common fund order') is to compensate Regency for funding the Takata Airbag Class Actions. The Court will decide whether it considers a 'common fund order' to be appropriate and, if so, the amount to be paid to Regency. This amount will be deducted from the settlement sum, prior to settlement payments being distributed to eligible group members.

6. Will Group Members be liable for legal costs?

The plaintiff intends to apply to the Court for an order having the effect that the costs that the plaintiff has incurred (and will incur) in conducting the Takata Airbag Class Actions for the benefit of all group members will be paid out of the overall settlement sum. This will include the costs of administering the settlement scheme (see **section 4**).

The plaintiff estimates that the total costs that will be incurred in conducting the six Takata Airbag Class Actions, from the beginning of each proceeding up to the end of distribution of the settlement sum to all eligible group members, will be approximately **\$15,300,000**. This figure includes costs already incurred and estimated future costs relating to the settlement approval and management of the settlement scheme, and is subject to review by an independent costs expert. The Court will be

asked to approve the payment of legal costs from the overall settlement sum. Group members are not responsible for any out of pocket costs.

Group members do not need to pay any out of pocket costs to register for a settlement payment.

7. What Group Members must do

In a class action, the plaintiff does not need to seek the consent of group members to commence a claim on their behalf. Group members can cease to be a member, however, by opting out of the class action. The deadline to opt out of the Toyota Proceedings is **4:00pm AEDT on 18 February 2022** (the **Opt Out Deadline**). Unless you opt out before this deadline, you will be bound by any outcome reached in the Takata Airbag Class Actions, which includes the Toyota Proceedings.

If you are a group member of the Toyota Proceedings with a vehicle that was subject to PRA 2020/18579, there are four **(4)** options you must consider:

Option 1: If you support the proposed settlement and wish to be eligible for a settlement payment you **must** register your interest to participate in the settlement by completing and submitting a registration form online at **www.airbagclassaction.com**, or by requesting a PDF copy by emailing the Settlement Administrator at **info@airbagclassaction.com** and returning a completed form to the Administrator by email. The deadline to register is **4:00pm AEDT on 18 February 2022**.

Registrations received after 4:00pm AEDT on 18 February 2022 will not be accepted.

Option 2: If you oppose **any** of the terms of the proposed settlement and wish to object then you must complete the “**Notice of Objection**” which appears at **Schedule A** to this Notice. The deadline to object to the proposed settlement is **4:00pm AEDT on 18 February 2022**.

Please note: Even if you do object to the settlement, but wish to receive a settlement payment if the settlement is approved, you should still register in accordance with Option 1 in case your objection is overruled and the settlement takes effect.

Option 3: Do nothing in response to this notice. If you do not register by **4:00pm AEDT on 18 February 2022** and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment and (b) any rights, including any rights to a settlement payment, you may have in relation to the circumstances giving rise to the Toyota Proceedings.

Option 4: If you do not wish to be part of the Toyota Proceedings, you should submit an “Opt Out Notice” to the Sydney Registry of the Supreme Court of New South Wales. If you are a group member and you do not submit an Opt Out Notice, you will be bound by the proposed settlement.

A copy of the “**Opt Out Notice**” appears at **Schedule B** to this Notice. The Opt Out Notice can also be accessed here:

https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

Questions? Visit www.airbagclassaction.com

8. What is an Opt Out?

As set out in section 7 above, in a class action, the plaintiff does not need to seek the consent of group members to commence a claim on their behalf. Group members can cease to be a member, however, by opting out. An Opt Out process has already been run for the majority of group members to the Takata Airbag Class Actions. However, group members with vehicles that were subject to recall notice PRA 2020/18579 were not previously notified of the right to Opt Out. The Court has therefore ordered that group members whose vehicles were subject to recall notice PRA 2020/18579 are entitled to Opt Out of the Toyota Proceedings by the Opt Out Deadline of **4:00pm AEDT on 18 February 2022**.

Accordingly, if you do not wish to remain as a group member in the Toyota Proceedings (and therefore preserve your right to pursue a separate claim against Toyota), you must opt out of the class action by completing and submitting an “**Opt Out Notice**” (set out at **Schedule B** to this Notice) to the Sydney Registry of the NSW Supreme Court before the Opt Out Deadline.

If you opt out of the Toyota Proceedings:

- (a) you will not be permitted to participate in the distribution of any damages awarded or the proposed settlement in the Takata Airbag Class Actions referred to above; and
- (b) you will be able to commence separate legal proceedings in relation to the matters the subject of the Toyota Proceedings on your own behalf if you so wish.

Opt Out Notices must be submitted directly to the Sydney Registry of the NSW Supreme Court in hard copy (at the address appearing on the Opt Out Notice) before the **Opt Out Deadline**.

Opt Out Notices received after **4:00pm AEDT on 18 February 2022** will not be accepted, and you will remain as a group member in the Toyota Proceedings and be bound by any judgment or settlement entered in relation to the Toyota Proceedings.

9. Court approval hearing

The Court will hold a public hearing to decide whether the settlement is fair and reasonable and in the interests of group members. The hearing will be held at the **Supreme Court of New South Wales, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney, NSW 2000**. It is not necessary for group members to attend this hearing in order to receive a settlement payment, but group members may attend if they wish and can contact Quinn Emanuel for details of when the hearing will take place.

You have a right to apply to be heard on the question of whether approval of the settlement should be granted. As noted above, if you wish to object you must complete the Notice of Objection appearing at Schedule A to this notice, and send a copy of that form to Quinn Emanuel by **4:00pm AEDT on 18 February 2022**. If you object to the settlement being approved, you or your lawyer may also present your position to the Court at the hearing where the Court will decide whether to approve the settlement.

If the Court approves the settlement, the settlement will be binding on all group members and will extinguish the claims of all group members (including all claims arising from or related to any circumstance or allegation giving rise to or referred to in the Takata Airbag Class Actions).

10. What happens if the settlement is not approved?

If the proposed settlement is not approved by the Court, the Takata Airbag Class Actions, which includes the Toyota Proceedings will continue and there will be no distribution of monies to group members unless the plaintiff is successful in the proceeding, or a further settlement is reached.

11. Affected vehicle models

The affected vehicle models in the Toyota Proceedings to which this notice applies is set out below:

| Make | Models |
|--------|---|
| Toyota | <u>Passenger side airbag inflator recalls</u> : ZZE122 (MY2003-2005); ZZE123 (MY2003-2005); |

IMPORTANT REMINDER REGARDING THE TAKATA AIRBAG RECALL

The Toyota Proceedings are **not** a means for group members to get their recalled Takata airbags replaced. If you have a vehicle that has been recalled because it is fitted with a Takata Airbag(s) and you have not had the airbag(s) replaced, please urgently contact the manufacturer or your closest authorised dealer.

Getting your airbag replaced in accordance with the recall will not affect your ability to participate in the Toyota Proceedings.

If you are unsure whether your vehicle is affected, you can check by entering your Vehicle Identification Number (VIN) at:

Toyota <https://www.toyota.com.au/recalls>

Takata Airbag Class Actions

2017/00340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited

2017/00353017 Kimley Whisson v Subaru (Aust) Pty Limited

2017/00378526 Akuratiya Kularathne v Honda Australia Pty Limited

2018/00009555 Owen Brewster v BMW Australia Ltd

2018/00009565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited

2018/00042244 Camilla Coates v Mazda Australia Pty Limited,

(together, the **Takata Airbag Class Actions**).

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

The person identified below:

- 1. is a group member in the Takata Airbag Class Actions; and
- 2. wishes to object to the proposed settlement of the Takata Airbag Class Actions.

A. Details of Objector

Name:

Telephone number:

Postal address:

Email address:

VIN:

Date vehicle purchased:

Do you still own your vehicle (yes/no)

If you no longer own your vehicle, date vehicle was disposed of:

Signed:

Date:

(If not the named group member, please state the relationship to the named group member:

.....

B. Grounds of objection

My objection to the proposed settlement is for the following reasons *[set out in the space below any submissions you wish to make, attach additional pages if necessary]*:

C. Evidence and submissions

Any group member who has provided written notice of an objection to the proposed settlement and/or any aspect of the proposed distribution of the settlement sum, including the proposed costs sharing order, and who wishes to rely on:

- (a) any evidence in support of their objection; and/or;
- (b) any written submissions in support of their objection (in addition to those submissions referred to at paragraph B above),

must serve on Quinn Emanuel that evidence and/or submissions (together with this completed form) by no later than **4:00pm AEDT on 18 February 2022**.

D. Attendance at settlement approval hearing

I intend to appear before the Court at the hearing.

[If you intend to appear, please complete the following]:

I will appear on my own behalf

I will be represented by a lawyer: Name and contact email of lawyer:

.....

I do not intend to appear, but wish for my submissions to be considered in my absence

The group member has also registered as a group member: Yes / No (circle one)

The group member has read the “Notes for Objectors” below: Yes / No (circle one)

Notes for Objectors: By the Court’s orders made on 13 September 2021, Objectors are required to deliver to Quinn Emanuel a completed copy of this form together with any written submissions and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed settlement by **4:00pm AEDT on 18 February 2022**.

OPT OUT NOTICE

COURT DETAILS

| | |
|-------------|----------------------------------|
| Court | Supreme Court of New South Wales |
| Division | Equity |
| List | General (Class Action) |
| Registry | Sydney Registry |
| Case number | 2017/00340824 |

TITLE OF PROCEEDINGS

| | |
|-----------|---|
| Plaintiff | Louise Haselhurst |
| Defendant | Toyota Motor Corporation Australia Limited |

FILING DETAILS

| | |
|--------------------------------|---|
| Filed for | [name] , person opting out of representative proceedings |
| Legal representative | [solicitor] [firm] |
| Legal representative reference | [reference number] |
| Contact name and telephone | [name] [telephone] |
| Contact email | [email address] |

OPT OUT NOTICE

Name of person opting out
Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

Signature of or on behalf of
person opting out if not legally
represented

Capacity

[eg solicitor, authorised officer of person opting out,
person opting out]

Date of signature

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members file this form in the registry of the court at the address below.

REGISTRY ADDRESS

| | |
|----------------|--|
| Street address | Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000 |
| Postal address | Supreme Court of NSW GPO Box 3 Sydney NSW 2001 |
| Telephone | 1300 679 272 |