

CONSENT ORDER

COURT DETAILS

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

TITLE OF PROCEEDINGS

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

PREPARATION DETAILS

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

TERMS OF ORDER MADE BY THE COURT BY CONSENT

- 1 Access be granted to all parties in this proceeding, and all parties in the following proceedings (jointly, the **Takata Proceedings**):
 - a) 2017/00353017 Kimley Whisson v Subaru (Aust) Pty Limited;
 - b) 2017/00378526 Akuratiya Kularathne v Honda Australia Pty Limited;
 - c) 2018/00009555 Owen Brewster v BMW Australia Limited;
 - d) 2018/00009565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited;
 - e) 2018/00042244 Camilla Coates v Mazda Australia Pty Limited;
 - f) 2018/00322648 Philip Dwyer v Volkswagen Group Australia Pty Limited t/a Volkswagen Australia,

in relation to the documents produced in accordance with the Subpoena to Produce addressed to the Australian Competition and Consumer Commission (**Disclosing Party**), filed and served by the Plaintiff on 9 September 2020 on the conditions set out in orders 2 to 15 below.

Confidentiality Regime

- 2 Until further order by the Court or other written agreement by the Disclosing Party, access to and use of any documents (**Confidential Documents**) and the information contained in the documents (**Confidential Information**) produced by the Disclosing Party and provided to a party (**Receiving Party**) for use in the Takata Proceedings are subject to this Confidentiality Regime and are restricted as follows.
- 3 Subject to further order, for the sole purpose of the Takata Proceedings, access to the Confidential Documents and the Confidential Information produced pursuant to order 1 shall be limited to the Court and to any of the following persons who have executed an undertaking in the form of Annexure A (**Authorised Person**) and delivered same to the Disclosing Party:
 - a) (**External Solicitors**) any legal professional, paralegal, and other law firm personnel, employees and contractors who are not employees of a party but who are engaged to represent or advise a party in the Takata Proceedings (other than barristers);
 - b) (**In-House Solicitors**) any legal professional, paralegal, other legal department personnel and compliance department personnel who are employees of a party in the Takata Proceedings and to whom disclosure is reasonably necessary for the Takata Proceedings;
 - c) (**Experts**) any person who has been retained by a party to serve as an expert witness or as a consultant in the conduct of the Takata Proceedings, to whom disclosure is reasonably necessary for the Takata Proceedings, provided that any report created by such person relying on or incorporating Confidential Documents or Confidential Information in whole or in part shall be treated in accordance with the terms of these orders;
 - d) any mediator or arbitrator or special referee engaged by the parties to the Takata Proceedings or appointed by the Court;
 - e) support staff for External Solicitors, barristers, Experts and any mediators or

arbitrators or special referees to whom disclosure is reasonably necessary for the conduct of the Proceeding.

4 Subject to any order of the Court, the Disclosing Party agrees to keep confidential and not disclose the identity of any person who has executed an undertaking in the form of Annexure A.

5 Any Confidential Document will:

- a) in the case of any electronic documents, be electronically secured so that access is limited to Authorised Persons in accordance with this Confidentiality Regime; and
- b) in the case of any hard copy document, be stored securely in accordance with order 8(b) of this Confidentiality Regime.

6 Except with the prior written consent of the Disclosing Party, Confidential Documents and the Confidential Information produced pursuant to order 1 will not be used or disclosed other than in accordance with this Confidentiality Regime.

7 Authorised Persons will not disclose the Confidential Documents or the Confidential Information to any person other than the Court or an Authorised Person who has executed an undertaking in the form of Annexure A, except as by Order of the Court.

8 The Authorised Persons must:

- a) maintain the confidential nature of the Confidential Documents and the Confidential Information, and in particular, not use, disclose or divulge the Confidential Documents or the Confidential Information other than in accordance with the terms of this Confidentiality Regime; and
- b) establish and maintain effective measures to safeguard the Confidential Documents and the Confidential Information from unauthorised access, use, copying or disclosure.

9 If any Confidential Information or Confidential Document is to be placed before the Court, whether by way of exhibit (e.g., to an affidavit) or by tender or otherwise, then prior to doing so, the Authorised Person will take all reasonable steps to request that the Court make an order preserving the confidentiality of the document or information to the effect that:

- a) the Confidential Documents or Confidential Information to be used or disclosed be dealt with on a confidential basis, consistent with the terms of this Confidentiality Regime; and

- b) any further use or disclosure of the Confidential Documents or Confidential Information by the Court be limited to communications between the Court and the Authorised Persons.
- 10 Nothing in this Confidentiality Regime will prevent an Authorised Person from preparing an Expert report for use in the Proceedings which annexes or contains Confidential Documents or Confidential Information.
- 11 Nothing in this Confidentiality Regime requires an Authorised Person to take any steps which would limit the evidence that is brought on behalf of a party to the Takata Proceedings.
- 12 Subject to order 13, within 21 days after either any settlement or final conclusion of the Proceedings or any appeal thereof, or expiry of the period within which any judgment made in the Proceedings may be appealed (whichever is the latter), each Authorised Person must, upon receipt of a written request from the Disclosing Party and unless otherwise required by law, take reasonable steps to:
- (a) ensure any electronic copies of the Confidential Documents or Confidential Information (including from document management systems and document management databases); and (b) destroy or return to the Disclosing Party all hard copies of any Confidential Documents or Confidential Information.
- 13 Each Authorised Person may retain a copy of any Confidential Document as part of their client file arising from the conduct of the Takata Proceedings solely for internal document retention purposes. This copy will be kept secure and otherwise subject to this Confidentiality Regime.
- 14 Within 28 days after either any settlement or final conclusion of the Proceedings or any appeal thereof, or expiry of the period within which any judgment made in the Proceedings may be appealed (whichever is the latter), each Authorised Person must, upon receipt of a written request by the Disclosing Party, take reasonable steps to provide written confirmation to the Disclosing Party of compliance with order 12.
- 15 The restrictions in this undertaking shall not apply if, and to the extent that, the Confidential Documents or the Confidential Information are in, or enter, the public domain, other than as a breach of this Confidentiality Regime.
- 16 For the sole purpose of the Takata Proceedings, barristers engaged to represent or advise a party in the Takata Proceedings may access the Confidential Documents, without the requirement to execute an undertaking, on the terms set out in orders 5,

6, 7, 8, 9, 12, 13 and 14.

SIGNATURES

Plaintiff

Louise Haselhurst, Plaintiff consents.

Signature of legal representative



Capacity: Solicitor

Date of signature: 4 December 2020

Disclosing Party

The Australian Competition and Consumer Commission consents.

Signature of legal representative



Capacity: Solicitor

Date of signature 4 December 2020

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date made or given

Date entered

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

ANNEXURE A: UNDERTAKING**COURT DETAILS**

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UNDERTAKING**UNDERTAKING IN RELATION TO CONFIDENTIAL DOCUMENTS**

TO: The Court and to the Disclosing Party.

I, of [insert company name and address], undertake to act in accordance with the attached Orders of..... made on..... 2020

Name:	
Signed:	
Position:	
Company:	
Date:	