



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD1210/2019

KENNETH JOHN WILLIAMS
Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)
Respondent

ORDER

JUDGE: JUSTICE LEE
DATE OF ORDER: 19 January 2021
WHERE MADE: Sydney

THE COURT ORDERS THAT:

Pleadings

1. The applicant is granted leave to file and serve the proposed form of Further Amended Originating Application and Further Amended Statement of Claim served by the applicant on 14 January 2021 by 20 January 2021.
2. The respondent is to file and serve any defence to the Further Amended Statement of Claim by 15 February 2021.

Further Information and Interrogatories

3. Pursuant to s 37P(2) of the *Federal Court of Australia Act 1976* (Cth) (**Act**), by 4.00pm on 12 February 2021, the respondent is to provide to the applicant the information set out in Annexure A to this Order.
4. By 4.00pm on 12 February 2021, the respondent is to provide written and verified answers to the interrogatories set out in Annexure B to this Order in accordance with r 21.03 of the *Federal Court Rules 2011* (Cth) (**Rules**).

Subpoenas

5. Pursuant to r 24.01 of the Rules, the applicant is granted leave to issue subpoenas:



- a. to the Toyota dealerships which are identified in the letter from the respondent's solicitors to the applicant's solicitors pursuant to Order 4 above in the form set out in Annexure C to this Order; and
- b. to the following auction houses in the form set out in Annexure D to this Order:
 - i. Pickles Auctions Pty Limited t/as "Pickles Auctions";
 - ii. Cox Automotive Australia Pty Ltd t/as "Manheim Auctions Australia Pty Ltd"; and
 - iii. S.M.A. Motors Pty Limited.

Supplementary Reference

6. Pursuant to s 33ZF and/or 37P(2) and/or s 54A of the Act:
 - a. the questions set out in Annexure E to this Order (**Supplementary Questions**) be referred to Mr David Garrett (**Referee**) for the purposes of the Referee conducting an inquiry into the Supplementary Questions (**Supplementary Reference**) and to make a report in writing to the Court on the Supplementary Questions stating, with reasons, the Referee's opinion on the Supplementary Questions (**Supplementary Report**);
 - b. the reference is to commence by 27 January 2021, or on such other date as ordered by the Referee;
 - c. by 4.00pm on 12 February 2021, each party is to provide to the Referee and to the other party:
 - i. a list of the categories of documents which the party contends the Referee should call for production as part of the Supplementary Reference (**Proposed Reference Documents**); and
 - ii. a brief written explanation (not exceeding 3 pages) as to why the Proposed Reference Documents are directly relevant to the issues to be determined by the Supplementary Reference;
 - d. by 4.00pm on 19 February 2021, each party is to indicate in writing to the Referee and to the other party its position in respect of the other party's Proposed Reference Documents (such document not to exceed 3 pages);



- e. by 4.00pm on 26 February 2021, the Referee is to notify the parties in writing which of the Proposed Reference Documents he requires for the Supplementary Reference (**Required Reference Documents**);
- f. by 4.00pm on 12 March 2021, the parties are to:
 - i. provide to Counsel Assisting and to the other party, the Required Reference Documents within their possession, custody or control; and
 - ii. send to the other party's solicitors a letter identifying any classes of Required Reference Documents withheld from production on the basis of a claim for privilege and explaining the basis of the asserted privilege;
- g. by 4.00pm on 9 April 2021, each party is to provide to the Referee and to the other party a brief written statement of the findings for which the first party contends in relation to the Supplementary Questions and the party's submissions in support of its contended findings (**submissions in chief**), with such submissions to be limited to 10 pages and to pinpoint and hyperlink any documents on which the party relies in support of its contended findings;
- h. by 4.00pm on 23 April 2021, each party is to provide to the Referee and to the other party a written response to the other party's submissions in chief, with such response to be limited to 5 pages;
- i. each party to the Supplementary Reference must do all things required of the party by the Referee to enable the Referee to form an opinion about the Supplementary Questions and must not wilfully do, or cause to be done, any act to delay or prevent the Referee forming an opinion (see FCR 28.65(8));
- j. the Referee is to consider and implement such manner of conducting the Supplementary Reference as will, without undue formality or delay, enable a just, efficient, timely and cost-effective resolution of the Supplementary Reference to allow completion of his Supplementary Report including, if the Referee thinks fit:
 - i. the making of enquiries by telephone, videoconference, or in writing;



- ii. direct communication (without intervention of lawyers) with any expert retained on behalf of a party and/or any person who the Referee believes may have information relevant to the Supplementary Reference;
 - iii. the making of such directions as the Referee considers appropriate as to the conduct of the Supplementary Reference to facilitate the Referee implementing the just, efficient, timely and cost-effective resolution of the Supplementary Reference;
- k. without limiting Order 6(j) above, to the extent the Referee considers it is:
- i. appropriate for the Referee to obtain any expert assistance in the conduct of the Supplementary Reference, the Referee may seek such assistance as the Referee thinks fit, including but not limited to, requesting each party to nominate an expert retained at the expense of that party, and the Referee, without intervention of any lawyer for any party, will make such direct enquires as the Referee thinks fit of any such expert;
 - ii. necessary or appropriate for the Referee to obtain any further submission from any party, the Referee may make any direction the Referee considers appropriate in relation to such submissions including that any submissions be provided wholly in writing and be limited in length and topic;
 - iii. necessary or appropriate, the attendance of any person and the production of documents may be compelled by direction of the Referee to a party or, in relation to a non-party, following issue of a subpoena by the Court (on application) returnable before the Referee; and
- l. except to the extent of providing to the Referee the documents contemplated by these orders, or otherwise as required by the Referee, the parties are to participate in the Supplementary Reference without any intervention in the Supplementary Reference by legal representatives and the laws of evidence will not apply in relation to the Supplementary Reference.
7. To assist the Referee in the preparation of the Supplementary Report, Guy Donnellan be appointed as counsel assisting (**Counsel Assisting**) and the reasonable costs of Counsel



Assisting be costs in the Reference and be dealt with in the same way as the fees of the Referee.

8. The Referee, in the Supplementary Report:
 - a. is, to the extent it is necessary for the Referee to make any finding of fact in order to express his opinion, make a statement of the facts found by the Referee from which, following any adoption, the Court may draw such inferences as it thinks fit; and/or
 - b. may submit any question arising on the Supplementary Reference for the decision of the Court and provide alternative opinions which depend upon how the Court determines any question submitted to the Court.
9. Without affecting the powers of the Court as to costs, the parties are to be jointly and severally liable to the Referee and Counsel Assisting for the fees payable in relation to the conduct of the Supplementary Reference.
10. By 30 April 2021, the Referee is to provide to the Associate to Justice Lee the date by which the Referee considers he could reasonably provide the Supplementary Report to the Court and a brief explanation of the Referee's reasons for selecting such date.
11. By 5 May 2021, the Court will determine on the papers the date by which the Referee is to deliver the Supplementary Report to the Court.
12. The Referee (without notice to the parties) and the parties have liberty to seek directions with respect to any matter arising upon application made on 24 hours' notice or such other notice ordered by the Court.
13. Following provision of the Supplementary Report by the Court to the parties, the proceeding be listed for the hearing of any application with respect to the Supplementary Report pursuant to r 28.67 of the Rules on a date to be fixed (**Second Adoption Hearing**).

Conjoint Analysis - Initial Conferral

14. By 25 January 2021, the respondent is to notify the applicant of the expert that the respondent has engaged in response to Mr Stefan Boedecker of Berkeley Research Group.



15. By 5 February 2021, Mr Boedecker and the expert that the respondent engages in response to Mr Boedecker (**Experts**) are to confer as to the information and documents (if any) to be produced by the parties, in order for Mr Boedecker to develop and perform a conjoint analysis for the purpose of seeking to prove the damages allegedly suffered by Group Members in the proceeding in relation to reduction in value on an aggregate basis (**Expert Conferral**). The Expert Conferral is to take place under the supervision of a Registrar of the Court in the absence of the lawyers acting for the parties or any other lawyers.
16. By 17 February 2021, the Experts are to prepare and send to the solicitors for the applicant and the respondent a short report recording the outcome of the Expert Conferral. If the Experts are unable to agree on the content of the report, they should set out the nature of and basis of that disagreement.

Mediation

17. Pursuant to rule 28.02 of the Rules, the proceeding be referred to mediation conducted by either Raymond Finkelstein AO, QC or Peter Jacobson QC, to have commenced within 21 days of the Second Adoption Hearing.

Trial

18. The proceeding is listed for trial commencing at 10.15 am on 29 November 2021 and concluding on 24 December 2021.

Case Management Hearing

19. The matter be listed for a case management hearing at 9.30 am on 7 May 2021.

Date that entry is stamped: 20 January 2021


Registrar



ANNEXURE A

Further information to be provided by the respondent

Defined Terms

The following definitions apply in this Annexure A:

“**Relevant Period**” means 1 October 2015 to 23 April 2020.

“**Relevant Vehicles**” means those models of Toyota motor vehicles in the Hilux, Fortuner and Prado ranges which are fitted with a 1GD-FTV or 2GD-FTV diesel combustion engine acquired in Australia during the Relevant Period.

Further information to be provided by the respondent:

1. For the most recent completed financial year, what are:
 - a. on a national basis, the 10 Toyota dealerships with the highest sales volumes for the Relevant Vehicle models; and
 - b. for each state and territory, the 2 Toyota dealerships with the highest sales volumes for the Relevant Vehicle models?
2. For the most recent completed financial year, what are:
 - a. on a national basis, the 10 Toyota dealerships which use the TUNE Dealer management system with the highest volumes of trade ins; and
 - b. for each state and territory, the 2 Toyota dealerships which use the TUNE Dealer management system with the highest volumes of trade ins?
3. A document listing the manufacturer's suggested retail price (**MSRP**) for each Relevant Vehicle, with columns containing the VIN, model description, engine type (1GD-FTV or 2GD-FTV), build year or production date, warranty start date, date of sale, packages and installed options and MSRP.
4. A document in tabular form containing:
 - a. the date of any agreement for the buy-back of, or refund for, a Relevant Vehicle;
 - b. the amount paid for the buy-back;
 - c. the make and VIN of the Relevant Vehicle; and



- d. the name of the owner of the Relevant Vehicle from whom the Relevant Vehicle was bought back or to whom the refund was provided.



ANNEXURE B

Interrogatories

Defined Terms:

The following definitions apply to these interrogatories:

“**Amended Defence**” means the Amended Defence filed by the respondent on 5 June 2020.

“**Relevant Period**” means 1 October 2015 to 23 April 2020.

“**Relevant Vehicles**” means those models of Toyota motor vehicles in the Hilux, Fortuner and Prado ranges which are fitted with a 1GD-FTV or 2GD-FTV diesel combustion engine acquired in Australia during the Relevant Period.

Interrogatories:

1. What is the process undertaken (including factors or criteria considered) by Toyota Australia for evaluating buy backs of, or refunds for, the Relevant Vehicles which present with one or more of the “DPF Issues” described in the Amended Defence?



ANNEXURE C

Pro Forma Subpoena to Dealerships

Form 43B
Rule 24.13(1)(b)

Subpoena to produce documents

No. NSD1210 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

KENNETH JOHN WILLIAMS
Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)
Respondent

To: [name], [address]

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is [date]. (*See Note 1*)

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Issued at the request of Kenneth John Williams, whose address for service is:

Place: Bannister Law Class Actions, Level 1, 107 Pitt Street, Sydney NSW 2000

Email: charles@bl.com.au



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building
184 Phillip Street
Queens Square
Sydney NSW 2000

Schedule of documents

The documents and things you must produce are as follows:



- 1) All documents recording the following information for each Relevant Vehicle sold by, traded in to or bought back by [the relevant Dealership] in the period 1 October 2015 to the date of this subpoena (inclusive):
 - a) VIN;
 - b) make;
 - c) model;
 - d) build year or production date;
 - e) warranty start date;
 - f) packages and installed options;
 - g) sale or buy-back price (if applicable);
 - h) value of trade-in (if applicable);
 - i) odometer reading; and
 - j) date of sale, trade-in or buy back.

Note: It will be sufficient compliance with this subpoena for the addressee to produce a document in Excel format containing a record of the information required to be produced in paragraph 1 above.

In this Schedule:

Relevant Vehicle means any model of Toyota motor vehicle in the Hilux, Fortuner and Prado ranges which is fitted with a 1GD-FTV engine or 2GD-FTV diesel combustion engine. The following table sets out an inclusive, but not exhaustive, list of Relevant Vehicles:

	Model	Year of Manufacture
Hilux		
	SR 2.8L 5 SP MAN	2015 – 2017
	Rogue (4x4) 2.8L 6 SP AUTO	2018
	Rugged (4x4) 2.8L 6 SP AUTO	2018
	Rugged (4x4) 2.8L 6 SP MAN	2018
	Rugged X (4x4) 2.8L 6 SP AUTO	2018
	Rugged X (4x4) 2.8L 6 SP MAN	2018
	SR (4x4) 2.8L 6 SP AUTO	2015 – 2018
	SR (4x4) 2.8L 6 SP MAN	2015 – 2018
	SR Hi-Rider 2.8L 6 SP AUTO	2015 – 2018
	SR Hi-Rider 2.8L 6 SP MAN	2015 – 2018
	SR+ (4x4) 2.8L 6 SP AUTO	2017 – 2018



	Model	Year of Manufacture
	SR+ (4x4) 2.8L 6 SP MAN	2017 – 2018
	SR5 (4x4) 2.8L 6 SP AUTO	2015 – 2018
	SR5 (4x4) 2.8L 6 SP MAN	2015 – 2018
	SR5 Hi-Rider 2.8L SP MAN	2015 – 2018
	SR5+ (4x4) 2.8L 6 SP AUTO	2017 – 2018
	SR5+ (4x4) 2.8L 6 SP MAN	2017 – 2018
	TRD Black (4x4) 2.8L 6 SP AUTO	2017
	TRD Black (4x4) 2.8L 6 SP MAN	2017
	TRD White (4x4) 2.8L 6 SP AUTO	2017
	TRD White (4x4) 2.8L 6 SP MAN	2017
	WorkMate (4x2) 2.4L 5 SP MAN	2015 – 2018
	WorkMate (4x4) 2.4L 6 SP AUTO	2015 – 2018
	WorkMate (4x4) 2.4L 6 SP MAN	2015 – 2018
	WorkMate (4x2) Hi-Rider 2.4L 6 SP AUTO	2017 – 2018
	Hilux 4x2 SR 2.8L T Diesel Automatic	2015 – 2018
	Hilux 4x2 SR5 2.8L T Diesel Automatic	2015 – 2018
	Hilux 4x2 SR 2.8L T Diesel Manual	2015 – 2018
	Hilux 4x2 SR5 2.8L T Diesel Manual	2015 – 2018
	Hilux 4x2 Workmate 2.4 L T Diesel Automatic	2015 – 2018
	Hilux 4x4 2.8L T Diesel Manual	2015 – 2018
Prado		
	Altitude (4x4) 2.8L 6 SP	2017
	GX (4x4) 2.8L 6 SP AUTO	2015 – 2018
	GX (4x4) 2.8L 6 SP MAN	2015 – 2018
	GX 7 SEAT (4x4) 2.8L 6 SP AUTO	2017 – 2018
	GXL (4x4) 2.8L 6 SP AUTO	2015 – 2018
	GXL (4x4) 2.8L 6 SP MAN	2015 – 2018
	Kakadu (4x4) 2.8L 6 SP AUTO	2015 – 2018
	VX (4x4) 2.8L 6 SP AUTO	2015 – 2018
	SE 2.8L T Diesel Automatic Wagon	2015 – 2018
Fortuner		
	Crusade 2.8L 6 SP AUTO	2015 – 2018
	Crusade 2.8L 6 SP MAN	2015 – 2016
	GX 2.8L 6 SP AUTO	2015 – 2018
	GX 2.8L 6 SP MAN	2015 – 2017
	GXL 2.8L 6 SP AUTO	2015 – 2018
	GXL 2.8L 6 SP MAN	2015 – 2017



Notes

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.



7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format

Applications in relation to subpoena

10. You have the right to apply to the Court:
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest



12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



ANNEXURE D

Pro Forma Subpoena to Auction Houses

Form 43B
Rule 24.13(1)(b)

Subpoena to produce documents

No. NSD1210 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

KENNETH JOHN WILLIAMS
Applicant

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)
Respondent

To: [name], [address]

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is [date]. (*See Note 1*)

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Issued at the request of Kenneth John Williams, whose address for service is:

Place: Bannister Law Class Actions, Level 1, 107 Pitt Street, Sydney NSW 2000

Email: charles@bl.com.au



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building
184 Phillip Street
Queens Square
Sydney NSW 2000

Schedule of documents

The documents and things you must produce are as follows:



- 1) All documents recording the following information for each Relevant Vehicle and each Comparator Vehicle sold by, through or using the platform provided by [the relevant Auction House] in the period 1 October 2015 to the date of this subpoena (inclusive):
 - a) VIN;
 - b) make;
 - c) model;
 - d) vehicle variant/series;
 - e) cylinders;
 - f) transmission;
 - g) engine;
 - h) doors;
 - i) body style;
 - j) drive type;
 - k) cab size;
 - l) fuel type;
 - m) build year or production date;
 - n) auction date (or sale date if different to auction date);
 - o) odometer reading;
 - p) sale price; and
 - q) manufacturer's suggested retail price (MSRP).

Note: It will be sufficient compliance with this subpoena for the addressee to produce a document in Excel format containing a record of the information required to be produced in paragraph 1 above.

In this Schedule:

Comparator Vehicles means:

- Dodge Journey
- Fiat Freemont
- Ford Endura
- Ford Everest
- Ford Falcon Ute



- Ford Ranger 4X2
- Ford Ranger 4X4
- Ford Territory
- Foton Tunland 4X2
- Foton Tunland 4X4
- Great Wall Steed 4X2
- Great Wall Steed 4X4
- Great Wall V200 4X2
- Great Wall V200 4X4
- Great Wall V240 4X2
- Great Wall V240 4X4
- Haval H8
- Haval H9
- Holden Acadia
- Holden Captiva
- Holden Captiva 7
- Holden Colorado 4X2
- Holden Colorado 4X4
- Holden Colorado 7
- Holden Trailblazer
- Holden Utility 4X2
- Hyundai Santa Fe
- Isuzu Ute D-Max 4X2
- Isuzu Ute D-Max 4X4
- Isuzu Ute MU-X
- Jeep Grand Cherokee
- Jeep Wrangler
- Kia Sorento
- Land Rover Defender PU/CC
- LDV D90
- LDV T60



- LDV T60 4X2
- LDV T60 4X4
- Mazda BT-50 4X2
- Mazda BT-50 4X4
- Mazda CX-8
- Mazda CX-9
- Mercedes-Benz G-Wagon CC
- Mercedes-Benz X-Class 4X2
- Mercedes-Benz X-Class 4X4
- Mitsubishi Challenger
- Mitsubishi Pajero
- Mitsubishi Pajero Sport
- Mitsubishi Triton 4X2
- Mitsubishi Triton 4X4
- Nissan Murano
- Nissan Navara 4X2
- Nissan Navara 4X4
- Nissan Pathfinder
- Nissan Patrol PU/CC
- RAM 1500 Express
- RAM 1500 Laramie
- RAM 2500/3500 Laramie
- RAM Laramie
- RAM SLT Big Horn
- Skoda Kodiaq
- Ssangyong Actyon Sports 4X2
- Ssangyong Actyon Sports 4X4
- Ssangyong Rexton
- Subaru Outback
- Subaru Tribeca
- Toyota FJ Cruiser



- Toyota Fortuner
- Toyota Hilux 4X2
- Toyota Hilux 4X4
- Toyota Kluger
- Toyota Landcruiser PU/CC
- Toyota Prado
- Volkswagen Amarok 4X2
- Volkswagen Amarok 4X4
- Volkswagen Passat Alltrack
- Volkswagen Tiguan Allspace

Relevant Vehicle means any model of Toyota motor vehicle in the Hilux, Fortuner and Prado ranges which is fitted with a 1GD-FTV engine or 2GD-FTV diesel combustion engine. The following table sets out an inclusive, but not exhaustive, list of Relevant Vehicles:

	Model	Year of Manufacture
Hilux		
	SR 2.8L 5 SP MAN	2015 – 2017
	Rogue (4x4) 2.8L 6 SP AUTO	2018
	Rugged (4x4) 2.8L 6 SP AUTO	2018
	Rugged (4x4) 2.8L 6 SP MAN	2018
	Rugged X (4x4) 2.8L 6 SP AUTO	2018
	Rugged X (4x4) 2.8L 6 SP MAN	2018
	SR (4x4) 2.8L 6 SP AUTO	2015 – 2018
	SR (4x4) 2.8L 6 SP MAN	2015 – 2018
	SR Hi-Rider 2.8L 6 SP AUTO	2015 – 2018
	SR Hi-Rider 2.8L 6 SP MAN	2015 – 2018
	SR+ (4x4) 2.8L 6 SP AUTO	2017 – 2018
	SR+ (4x4) 2.8L 6 SP MAN	2017 – 2018
	SR5 (4x4) 2.8L 6 SP AUTO	2015 – 2018
	SR5 (4x4) 2.8L 6 SP MAN	2015 – 2018
	SR5 Hi-Rider 2.8L SP MAN	2015 – 2018
	SR5+ (4x4) 2.8L 6 SP AUTO	2017 – 2018
	SR5+ (4x4) 2.8L 6 SP MAN	2017 – 2018
	TRD Black (4x4) 2.8L 6 SP AUTO	2017
	TRD Black (4x4) 2.8L 6 SP MAN	2017
	TRD White (4x4) 2.8L 6 SP AUTO	2017
	TRD White (4x4) 2.8L 6 SP MAN	2017
	WorkMate (4x2) 2.4L 5 SP MAN	2015 – 2018
	WorkMate (4x4) 2.4L 6 SP AUTO	2015 – 2018
	WorkMate (4x4) 2.4L 6 SP MAN	2015 – 2018



	Model	Year of Manufacture
	WorkMate (4x2) Hi-Rider 2.4L 6 SP AUTO	2017 – 2018
	Hilux 4x2 SR 2.8L T Diesel Automatic	2015 – 2018
	Hilux 4x2 SR5 2.8L T Diesel Automatic	2015 – 2018
	Hilux 4x2 SR 2.8L T Diesel Manual	2015 – 2018
	Hilux 4x2 SR5 2.8L T Diesel Manual	2015 – 2018
	Hilux 4x2 Workmate 2.4 L T Diesel Automatic	2015 – 2018
	Hilux 4x4 2.8L T Diesel Manual	2015 – 2018
Prado		
	Altitude (4x4) 2.8L 6 SP	2017
	GX (4x4) 2.8L 6 SP AUTO	2015 – 2018
	GX (4x4) 2.8L 6 SP MAN	2015 – 2018
	GX 7 SEAT (4x4) 2.8L 6 SP AUTO	2017 – 2018
	GXL (4x4) 2.8L 6 SP AUTO	2015 – 2018
	GXL (4x4) 2.8L 6 SP MAN	2015 – 2018
	Kakadu (4x4) 2.8L 6 SP AUTO	2015 – 2018
	VX (4x4) 2.8L 6 SP AUTO	2015 – 2018
	SE 2.8L T Diesel Automatic Wagon	2015 – 2018
Fortuner		
	Crusade 2.8L 6 SP AUTO	2015 – 2018
	Crusade 2.8L 6 SP MAN	2015 – 2016
	GX 2.8L 6 SP AUTO	2015 – 2018
	GX 2.8L 6 SP MAN	2015 – 2017
	GXL 2.8L 6 SP AUTO	2015 – 2018
	GXL 2.8L 6 SP MAN	2015 – 2017



Notes

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.



7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:

.doc and .docx – Microsoft Word documents

.pdf – Adobe Acrobat documents

.xls and .xlsx – Microsoft Excel spreadsheets

.jpg – image files

.rtf – rich text format

.gif – graphics interchange format

.tif – tagged image format

Applications in relation to subpoena

10. You have the right to apply to the Court:
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court - arrest



12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



ANNEXURE E

Supplementary Questions

Defined Terms:

Design defect

1. Are the Relevant Vehicles defective by reason of the fact that they are designed to rely principally on Automatic Regeneration and, where a DPF Switch is fitted, on Manual Regeneration, rather than Passive Regeneration, to regenerate the DPF?
2. If Supplementary Question 1 is answered “yes”, do the Relevant Vehicles suffer, or have they during the Relevant Period suffered, any of the Vehicle Defects and/or Vehicle Defect Consequences wholly or partly by reason of that defect?

Fuel consumption

3. Is the fuel consumption of the Relevant Vehicles increased and/or their fuel economy decreased, by reason of:
 - a. the Vehicle Defects and/or Vehicle Defect Consequences to which a “D” or “C” was allocated in Annexure F of the Referee’s Report and, if so, by how much; and/or
 - b. if Supplementary Question 1 is answered “yes”, the Relevant Vehicles’ reliance on Automatic Regeneration and Manual Regeneration, rather than Passive Regeneration, to regenerate the DPF and, if so, by how much?

2020 Countermeasures

4. To what extent (if at all) is it established that the countermeasures implemented after the Relevant Period, have been and will continue to be effective in remedying:
 - a. the Vehicle Defects and Vehicle Defect Consequences to which a “D” or “C” was allocated in Annexure F of the Referee’s Report;
 - b. in the event that Supplementary Question 1 is answered “yes”, that defect and any Vehicles Defects and Vehicle Defect Consequences suffered wholly or partly by reason of that defect; and/or



- c. any increase in fuel consumption and/or decrease in fuel economy found to exist in answer to Supplementary Question 3 above?