

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Toyota Motor Corporation Australia Limited ACN 009 686 097

1. Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Toyota Motor Corporation Australia Limited (**Toyota Australia**) for the purposes of section 87B of the Competition and Consumer Act 2010 (**CCA**).

2. Background

- 2.1 The Australian Consumer Law (ACL) commenced on 1 January 2011 and contains statutory guarantees in Division 1 of Part 3-2 which provides consumers with a basic, guaranteed level of protection for goods and services which they acquire (**Statutory Consumer Guarantees**). The Statutory Consumer Guarantees cannot be excluded, restricted or modified. Consumers who are supplied with goods or services that fail to meet the consumer guarantees are entitled to remedies under Part 5-4 of the ACL.

ACCC concerns about the new car industry

- 2.2 The ACCC and other consumer protection agencies receive a large number of complaints each year relating to motor vehicles. Generally, around 20% of complaints received by the ACCC about consumer guarantee issues concern motor vehicles.
- 2.3 Given this level of complaints, the ACCC has for several years prioritised its work on consumer issues in new car retailing, including responses by car manufacturers and new car dealers to consumer guarantee claims.
- 2.4 Most car manufacturers provide consumers with a warranty with the purchase of a new car (**Manufacturer's Warranties**). Manufacturer's Warranties provide specific rights and obligations which are separate, and in addition to, the Statutory Consumer Guarantees.
- 2.5 The ACCC considers that car manufacturers' policies and procedures, including consumer redress systems and compliance programs, are generally focused on Manufacturer's Warranties, rather than consumers' entitlements arising from the Statutory Consumer Guarantees.

Misrepresentations about statutory consumer guarantees

- 2.6 The ACCC is concerned that some car manufacturers and new car dealers may make false or misleading representations to consumers about their statutory rights under the ACL in relation to:
- (a) the circumstances in which the Statutory Consumer Guarantees apply;
 - (b) the remedies available to consumers when a car does not meet the Statutory Consumer Guarantees; and
 - (c) the interaction between the Statutory Consumer Guarantees and Manufacturer's Warranties.

3. Toyota Australia

- 3.1 Toyota Australia imports, markets, sells and services motor vehicles and related components, parts and accessories in Australia. Toyota Australia distributes all vehicles via its dealer network. Toyota Australia provides a Manufacturer's Warranty (the "Toyota Warranty Advantage") to consumers at the time they purchase a new Toyota car. The term of the Toyota Warranty Advantage is five years with unlimited kilometres for domestic vehicles and five years or 120,000 kilometres for vehicles used in commercial applications. Full terms and conditions of the Toyota Warranty Advantage are available at

Toyota Australia's website.

- 3.2 The ACCC has received a number of complaints about the way in which Toyota Australia and its dealers have assessed claims about Toyota vehicle faults.
- 3.3 Between June 2015 and June 2018, Toyota Australia supplied vehicles fitted with 2.4L or 2.8L diesel engines to Australian consumers. These vehicles were fitted with a Diesel Particulate Filter (DPF) designed to capture particulate matter and transform it into carbon dioxide and water vapour through a process referred to as regeneration.
- 3.4 During 2016, Toyota Australia first became aware that vehicles were presenting to Toyota dealers with issues, being:
 - (a) emission of excessive white smoke from the vehicle; and
 - (b) soot accumulation in the DPF, resulting in:
 - (i) the display of warning messages by the vehicle; or
 - (ii) in some instances, the vehicle entering 'limp mode', in which the vehicle is prevented from going into fifth gear or more and the driver will experience gear "shift shudder", to encourage the driver to proceed cautiously and seek assistance, (**DPF Issues**).
- 3.5 During 2017 and early 2018, Toyota Australia investigated the DPF issues and consumers experiencing DPF issues were typically instructed to take their vehicles to a Toyota Dealer for repair under warranty. The ACCC received several complaints from consumers who experienced multiple repairs which did not remedy the DPF issues occurring with their vehicles.
- 3.6 From June 2018, Toyota Australia progressively implemented measures, including software updates that significantly reduced the occurrence of DPF issues in new vehicles. These measures were rolled out to existing vehicles from October 2018. In 2019 Toyota Australia established a DPF consumer redress program to review requests for refunds and replacement vehicles made by consumers who experienced DPF issues.
- 3.7 Toyota Australia has also implemented a review of, and improvements to, its Consumer Law Compliance Program and the Consumer Law compliance training provided to relevant Toyota Australia staff and Toyota Dealers.
- 3.8 Toyota Australia acknowledges the ACCC's concerns that:
 - (a) representations to consumers about the interaction of the Statutory Consumer Guarantees and the Manufacturer's Warranties can be misleading and internal processes should be maintained that ensure consumers are informed of, and able to easily access, their legal rights under the Statutory Consumer Guarantees; and
 - (b) failure to inform consumers regarding mechanical issues with their vehicles (or issues with repairs) may be misleading.
- 3.9 To address these concerns, Toyota Australia has offered this Undertaking to the ACCC.
- 3.10 This Undertaking applies to Toyota Australia's activities in relation to Toyota vehicles.

4. Commencement of this undertaking

- 4.1 This Undertaking comes into effect when:
 - (a) this Undertaking is executed by Toyota Australia; and
 - (b) this Undertaking so executed is accepted by the ACCC.
- 4.2 Upon the commencement of this Undertaking, Toyota Australia undertakes to assume the obligations set out in clause 5 below, for the purposes of section 87B of the CCA, for a period of 3 years.

5. Undertaking

- 5.1 Toyota Australia provides the undertakings set out below for the purposes of section 87B of the CCA and

undertakes to implement these commitments, including by advising dealers and relevant staff of any changes to processes.

Complaints Handling

- 5.2 Toyota Australia undertakes that within 6 months of the date of this Undertaking, Toyota Australia will complete its review of its systems and procedures for dealing with customer complaints, including a review of Toyota Australia's policies regarding repair and scripts provided to Guest Experience Centre representatives, and make any further changes necessary to ensure that:
- (a) consumers are able to access replacement vehicles or refunds where there has been a major failure;
 - (b) consideration of customers' rights under, and arising from, the Statutory Consumer Guarantees is embedded into Toyota Australia's systems and procedures for handling customer complaints with the objective of ensuring that consumers are not denied remedies they are entitled to arising from the Statutory Consumer Guarantees; and
 - (c) customers who have requested a refund or replacement vehicle are advised in writing of the outcome of their request, and, where applicable, of the reason that a remedy sought by the customer has not been agreed by Toyota Australia.

Letter to Consumers

- 5.3 Toyota Australia undertakes that within 120 days of the date of this Undertaking, Toyota Australia will ensure that all customers who purchase a new Toyota vehicle from a Toyota dealer receive a letter from Toyota Australia which advises them of their rights in relation to the Statutory Consumer Guarantees. These letters will be sent to new consumers within 30 days of the date of purchase or provided to consumers on the date of delivery of the vehicle.

Manufacturing defects and technical problems

- 5.4 Toyota Australia undertakes that within 6 months of the date of this Undertaking, Toyota Australia will supplement its existing online vehicle identification number (VIN) lookup, located at <https://toyotamanuals.com.au/#/service-bulletins>, by providing further VIN lookup facilities (at that website or an equivalent website) so that, in addition to details of applicable safety recalls, which are currently accessible, consumers who enter the VIN of their vehicle using this site will also be able to access details of customer service campaigns that are current and applicable to the vehicle.

Monitoring compliance

- 5.5 Toyota Australia undertakes that within 60 days of the date of this Undertaking, Toyota Australia will implement a program to monitor compliance with this Undertaking by means of:
- (a) a review of a sample of 10 customer complaints received per month; and
 - (b) a mystery shopping program whereby point of sale information provided by dealers to consumers about their entitlements under the ACL is tested through replicating the consumer experience, without disclosing that the mystery shopping exercise is being carried out;
 - (c) the mystery shopping exercises are to be carried out at a variety of locations each month, or by telephone or electronic means where government regulations in connection with COVID-19 prevent site attendance;
 - (d) the mystery shopping exercises are to include consideration of any documents and/or materials provided by the dealer, or visible at the dealership, concerning consumer rights.

Independent review

- 5.6 Toyota Australia undertakes to involve an independent expert or experts, with suitable experience in

consumer law, in the following:

- (a) the review of its complaints handling processes referred to in clause 5.2;
- (b) the implementation of the mystery shopping program and monitoring of compliance with this Undertaking referred to in clause 5.5;
- (c) the Annual review referred to in clause 5.7;
- (d) the preparation of the update referred to in clause 5.8; and
- (e) any review of Toyota Australia's Consumer Law Compliance Program during the period that the Undertaking is in effect.

Annual review

- 5.7 Toyota Australia undertakes that for the duration of this Undertaking it will appoint an officer responsible for conducting an annual review of the commitments made in this undertaking and that responsible officer will report to the Risk and Compliance Committee on the effectiveness and implementation of the commitments in ensuring ACL compliance. That report will form part of the Risk and Compliance Committee update to the Board.

Annual reporting

- 5.8 Toyota Australia undertakes that for the duration of this Undertaking it will provide an annual report to the ACCC, prepared with the involvement of the independent expert, with respect to its compliance with the Undertaking.

ACCC inquiries

- 5.9 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries with Toyota Australia in respect of compliance with this Undertaking and Toyota Australia will respond to such inquiries within a reasonable period of time

6. Acknowledgements

- 6.1 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 may, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Toyota Motor Corporation Australia Limited ACN 009 686 097 pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director		Signature of director
		
Name of director (print)		Name of director (print)
Matthew Callchor		Tetsuo Mori
Date 30/11/2020		Date 30/11/2020

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

2nd December 2020

Date

and signed on behalf of the Commission:



Chair

2nd December 2020

Date