

**TRADE PRACTICES ACT 1974**  
**AND**  
**COMPETITION AND CONSUMER ACT 2010**

Undertaking to the Australian Competition and Consumer Commission

given for the purposes of section 87B

by

Toyota Motor Corporation Australia Limited

ACN 009 686 097

**PERSONS GIVING THIS UNDERTAKING**

1. This undertaking (“**Undertaking**”) is given to the Australian Competition and Consumer Commission (the “**ACCC**”) by Toyota Motor Corporation Australia Limited, ACN 009 686 097 (“**Toyota Australia**”) of 155 Bertie Street, Port Melbourne, in the State of Victoria, for the purposes of:
  - (a) Section 87B of the *Trade Practices Act 1974* (the “**TPA**”), as applied by item 6 of schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010*, for conduct engaged in prior to 1 January 2011; and
  - (b) Section 87B of the *Competition and Consumer Act 2010* (the “**CCA**”) for conduct engaged in from 1 January 2011.

**BACKGROUND**

2. Toyota Australia is a leading Australian manufacturer, distributor and exporter of motor vehicles.
3. Most sales by Toyota Australia of vehicles in Australia are made through Toyota dealerships (“**Toyota dealerships**”). Toyota dealerships are independent franchises, except for one dealership which is operated by a wholly owned subsidiary of Toyota Australia. Toyota Australia also makes direct sales to fleet and government customers.
4. Toyota Australia undertakes its own marketing to promote its product and brand to private, fleet and government customers through a number of media, including point of sale, brochures, traditional media (television, press and radio) and the internet, including on its corporate website at [www.toyota.com.au](http://www.toyota.com.au) (“**Website**”). Each Toyota dealership also undertakes its own marketing, including traditional media, point of sale and the internet.
5. From at least 2005 to 2009, Toyota Australia’s advertising and promotional material relating to several models of its vehicles included:
  - (a) descriptions of vehicle interior upholstery as “leather” or “all leather” when the relevant interior upholstery was only partially leather; and

- (b) descriptions of the upholstery of particular components within the vehicle (such as, for example, seats) as “leather” when in a number of cases the upholstery of those components was not leather, or was partially leather,

(the “**Pre-2009 Representations**”). The vehicle models known by Toyota Australia to have been the subject of the Pre-2009 Representations are the Camry, Aurion, Prado and Kluger models listed in Attachment A.

- 6. During 2009, Toyota Australia progressively amended all of its advertising and promotional material for all vehicle models containing leather, so as to refer to vehicle interior upholstery or the upholstery of particular components using the phrases “leather accents” and “leather accented” instead of “*leather*”, regardless of whether the relevant interior upholstery or component was partially or fully leather (the “**Post-2009 Representations**”).
- 7. The ACCC is concerned that, as a result of Toyota Australia making the Pre-2009 Representations, consumers were likely to have been misled into believing that the entire interior upholstery of the relevant vehicles, or the entire upholstery of the relevant components, as applicable, were made of leather when they were not.
- 8. The ACCC considers that, by making the Pre-2009 Representations, Toyota Australia has engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of sections 52, 53(a) and/or 55 of the TPA.
- 9. Further, the ACCC is concerned that, despite the adoption by Toyota Australia of the Post-2009 Representations in its advertising and promotional material, a number of Toyota dealerships continued to represent to consumers that the entire interior upholstery of the relevant vehicles the subject of the Post-2009 Representations, or the entire upholstery of the components the subject of those representations, as applicable, were made of leather when at least some of them were not.
- 10. The ACCC considers that, by not accurately communicating the Post-2009 Representations, Toyota dealerships and Toyota Australia may have engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of sections 52, 53(a) and/or 55 of the TPA, and/or sections 18, 29(1)(a) and 33 of the Australian Consumer Law (“**ACL**”), being Schedule 2 to the CCA, for conduct engaged in from 1 January 2011.

#### ADMISSION

- 11. Toyota Australia admits that by making the Pre-2009 Representations as outlined in paragraph 5 above, Toyota Australia may have engaged in conduct that was misleading or deceptive, or likely to mislead or deceive in contravention of sections 52, 53(a) and/or 55 of the TPA.
- 12. Further, Toyota Australia acknowledges the concerns of the ACCC regarding the communication of the Post-2009 Representations to consumers.
- 13. In response to the ACCC’s concerns, Toyota Australia has:
  - (a) cooperated with the ACCC in its enquiries;

- (b) agreed to provide further clarification in its advertising and promotional material in respect of the Post-2009 Representations in accordance with this undertaking; and
- (c) offered the ACCC this undertaking in relation to both the Pre-2009 Representations and the Post-2009 Representations to resolve this matter.

## **COMMENCEMENT OF UNDERTAKING**

- 14. This undertaking comes into effect when the following two conditions are met:
  - (a) the undertaking is executed by Toyota Australia; and
  - (b) the ACCC accepts the undertaking so executed.
- 15. Upon the commencement of this undertaking, Toyota Australia undertakes to assume the obligations set out in paragraphs 16 to 24 below.

## **UNDERTAKING**

### **Use of the word “leather” in advertising and promotional material**

- 16. For the purposes of section 87B of the TPA and section 87B of the CCA, Toyota Australia undertakes that:
  - (a) commencing as soon as possible, and in any event within 21 days from the commencement of this undertaking, it will not use the word “leather” (without the word “accents” or “accented”) on any advertising and promotional material to describe the upholstery on any interior component of any of its vehicles, unless Toyota Australia is able to demonstrate that that component is entirely upholstered in leather and has no synthetic upholstery content;
  - (b) commencing as soon as possible, and in any event within:
    - (i) five months of the commencement of this undertaking, in respect of all vehicle models offered for sale by Toyota Australia as at the date of giving this undertaking; and
    - (ii) six weeks after the launch in Australia of a new vehicle model, in respect of any vehicle models first offered for sale by Toyota Australia after the giving of this undertaking,

it will not use the phrases “leather accents” or “leather accented” on any advertising and promotional material to describe the upholstery on any interior component of any of its vehicles, unless details of the leather, partial leather and non-leather interior components of the vehicle have been provided on the website referred to in paragraph 17 below.
- 17. For the purposes of section 87B of the TPA and section 87B of the CCA, Toyota Australia undertakes that it will, at its own expense, within 21 days of the date of this undertaking coming into effect, publish or cause to be published a dedicated web page, prominently linked from the Toyota Australia Website homepage, that provides consumers with detail of the meaning of the phrases “leather accents” and “leather accented” in the context of the upholstery on any interior component of Toyota Australia vehicles.

## **Corrective Notices**

### ***Printed Media Corrective Notice***

18. For the purposes of section 87B of the TPA and section 87B of the CCA, Toyota Australia undertakes that it will, at its own expense, within 21 days of the date of this undertaking coming into effect, cause to be published a corrective notice in the form and terms of **Annexure B** to this undertaking, subject only to such variations as may be agreed to by the ACCC in writing, in each of the Daily Telegraph (NSW), Herald Sun (Vic), Courier Mail (Qld), The Advertiser (SA), The West Australian (WA), The Mercury (Tas), NT News (NT) and Canberra Times (ACT), ("**Printed Media Corrective Notice**") and use its best endeavours to ensure that such notice:
- (a) is published within the first 15 pages of the general news section of the newspaper;
  - (b) is of a size at least 20cm high by 11cm wide;
  - (c) has a black banner with a height of 10mm placed at the top with uppercase in 14 point bold Times New Roman white font and centred with the words 'CORRECTIVE NOTICE';
  - (d) has a heading in 11 point underlined Times New Roman black font and left justified;
  - (e) includes the Toyota logos in colour and at least 20mm high as referred to in Annexure B; and
  - (f) has baseline text in at least 8 point Times New Roman black font and centred.
19. Within 21 days of the publication of the Printed Media Corrective Notice in each publication referred to in paragraph 18 above, Toyota Australia undertakes that it will, at its own expense, provide to the ACCC a copy of the Printed Media Corrective Notice together with details of publication, including the name of the publication, the date of publication and the page number on which the Printed Media Corrective Notice was published.

### ***Website Corrective Notice***

20. For the purposes of section 87B of the TPA and section 87B of the CCA, Toyota Australia undertakes that it will, at its own expense, within 14 days of the date of this undertaking coming into effect, cause to be published a corrective notice in the form and terms of **Annexure B** to this undertaking, subject only to such variations as may be agreed to by the ACCC in writing, on its Website ("**Website Corrective Notice**") and use its best endeavours to ensure that such notice:
- (a) is maintained on the Website for a period of at least 90 consecutive days;

- (b) is accessible by a prominent one-click hyper-link displayed in the top third of the homepage of the Website entitled 'CORRECTIVE NOTICE' with the following minimum specifications:
  - (i) The words 'CORRECTIVE NOTICE' to be in 18 point, bold, black, times new roman font on a white background, centred and in a bordered box;
  - (ii) The words 'Click here for further information' to be in 14 point, black, Times New Roman font on a white background and centred below the words 'CORRECTIVE NOTICE' in the same bordered box;
  - (iii) The bordered box to be at least 255 pixels wide by 60 pixels high; and
  - (iv) The bordered box and its contents, including white space, is to operate in the form of a one-click hyper-link to the Website Corrective Notice;
- (c) is at least 540 pixels wide by 500 pixels high;
- (d) has a banner at the top with the words "Corrective Notice" appearing in the centre in not less than 14 point white font on a black background;
- (e) is legible and in black Times New Roman font on a white background and justified left unless otherwise stated;
- (f) displays the body of the text in at least 10 point font;
- (g) has a border in black and 3 pixels wide;
- (h) displays the TOYOTA logo in colour, centred and at least 60 pixels high;
- (i) is displayed on a stand-alone webpage that is coded in standard "HTML" format;
- (j) is not displayed as a 'pop-up' or 'pop-under' window, and
- (k) refers to the ACCC website ([www.accc.gov.au](http://www.accc.gov.au)) in the form of a hyperlink to that website.

21. Within 14 days of publication of the Website Corrective Notice referred to in paragraph 20 above, Toyota Australia undertakes that it will, at its own expense, provide to the ACCC a copy of the Website Corrective Notice together with details of publication, including the date of publication and the URL of the page on which the Website Corrective Notice is published.

#### **In-store Corrective Notice**

22. For the purposes of section 87B of the TPA and section 87B of the CCA, Toyota Australia undertakes that it will, at its own expense, within 21 days of the date of this undertaking coming into effect, cause to be prepared a sign in the form and terms of **Annexure B** to this undertaking, subject only to such variations as may be agreed to by the ACCC in writing, ("**In-store Corrective Notice**") and use its best endeavours to:

- (a) provide each Toyota dealership with two copies of the In-store Corrective Notice;

- (b) instruct each franchised Toyota dealership (in writing) to display the In-store Corrective Notice in a prominent position at the reception desk and in the vehicle display areas at each Toyota dealership, for a period of at least 60 consecutive days;
  - (c) ensure that the Toyota dealership operated by Toyota Australia's wholly owned subsidiary displays the In-store Corrective Notice in a prominent position at the reception desk and in the vehicle display areas, for a period of at least 60 consecutive days;
  - (d) ensure that the In-store Corrective Notice has a bold type heading in at least 28 type and the body of the notice is in a type not less than 12 points in Times New Roman font;
  - (e) ensure that the In-store Corrective Notice is laminated and at least A4 in size (210 mm x 297 mm).
23. Within 21 days of publication, Toyota Australia will, at its own expense, provide to the ACCC a copy of the In-store Corrective Notice with details of publication, including the specific locations at which the In-store Corrective Notices were placed and the date(s) on which the In-Store Corrective Notices were put in place.

#### **Supplementary Compliance Program**

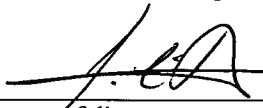
24. For the purposes of section 87B of the TPA and section 87B of the CCA, Toyota Australia undertakes to, at its own expense, implement (and maintain for a period of 3 years from the commencement of this Undertaking) a supplementary compliance program, as an additional part of Toyota Australia's existing ongoing TPA/CCA compliance program, in accordance with the requirements set out in **Annexure C** to this undertaking, being a program designed to:
- (a) ensure that Toyota dealerships and consumers understand that vehicle interiors and/or upholstered interior components described by reference to the terms "leather accents" or "leather accented" may have leather and non-leather elements;
  - (b) minimise the risk of any misunderstanding by consumers of the leather and non-leather content of upholstery in interiors and/or upholstered interior components;
  - (c) minimise the risk of any misstatement by Toyota dealerships in relation to the leather and non-leather components of the upholstery of interiors and/or upholstered interior components, including by an audit process; and
  - (d) ensure that records are kept of the details of the leather and non-leather components of interiors and/or upholstered interior components and that this information is available to Toyota dealerships and the public.

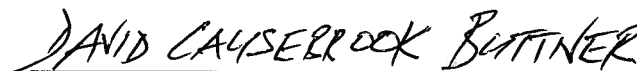
#### **Acknowledgements**


25. Toyota Australia acknowledges that:
- (a) the ACCC will make this undertaking publicly available, including by publishing it on the ACCC's public register of section 87B undertakings on its website;

- (b) the ACCC will, from time to time, make public reference to this undertaking, including in news media statements and in ACCC publications;
- (c) this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- (d) a summary of the supplementary compliance program review reports referred to in Annexure C of this undertaking may be held with this undertaking in the public register.

**Executed by Toyota Motor Corporation  
Australia Limited** in accordance with  
section 127 of the Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Full name of director

  
\_\_\_\_\_  
Signature of company secretary/~~director~~

  
\_\_\_\_\_  
Full name of company secretary/~~director~~

This.....7th.....day of.....January.....2013.

**Accepted by the Australian Competition and Consumer Commission pursuant to  
section 87B of the *Trade Practices Act 1974* and Section 87B of the *Competition and  
Consumer Act 2010*.**

  
.....

Rodney Graham Sims

Chairman

This.....31st.....day of.....January.....2013.

**ANNEXURE A**  
**LIST OF RELEVANT VEHICLES**

**Camry**

- Altise Limited
- Ateva
- Grande
- Azura
- Sportivo
- Altise Sport
- Ateva "L" Special Edition
- Touring

**Aurion**

- Touring SE
- Prodigy
- Presara
- Sportivo SX6
- Sportivo ZR6
- TRD

**Prado**

- VX
- Grande
- GXL

**Kluger**

- CVX
- Grande
- KXS 7 Seat
- Grande 7 Seat



## ANNEXURE B

### CORRECTIVE NOTICE

#### **Misleading representations regarding leather interior upholstery**

The Australian Competition and Consumer Commission (“ACCC”) has advised Toyota Australia that it is concerned that consumers were likely to have been misled to believe that the interior components of certain Toyota vehicles were upholstered entirely in leather when that was not the case, in contravention of the Trade Practices Act 1974 (“TPA”).

Between at least 2005 and 2009, Toyota Australia represented in advertising and promotional material that certain models of its Prado, Kluger, Camry and Aurion vehicles had leather upholstery on the upholstered interior components. The upholstered interior components of these vehicles were not wholly leather but contained some leather and some synthetic material.

As a result of the ACCC’s concerns, Toyota Australia admits that by making the above representations Toyota Australia may have engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of sections 52, 53(a) and/or 55 of the TPA.

The ACCC has accepted a court-enforceable undertaking from Toyota Australia (available at [www.accc.gov.au](http://www.accc.gov.au)). The undertaking requires Toyota Australia to publish this corrective notice, to provide Toyota dealerships with details of the leather and non-leather upholstered interior components of its vehicles, and to implement a supplementary compliance program to ensure that this kind of conduct does not occur again.

A list of the relevant models of Prado, Kluger, Camry and Aurion vehicles currently known by Toyota to have been the subject of the above representations is available at [www.toyota.com.au](http://www.toyota.com.au) or at any Toyota dealership.

If you believe you have been affected by the conduct outlined above, please contact Toyota on the Toyota Customer Experience Centre on 1800 063 323.



This Corrective Notice has been paid for by Toyota Australia pursuant to an undertaking accepted by the ACCC.

## ANNEXURE C – SUPPLEMENTARY COMPLIANCE PROGRAM

Toyota Australia will implement a supplementary compliance program in relation to the advertisement of interior upholstery on its vehicles (“**supplementary compliance program**”).

It is acknowledged that the supplementary compliance program will be carried out within the framework of Toyota Australia’s existing compliance programs, including the VALID system for the verification of vehicle information.

The supplementary compliance program will commence on the date of commencement of the Undertaking and will consist of, at least, the following features:

### 1. **Compliance Officer**

- (a) Within one month of the Undertaking coming into effect, Toyota Australia will nominate a member of its senior management staff as the Compliance Officer responsible for this supplementary compliance program and will notify the ACCC of that person’s name and contact details within two weeks of their appointment.
- (b) Toyota Australia will notify the ACCC of any change in the identity of the Compliance Officer within two weeks of any such change.
- (c) The Compliance Officer will report to Toyota Australia’s Corporate Compliance Committee on the ongoing effectiveness of the supplementary compliance program as required, but at least biannually from the commencement of the Undertaking.
- (d) The Compliance Officer will report in writing to the ACCC on dates which are three months, six months and one year respectively from the commencement of the supplementary compliance program, and after that date every 12 months for the following two years, giving details of the progress of the supplementary compliance program.

### 2. **Compliance Advisor**

- (a) Toyota Australia will nominate a member of its management staff with experience in Australian consumer law compliance as the Compliance Advisor responsible for conducting a Competition and Consumer Act risk assessment in accordance with paragraphs (i) to (iv) below (“**Risk Assessment**”):
  - (i) identify the areas where Toyota Australia is at risk of breaching sections 18, 29 and 33 of the Australian Consumer Law (“**ACL**”);
  - (ii) assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Toyota Australia should they occur;
  - (iii) identify where there may be gaps in Toyota Australia’s existing procedures for managing these risks; and

- (iv) provide recommendations for action having regard to the assessment.

### **3. Vehicle interior illustrations**

- (a) Vehicle interior illustrations will be produced showing the leather and non-leather content of the interior upholstery of each Toyota vehicle model containing any element of leather upholstery.
- (b) The vehicle interior illustrations will be made available to Toyota Dealers via an online portal accessible by Toyota dealerships, the illustrations to be released progressively as they are produced, with all illustrations to be available no later than five months from the commencement of the supplementary compliance program.
- (c) Copies of the vehicle interior illustrations will be provided to the ACCC within two weeks of their completion.
- (d) Toyota Australia will send a further Dealer Bulletin or bulletins (as appropriate) to all members of its dealer network advising dealers of their obligations in relation to the promotion of vehicle interior upholstery, and the details of the supplementary compliance program.
- (e) Toyota Australia will refer to and use the vehicle interior illustrations in the supplemental training of dealership sales staff referred to below.

### **4. Procedure for checks of vehicle advertising**

The Toyota Australia *Marketing Issues Guide* used by staff to review advertising and marketing material on Toyota Australia's VALID document review system will be revised to improve and update the existing section regarding vehicle interior upholstery. A review will be conducted at regular intervals to ensure its accuracy and currency.

### **5. Training**

- (a) Toyota Australia will conduct annual training for Toyota Australia Sales & Marketing staff at executive levels 1 to 4, which training will specifically deal with the matters raised by sections 18, 29 and 33 of the ACL.
- (b) Toyota Australia will conduct specific education and training for Toyota Dealer sales staff, including:
  - (i) the matters raised by sections 18, 29 and 33 of the ACL;
  - (ii) fact sheets setting out details of vehicle interior upholstery (including the vehicle interior illustrations referred to in paragraph 3) to be used in training of dealer sales staff and made available through the online training application.
  - (iii) specific information about vehicle interior upholstery in all published training materials for dealer sales staff;

- (iv) specific information about vehicle interior upholstery in each training program delivered to dealer sales staff upon the launch of a new vehicle model or upgrade;
- (v) specific assessment of vehicle interior upholstery into “vehicle walk around” training and assessment for dealer sales staff; and
- (vi) inclusion of questions regarding vehicle interior upholstery into written question and answer style assessments of dealer sales staff.

## 6. Complaints and Enquiries

- (a) Within three months from the commencement of the Undertaking, Toyota Australia will ensure that there is a clear mechanism for the handling of complaints (“**complaints handling system**”) relating to vehicle interior upholstery as part of its existing system for dealing with customer complaints and enquiries, including specific complaints in relation to advertising and promotional material and/or the matters raised by sections 18, 29 and 33 of the ACL, through its Customer Experience Centre. In particular, Toyota Australia will ensure that the complaints handling system is capable of:
  - (i) identifying,
  - (ii) classifying,
  - (iii) storing, and where necessary
  - (iv) referring
 internal and external complaints relating to sections 18, 29 and 33 of the ACL.
- (b) Toyota Australia has in place comprehensive whistleblower protection mechanisms under its “TEL Toyota” program to protect those coming forward with complaints (including trade practices complaints) and shall use its best endeavours to ensure that any complaints related to the matters raised by sections 18, 29 and 33 of the ACL are afforded the protection given by those mechanisms.
- (c) Toyota Australia will ensure staff at its Customer Experience Centre are available to respond to enquiries from Toyota dealers and customers regarding the interior upholstery of Toyota vehicles.
- (d) Toyota Australia will provide a supplementary briefing to Customer Experience Centre staff in relation to vehicle interior upholstery and the matters raised by sections 18, 29 and 33 of the ACL, and the matters in Toyota Australia’s undertaking to the ACCC, to enable those staff to respond to enquiries.