

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

S ECI 2023 01521

BETWEEN:

JAMES KENDALL MCCOY

Plaintiff

- and -

HINO MOTORS LTD

First Defendant

HINO MOTOR SALES AUSTRALIA PTY LTD (ACN 064 989 724) Second Defendant

ORDER

JUDGE: The Honourable Justice Delany

DATE MADE: 18 July 2025

ORIGINATING PROCESS: Writ filed on 17 April 2023

HOW OBTAINED: At hearing of summons dated 17 February 2025

ATTENDANCE: Mr D Barnett with Mr L Moretti, counsel for the plaintiff

Mr G Rich SC with Ms C Winnett and Ms L Mills, counsel for the defendants

Mr W A D Edwards KC with Mr D J Fahey, counsel for the intervenor

OTHER MATTERS: A. At the hearing on 18 July 2025, the parties were advised that the Court intends to appoint a contradictor in relation to the question of whether there should be an variation to the Group Costs Order made by the Honourable Justice Osborne on 15 December 2023 pursuant to s 33ZDA(3) of the *Supreme Court Act 1986* (Vic) ('Act').



- B. Counsel for the plaintiff and the defendants will confer and by **12:00pm** on **21 July 2025** and provide by email to the Associates to the Honourable Justice Delany a list of five senior counsel or experienced junior counsel (together with short CVs and rates) for the Court's consideration.
- C. The directions hearing provided for in paragraph 18 of this Order is anticipated to occur after the appointment of the contradictor and is for the purpose of giving directions concerning the consideration of any variation.

THE COURT ORDERS THAT:

1. Pursuant to ss 33V and/or 33ZF of the *Act*, the settlement of the proceeding be approved on the terms set out in:
 - (a) the deed of settlement entered into between the parties and dated 14 February 2025 ('Deed'); and
 - (b) the plaintiff's proposed Settlement Distribution Scheme, being the proposed scheme for the allocation of the settlement monies ('Scheme').
2. Pursuant to s33J(3) of the *Act*, extend the period within which [REDACTED] [REDACTED] being group members, may opt out of the proceeding to **11 May 2025**.
3. Pursuant to s 33ZF of the *Act*, the Court authorises the plaintiff, *nunc pro tunc* for and on behalf of persons who:
 - (a) meet the definition of Group Member in paragraph 1 of the Writ filed on 17 April 2023; and
 - (b) who did not opt out of the proceeding under s 33J of the *Act* in accordance with:
 - i. paragraphs 1 and 11 to 14 of the Order dated 12 March 2025; and
 - ii. paragraph 2 above,(all such persons being 'Bound Group Members'), to enter into and give effect to the Deed.
4. Pursuant to ss 33ZB and 33ZF of the *Act*, all Bound Group Members are affected and bound by the settlement of the proceeding approved in paragraph 1 above.
5. The statement of claim be dismissed with no finding of liability against the defendants.
6. No order as to the costs of the proceeding.



7. All outstanding costs orders in the proceeding be vacated.

Settlement Distribution Scheme

8. Pursuant to ss 33V(2) and/or 33ZF of the Act or otherwise, Maurice Blackburn be appointed administrator of the Scheme ('Scheme Administrator') and is to act in accordance with the Scheme, subject to any direction of the Court, and be given the powers and immunities contemplated by the Scheme.
9. Pursuant to ss 33V(2) and/or 33ZF of the Act, for the purposes of the Scheme, the following distributions from the Settlement Distribution Fund (as defined in the Scheme) be approved:
- (a) the plaintiff Reimbursement Payment in the amount of \$20,000;
 - (b) the Group Costs Order in an amount to be determined by the Court, which amount shall not be more than \$21,450,000; and
 - (c) Administration Costs up to a maximum amount of \$2,785,244.55.
10. The Scheme Administrator is to provide a report to the Court every 6 months from the date of these orders, to advise the Court of the performance of the settlement (including any steps in the Scheme), including the costs incurred and the distributions made during that period.
11. Within 12 weeks of all distributions having been made under the Scheme, the Scheme Administrator is to file a final report with the Court outlining:
- (a) the distributions to Eligible Group Members (as defined in the Scheme) under the Scheme;
 - (b) the time taken for distributions to be made;
 - (c) the amount of costs and disbursements incurred by the Scheme Administrator;
 - (d) if portions of the settlement sum were unclaimed by Eligible Group Members, what amounts were unclaimed and what, if anything, has been done with those amounts.
12. The Scheme Administrator has liberty to apply in relation to any matter arising under the Scheme.

Late Registration

13. By no later than **4:00pm on 25 July 2025**, any unregistered group members who have not registered their claims in the proceeding, but wish to participate in the proposed settlement of the Hino Class Action), must submit to Maurice Blackburn at hino@mauriceblackburn.com.au
- (a) an affidavit in support of their application for late registration; and
 - (b) may submit written submissions of no more than 2 pages outlining the reasons they did not register by 2 May 2025 ('class deadline').



14. Any applications for late registration received after the deadline in paragraph 13 will not be considered by the Court.

Confidential materials

15. Pursuant to s 18(1)(a) of the *Open Courts Act 2013* (Vic):

(a) the information contained in the following materials not be published or disclosed without the prior leave of the Court to any person or entity other than the plaintiff and his legal advisers, CF FLA Australia Investments 3 Pty Ptd ('CF3') and their legal advisers, the contradictor to be appointed by the Court, and the Court:

- i. the redacted parts of the report of Ms Kerrie Rosati dated 13 June 2025 (as contained at pages 256 to 295 of exhibit LST-3 to the second affidavit of Lee Scott Taylor affirmed 27 June 2025);
- ii. the third affidavit of Lee Scott Taylor affirmed 27 June 2025 (including pages 20-54, 84-349 and 420-425 of exhibit LST-4 to that affidavit but not the other pages of that exhibit);
- iii. the redacted parts of the fourth affidavit of Lee Scott Taylor affirmed 27 June 2025;
- iv. the redacted parts of the plaintiff's submissions dated 27 June 2025;
- v. the redacted parts of Maurice Blackburn's submissions as intervener dated 27 June 2025; and
- vi. the redacted parts of the plaintiff's supplementary submissions dated 15 July 2025; and

(b) the information contained in the following materials not be published or disclosed without the prior leave of the Court to any person or entity other than the plaintiff and his legal advisers, the defendants and their legal advisers, CF3 and their legal advisers and the Court:

- i. exhibit LST-6 to the fifth affidavit of Lee Scott Taylor affirmed 15 July 2025;

(c) The following materials filed by the defendants in the proceeding:

- i. the whole of paragraphs 7 to 13, 27, 33, 34, 36, 37(a), 40, 44 to 60 of the affidavit of Gregory John Williams sworn 13 June 2025 ('First Williams Affidavit');
- ii. the last sentence of each of paragraphs 31 and 32 of the First Williams Affidavit;
- iii. pages 17 to 167 and 281 to 287 of Exhibit GJW-1 to the First Williams Affidavit;



iv. exhibits GJW-2, GJW-3 and GJW-4 to the First Williams Affidavit; and

v. paragraphs 4 to 15 of the outline of submissions filed by the defendants on 13 June 2025,

are confidential and shall not be published or disclosed without prior leave of the Court to any person or entity other than the plaintiff and his legal representatives, the defendants and their legal representatives, Maurice Blackburn as intervener and its legal representatives, the contradictor appointed by the Court and the Court.

16. The proceeding is listed for a directions hearing on **24 July 2025** at **10:00am** before Justice Delany.
17. The plaintiff and the defendants are not required to appear at the directions hearing listed on 24 July 2025 and are excused from further participation in the proceeding until further order.

DATE AUTHENTICATED: 18 July 2025



The Hon. Justice Delany

SCHEDULE OF PARTIES

JAMES MCCOY

Plaintiff

- and -

HINO MOTORS LTD

First Defendant

HINO MOTOR SALES AUSTRALIA PTY LTD
(ACN 064 989 724)

Second Defendant