



TOYOTA DEALER FINANCE (FLEX COMMISSIONS) CLASS ACTION

Belinda Jenner
Tracey Leigh Hepi & Anor v Toyota Finance Australia Limited
Supreme Court of Victoria

Case: S ECI 2023 02581

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CLASS ACTION SUMMARY AND FUNDING INFORMATION STATEMENT

1. What is a class action?

Where seven or more people have claims that arise out of similar circumstances, a class action can be brought by one plaintiff on their own behalf and representing others.

2. Who is the Toyota Dealer Finance (Flex Commissions) Class Action against, and what is the claim for?

The claim is against Toyota Finance Australia Limited (ACN 002 435 181) concerning "Flex Commission" arrangements with car dealers. These arrangements allowed car dealers at the point of sale to set the interest rates offered to consumers on Toyota Finance Australia car loans (including loans issued by Toyota Finance Australia's divisions, such as Lexus Financial Services and PowerTorque Finance). The higher the interest rate, the higher the commission paid by the lender to the dealer.

The claim alleges that certain features of the Flex Commission arrangements were unfair to consumers who paid higher interest rates on their Toyota Finance Australia car loans than would otherwise have been the case. It is claimed in the class action that Toyota Finance Australia are responsible for the arrangements and that they should pay compensation to consumers (or "group members") for the loss they suffered as a result.

3. Who is a group member in the Toyota Dealer Finance (Flex Commissions) Class Action?

You may be a group member if you:

- (a) entered into a finance agreement for the purchase of a car issued under Toyota Finance Australia's credit licence facilitated by a Toyota Finance Australia car dealer in which a Flex Commission was paid to the dealer;
- (b) in the period between 1 January 2010 to 31 October 2018.

A complete definition of group members is available in [Part A.1. of the Generally Indorsed Writhe Amended Statement of Claim](#).

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

Echo Law.

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

The role of the lead plaintiff is to be the representative for the class. They will give instructions to Echo Law regarding the conduct of the case and may give evidence during the proceeding. In hearing the lead plaintiff's case, the Court will be asked to make findings in relation to questions of fact and/or law that are common to all group members. In this case, Ms Tracy Hepi and Mr Eru Hepi (~~the Proposed Plaintiffs~~) are

~~seeking to be substituted for the current plaintiff into the representative role~~ are the lead plaintiffs (the **Plaintiffs**).

6. Are there any other class actions that relate to Toyota Finance Australia's car loan practices?

Echo Law is unaware of any other filed class action as at the date of filing this ~~class action document~~ that relates to Toyota Finance Australia's ~~car loan~~ Flex Commission practices.

A separate proceeding is being conducted by the Plaintiffs against Toyota Finance Australia and Aioi Nissay Dowa Insurance Company Australia Pty Ltd (**ADICA**). This proceeding relates to the sale of Toyota branded add-on insurance which was sold with, or added onto, car loans through car dealerships. That proceeding is *Tracey Hepi and Eru Hepi v Toyota Finance Australia Limited & Anor* (S ECI 2024 05243) (**Toyota Add-on Insurance Class Action**).

7. How is the Toyota Dealer Finance (Flex Commissions) Class Action funded?

The ~~Proposed~~ Plaintiffs in the Toyota Dealer Finance (Flex Commission) class action are not able to pay their "own costs", provide any security for costs or pay any substantial order for adverse costs that might be made in the course of the class action.

For that reason, the ~~Proposed~~ Plaintiffs have made agreements with their solicitors, Echo Law, and a commercial litigation funder, LLS Australia Funding Pty Ltd (**LLS**).

Under those agreements:

- (a) Echo Law will charge for its work on the class action, according to the time reasonably expended in performing the work;
- (b) LLS will pay 75% of the solicitor's time-based charges, plus all of the expenses properly incurred in the proceeding (such as barristers' fees, witness costs and Court fees);
- (c) LLS will indemnify the ~~Proposed~~ Plaintiffs (and group members who participate) against liability for any adverse costs order made against them by the Court;
- (d) LLS have or will obtain after-the-event insurance (**ATE Insurance**) to:
 - i. provide the ~~Proposed~~ Plaintiffs and group members with additional protection against the risk of adverse costs; and
 - ii. assist the ~~Proposed~~ Plaintiffs to provide security for the defendant's costs.
- (e) if the class action is unsuccessful, Echo Law will not be entitled to the remaining 25% of its fees incurred, and LLS will not be able to recover its costs or any remuneration; but
- (f) if a settlement of claims covered by the class action, or a judgment, results in compensation being payable to the plaintiffs and group members, then the ~~Proposed~~ Plaintiffs, Echo Law and LLS will seek orders from the Court that, before the compensation is paid to the group members:
 - i. a portion of the compensation be used to pay Echo Law's remaining

25% of its fees, plus an “uplift” of 25% which is only applied to that remaining 25% amount; and

- ii. a further portion of the compensation be used to reimburse LLS for the expenses it incurred, and to remunerate it for having carried the financial risk of the litigation.

The court will decide whether or not to make any orders sought by the **Proposed** Plaintiffs, Echo Law or LLS.

8. What success fee will LLS be paid?

If there is a successful outcome (such as a settlement that is approved by the Court or a judgment by the Court awarding damages to group members), under its funding agreement LLS is entitled to recover the following:

- (a) the legal costs and disbursements LLS have paid during the course of the proceeding, including any upfront insurance premiums relating to ATE Insurance, any adverse costs and security for costs (including the cost of any deeds of indemnity purchased from ATE insurers);
- (b) any other insurance premiums under any ATE Insurance policy; and
- (c) a funding commission that is a percentage of any gross proceeds (that is, the amount of resolution proceeds before deducting the above amounts), ~~to be set by the Court at the time of the successful outcome as set out in the funding agreement. The amount of the funding commission contained in the funding agreement varies between 25% to 30% of any gross proceeds, depending on when a successful outcome occurs.~~ This is to be paid as remuneration for LLS having carried the financial risk that enabled the class action to be run to a successful conclusion.

Before any of the above amounts can be deducted from any resolution sum, those amounts must first be approved by the Court. The **Proposed** Plaintiffs will also seek a Common Fund Order so that all group members will contribute to the costs and the funding commission without having to enter into any funding agreement with LLS.

The Court will decide whether or not to make any order remunerating LLS, including whether any percentage of the compensation to group members should be paid to LLS. The **Proposed** Plaintiffs’ own agreement with LLS provides for a remuneration rate depending on factors identified in the funding agreement. That funding agreement also provides for further increases in the remuneration rate to LLS in certain circumstances, such as if there is an appeal or additional defendants are added to the class action.

9. Changes to the funding arrangements

If there are material changes to the funding arrangements for the Toyota Dealer Finance (Flex Commissions) Class Action, notices about the changes will be sent to group members.

10. What happens if there is not a successful outcome?

If there is not a successful outcome, LLS will pay any adverse costs orders that are made. The **Proposed** Plaintiffs and group members will not be asked to pay Echo Law’s costs or disbursements. LLS will not seek and are not entitled to recover from

group members any costs they have paid in relation to the case.

The ~~Proposed~~ Plaintiffs and group members will never be 'out of pocket' whether or not the proceeding has a successful outcome.

11. Are group members liable for costs?

The class action rules in the Supreme Court make clear that group members cannot be ordered to pay any costs in relation to a class action, other than by having a portion of any eventual compensation deducted at the end of the action, and used to reimburse or remunerate the plaintiffs, their solicitors and the funder in the manner described above.

In rare situations, a group member might choose to play an active role in a particular hearing during the course of a class action. The class action rules provide that such a group member might be liable for costs incurred by other parties in relation to the particular hearing. This is rare however, and if it becomes relevant to any group member in the Toyota Dealer Finance (Flex Commissions) Class Action, further information will be given to the group member(s) involved before they make any such choice.

12. Who can group members contact for further information about the case?

For further information about the Toyota Dealer Finance (Flex Commissions) Class Action, group members may contact Echo Law, at no out of pocket cost, via the following methods:

Email enquiries@echolaw.com.au

Phone 1800 571 241

Website <https://www.echolaw.com.au/home/#contact>

Post Toyota Dealer Finance (Flex Commissions) Class Action
Echo Law
Level 2, 533 Little Lonsdale Street
Melbourne VIC 3000