

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD1210/2019
File Title: KENNETH JOHN WILLIAMS & ANOR v TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 28/10/2021 5:05:32 PM AEDT

Registrar

Important Information

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Form 33
Rule 16.32

**Defence to [Second](#) Further Amended Statement of Claim
(in accordance with the Orders made by Lee J on 8 October 2021)**

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

No. NSD 1210 of 2019

Kenneth John Williams and another
Applicants

Toyota Motor Corporation Australia Limited (ACN 009 686 097)
Respondent

By way of defence to the [second](#) further amended statement of claim dated [12 October 20](#)~~January~~ 2021 ([Second Further Amended Statement of Claim](#)), the respondent, Toyota Motor Corporation Australia Limited (**TMCA**), says as follows:

Notes:

- (a) Unless otherwise defined, capitalised terms have the meaning ascribed to them in the [Second](#) Further Amended Statement of Claim.
- (b) TMCA does not plead to the "Overview of Claim", which commences at page [43](#) of the [Second](#) Further Amended Statement of Claim, on the basis that it is simply a summary of the claims pleaded in the remainder of the [Second](#) Further Amended Statement of Claim. For the avoidance of doubt, TMCA does not admit the allegations contained in the "Overview of Claim" other than to the extent that they are specifically admitted below.

A. PARTIES

A1. The Applicants and Group Members

1. In response to paragraph 1, TMCA:

- (a) admits that the Applicants purport to bring this claim pursuant to Part IVA of the *Federal Court of Australia Act 1976 (Cth)*;

Filed on behalf of: The respondent

Prepared by: Andrew Morrison
Law firm: Clayton Utz

Address for service:

Level 18
333 Collins Street
Melbourne VIC 3000

Contact details:

Tel: (03) 9286 6000
Fax: (03) 9286 8488
Contact: Andrew Morrison
Email: amorrison@claytonutz.com
Ref: 637/17587/80201688

(b) denies that the Group Members have the claims against it as pleaded in the [Second](#) Further Amended Statement of Claim for the reasons set out below;

(c) otherwise does not know and therefore cannot admit the allegations in paragraph 1.

2. In response to paragraph 2, TMCA:

(a) denies that the Group Members have the claims against it as pleaded in the [Second](#) Further Amended Statement of Claim for the reasons set out below;

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 2.

3. In response to paragraph 3, TMCA:

(a) admits that the First Applicant acquired a new 2016 Toyota Prado GXL 2.8L Diesel Automatic Wagon (**Applicants' Vehicle**) on or around 8 April 2016;

(b) otherwise denies the allegations in paragraph 3.

3A. In response to paragraph 3A, TMCA:

(a) admits that the Second Applicant is, and throughout the Relevant Period was, a corporation incorporated in Australia with the First Applicant as its sole director;

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 3A.

A2. The Respondent

4. TMCA admits the allegations in paragraph 4.

5. In response to paragraph 5, TMCA:

(a) says in response to paragraph 5(a) that:

(i) during the Relevant Period, it supplied the vehicles described in Schedule 1 to this Defence (**DPF Vehicles**) through a network of dealerships;

(ii) the Applicants' Vehicle is a DPF Vehicle;

(iii) it admits that during the Relevant Period it had a network of approximately 200 dealerships throughout Australia;

(iv) the dealerships through which DPF Vehicles were supplied operate as franchises and are separate corporate entities from TMCA;

(v) it otherwise denies the allegations contained in paragraph 5(a);

- (b) says in response to paragraph 5(b) that:
 - (i) it admits that it advertised, marketed and distributed the DPF Vehicles throughout Australia; and
 - (ii) it otherwise denies the allegations in paragraph 5(b).

B. DPF SYSTEM IN THE DPF VEHICLES

B1. Overview

6. In response to paragraph 6, TMCA:

- (a) admits that the DPF Vehicles are fitted with a 1GD-FTV or 2GD-FTZ diesel combustion engine;
- (b) otherwise denies the allegations in paragraph 6.

7. TMCA admits the allegations in paragraph 7.

8. In response to paragraph 8, TMCA:

- (a) says that throughout the Relevant Period, the minimum emissions standard for new light vehicles in Australia was regulated by:
 - (i) ADR 79/03 for vehicles manufactured on or after 1 November 2013 but before 1 November 2016; and
 - (ii) ADR 79/04 for vehicles manufactured on or after 1 November 2016;
- (b) says that ADR 79/03 and ADR 79/04 adopt the United Nations Regulation UN-R83 Revision 4, known as "Euro 5";
- (c) says that ADR 79/03 and ADR 79/04 are performance standards, which define the maximum level of exhaust emissions permitted under the Type I test specified by Annex 4a of ADR 79/04;
- (d) otherwise denies the allegations in paragraph 8.

9. In response to paragraph 9, TMCA:

- (a) says that the DPF Vehicles have a diesel exhaust after-treatment system, which is designed to capture and convert the Pollutant Emissions into carbon dioxide and water vapour through a combination of filtration, combustion and chemical reactions (**Toyota DPF System**);

(b) says that it has adopted the Toyota DPF System to comply with the emission limits in ADR 79/03 and ADR 79/04;

(c) otherwise denies the allegations in paragraph 9.

10. In response to paragraph 10, TMCA:

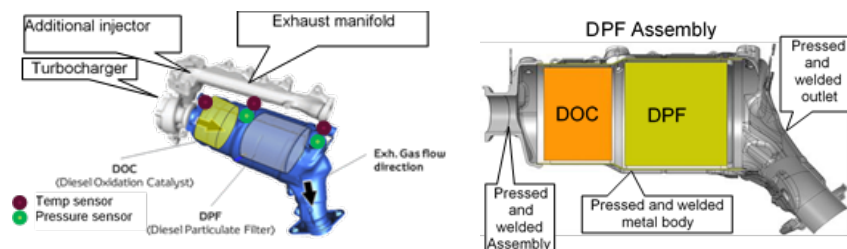
(a) says that the Toyota DPF System comprises the following components:

- (i) the cast exhaust manifold (**Exhaust Manifold**);
- (ii) the Additional Injector;
- (iii) the ~~variable nozzle turbocharger~~ (Turbocharger);
- (iv) the inlet at the entrance to the DOC (**DPF Assembly Inlet**);
- (v) the DOC;
- (vi) the diesel particulate filter (**DPF**);
- (vii) the emission or exhaust gas temperature sensors (**Temperature Sensors**);
- (viii) the Pressure Sensor; and

(b) admits the DPF is housed together with the DOC in the DPF Assembly.

Particulars

The following diagrams are representative of the Toyota DPF System.



(c) otherwise denies the allegations in paragraph 10.

11. In response to paragraph 11, TMCA:

(a) says that the following components in the DPF Vehicles also contribute to the operation of the Toyota DPF System:

- (i) the ECM is a computer system that manages the operation of the engine and associated component parts within the DPF Vehicle, utilising data received from sensors, including the Temperature Sensors and the Pressure Sensor;
- (ii) DPF Vehicles have a diesel combustion engine, which is controlled by the ECM and generates exhaust emissions that are directed through the Toyota DPF System;
- (iii) the Temperature Sensors:
 - A. are located at the following three points:
 - 1) the entrance to the DOC;
 - 2) between the DOC and the DPF; and
 - 3) the exit from the DPF;
 - B. measure the temperature of exhaust emissions at each point and transmit that information to the ECM;
- (iv) the Pressure Sensor:
 - A. measures the difference between the pressure of exhaust emissions at the front and the back of the DPF;
 - B. transmits that information to the ECM to calculate the particulate matter that has accumulated in the DPF;
- (v) the DPF Notifications are:
 - A. a series of symbols or messages that are displayed in DPF Vehicles;
 - B. illuminated when the calculated amount of particulate matter reaches a predetermined level;
 - C. explained in the owner's manual and associated DPF Vehicle product information (**Owner's Manual**);
- (vi) the Engine MIL is a symbol or message that is:
 - A. illuminated, together with the DPF Notifications, in DPF Vehicles when the calculated amount of accumulated particulate matter reaches a predetermined level; and
 - B. explained in the Owner's Manual;

(vii) the DPF Switch:

- A. enables Regeneration (as defined in paragraph 15(a)(i)(D) below) to be initiated manually;
- B. is installed in all DPF Vehicles manufactured after June 2018;
- C. has been retrospectively fitted to some DPF Vehicles manufactured prior to June 2018;

(b) otherwise denies the allegations in paragraph 11.

B2. Key components of the Toyota DPF System

12. In response to paragraph 12, TMCA:

- (a) admits that the Additional Injector is controlled by the ECM;
- (b) says further that the Additional Injector:
 - (i) is mounted to the Exhaust Manifold;
 - (ii) injects diesel fuel through the Exhaust Manifold and the Turbocharger to increase the heat of the exhaust gas entering the DOC to trigger Toyota Automatic Regeneration as defined in paragraph 17(b)(iv) below;

(b) otherwise denies the allegations in paragraph 12.

13. In response to paragraph 13, TMCA:

- (a) says that the Toyota DPF System includes:
 - (i) the Turbocharger which emits exhaust gas from the engine and the fuel from the Additional Injector across and through the front of the DOC;
 - (ii) the DPF Assembly Inlet, which is located after the Turbocharger;

(b) otherwise denies the allegations in paragraph 13.

14. In response to paragraph 14, TMCA:

- (a) says that:
 - (i) the DOC:

- A. comprises a honeycomb ceramic flow-through filter incorporating a monolith substrate with a catalyst coating containing precious metals, including platinum and palladium;
 - B. is designed to:
 - 1) facilitate the catalytic oxidation of carbon monoxide and hydrocarbons present in engine exhaust emissions, resulting in conversion of those pollutants into carbon dioxide and water vapour; and
 - 2) increase the temperature in the DPF during Toyota Automatic Regeneration and Toyota Manual Regeneration (as defined in paragraph 17 below);
 - (ii) the presence of precious metals in the DOC also causes a catalytic oxidation of NO_x present in engine exhaust emissions (**NO_x Catalytic Oxidation**);
 - (b) otherwise denies the allegations in paragraph 14.
15. In response to paragraph 15, TMCA:
- (a) says that:
 - (i) the DPF:
 - A. comprises a porous ceramic monolith wall-flow filter, with a catalyst coating containing precious metals, including platinum and palladium;
 - B. captures particulate matter;
 - C. enables the passage of carbon dioxide and water vapour oxidised in the DOC through the exhaust;
 - D. facilitates the oxidisation of captured particulate matter, which is then emitted through the exhaust as carbon dioxide and water vapour (**Regeneration**);
 - (ii) due to the presence of precious metals, NO_x Catalytic Oxidation may also occur in the DPF;
 - (b) otherwise denies the allegations in paragraph 15.

B3. Accumulation of particulate matter in the DPF

16. In response to paragraph 16, TMCA:
- (a) refers to and repeats paragraph 15 above;

- (b) says that:
 - (i) the amount of particulate matter captured in the DPF is calculated by the ECM;
 - (ii) the designed maximum amount of particulate matter that can be captured by the DPF is 23.4 grams;
 - (iii) prior to the amount of captured particulate matter in the DPF reaching the maximum amount, the ECM is programmed to trigger Regeneration, as those processes are described in paragraph 17 below;
- (b) otherwise denies the allegations in paragraph 16.

17. In response to paragraph 17, TMCA:

- (a) refers to and repeats paragraphs 9 to 16 above;
- (b) says that:
 - (i) Regeneration of accumulated particulate matter in the DPF is dependent upon the temperature of the exhaust emissions in the engine, the DOC and the DPF being high enough, together with the presence of oxygen, to enable oxidation;

Toyota Passive Regeneration

- (ii) engine operation in a DPF Vehicle may generate sufficient heat for Regeneration to occur in the course of driving without any notification or driver intervention (**Toyota Passive Regeneration**);

Toyota Automatic Regeneration

- (iii) in certain conditions, such as frequent short trips, the temperature in the Toyota DPF System may not reach a sufficient level to enable Toyota Passive Regeneration to occur;
- (iv) when Toyota Passive Regeneration does not occur, and the ECM calculates that the accumulated particulate matter in the DPF has reached a predetermined level, the ECM causes the following to occur:
 - A. temporary changes in the engine settings, including the air to fuel ratio (**AF Ratio**), which increases the exhaust emission temperature; and
 - B. after combustion in the engine, a small additional amount of diesel fuel is injected by the Additional Injector through the Exhaust Manifold and the Turbocharger,

thereby further increasing the temperature within the Toyota DPF System and triggering Regeneration (**Toyota Automatic Regeneration**);

- (v) during Toyota Automatic Regeneration:
 - A. if the vehicle is stopped with the engine running, the engine idling speed rpm) increases (as set out in the table in paragraph 36 below);
 - B. there may be a noticeably different exhaust smell compared to a diesel engine not undergoing Regeneration;
 - C. a small amount of white smoke may be emitted from the exhaust tail pipe;
- (vi) the temperature in the Toyota DPF System must remain at a sufficient level to enable completion of Toyota Automatic Regeneration;

Toyota Manual Regeneration

- (vii) for DPF Vehicles fitted with a DPF Switch, Regeneration can be manually initiated by the driver (**Toyota Manual Regeneration**);
- (viii) in order for Toyota Manual Regeneration to occur, the driver must push the DPF Switch when the vehicle is stationary with the engine running;
- (ix) a DPF Notification appears to indicate that Toyota Manual Regeneration has commenced;
- (x) once Toyota Manual Regeneration is complete, the DPF Notification turns off and the engine idling speed returns to normal;

DPF Notifications

- (xi) if Toyota Automatic Regeneration is not completed, depending upon the type of engine and the amount of accumulated particulate matter as calculated by the ECM as set out in the table below, the ECM will activate the following modes:

Level	PM accumulation %		PM level (g)	
	1GD*	2GD**	1GD	2GD
Advisory Mode	156	146	16.8	19.4
Caution Mode	176	162	18.9	21.5

* 1GD means DPF Vehicles with a 2.8 litre engine

** 2GD means DPF Vehicles with a 2.4 litre engine

(xii) in Advisory Mode:

- A. a static DPF symbol is displayed or the message "DPF FULL - MANUAL REGENERATION - REQUIRED SEE OWNERS MANUAL" or "DPF FULL - SEE OWNER'S MANUAL" appears;
- B. the Owner's Manual instructs the driver to:
 - 1) drive the vehicle at over 60 kilometres per hour for approximately 30 minutes to trigger Toyota Automatic Regeneration; or
 - 2) stop and perform Toyota Manual Regeneration using the DPF Switch;

(xiii) if the driver ignores the Advisory Mode warning, and the amount of accumulated particulate matter reaches the predetermined level, Caution Mode will be activated and:

- A. if the vehicle has a DPF Switch:
 - 1) the DPF symbol is displayed or the message "DPF FULL - MANUAL REGENERATION - REQUIRED SEE OWNERS MANUAL" appears; and
 - 2) the Owner's Manual instructs the driver to stop and perform Toyota Manual Regeneration;
- B. if the vehicle does not have a DPF Switch:
 - 1) the DPF symbol will flash or the message "DPF FULL - VISIT YOUR DEALER" appears;
 - 2) the Owner's Manual instructs the driver to take the vehicle to a Dealer for Regeneration;

(xiv) if the driver ignores both the Advisory Mode warnings and the Caution Mode warnings, and the amount of accumulated particulate matter in the DPF calculated by the ECM reaches the following predetermined levels, the Engine MIL is illuminated:

PM accumulation %		PM level (g)	
1GD	2GD	1GD	2GD
182	166	19.8	22.4

(xv) at this point, the Engine MIL is displayed, together with:

- A. a flashing DPF symbol; or

- B. the message "DPF FULL - VISIT YOUR DEALER";

Limp Mode

- (xvi) if Regeneration does not occur:

- A. when the Engine MIL is displayed, the ECM will prevent the DPF Vehicle from going into fifth gear or more and the driver will experience gear "shift shudder";
- B. after the process described in sub-paragraph (A) above, and the amount of particulate matter calculated by the ECM rises to approximately 30 grams or higher, the ECM limits acceleration to 30%,

both referred to as "Limp Mode" (**Limp Mode**);

- (xvii) in Limp Mode, the DPF Vehicle can still be driven, albeit at reduced speed;

- (xviii) the purpose of Limp Mode is to encourage drivers to proceed cautiously and to seek assistance from a Dealer or repairer;

- (c) otherwise denies the allegations in paragraph 17.

- 18. In response to paragraph 18, TMCA:

- (a) refers to and repeats paragraph 17 above;
- (b) otherwise denies the allegations in paragraph 18.

- 19. In response to paragraph 19, TMCA:

- (a) refers to and repeats paragraph 17(b)(xi) to (xviii) above; and
- (b) otherwise denies the allegations in paragraph 19.

- 20. In response to paragraph 20, TMCA:

- (a) refers to and repeats paragraph 17 above;
- (b) otherwise denies the allegations in paragraph 20.

- 21. In response to paragraph 21, TMCA:

- (a) refers to and repeats paragraph 17 above;
- (b) otherwise denies the allegations in paragraph 21.

22. In response to paragraph 22, TMCA:

- (a) refers to and repeats paragraphs 15 and 17 above and paragraph 23 below;
- (b) otherwise denies the allegations in paragraph 22.

23. In response to paragraph 23, TMCA:

- (a) refers to and repeats paragraphs 14, 15 and 17 above;
- (b) says further that:
 - (i) the Toyota DPF System is:
 - A. designed to achieve Regeneration by reacting particulate matter with oxygen at sufficiently high temperature in the DPF (**Toyota Thermal Oxidation**);
 - B. not designed to rely upon the reaction of particulate matter with NO₂ to achieve Regeneration; and
 - (c) otherwise denies the allegations in paragraph 23.

24. In response to paragraph 24, TMCA:

- (a) refers to and repeats paragraphs 15, 17 and 23 above; and
- (b) otherwise denies the allegations in paragraph 24.

25. In response to paragraph 25, TMCA:

- (a) refers to and repeats paragraphs 17 and 23 above; and
- (b) otherwise denies the allegations in paragraph 25.

26. In response to paragraph 26, TMCA:

- (a) refers to and repeats paragraphs 14, 15, 17 and 23 above;
- (b) otherwise denies the allegations in paragraph 26.

27. In response to paragraph 27, TMCA:

- (a) refers to and repeats paragraphs 15, 17 and 23 above;
- (b) says further that Toyota Passive Regeneration occurs using Toyota Thermal Oxidation when:
 - (i) the engine exhaust temperature is sufficiently high; and

- (ii) there is a sufficient concentration of oxygen in the DPF to catalytically oxidise the particulate matter into carbon dioxide and water vapour;
 - (c) otherwise denies the allegations in paragraph 27.
28. In response to paragraph 28, TMCA:
- (a) refers to and repeats paragraphs 14, 15, 17, 23 and 27 above;
 - (b) says further that:
 - (i) in the Toyota DPF System, during Toyota Passive Regeneration, the exhaust gas from the engine flows through:
 - A. the Exhaust Manifold;
 - B. the Turbocharger;
 - C. the DPF Assembly Inlet;
 - D. the DOC;
 - E. the DPF; and
 is then emitted through the muffler into the atmosphere;
 - (ii) as the exhaust gas flows through the DOC, the precious metals in the catalyst coating of the DOC cause oxidation of carbon monoxide and hydrocarbons, which produces carbon dioxide and water vapour;
 - (iii) as the exhaust gas flows through the DPF, Toyota Thermal Oxidation converts captured particulate matter into carbon dioxide and water vapour, which is then emitted from the DPF through the muffler and into the atmosphere;
 - (c) otherwise denies the allegations in paragraph 28.

B4.2 Rate of Toyota Passive Regeneration in the DPF Vehicles

29. ~~[Not used] In response to paragraph 29, TMCA:~~
- ~~(a) refers to and repeats paragraphs 15, 17, 23, 27, 28 and 29 above;~~
 - ~~(b) says further that in the Toyota DPF System, the rate at which oxidation of particulate matter that is captured and stored in the DPF occurs during Toyota Passive Regeneration is dependent upon:~~
 - ~~(i) the temperature of the exhaust that is generated by the operation of the engine; and~~

- (ii) ~~the presence of oxygen in the DPF; and~~
- (c) ~~otherwise denies the allegations in paragraph 29.~~
30. ~~[Not used]~~ [Not used] In response to paragraph 30, TMCA:
- (a) ~~refers to and repeats paragraph 8 above; and~~
- (b) ~~otherwise admits the allegations in paragraph 30.~~
31. ~~[Not used]~~ [Not used] In response to paragraph 31, TMCA:
- (a) ~~says that to reduce the level of NO_x generated by the operation of the engine, the DPF Vehicles employ:~~
- (i) ~~EGR; and~~
- (ii) ~~electronically controlled fuel injection,~~
- ~~(Toyota NO_x Reduction Techniques); and~~
- (b) ~~otherwise denies the allegations in paragraph 31.~~
32. ~~[Not used]~~ [Not used] In response to paragraph 32, TMCA:
- (a) ~~admits that, in the DPF Vehicles, the Toyota NO_x Reduction Techniques can have the effects pleaded in paragraphs 32(a), (b) and (c) of the ASOC;~~
- (b) ~~says further that:~~
- (i) ~~in response to paragraph 32(d), the Toyota NO_x Reduction Techniques may variably raise or lower the temperature of the exhaust generated by the engine;~~
- (ii) ~~the DPF Vehicles use EGR, together with the Turbocharger, to manage the effects pleaded in paragraphs 32(a) and (b)(i) above; and~~
- (c) ~~otherwise denies the allegations in paragraph 32.~~
33. ~~[Not used]~~ [Not used] In response to paragraph 33, TMCA:
- (a) ~~refers to and repeats paragraphs 29, 31 and 32 above;~~
- (b) ~~otherwise denies the allegations in paragraph 33.~~
34. In response to paragraph 34, TMCA:
- (a) refers to and repeats paragraphs 15, 17, 23, 27, and 28 ~~and 29~~ above;

(b) otherwise denies the allegations in paragraph 34.

35. In response to paragraph 35, TMCA:

(a) refers to and repeats paragraphs 15, 17, 23, 27, [and 28](#) ~~and 29~~ above;

(b) otherwise denies the allegations in paragraph 35.

36. In response to paragraph 36, TMCA:

(a) refers to and repeats paragraphs 14, 15, 17, 23, 27, [and 28](#) ~~and 29~~ above;

(b) says further that in the Toyota DPF System during Toyota Automatic Regeneration and Toyota Manual Regeneration:

(i) the ECM causes temporary changes in the engine settings to increase the temperature of the exhaust generated by the operation of the engine;

(ii) the exhaust gas from the engine flows through:

A. the Exhaust Manifold;

B. the Turbocharger;

C. the DPF Assembly Inlet;

D. the DOC;

E. the DPF; and

is then emitted through the muffler into the atmosphere;

(iii) as the exhaust gas flows through the DOC, the precious metals in the catalyst coating of the DOC cause oxidation of carbon monoxide and hydrocarbons, which produces carbon dioxide and water vapour;

(iv) as the exhaust gas flows through the DPF, Toyota Thermal Oxidation converts captured particulate matter into carbon dioxide and water vapour, which is then emitted from the DPF through the muffler and into the atmosphere;

(v) the engine idling speed of the DPF Vehicles increases, depending upon the model of the DPF Vehicle; and

Particulars

DPF Vehicle	Engine idling speed
Hilux / Fortuner / Prado (manual transmission)	1,200 rpm
Hilux / Fortuner / Prado (automatic transmission)	900 rpm

(c) otherwise denies the allegations in paragraph 36.

37. ~~In response to paragraph 37, TMCA:~~

~~(a) says that during Toyota Automatic Regeneration and Toyota Manual Regeneration:~~

~~(i) there may be a noticeably different exhaust smell compared to a diesel engine not undergoing Toyota Automatic Regeneration and Toyota Manual Regeneration;~~

~~(ii) a small amount of white smoke may be emitted from the exhaust tail pipe; and~~

~~(b) otherwise denies the allegations in paragraph 37.~~

38. In response to paragraph 38, TMCA:

(a) admits that:

(i) Toyota Manual Regeneration requires the DPF Vehicle to be stationary and the engine running, where Toyota Passive Regeneration does not;

(ii) in Australia, subject to limited exceptions, it is contrary to law for a driver of a vehicle to leave that vehicle on a road while the engine is running;

(b) otherwise denies the allegations in paragraph 38.

C. THE ALLEGED VEHICLE DEFECTS AND THEIR CONSEQUENCES

39. In response to paragraph 39, TMCA:

(a) refers to and repeats paragraphs 13, 14, 15, 17, 23, 27, 28, ~~29, 31, 32~~ and 36(b)(ii) above and 47 below;

(b) says that the operation of the Toyota DPF System as set out in paragraphs 14, 15, 17, 23, 27, 28, ~~29, 31, 32~~ and 36(b)(ii) above is part of the normal operation of the DPF Vehicles and does not constitute a defect in the DPF Vehicles;

(c) says that during the Relevant Period, unless the DPF Vehicle was a 2018 Production Change Vehicle or had received the 2020 Field Fix (as these terms are defined in paragraphs 47(f)(i)(B) and 47(i) respectively below):

(i) the Toyota DPF System in DPF Vehicles was not designed to function effectively during all reasonably expected conditions of normal operation and use in the Australian market, in particular regular continuous driving at approximately 100km/hr (High Speed Driving Pattern): First Reference Report (R1) [8]. [38(a)]:

(ii) in the event the DPF Vehicles were exposed to the High Speed Driving Pattern, the Toyota DPF System was ineffective in preventing the formation of deposits on the DOC surface or coking within the DOC, which in turn prevented the DPF filter from effective Toyota Automatic Regeneration or Toyota Manual Regeneration: R1 [8]:

(iii) if the DPF Vehicles were exposed to the High Speed Driving Pattern and/or subject to the countermeasures referred to in paragraph 47(f)(ii) below:

A. the DOC became blocked by deposits forming on the face of the DOC: R1 Annexure F [39(f)]:

B. the DOC did not function effectively: R1 Annexure F [41(a)]:

C. the DPF did not function effectively: R1 Annexure F [41(b)]:

D. the catalytic efficiency of the DOC was diminished: R1 Annexure F [41(c)]:

E. the exhaust in the DPF did not reach a sufficiently high temperature to effect Toyota Thermal Oxidation: R1 Annexure F [41(e)]:

F. Regeneration events failed to remove sufficient particulate matter from the DPF to prevent the DPF from becoming full: R1 Annexure F [39(h)]:

G. the DPF System failed to prevent the DPF from becoming full or blocked: R1 Annexure F [39(i)]:

(iv) Toyota Manual Regeneration could not be performed unless the DPF Vehicle was fitted with a DPF Switch, and

A. a DPF Switch was not installed in new vehicles at the time of production through to the end of the 2017 MY: R1 Annexure F [39(g)]:

B. from June 2018, a DPF Switch was fitted in all new vehicles and retrofitted in some existing vehicles; and

(d) says that during the Relevant Period, unless a DPF Vehicle was a 2018 Production Change Vehicle or had received the 2020 Field Fix, many of the DPF Vehicles which regularly and/or were persistently subjected to the High Speed Driving Pattern and/or subject to the countermeasures referred to in paragraph 47(f)(ii) below may have experienced one or more of the following consequences:

(i) the Additional Injector became blocked by carbon deposits on its tip: R1 Annexure F [39(d)];

(ii) the Additional Injector caused deposits on the face of the DOC and caused white smoke: R1 Annexure F [39(e)]; and

(e) otherwise denies the allegations in paragraph 39.

~~(c1) in response to paragraph 39(a1):~~

~~(i) says that regeneration in the DPF Vehicles is principally achieved through Toyota Automatic Regeneration and, where a DPF Switch was fitted, may be achieved through Toyota Manual Regeneration;~~

~~(ii) otherwise denies the allegations in paragraph 39(a1);~~

~~(c) in response to paragraph 39(a):~~

~~(i1) denies the allegation in paragraph 39(a)(i1);~~

~~(i) refers to and repeats paragraphs 31 and 32 above and otherwise denies the allegations in paragraph 39(a)(i);~~

~~(iii) refers to and repeats paragraphs 14 and 23 above and otherwise denies the allegations in paragraph 39(a)(iv);~~

~~(iv) it denies the allegations in paragraph 39(a)(v);~~

~~(v) denies the allegations in paragraph 39(a)(vi);~~

~~(vi) otherwise denies the allegations in paragraph 39(a).~~

~~(d) denies the allegations in paragraph 39(b);~~

~~(e) in response to paragraph 39(c), TMCA:~~

~~(i) refers to and repeats paragraphs 13, 14, 15, 17, 23, 27, 28, 29 and 36 above; and~~

~~(ii) otherwise denies the allegations in paragraph 39(c);~~

~~(f) — in response to paragraph 39(d), TMCA:~~

~~(i) — refers to and repeats paragraph 47 below; and~~

~~(ii) — otherwise denies the allegations in paragraph 39(d);~~

~~(g) — in response to paragraph 39(e), TMCA:~~

~~(i) — refers to and repeats paragraph 47 below;~~

~~(ii) — otherwise denies the allegations in paragraph 39(e);~~

~~(h) — in response to paragraph 39(f), TMCA:~~

~~(i) — refers to and repeats paragraph 47 below; and~~

~~(ii) — otherwise denies the allegations in paragraph 39(f);~~

~~(i1) — in response to paragraph 39(g1), TMCA:~~

~~(i) — says that Toyota Manual Regeneration cannot be performed unless the DPF Vehicle is fitted with a DPF Switch;~~

~~(ii) — says that from June 2018, a DPF Switch was:~~

~~—— (1) — fitted in all new vehicles; and~~

~~—— (2) — retrofitted in some existing vehicles;~~

~~(iii) — otherwise denies the allegation in paragraph 39(g1);~~

~~(i) — in response to paragraph 39(g), TMCA:~~

~~(i) — says that Toyota Manual Regeneration:~~

~~A. — cannot be completed unless the DPF Vehicle is fitted with a DPF Switch and the vehicle is stationary with the engine running for a period of approximately 30 minutes;~~

~~B. — should not be completed unless the DPF Vehicle is parked in an unenclosed space, and, if the DPF Vehicle is parked on a road, the driver remains with the DPF Vehicle for that period;~~

~~(ii) — otherwise denies the allegations in paragraph 39(g);~~

~~(j) — denies the allegations in paragraph 39(h); and~~

~~(k) — denies the allegations in paragraphs 39(i).~~

40. TMCA denies the allegations in paragraph 40.

41. In response to paragraph 41, TMCA:

- (a) refers to and repeats paragraphs 14, 15, 17, 23, 27, 28, ~~29, 31, 32,~~ 36 and 39 above;
- (b) says that during the Relevant Period, unless a DPF Vehicle was a 2018 Production Change Vehicle or had received the 2020 Field Fix, many of the DPF Vehicles which regularly and/or were persistently subjected to the High Speed Driving Pattern and/or subject to the countermeasures referred to in paragraph 47(f)(ii) below may have experienced one or more of the following consequences: ~~denies that the DPF Vehicles suffer, or have suffered from, the alleged Vehicle Defects;~~
 - (i) the DOC became damaged: R1 Annexure F [41(d)];
 - (ii) unoxidized fuels flowed through the DPF and was emitted from the DPF Vehicle as white smoke during and immediately following Toyota Automatic Regeneration: R1 Annexure F [41(g)] and [41(k)];
 - (iii) the DPF became partially or completely blocked: R1 Annexure F [41(h)];
 - (iv) foul smelling white smoke was emitted from the exhaust pipe when the engine was on during and immediately following Toyota Automatic Regeneration: R1 Annexure F [41(k)];
 - (v) those DPF Vehicles must be inspected, serviced and/or repaired by a service engineer for the purpose of cleaning, repairing or replacing the DPF, the DPF System, (or components thereof): R1 Annexure F [41(o)];
 - (vi) those DPF Vehicles must be inspected, serviced and/or repaired more regularly than would be required absent the defects referred to in paragraph 39(c) above: R1 Annexure F [41(p)];
 - (vii) the ECM must be reprogrammed more often than would be required absent the defects referred to in paragraph 39(c) above: R1 Annexure F [41(q)];
 - (viii) DPF Notifications were displayed on an excessive number of occasions and/or for an excessive period of time: R1 Annexure F [41(s)]; and
- (c) otherwise denies the allegations in paragraph 41.

D. THE APPLICANTS' VEHICLE

42. In response to paragraph 42, TMCA:

- (a) refers to and repeats paragraphs 39 to 41 and 43 to 45 below;
- (b) otherwise denies the allegations in paragraph.

43. In response to paragraph 43, TMCA:

- (a) says in response to paragraph 43(a) that:
 - (i) it admits that the First Applicant has made contact with a Dealer on at least four occasions during the Relevant Period and expressed concern about issues associated with the Toyota DPF System in the Applicants' Vehicle (**Applicants' DPF Issues**);
 - (ii) it otherwise denies the allegations in paragraph 43(a);
- (b) says in response to paragraph 43(b) that:
 - (i) it admits that the Applicants' Vehicle was inspected and / or serviced by a Dealer for the purposes of attempting to address the Applicants' DPF Issues on four occasions;
 - (ii) it otherwise denies the allegations in paragraph 43(b);
- (c) admits the allegations in paragraph 43(c);
- (d) admits the allegations in paragraph 43(d);
- (e) says in response to paragraph 43(e) that:
 - (i) it admits that the ECM in the Applicants' Vehicle was reprogrammed on 16 November 2017 and 12 April 2019;
 - (ii) it otherwise denies the allegations in paragraph 43(e).

44. TMCA admits the allegations in paragraph 44.

45. In response to paragraph 45, TMCA:

- (a) denies that the Applicants' DPF Issues were caused by the alleged Vehicle Defects;
- (b) does not know and cannot admit whether the Applicants' Vehicle continues to suffer from the Applicants' DPF Issues;
- (c) otherwise denies the allegations in paragraph 45.

E. TOYOTA AUSTRALIA'S KNOWLEDGE

46. In response to paragraph 46, TMCA:

- (a) refers to and repeats paragraphs 39 to 41 above and paragraphs 47 to 49 below; and
- (b) otherwise denies the allegations in paragraph 46.

47. In response to paragraph 47, TMCA:

- (aa) refers to and repeats paragraphs 39 to 41 above;
- (a) says that the first notification that TMCA has identified of a consumer experiencing issues with the Toyota DPF System in a DPF Vehicle was communicated to TMCA on 26 February 2016 when a Dealer Product Report was submitted to TMCA (**First DPR**);
- (b) says that following the First DPR, TMCA received further complaints from some owners of DPF Vehicles that were experiencing issues related to the Toyota DPF System (**DPF Issues**);
- (c) says that the DPF Issues experienced by some owners of DPF Vehicles included one or more of the following:
 - (i) emission of excessive white smoke from the exhaust of DPF Vehicles;
 - (ii) display of DPF Notifications;
 - (iii) display of the Engine MIL;
- (d) says that TMCA subsequently concluded that the DPF Issues experienced by some owners of DPF Vehicles were caused by a build-up of particulate matter and unburnt fuel from the Additional Injector on the front face of the DOC (**DOC Build-up**);
- (e) says that the DOC Build-up may reduce the thermal efficiency of the DOC such that the temperature required to achieve oxidisation may not be reached or maintained for a sufficient period of time;
- (f) says that to address the DOC Build-up, TMCA:
 - (i) implemented the following countermeasures in the production of new DPF Vehicles:
 - A. from 2017, implemented a programming change to the ECM in new DPF Vehicles which increased engine emission temperature at the time of Toyota Automatic Regeneration;
 - B. from June 2018:

- 1) implemented a programming change to the ECM for all new DPF Vehicles which changed the AF Ratio and reduced the amount of fuel added by the Additional Injector at the time of Toyota Automatic Regeneration; and
- 2) installed a DPF Switch in all new DPF Vehicles; [and](#)
- 3) [modified the DPF Assembly by changing the use and distribution of precious metals in the DOC and DPF.](#)

(2018 Production Change Vehicles):

(ii) implemented the following "field fixes" free of charge to DPF Vehicles that presented to Dealers:

A. from December 2016 to June 2018:

- 1) reprogrammed the ECM to implement the changes described in paragraph 47(f)(i)(A) above; and / or
- 2) replaced the DPF Assembly in some DPF Vehicles that presented with one or more DPF Issues;

B. from June 2018:

- 1) reprogrammed the ECM to implement the changes described in paragraph 47 (f)(i)(B)(1) above;
- 2) introduced a software programme to enable authorised Dealers to perform a "superburn", in which the DOC Build-up is eliminated by exposure to temperatures in the range of approximately 500°C - 550°C;
- 3) introduced a test to enable Dealers to determine:
 - a) the existence of white smoke following the superburn; or
 - b) if the Dealer regeneration was not successfully completed within 15 minutes,

and, if so, the DPF Assembly was replaced;

- 4) fitted a DPF Switch to some DPF Vehicles; and
- 5) introduced a Custom Mode feature to notify the driver when Toyota Automatic Regeneration was in progress;

- C. from May 2019, cleaned the Additional Injector Housing in some DPF Vehicles following the test referred to in paragraph 47(f)(ii)(B)(3);
- (iii) in July 2018, extended the TMCA warranty for all DPF Vehicles with DPF Issues regardless of age and kilometres;
- (iv) has instructed Dealers to repair individual DPF Vehicles presenting with DPF Issues, at no cost to consumers, and reimbursed Dealers for those repairs;
- (g) says that there have been some DPF Vehicles that have presented with DPF Issues following the implementation of the field fixes referred to in paragraph 47(f)(ii) above;
- (h) says that after ongoing investigations, in July 2019, TMCA concluded that the DOC Build-up occurring in some DPF Vehicles:
- (i) is a consequence of a reaction between carbon and precious metals present in the DOC; and
- (ii) may be affected by a deterioration in the Additional Injector spray pattern;
- (i) says that commencing in January 2020, it implemented the following "field fixes" free of charge to DPF Vehicles that presented to Dealers with one or more DPF Issues and / or that had not received the countermeasures referred to in paragraph 47(f)(ii)(B) above:
- (i) replaced the DPF Assembly with a DPF Assembly with a Euro 6 DOC unit, which contains a modified substrate that does not contain silicon oxide and has a different distribution of precious metals;
- (ii) replaced the Additional Injector and the Additional Injector housing assembly with a modified Additional Injector housing assembly, which incorporates a narrower fuel passage, together with a cooling jacket; and
- (iii) programmed changes to the ECM, which removed the cooling pulse previously used with the Additional Injector and added a "soot blow", which clears the front of the DOC prior to Toyota Automatic Regeneration or Toyota Manual Regeneration.†
- (2020 Field Fix):
- (j) says that from June 2020, the enhancements referred to in paragraph 47(i) above, have been included in the production of new DPF Vehicles;
- (k) says that TMCA is continuing to investigate the DOC Build-up in some DPF Vehicles and is in the process of validating and implementing further enhancements;
- (l) otherwise denies the allegations in paragraph 47.

48. In response to paragraph 48, TMCA:

- (a) admits that it created the document entitled "AuCQE - Field Action Proposal Form" dated 21 April 2017 (produced as document TAL.850.006.0383); and
- (b) otherwise denies the allegations in paragraph 48.

49. In response to paragraph 49, TMCA:

- (a) admits that it created the document entitled "AuCQE – Field Action Proposal Form" dated 24 September 2018 (produced as document TAL.850.016.0084); and
- (b) otherwise denies the allegations in paragraph 49.

50. In response to paragraph 50, TMCA:

- (a) refers to and repeats paragraph 47 above;
- (b) otherwise denies the allegations in paragraph 50.

51. In response to paragraph 51, TMCA:

- (a) refers to and repeats paragraph 47 above;
- (b) otherwise denies the allegations in paragraph 51.

52. In response to paragraph 52, TMCA:

(a) says that the 2018 Production Change Vehicles did not suffer from the alleged Vehicle Defects or Vehicle Defect Consequences;

(b) says that insofar as any DPF Vehicles suffered from any of the defects or consequences referred to in paragraphs 39 or 41 above, they were remedied by the 2020 Field Fix: Supplementary Reference Report [32]-[39];

~~(a)~~(c) says that subject to the matters pleaded at paragraphs 39 and 41 above, it denies that the DPF Vehicles suffereded from the alleged Vehicle Defects and / or the alleged Vehicle Defect Consequences;

(d) refers to and repeats paragraphs 47 above;

~~(b)~~(e) otherwise denies the allegations in paragraph 52.

53. In response to paragraph 53, TMCA:

- (a) refers to and repeats paragraphs 47;

- (b) otherwise denies the allegations in paragraph 53.

F. TOYOTA AUSTRALIA'S REPRESENTATIONS

F1. Vehicle Representations

54. In response to paragraph 54, TMCA:

- (a) says in response to paragraphs 54(a) that:
- (i) it admits the allegations in paragraphs 54(a)(i)-(iv) and (vi) in so far as they relate to DPF Vehicles;
 - (ii) it says that the DPF Vehicles were subject to the statutory guarantee of acceptable quality in s. 54 of the ACL but otherwise denies the allegations in paragraph 54(a)(v);
 - (iii) it otherwise denies the allegations paragraph 54(a);
- (b) denies the allegations in paragraph 54(b);
- (c) ~~[not used] says in response to paragraph 54(c) that:~~
- ~~(i) — the allegations in that paragraph are vague and embarrassing as they do not identify what the fuel efficiency stated in the promotional and instructional materials and on the fuel consumption labels applied to the windscreen of the DPF Vehicles is alleged to have been such that it is not possible for TMCA to properly respond;~~
 - ~~(ii) — subject to the matters referred to paragraph 54(c)(i) above, it denies the allegations in paragraph 54(c);~~
- (d) says in response to paragraph 54(d) that:
- (i) it admits the allegations in paragraph 54(d)(i);
 - (ii) it denies the allegations in paragraph 54(d)(ii) and (iii).

55. In response to paragraph 55, TMCA:

- (a) says that in relation to the representations that it admits making in paragraph 54 above **(Admitted Vehicle Representations)** it:
- (i) admits the allegation in paragraph 55(a);
 - (ii) does not know and therefore cannot admit the allegations in paragraph 55(b);
- (b) otherwise denies the allegations in paragraph 55.

56. In response to paragraph 56, TMCA:

- (a) says that the Admitted Vehicle Representations were made continuously, and continued, throughout the Relevant Period;
- (b) otherwise denies the allegations in paragraph 56.

57. In response to paragraph 57, TMCA:

- (a) refers to and repeats paragraph 56(a) above;
- (b) otherwise denies the allegations in paragraph 57 on the basis that it only made the Admitted Vehicle Representations and had no obligation to correct them.

F2. Future Vehicle Representations

58. In response to paragraph 58, TMCA:

- (a) says in response to paragraphs 58(a) that it:
 - (i) admits the allegations in paragraphs 58(a)(i)-(iv) and (vi) insofar as they relate to the DPF Vehicles;
 - (ii) says that the DPF Vehicles were subject to the statutory guarantee of acceptable quality in s. 54 of the ACL;
 - (iii) otherwise denies the allegations in paragraph 58(a);
- (b) denies the allegations in paragraph 58(b);
- (c) ~~[not used] says in response to paragraph 58(c) that:~~
 - ~~(i) the allegations in that paragraph are vague and embarrassing as they do not identify what the fuel efficiency stated in the promotional and instructional materials and on the fuel consumption labels applied to the windscreen of the DPF Vehicles is alleged to have been such that it is not possible for TMCA to properly respond;~~
 - ~~(ii) subject to the matters referred to in paragraph 58(c)(i) above, it denies the allegations in paragraph 58(c);~~
- (d) says in response to paragraph 58(d) that:
 - (i) it admits the allegations in paragraph 58(d)(i);
 - (ii) it denies the allegations in paragraph 58(d)(ii) and (iii);

59. In response to paragraph 59, TMCA:

- (a) says that in relation to the representations that it admits making in paragraph 58 above (**Admitted Future Vehicle Representations**) it:
 - (i) admits the allegation in paragraph 59(a);
 - (ii) does not know and therefore cannot admit the allegations in paragraph 59(b);
- (b) otherwise denies the allegations in paragraph 59.

60. In response to paragraph 60, TMCA:

- (a) admits that the Admitted Future Vehicle Representations were with respect to future matters, within the meaning of s. 4 of the ACL;
- (b) otherwise denies the allegations in paragraph 60.

61. In response to paragraph 61, TMCA:

- (a) says that the Admitted Future Vehicle Representations were made continuously, and continued, throughout the Relevant Period;
- (b) otherwise denies the allegations in paragraph 61.

62. In response to paragraph 62, TMCA:

- (a) refers to and repeats paragraph 61(a) above;
- (b) otherwise denies the allegations in paragraph 62 on the basis that it only made the Admitted Future Vehicle Representations and had no obligation to correct them.

F3. DPF System Representations

63. In response to paragraph 63, TMCA:

- (a) admits the allegations in paragraphs 63(a), (b), (c), (d), (f) and (i) insofar as they relate to the Toyota DPF System;
- (b) otherwise denies the allegations in paragraph 63.

64. In response to paragraph 64, TMCA:

- (a) says that in relation to the representations that it admits making in paragraph 63 (**Admitted DPF System Representations**) it:
 - (i) admits the allegation in paragraph 64(a);

(ii) does not know and therefore cannot admit the allegations in paragraph 64(b);

(b) otherwise denies the allegations in paragraph 64.

65. In response to paragraph 65, TMCA:

(a) says that the Admitted DPF System Representations were made continuously, and continued, throughout the Relevant Period;

(a) otherwise denies the allegations in paragraph 65.

66. In response to paragraph 66, TMCA:

(a) refers to and repeats paragraph 65(a) above;

(b) otherwise denies the allegations in paragraph 66 on the basis that it only made the Admitted DPF System Representations and had no obligation to correct them.

F4. Future DPF System Representations

67. In response to paragraph 67, TMCA:

(a) admits the allegations in paragraphs 67(a), (b), (c), (d), (f) and (i) insofar as they relate to the Toyota DPF System;

(b) otherwise denies the allegations in paragraph 67.

68. In response to paragraph 68, TMCA:

(a) says that in relation to the representations that it admits making in paragraph 63 (**Admitted Future DPF System Representations**) it:

(i) admits the allegation in paragraph 68(a);

(ii) does not know and therefore cannot admit the allegations in paragraph 68(b);

(b) otherwise denies the allegations in paragraph 68.

69. In response to paragraph 69, TMCA:

(a) admits that the Admitted Future DPF System Representations were with respect to future matters, within the meaning of s. 4 of the ACL;

(b) otherwise denies the allegations in paragraph 69.

70. In response to paragraph 70, TMCA:

- (a) says that the Admitted Future DPF System Representations were made continuously throughout the Relevant Period;
- (b) otherwise denies the allegations in paragraph 70.

71. In response to paragraph 71, TMCA:

- (a) refers to and repeats paragraph 70(a) above;
- (b) otherwise denies the allegations in paragraph 71 on the basis that it only made the Admitted Future DPF Vehicle Representations and had no obligation to correct them.

G. TOYOTA AUSTRALIA'S OMISSIONS

72. TMCA denies the allegations in paragraph 72 on the basis of the denials in paragraphs 39 and 41 above.

73. TMCA denies the allegations in paragraph 73 on the basis of the denials in paragraphs 39 and 41 above.

74. TMCA denies the allegations in paragraph 74 on the basis of the denials in paragraphs 39 and 41 above.

H. FAILURE TO COMPLY WITH STATUTORY GUARANTEE AS TO ACCEPTABLE QUALITY

75. In response to paragraph 75, TMCA:

- (a) admits the allegations insofar as they relate to Group Members;
- (b) otherwise denies the allegations in paragraph 75.

76. In response to paragraph 76, TMCA:

- (a) denies the allegations in paragraph 76(a) and refers to and repeats paragraph 5(a)(iv) above;
- (b) says in response to paragraph 76(b) that:
 - (i) it admits that, according to the definition of Group Members and Affected Vehicles contained in paragraph 1 of the [Second](#) Further Amended Statement of Claim, some of the Affected Vehicles will have been supplied by Dealers;
 - (ii) it otherwise denies the allegations in paragraph 76(b);
- (c) does not know and therefore cannot admit the allegations in paragraph 76(c).

77. TMCA admits the allegations in paragraph 77.

78. In response to paragraph 78, TMCA:

- (a) refers to and repeats paragraph 76(a) above;
- (b) admits the allegations insofar as they relate to Group Members (other than those falling within paragraph 1(b)(ii) of the [Second](#) Further Amended Statement of Claim);
- (c) does not know and therefore cannot admit whether the Group Members falling within paragraph 1(b)(ii) of the [Second](#) Further Amended Statement of Claim acquired their DPF Vehicles from a Supplier (as defined in paragraph 76 of the [Second](#) Further Amended Statement of Claim);
- (d) otherwise does not know and therefore cannot admit the allegations in paragraph 78.

79. In response to paragraph 79, TMCA:

- (a) refers to and repeats paragraph 76(a) above;
- (b) admits the allegations insofar as they relate to Group Members (other than those falling within paragraph 1(b)(ii) of the [Second](#) Further Amended Statement of Claim);
- (c) refers to and repeats paragraph 78(c) above;
- (d) otherwise does not know and therefore cannot admit the allegations in paragraph 79.

80. In response to paragraph 80, TMCA:

- (a) refers to and repeats paragraph 76(a) above;
- (b) admits the allegations insofar as they relate to Group Members (other than those falling within paragraph 1(b)(ii) of the [Second](#) Further Amended Statement of Claim);
- (c) refers to and repeats paragraph 78(c) above;
- (d) otherwise does not know and therefore cannot admit the allegations in paragraph 80.

81. TMCA admits the allegations in paragraph 81 ~~but refers to and repeats the denial of paragraph 39(a)(ii) above.~~

82. In response to paragraph 82, TMCA:

- (a) denies the allegations in paragraph 82;

(b) says further that:

- (i) while the DPF Issues experienced by some owners of DPF Vehicles may have meant that their particular DPF Vehicle did not meet the statutory guarantee of acceptable quality in s. 54 of the ACL, the DPF Issues are not common to all Group Members and do not mean that all DPF Vehicles fail to meet the statutory guarantee of acceptable quality in s. 54 of the ACL;
- (ii) TMCA has undertaken, and continues to undertake, a Customer Redress Scheme designed to identify those owners of DPF Vehicles who have experienced DPF Issues that may have meant that their particular DPF Vehicle did not meet the statutory guarantee of acceptable quality contained in s. 54 of the ACL;
- (iii) to the extent the DPF Issues experienced by some owners of DPF Vehicles who are Group Members were due to the Applicants' or Group Members' failure to respond appropriately to the DPF Notifications and / or the Engine MIL, as set out in paragraph 17 above, then the relevant DPF Vehicle will not have failed to comply with the statutory guarantee of acceptable quality in s. 54 of the ACL by reason of s. 54(6) of the ACL.

83. In response to paragraph 83, TMCA:

- (a) refers to and repeats paragraph 82 above;
- (b) otherwise denies the allegations in paragraph 83.

84. In response to paragraph 84, TMCA:

- (a) admits that according to the definition of Group Members contained in paragraph 1 of the [Second](#) Further Amended Statement of Claim, each was either:
 - (i) a consumer who acquired a DPF Vehicle;
 - (ii) a person who acquired a DPF Vehicle from a consumer (other than for the purposes of re-supply);
- (b) refers and repeats paragraph 82 above;
- (c) otherwise denies the allegations in paragraph 84.

I. MISLEADING OR DECEPTIVE CONDUCT

85. In response to paragraph 85, TMCA:

- (a) admits that the Admitted Vehicle Representations, the Admitted Future Vehicle Representations, the Admitted DPF System Representations and the Admitted Future DPF System Representations (collectively, the **Admitted Representations**) were made in trade or commerce;
- (b) otherwise denies the allegations in paragraph 85.

86. TMCA denies the allegations in paragraph 86.

87. In response to paragraph 87, TMCA:

- (a) says that the fact that some owners of DPF Vehicles experienced some DPF Issues does not mean that TMCA did not have reasonable grounds for making the Admitted Future Vehicle Representations in circumstances where:
 - (i) the DPF Issues were not safety related;
 - (ii) TMCA has reimbursed Dealers so that the repair of the DPF Issues are provided free of charge to Group Members;
 - (iii) TMCA has continued to investigate the DPF Issues and validate and implement enhancements to DPF Vehicles; and
 - (iv) TMCA has implemented the Customer Redress Scheme referred to in paragraph 82(b)(ii) above; and
- (b) otherwise denies the allegations in paragraph 87.

88. TMCA denies the allegations in paragraph 88.

89. In response to paragraph 89, TMCA:

- (a) refers to and repeats paragraph 87 above; and
- (b) otherwise denies the allegations in paragraph 89.

90. TMCA denies the allegations in paragraph 90.

91. TMCA denies the allegations in paragraph 91.

92. TMCA denies the allegations in paragraph 92.

J. UNCONSCIONABLE CONDUCT

93. In response to paragraph 93, TMCA:

- (a) admits that the Admitted Representations were conduct engaged in by TMCA in connection with the supply or possible supply of DPF Vehicles to a person within the meaning of s. 21 of the ACL;
- (b) otherwise denies the allegations in paragraph 93.

94. In response to paragraph 94, TMCA:

- (a) denies that it engaged in the alleged Misleading Conduct;
- (b) denies the allegations in paragraphs 94(a), 94(b), 94(c) and 94(e);
- (c) denies the allegations in paragraph 94(d) on the basis of the denials contained in paragraphs 39 and 41 above.

95. In response to paragraph 95, TMCA:

- (a) refers to and repeats paragraph 87 above; and
- (b) otherwise denies the allegations in paragraph 95.

K. CAUSATION

96. In response to paragraph 96, TMCA:

- (a) denies the allegations in paragraphs 96(a), ~~and 96(b)~~ and 96(e);
- (b) says in response to paragraph 96(c) that:
 - (i) insofar as the allegations in paragraph 96(c) concern the First and/or Second Applicant, it refers to and repeats paragraph 43 above and otherwise denies the allegations in paragraph 96(c);
 - (ii) insofar as the allegations in paragraph 96(c) concern Group Members, it refers to and repeats paragraphs 47(a), 47(b) and 82 above and otherwise it does not know and therefore cannot admit the allegations in paragraph 96(c);
- (c) does not know and therefore cannot admit the allegations in paragraph 96(d).

97. In response to paragraph 97, TMCA:

- (a) denies that it has engaged in the Misleading Conduct and / or the Unconscionable Conduct;

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 97.

L. LOSS OR DAMAGE SUFFERED BY THE APPLICANTS AND GROUP MEMBERS

98. In response to paragraph 98, TMCA:

- (a) refers to and repeats paragraph 82 above [and paragraph 100 below](#);
- (b) otherwise denies the allegations in paragraph 98.

99. [In response to paragraph 99, TMCA:](#)

- [\(a\) refers to and repeats paragraph 100 below; and](#)
- [\(b\) ~~TMCA~~ denies the allegations in paragraph 99.](#)

M. RELIEF

100. In response to paragraph 100, TMCA:

- (a) denies that the Applicants or the Group Members are entitled to the relief sought in paragraphs 100(a), 100(c), 100(d), 100(e) and 100(f);
- (b) in response to paragraph 100(b):
 - (i) refers to and repeats paragraph 82 above;
 - (ii) otherwise denies that the Applicants or the Group Members are entitled to the relief sought in paragraph 100(b);

[\(c\) says that all of the 2018 Production Change Vehicles did not suffer from any Vehicle Defects or Vehicle Defect Consequences;](#)

Particulars

[264,170 DPF Vehicles were acquired in Australia during the Relevant Period, of which 98,861 are 2018 Production Change Vehicles.](#)

[\(d\) says that TMCA gave or made express warranties to the Applicants and all Group Members with respect to DPF Vehicles;](#)

Particulars

[The express warranties are:](#)

[\(A\) known as the "Toyota New Vehicle Warranty" set out in warranty and service booklets provided with DPF Vehicles prior to on or about 1 January 2019;](#)

(B) known as the “Toyota Warranty Advantage” set out in warranty and service booklets provided with DPF Vehicles and on TMCA’s website (<https://www.toyota.com.au/-/media/toyota/main-site/page-data/warranty/files/toyota-warranty-advantage-terms-conditions.pdf>) from on or about 1 January 2019 onwards; and

(C) set out in letters issued by TMCA to the Applicants and Group Members from on or about 31 July 2020 by which TMCA extended its warranty, so as to apply for 10 years from delivery of each vehicle when new, for issues with the Toyota DPF System (10 Year Warranty Letter).

(together the “Express Warranties”).

(e) says that the Applicants and Group Members each had an obligation to mitigate any losses that they claim in paragraph 100;

(f) says that the 2020 Field Fix is effective in fixing any Vehicle Defects and Vehicle Defect Consequences;

(g) says that TMCA has invited or requested that the Applicants bring the Applicants’ Vehicle to a Toyota dealer with a view to implementing the 2020 Field Fix, free of charge, but the Applicants have failed to do so;

Particulars

The invitation or request is in writing and contained in the letter dated 24 August 2020 titled “Toyota Prado – Month & Year of manufacture February 2016” from TMCA to Kenneth Williams

(h) says that TMCA has invited Group Members to bring their DPF Vehicle to a Toyota dealer with a view to implementing the 2020 Field Fix, free of charge.

Particulars

The invitation is in writing and contained in the 10 Year Warranty Letter, and sent to Group Members in the period 31 July 2020 to 9 September 2020.

(i) says that the Applicants and Group Members who have not caused the Toyota DPF System in their DPF Vehicles to be repaired or replaced by TMCA pursuant to the 10 Year Warranty Letter have failed to mitigate their losses (as alleged), save for Group Members who purchased the 2018 Production Change Vehicles;

(j) says that if Group Members who purchased the 2018 Production Change Vehicles allege that their DPF Vehicles suffer or suffered from any of the Vehicle Defects or Vehicle Defect Consequences (which is denied), those Group Members who have not caused the Toyota

DPF System in their DPF Vehicles to be repaired or replaced by TMCA pursuant to any of the Express Warranties have failed to mitigate their losses (as alleged):

(k) says that if TMCA did not comply with any guarantee of acceptable quality within the meaning of s. 54 of the ACL with respect to any of the Affected Vehicles (which is denied):

(i) at least some Group Members have, in accordance with one or more of the Express Warranties, required TMCA to remedy any non-compliance with the guarantee of acceptable quality within the meaning of s. 54 of the ACL by repairing their vehicle or replacing the vehicle with a vehicle of an identical type (together the “**Remedied Vehicles**”):

Particulars

The requirement was express or inferred from the conduct of the Applicants and Group Members.

Insofar as it was express, it was made orally and/or in writing.

Insofar as it was inferred, such inference is drawn from the fact that the Applicants and relevant Group Members brought in their DPF Vehicle for one or more services and TMCA (through Toyota dealers) repaired the vehicle.

Further particulars may be provided prior to the final trial.

(ii) by implementation of the 2020 Field Fix, TMCA remedied any non-compliance with the guarantee of acceptable quality within the meaning of s. 54 of the ACL in respect of the Remedied Vehicles (**Remediation**):

Particulars

As at 28 February 2021, 20,570 DPF Vehicles have had the 2020 Field Fix.

As at 31 July 2021, 30,875 DPF Vehicles have had the 2020 Field Fix.

(iii) in respect of each Remedied Vehicle, TMCA undertook Remediation within a reasonable time; and

(iv) by reason of the matters in sub-paragraphs (i) to (iii) above and pursuant to s 271(6) of the ACL, at least some of the Group Members are not entitled to commence an action to recover damages of a kind referred to in s 272(1)(a) of the ACL.

Date: ~~4 June~~ ~~15 February~~ 28 October 2021

.....
Signed by Andrew Morrison
Lawyer for the respondent

This pleading was prepared by Andrew Morrison and Emma Mawson, lawyers for the respondent, and settled by Peter Brereton SC, Jeremy Slattery SC and Amy Munro of Counsel.

The further amendments to this pleading were prepared and settled by Andrew Morrison and Emma Mawson, lawyers for the respondent, and settled by Amy Munro and Xuelin Teo of Counsel.

[The amendments to this pleading dated 28 October 2021 were prepared by Andrew Morrison, lawyer for the respondent, and settled by Robert Dick SC and Xuelin Teo of Counsel.](#)

Certificate of lawyer

I Andrew Morrison certify to the Court that, in relation to the defence filed on behalf of the respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~18 October 2019~~ ~~15 February~~ 28 October 2021



.....
Signed by Andrew Morrison
Lawyer for the respondent

Schedule 1

#	Model Version	Katashiki
1.	Fortuner GX 2.8L T Diesel Automatic Wagon	GUN156R-STTLHQ
2.	Fortuner GX 2.8L T Diesel Manual Wagon	GUN156R-STFLHQ
3.	Fortuner GXL 2.8L T Diesel Automatic Wagon	GUN156R-STTSHQ
4.	Fortuner GXL 2.8L T Diesel Manual Wagon	GUN156R-STFSHQ
5.	Fortuner Crusade 2.8L T Diesel Automatic Wagon	GUN156R-STTMHQ
6.	Fortuner Crusade 2.8L T Diesel Manual Wagon	GUN156R-STFMHQ
7.	Hilux 4x2 Workmate 2.4L T Diesel Manual Single Cab C/C 5M	GUN122R-BTMXYQ3
8.	Hilux 4x2 Workmate 2.4L T Diesel Automatic Double Cab	GUN135R-DTTXHQ
9.	Hilux 4x2 Workmate 2.4L T Diesel Manual Double Cab	GUN122R-DTMXYQ
10.	Hilux 4x2 SR 2.8L T Diesel Automatic Extra Cab	GUN136R-CTTSHQ
11.	Hilux 4x2 SR 2.8L T Diesel Manual Extra Cab	GUN123R-CTMSYQ
12.	Hilux 4x2 SR 2.8L T Diesel Automatic Double Cab	GUN136R-DTTSHQ
13.	Hilux 4x2 SR 2.8L T Diesel Manual Double Cab	GUN136R-DTFSHQ
14.	Hilux 4x2 SR 2.8L T Diesel Manual Single Cab C/C	GUN123R-BTMSYQ3
15.	Hilux 4x2 SR5 2.8L T Diesel Automatic Double Cab	GUN136R-DTTMHQ
16.	Hilux 4x2 SR5 2.8L T Diesel Manual Double Cab	GUN136R-DTFMHQ
17.	Hilux 4x4 Workmate 2.4L T Diesel Automatic Single Cab C/C	GUN125R-BTTXHQ3
18.	Hilux 4x4 Workmate 2.4L T Diesel Manual Single Cab C/C	GUN125R-BTFXHQ3
19.	Hilux 4x4 Workmate 2.4L T Diesel Automatic Extra Cab C/C	GUN125R-CTTXHQ3
20.	Hilux 4x4 Workmate 2.4L T Diesel Manual Extra Cab C/C	GUN125R-CTFXHQ3
21.	Hilux 4x4 Workmate 2.4L T Diesel Automatic Double Cab	GUN125R-DTTXHQ
22.	Hilux 4x4 Workmate 2.4L T Diesel Manual Double Cab	GUN125R-DTFXHQ
23.	Hilux 4x4 Workmate 2.4L T Diesel Automatic Double Cab C/C	GUN125R-DTTXHQ3
24.	Hilux 4x4 SR 2.8L T Diesel Automatic Single Cab C/C	GUN126R-BTTSHQ3
25.	Hilux 4x4 2.8L T Diesel Manual Single Cab C/C	GUN126R-BTFSHQ3
26.	Hilux 4x4 SR 2.8L T Diesel Automatic Extra Cab C/C	GUN126R-CTTSHQ3
27.	Hilux 4x4 SR 2.8L T Diesel Manual Extra Cab C/C	GUN126R-CTFSHQ3

28.	Hilux 4x4 SR 2.8L T Diesel Automatic Double Cab	GUN126R-DTTSHQ
29.	Hilux 4x4 Rugged 2.8L T Diesel Automatic Double Cab	GUN126R-DTTSHQ
30.	Hilux 4x4 SR 2.8L T Diesel Manual Double Cab	GUN126R-DTFSHQ
31.	Hilux 4x4 Rugged 2.8L T Diesel Manual Double Cab	GUN126R-DTFSHQ
32.	Hilux 4x4 SR 2.8L T Diesel Automatic Double Cab C/C	GUN126R-DTTSHQ3
33.	Hilux 4x4 SR 2.8L T Diesel Manual Double Cab C/C	GUN126R-DTFSHQ3
34.	Hilux 4x4 SR 2.8L T Diesel Manual Extra Cab	GUN126R-CTFSHQ
35.	Hilux 4x4 SR5 2.8L T Diesel Automatic Extra Cab	GUN126R-CTTMHQ
36.	Hilux 4x4 SR5 2.8L T Diesel Manual Extra Cab	GUN126R-CTFMHQ
37.	Hilux 4x4 SR5 2.8L T Diesel Automatic Double Cab	GUN126R-DTTMHQ
38.	Hilux 4x4 Rugged X 2.8L T Diesel Automatic Double Cab	GUN126R-DTTMHQ
39.	Hilux 4x4 Rogue 2.8L T Diesel Automatic Double Cab	GUN126R-DTTMHQ
40.	Hilux 4x4 SR5 2.8L T Diesel Manual Double Cab	GUN126R-DTFMHQ
41.	Hilux 4x4 Rugged X 2.8L T Diesel Manual Double Cab	GUN126R-DTFMHQ
42.	Prado GX 2.8L T Diesel Automatic Wagon	GDJ150R-GKTEYQ
43.	Prado GX 2.8L T Diesel Manual Wagon	GDJ150R-GKFEYQ
44.	Prado GXL 2.8L T Diesel Automatic Wagon	GDJ150R-GKTEYQ
45.	Prado GXL 2.8L T Diesel Manual Wagon	GDJ150R-GKFEYQ
46.	Prado VX 2.8L T Diesel Automatic Wagon	GDJ150R-GKTEYQ
47.	Prado Kakadu 2.8L T Diesel Automatic Wagon	GDJ150R-GKTEYQ
48.	Prado SE 2.8L T Diesel Automatic Wagon	GDJ150R-GKTEYQ
49.	Hilux 4x2 Workmate 2.4L T Diesel Manual Single Cab C/C 6M	GUN135R-BTFXHQ3
50.	Hilux DC 4x2 W/mate T/Diesel 5M	GUN135R-DTFXHQ