



THE TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission for the purposes of Section 87B of the Trade Practices Act 1974

by

Toyota Motor Corporation Australia Limited

ABN 64 009 686 097

Background

- 1 Toyota Motor Corporation Australia Limited (**Toyota**) is a manufacturer and importer of motor vehicles. Toyota sells its products throughout Australia through an independent network of authorised Toyota dealers (**Dealers**).
- 2 On 5 December 2001 Toyota launched the Corolla Levin Wagon (**Levin Wagon**). During the first 2 weeks of February 2002 Toyota also published and distributed to Dealers approximately 35,000 brochure Savers (**Saver**). A Saver is a one page document giving up to 250 vehicle specifications and is supplied by Toyota to Dealers to be provided to customers as appropriate.
- 3 Included in the Levin Wagon Saver is the statement that 'Power front and rear windows' are standard features on the Levin Wagon. In fact at that time the Levin Wagon had front power windows as standard, but the rear windows were manually operated.
- 4 Toyota also advertised the Levin Wagon on its website at <http://www.toyota.com.au/> (**Website**).
- 5 The electronic brochure and details of the Levin Wagon's specifications on the Website also stated that the Levin Wagon had rear power windows as standard during the period from approximately December 2001 to approximately October 2002.
- 6 Toyota detected the Saver and Website errors shortly after distribution of the Saver and all Toyota Dealers were advised by Dealer Bulletin dated 20 February 2002 that:

'Please be advised there is an error on the new Corolla Wagon Saver.

In the features section, the Levin model is listed as coming standard with Power Front & Rear Windows. This is incorrect. The Levin model comes standard with Power Front Windows only.

Please advise relevant personnel immediately.'
- 7 This Dealer Bulletin was issued by Toyota prior to any customer complaints being received.
- 8 During February 2002 amendments were made to the website to remove the representations that the Levin Wagon has rear power windows. However, due to human error, one of three such representations on the website was not corrected until detected in approximately October 2002.

Concerns raised by Commission and Toyota's response

- 9 In a letter dated 22 November 2002 the Australian Competition & Consumer Commission (**Commission**) informed Toyota that it had received a complaint from a person who had purchased a Levin Wagon, in partial reliance on the representations in the Saver and Website that the vehicle had rear power windows.
- 10 Subsequently Toyota identified 5 customers who had complained, either directly to Toyota's Customer Relations Department or to Dealers, regarding the representations in question. Two of these complaints were in relation to Victorian dealerships and one dealership in each of Tasmania, Western Australia and Queensland. Toyota has written to these 5 customers to apologise for the Saver and website error and offered to install rear power windows in their vehicles free of charge. This has occurred for those customers who have accepted this offer.
- 11 Following its investigation the Commission has expressed concern that Toyota may have made false or misleading representations in both the Saver and on the website in contravention of sections 52 and 53(a) of the Trade Practices Act 1974 (**the Act**).
- 12 Following the matter being raised with it by the Commission, Toyota conducted an internal review of its processes for:
- (a) recall of brochures and Savers, and
 - (b) maintaining and correcting the content of its website.
- 13 Following these reviews Toyota has implemented various process changes to ensure that, insofar as is possible, any such documents that contain errors are promptly recalled and destroyed and that website information which is incorrect is promptly corrected and any updated information promptly posted. These reviews remain open to process improvements on an ongoing basis, consistent with Toyota's and its supplier's ongoing commitment to continuous improvement.
- 14 On 28 July 2003 the Commission informed Toyota that it had detected further errors on Toyota's website. These were in the 'Price Your Car' section of the website and were that both the Corolla Conquest Wagon and Levin Wagon were identified as having front power windows as standard, without reference to rear power windows. This was contradicted by other portions of the website that stated the vehicle had front and rear power windows as standard. As front and rear power windows have been standard in both vehicles since approximately 11 April 2003, the representation that the vehicle had only front power windows as standard was incorrect and an under-representation of the vehicles' standard features. This error predated the implementation by Toyota for revised processes for updating information on its website.
- 15 In response to the Commission's having detected errors in the 'Price Your Car' section of the website Toyota closed down 'Price Your Car' pending a review of the accuracy of its content.
- 16 In further response to the Commission's concerns regarding the accuracy of Toyota's website, Toyota offers this undertaking to the Commission.

Commencement of Undertakings

- 17 These Undertakings will come into effect when:
- 17.1 The undertakings are executed by Toyota
 - 17.2 The undertakings so executed are accepted by the Commission

Undertakings

- 18 Toyota will, within 21 days of the Commission accepting this undertaking, write to all those who purchased the Levin Wagon new from Toyota dealers between 1 December 2001 and 31 October 2002 apologising for the brochure/Saver and website error and inviting purchasers to respond to Toyota if they were supplied with the brochure/Saver, or viewed the website representations and acted in reliance upon these representations when purchasing their vehicle.
- 19 Toyota will provide the Commission with a draft of the letter to purchasers in order to allow Commission staff the opportunity to review and provide comment. Toyota will carefully consider any amendments that are provided by Commission staff and will, where it considers appropriate, incorporate such amendments prior to sending the letter to purchasers.
- 20 Toyota will provide the Commission with a copy of the template of the finalised letter sent to purchasers and, within 7 days of sending the letters, will provide the Commission with a written confirmation that the letters have been sent and the total number of recipients.
- 21 Toyota will offer compensation to those purchasers who respond to the apology letter with information that indicates they were misled by the Saver or website representations at the time of vehicle purchase. This compensation will consist of an offer of free Toyota genuine service and/or accessories to the value of \$250.00, or such greater offer of compensation as Toyota, in its absolute discretion, considers fair and appropriate given the circumstances of the claim.
- 22 Toyota will, within 6 months of sending the letter to purchasers, provide the Commission with a written report of the number of purchasers who responded to the apology letter and an overview of the compensation provided to those purchasers. This report will not identify the individual respondent purchasers. The Commission will not disclose any part of that report to any other person or make use of that report except for the purposes of consultation with Toyota.
- 23 Toyota will, within 40 days of the Commission accepting this undertaking, complete a full internal audit of its website in consultation with its external website maintainer and such other consultants as Toyota deems necessary. This will involve, *inter alia*, a physical cross check of actual vehicles against the representations contained in the website and also a check of consistency across all sections of the website.
- 24 Toyota will engage an independent assessor, approved by the Commission, as soon as practicable after completion of the review proposed in paragraph 23 above, and no later than three (3) months from the date of this undertaking. Such independent assessor is to undertake a review of Toyota's processes and procedures for ensuring the accuracy of the description of Toyota vehicles in the website.

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- 25 The purpose of this review is to identify operational improvements that are practical, reasonable and cost-effective (having regard to industry standards) to assist Toyota in its compliance with sections 52 and 53(a) of the Act.
- 26 Toyota will supply the Commission with a copy of the report of this review within 14 days of completion of the review. The Commission will not disclose any part of that report to any other person or make use of that report except for the purposes of consultation with Toyota. The Commission acknowledges that such report will contain information which is highly sensitive and valuable to Toyota and must remain commercial-in-confidence.
- 27 Toyota will consult with the Commission and will implement such changes to its processes as it considers appropriate, reasonable and cost-effective after taking into account both the recommendations of the reviewer's report and the views of the Commission.
- 28 Twelve (12) months after completion of the review proposed in paragraph 23 above, Toyota will conduct a further internal audit of its website in consultation with its external website maintainer. This audit will be based upon a random sample of vehicle models for the purpose of checking the efficacy of the revised processes implemented for updating of the Toyota Website. It will not involve a review of website content beyond those random models selected and for the purpose outlined above.
- 29 Toyota will supply the Commission with a copy of the report of this review within 14 days of completion of the review. The Commission will not disclose any part of that report to any other person or make use of that report except for the purposes of consultation with Toyota. The Commission acknowledges that such report will contain information which is highly sensitive and valuable to Toyota and must remain commercial-in-confidence.
- 30 Toyota will consider the report and may make such changes to its processes and website as it believes to be appropriate, reasonable and cost-effective to assist Toyota in its compliance with sections 52 and 53(a) of the Act. Toyota will advise the Commission of all such further proposed changes.

Application of Undertakings

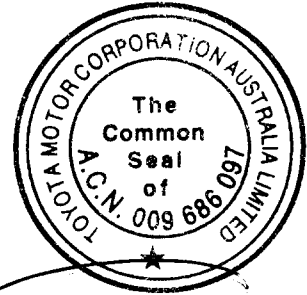
- 31 The application of these undertakings is limited to Toyota only and do not apply in any way to its parent company, subsidiaries or other related bodies corporate.


Acknowledgements

- 32 Toyota acknowledges that the Commission may make this undertaking available for public inspection.
- 33 Toyota acknowledges that the Commission may from time to time publicly refer to this undertaking.

34 Toyota acknowledges that this undertaking by no way derogates from the rights and remedies of any person arising from the alleged conduct.

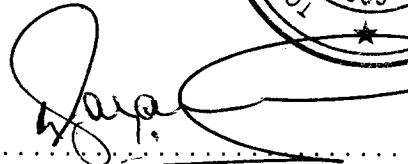
IN WITNESS of these undertakings and its agreement the common seal of **Toyota Motor Corporation Australia Limited** was affixed, witnessed by the following persons:




.....
Signature of authorised person

DIRECTOR
.....
Office held

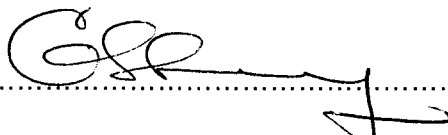
D. C. BUTNER
.....
Name of authorised person (print)


.....
Signature of authorised person

SECRETARY
.....
Office held

J. D. RAYARD
.....
Name of authorised person (print)

Acceptance by the Australian Competition and Consumer Commission
pursuant to section 87B of the Trade Practices Act 1977


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Graeme Samuel
Chairman

20 NOV 2003

[Toyota Letterhead]

[Customer Address]

Dear [insert customer name],

Toyota Corolla Levin Wagon

Our records indicate that you purchased a Toyota Corolla Levin wagon between December 2001 and October 2002. We hope that you are enjoying your vehicle and thank you for deciding to purchase a Toyota.

It has come to Toyota's attention that between the dates above, some of our brochure savers and a part of our website indicated that the Corolla Levin Wagon had rear power windows as standard specification. This was not then the case. The Australian Competition & Consumer Commission (ACCC) has also raised concerns directly with Toyota regarding this occurrence.

Toyota offers its sincere apologies to you in relation to this inaccurate description of this aspect of the Corolla Levin Wagon's specifications. It is regrettable and arose as a result of human error. We trust that most of our customers had the opportunity to see the vehicle prior to purchase and to discuss specifications with dealer sales representatives and therefore any incorrect impressions were corrected.

However, if you relied upon this inaccurate information at the time of purchasing your vehicle, Toyota invites you to:

1. advise us of the details of the Toyota marketing materials you viewed; and
2. advise us how the inaccurate information in that material influenced you in your decision to purchase the Corolla Levin Wagon.

Please use the reply paid envelope enclosed with this letter to respond to Toyota by no later than **[date (give 3 weeks to respond)]**. Please note that Toyota may wish to disclose part or all of your response to the ACCC by report, so for Privacy Act reasons, please state either your consent or refusal to this disclosure in your response.

If you wish to discuss this letter or require further assistance, please do not hesitate to contact our Free call Customer Support Line on **1800 643 714**.

Thank you again for being a valued Toyota customer.

Yours sincerely