



HIGH COURT OF AUSTRALIA

6 November 2024

KENNETH JOHN WILLIAM & ANOR v TOYOTA MOTOR CORPORATION
AUSTRALIA LIMITED (ACN 009 686 097)
[2024] HCA 38

Today, the High Court allowed an appeal (and dismissed another) from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned the proper construction of s 272(1)(a) of the *Australian Consumer Law* ("the ACL").

Kenneth John Williams and Direct Claim Services Qld Pty Ltd ("the Williams parties") brought representative proceedings against Toyota Motor Corporation Australia Limited ("Toyota") on behalf of persons who, between 1 October 2015 and 23 April 2020, acquired certain motor vehicles with a defective diesel exhaust after-treatment system ("the core defect"). The vehicles had a propensity to experience one or more "defect consequences" that "substantially interfere[d] with [their] normal use and operation". These included excessive white smoke and foul-smelling exhaust, the need for inspections, services or repairs, an increase in fuel consumption and a decrease in fuel economy. After several attempts to fix the core defect, an effective repair became "available" in May 2020 free of charge.

The primary judge found that, at the time of supply, the vehicles did not comply with the guarantee of "acceptable quality" provided for in s 54(1) of the ACL. Section 271(1) of the ACL provides that if the guarantee under s 54 is not complied with, "an affected person in relation to the goods may ... recover damages from the manufacturer". Section 272(1)(a) of ACL provides that "an affected person in relation to goods is entitled to recover damages for ... any reduction in the value of the goods, resulting from the failure to comply with the guarantee to which the action relates". The primary judge held that an assessment of damages under s 272(1)(a) was to be made at the time of supply and information acquired thereafter could only be considered if it bore upon the "true value" of the relevant vehicle at the time of its supply, which did not include knowledge of the availability of the repair in 2020, more than four years after the core defect was detected. On appeal, the Full Court held that an assessment of damages under s 272(1)(a) is "concerned with compensation for loss or damage" and may require a departure from the time of supply or an adjustment to avoid "over-compensation" and to reflect the "intrinsic" or "utilisation" value of the relevant goods. The Full Court held that as a repair of the core defect was available at the time of trial, the availability and timing of that repair should be considered in assessing damages. The Williams parties and Toyota were each granted special leave to appeal from the Full Court's decision.

The High Court allowed the appeal from the Williams parties and dismissed the appeal from Toyota. The Court held that the assessment of damages to be made under s 272(1)(a) is of the amount by which the value of the goods is reduced at the time of supply to the consumer as a result of the failure to comply with the guarantee of acceptable quality at that time. The assessment is undertaken having regard to what is known at the time of trial about the "state and condition of the goods" at the time of supply, which includes the effectiveness, cost, inconvenience and timing of any repair of a defect in the goods. As neither the primary judge nor the Full Court assessed the damages payable under s 272(1)(a) in accordance with this approach, the proceedings were remitted to the primary judge to undertake that task in accordance with the High Court's reasons.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.