



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

Part I: Certification

This chronology is in a form suitable for publication on the internet.

Part II: Chronology

List of principal events leading to the litigation, with appropriate references to the appeal book in respect of findings of fact and evidence relating to those events.

	Date	Event	Reference
2015			
1.	1-Oct-15	Relevant Period commenced.	Initial Trial reasons for judgment (J) [6] (Joint Core Appeal Book (JCAB) 16)
2.	Throughout the relevant period	264,170 Toyota cars in the Prado, Fortuner and Hilux ranges and fitted with a “1GD FTV” or “2GD-FTV” diesel combustion engine were supplied to consumers in Australia (Relevant Vehicles).	J [6], [15] (JCAB 16, 18); Agreed Facts (AF) [33] (Williams Book of Further Materials (WBFM) 105)
		Each Relevant Vehicle was supplied with a diesel exhaust after-treatment system (DPF System) that 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 per hour (the High Speed Driving Pattern) (as defined in J [15(7)] (JCAB 20)) (Core Defect).	J [6], [15], [44], [196] (JCAB 16, 18, 20, 28, 66); AF [67], [69] (WBFM 113); First Referee Report (Pt C tab 12.259) (IRR) [8], [38(a)] (WBFM 9, 16)
		The Core Defect was inherent in the design of the DPF system. The Core Defect was latent in vehicles which did not experience symptoms and	AF [69], [70] (WBFM 113); 1RR [9]-[10] (WBFM 9, 10)

	<p>consequences of the Core Defect, due to their usage patterns, but was nevertheless present in those vehicles. The Defect Consequences of the Core Defect were likely to manifest in relatively common driving conditions for many buyers,</p>	
	<p>If a Relevant Vehicle was exposed to the High Speed Driving Pattern and/or subject to the Earlier Countermeasures (as defined in Schedule 1 to the Orders of Lee J dated 16 May 2022 (JCAB 168)), the vehicle had a propensity to malfunction in the manner described in J [15(8)] (JCAB 20). The consequences of the Core Defect, when experienced, included excessive white smoke and foul-smelling exhaust being emitted from the vehicle's exhaust during regeneration, components becoming blocked or damaged, warning lights illuminating on the dashboard, the need to have the vehicle inspected, serviced and/or repaired more than would otherwise be necessary and an increase in fuel consumption.</p>	<p>J [15], [59], [63] (JCAB 18, 20, 32, 34); Full Court reasons for judgment (FC) [15], [55], [58] (JCAB 266, 275, 276); AF 275, 276); AF (WBFM 113 114); 1RR [8], [9], [11], [38(a)], [39], [43] (WBFM 9, 10, 16, 17)</p>
	<p>There was no suggestion that the safety of those in any of the relevant vehicles when the excessive smoke was produced was threatened or that the Core Defect might adversely affect the safe road handling capacity of those vehicles. They were not made unroadworthy by the Defect Consequences. In all other</p>	<p>FC [308] (JCAB 326)</p>

	respects, the features of the vehicle were not compromised.	
	The “ <i>likelihood or probability that any given Relevant Vehicle would suffer from one or more Defect Consequences was relatively high</i> ”. Indeed, the manifestation of one or more Defect Consequences “ <i>was a certainty occasioned by the normal use of highway driving</i> ”.	J [64], [391] (JCAB 34, 120); 1RR [43] (WBFM 17)
	There was no effective remedy available for the Core Defect throughout the Relevant Period. While TMCA attempted a number of countermeasures to remedy the Core Defect, none was effective and “ <i>in some cases caused the DPF System to malfunction in Relevant Vehicles which had not previously suffered from any defect consequences</i> ”.	J [44]-[47] (JCAB 28-29); 1RR [11] (WBFM 10)
	Under certain conditions, deposits and/or coking of the DOC prevented the DPF System from effective automatic or manual regeneration. When regeneration does not occur, the DPF becomes partially or completely blocked.	J [232] (JCAB 77); FC [13]-[14] (JCAB 266); 1RR [21], [39] (WBFM 12, 16)
	TMCA made (and did not correct or qualify) the Admitted DPF System Representations and the Admitted Future DPF System Representations, which were false and misleading.	J [191], [215(2)], [217], [232] (JCAB 65, 73, 74, 77); AF [191]-[196] (WBFM 138)
	TMCA made (and did not correct or qualify) the Admitted Vehicle	J [191], [215(1)], [217] (JCAB 65,

		Representations and the Admitted Future Vehicle Representations, which were false and misleading.	72, 74); AF [187]-[190], [195]-[196] (WBFM 137, 138)
		TMCA engaged in the admitted misleading conduct, by failing to disclose, or adequately disclose: (a) the existence, nature and extent of the Core Defect in the Relevant Vehicles; (b) the Defect Consequences; (c) that the Core Defect had not been remedied; and (d) that from February 2016, TMCA knew of the Core Defect and its consequences. This conduct was misleading or deceptive, or likely to mislead or deceive.	J [244]-[250], [538] (JCAB 80- 81,156)
		The consumer market was not apprised of the Core Defect and the Defect Consequences; instead, ignorance of the Core Defect and Defect Consequences was profound and widespread.	J [87], [90], [92], [114], [117] (JCAB 40, 41, 42, 47, 48); FC [265], [272] (JCAB 318, 319)
2016			
3.	From Feb-16	TMCA was aware that some Relevant Vehicles were being presented to Dealers by customers who reported concerns about the emission of excessive white smoke during regeneration and the illumination of DPF Notifications (as defined in Schedule 1 to the Orders of Lee J dated 16 May 2022 (JCAB 167)).	J [16] (JCAB 21); AF [125] (WBFM 126)
4.	24-Mar-16	TMCA issued the First Field Technical Report (FTR) to Toyota Motor Corporation (TMC) in Japan concerning TMCA’s inspection of a Relevant Vehicle which had suffered repeated DPF	AF [125]-[131] (WBFM 126- 127); Affidavit of Martin John Nelson affirmed on 5

		issues, together with the DPF recovered from that vehicle.	October 2021 (Pt C tab 13) (Nelson Affidavit), [80] (JCAB 403)
5.	8-Apr-16	The second respondent acquired the Relevant Prado for \$60,315. This was arranged by Mr Williams, the second respondent’s sole director. There was no disclosure of the Core Defect or Defect Consequences to Mr Williams (and hence to the second respondent) before the Relevant Prado was acquired.	J [7], [128]- [129], [512] (JCAB 17, 50- 51, 149); AF [77]-[80], [90] (WBFM 115, 117); Affidavit of Kenneth John Williams sworn on 11 December 2020 (Pt C tab 17) (Williams Affidavit), [96] (JCAB 404)
6.	26-Apr-16	<p>TMCA issued a Global Registration Notice (First GRN) to TMC relating to the Relevant Vehicles experiencing the DPF issues, reflecting TMCA’s view that the DPF issues were a serious matter deserving of the urgent attention of TMC.</p> <p>The First GRN states that:</p> <p style="padding-left: 40px;"><i>“- Failure strongly affects reputation of new engine technology in the market.</i></p> <p style="padding-left: 40px;"><i>- There is no current repair method.</i></p> <p style="padding-left: 40px;"><i>- A quick Production [countermeasure] & supply of</i></p>	J [21(2)] (JCAB 22); AF [132] (WBFM 127); Pt C tab 42, T84.15-25 (JCAB 406); Pt C tab 13.1.14 (JCAB 403)

		<i>service parts is required.”</i>	
7.	22-Jun-16	A technical committee comprising attendees from TMCA, TMC and Toyota Industries Corporation (TICO) identified the High Speed Driving Pattern as a root cause of the DPF Issues.	Pt C tab 12.23 (JCAB 401)
8.	28-Jun-16	TMCA issued a Global Registration Request to TMC relating to the Relevant Vehicles experiencing the DPF issues, which states that: <i>“The subject condition is currently tarnishing the New Hilux brand and reputation. ... Please urgently investigate the reported condition and implement an effective countermeasure to eliminate this condition”</i> .	Pt C tab 12.24 (JCAB 401)
9.	31-Aug-16	TMCA issued a second GRN (Second GRN) to TMC regarding the DPF issues. The Second GRN states that: <i>“Failure cases is [sic] increasing and countermeasure is urgently necessary. There are several customers getting stopped by the police, and also other road users”</i> .	J [86] (JCAB 40); AF [134] (WBFM 128); Pt C tab 13.1.15 (JCAB 403)
10.	5-Sep-16	TMCA received a Technical Information bulletin from TMC, which confirmed that "the root cause of clogging is due to auto regeneration being too difficult to complete when driving in 5th gear, at 100km/h" and that a countermeasure was awaiting implementation (First Countermeasure) (as defined in AF [135(b)] (WBFM 128)).	J [16] (JCAB 21); AF [135] (WBFM 128); Pt C tab 13.1.16 (JCAB 403)

11.	23-Dec-16	<p>TMCA directed Dealers to offer the First Countermeasure and a replacement DPF (First Field Fix) to customers for Relevant Vehicles in the Hilux and Fortuner ranges that presented to Dealers exhibiting excess white smoke from the exhaust and/or a DPF Notification and the diagnostic code P2463.</p> <p>The First Countermeasure was ineffective and, in some cases, caused the DPF System to malfunction in Relevant Vehicles which had not previously suffered any Defect Consequences.</p>	<p>AF [136] (WBFM 128); Pt C tab 13.1.17 (JCAB 404)</p> <p>J [16], [44], [109(3)] (JCAB 21, 28, 46)</p>
12.	Between 7-Nov-16 and 1-Feb-17	<p>Mr Williams had his first experience of the Relevant Prado emitting foul smelling, excessive white smoke from the exhaust. From this time onwards, Mr Williams observed that the Relevant Prado's fuel consumption increased.</p>	<p>J [135], [148] (JCAB 51, 54); Williams Affidavit [117], [127]-[130] (JCAB 404)</p>
13.	2-3 weeks later	<p>Mr Williams had his second experience of the Relevant Prado emitting foul smelling, excessive white smoke from the exhaust.</p>	<p>J [136] (JCAB 52); Williams Affidavit [122]- [123], [126] (JCAB 404)</p>
2017			
14.	27-Jan-17	<p>TMCA re-issued Technical News Flash 89/16 (TNF) to include ECM calibration codes to enable Relevant Vehicles in the Prado range to be offered the First Field Fix.</p>	<p>AF [137] (WBFM 128)</p>
15.	1-Feb-17	<p>Mr Williams raised the emission of excessive white smoke from the Relevant</p>	<p>J [137], [149] (JCAB 52,</p>

		Prado with Oldmac Toyota when he dropped the vehicle off for servicing. At around this time, the Relevant Prado was emitting excessive, foul smelling white smoke almost daily.	54);Williams Affidavit [114], [131]-[135] (JCAB 404)
16.	21-Apr-17	By way of a “ <i>Field Action Proposal</i> ”, TMCA sought permission from TMC to implement a “ <i>Customer Service Campaign</i> ” (CSC) to address the DPF issues experienced by Relevant Vehicles. The purpose of the Field Action Proposal was “ <i>to demonstrate to TMC the level of importance, severity and potential impact upon guests</i> ” of the DPF issues being experienced by the Relevant Vehicles. The Field Action Proposal forecast that 50% of Relevant Vehicles would be the subject of a DPF-related complaint within 5 years of service and 94% within 10 years.	J [64] (JCAB 34); AF [140] (WBFM 129); Nelson Affidavit [91]-[95] (JCAB 403); Pt C tab 13.1.20 (JCAB 404); Pt C tab 42, T89.30- 91.13 (JCAB 406)
17.	24-Apr-17	TMC approved the implementation of the First Countermeasure as a CSC in the Australian market.	AF [140] (WBFM 129)
18.	Jun-17	Relevant Vehicles started to present to Dealers exhibiting DPF Issues after having received the First Field Fix.	AF [143] (WBFM 130)
19.	19-Jun-17	The First Countermeasure was applied to the Relevant Prado, but was ineffective and the Relevant Prado continued to emit white smoke approximately every day.	J [149] (JCAB 54); Williams Affidavit [114], [136]-[139] (JCAB 404)
20.	10-Jul-17	The DPF was replaced in the Relevant	J [138], [149]

		Prado at an unscheduled service after Mr Williams complained to Oldmac Toyota. The tax invoice for this service states: <i>“VEHICLE STILL BLOWING EXCESSIVE WHITE SMOKE... CONCERN DIAGNOSED AS A FAULTY DPF ASSEMBLY”</i> . Replacing the DPF did not resolve the issue.	(JCAB 52, 54); AF [89] (WBFM 116); Williams Affidavit [115], [139]-[144] (JCAB 404)
21.	15-Sep-17	TMCA issued a Global Registration Request (GRR) to TMC outlining its concerns that Relevant Vehicles were presenting with DPF Issues after having received the First Countermeasure, including Relevant Vehicles which had had no previous DPF concerns. TMCA requested that TMC urgently investigate and implement an effective countermeasure to eliminate the DPF issues.	AF [144] (WBFM 130); Pt C tab 12.38 (JCAB 401); Pt C tab 13.1.21 (JCAB 404)
22.	26-Oct-17	TMCA issued a third GRN (Third GRN) to TMC regarding the DPF issues. The reason for the Third GRN was that: <i>“Vehicles without any prior DPF issue have started to experience this problem soon after the ECU reprogram (part of CSE campaign) was installed. As the number of occurrences is increasing and a large number of vehicles is [affected], an urgent root cause is necessary.”</i>	AF [145] (WBFM 130); Nelson Affidavit [99] (JCAB 403); Pt C tab 12.44 (JCAB 401)
23.	16-Nov-17	The ECU on the Relevant Prado was again reprogramed by Oldmac Toyota after Mr Williams complained.	J [149] (JCAB 54); Williams Affidavit [114], [146]-[149]

			(JCAB 404)
2018			
24.	14-Mar-18	The Relevant Prado was serviced to seek to address continuing DPF issues. The tax invoice for the service states: <i>“INSPECT DPF OPERATION VEHICLE IS STARTING TO BLOW EXCESSIVE SMOKE AGAIN AND USING ALOT OF FUEL”.</i>	J [149] (JCAB 54); Williams Affidavit [150]- [151] (JCAB 404)
25.	Around 19-Apr-18	Mr Williams and his family experienced a particularly bad instance of the Relevant Prado emitting white smoke. On this occasion, a substantial amount of white smoke started to blow from the exhaust causing the smoke and its chemical smell to surround the family. Mr Williams felt sick from the amount of smoke and its chemical smell, and recalls, <i>“we were all coughing from the smoke and... from their facial expressions, it looked as though the smoke was also making my wife and children feel sick”.</i>	J [139] (JCAB 52); Williams Affidavit [153]- [156] (JCAB 404)
26.	19-Apr-18	Mr Williams sent complaints to Oldmac Toyota and TMCA about the DPF Issues affecting the Relevant Prado.	J [140]-[141] (JCAB 52-53); Williams Affidavit [157]- [159] (JCAB 404); Pt C tab 17.1.23 (JCAB 404); Pt C tab 17.1.24 (JCAB 404)
27.	27-Apr-18	The Relevant Prado was serviced to	Williams

		<p>seek to address continuing DPF Issues. The tax invoice for this service states: “...<i>COMPLETE FORCED BURN WITH CLEANER AND CHECK 5TH INJECTOR</i>” and “<i>BLOCKED DPF REMOVED AND CLEANED 5TH INJECTOR ...CARRIEDE [sic] OUT A FORCED BURN & USED ADDITIVE. WILL REQUIRE REPLACEMENT DPF TO BE ORDERED VIA ROBO. CALL GUEST WHEN PARTS ARRIVE TO HAVE FITTED</i>”. The Relevant Prado continued to experience the same issues following the 27 April 2018 service as it had been leading up to the service.</p>	<p>Affidavit [114], [161]-[167], [232] (JCAB 404); J [149] (JCAB 54)</p>
28.	Jun-18	<p>By June 2018, TMCA had received at least 3,411 Dealer Product Reports (DPRs) and 90,926 warranty claims from Dealers in relation to Relevant Vehicles presenting with DPF Issues.</p>	<p>AF [149] (WBFM 131)</p>
29.	By no later than 1-Jun-18	<p>TMC developed the Second Countermeasure (as defined in AF [148] (WBFM 131)).</p> <p>The Second Countermeasure was ineffective and, in some cases, caused the DPF System to malfunction in Relevant Vehicles which had not previously suffered any Defect Consequences.</p>	<p>AF [148] (WBFM 131)</p> <p>J [16], [46] (JCAB 21, 28)</p>
30.	11-Jun-18	<p>The DPF in the Relevant Prado was replaced for a second time during an unscheduled service at Oldmac Toyota. The tax invoice for the service states:</p>	<p>Williams Affidavit [115], [168]-[172], [177] (JCAB</p>

		<p><i>“ENGINE BLOWING EXCESSIVE AMOUNTS OF SMOKE AT IDLE CONCERN DUE TO BLOCKED DPF ASSEMBLY... REMOVED AND REPLACED DPF”.</i></p> <p>Within approximately 2 or 3 months of this unscheduled service, the Relevant Prado again began to suffer the Defect Consequences.</p>	<p>404); J [149] (JCAB 54); AF [89] (WBF 116)</p>
31.	21-Jun-18	<p>TMCA directed Dealers to offer customers with Pre- MY2018 Relevant Vehicles that presented with DPF issues the 2018 Software Change which comprised part of the Second Countermeasure and, if the vehicle failed two tests, a replacement DPF Assembly (Second Field Fix). The Second Field Fix was ineffective.</p>	<p>AF [151], [153] (WBFM 131, 132); Pt C tab 12.112 (JCAB 402); J [16], [44], [109(3)] (JCAB 21, 28, 46)</p>
32.	12-Jul-18	<p>News.com.au published a news article titled <i>‘Secret documents reveal true extent of mechanical faults with some of Australia’s top selling Utes’</i> which stated: <i>“In a statement to News Corp, Toyota Australia apologised for the inconvenience to affected customers and confirmed the above technical issues are being addressed.”</i></p>	<p>Pt C tab 12.91 (JCAB 401); AF [123] (WBFM 123); J [91(4)] (JCAB 41)</p>
33.	20 and 24 Jul-18	<p>TMCA advised Dealers that until further notice Relevant Vehicles presenting with DPF issues out of warranty will be considered for out of warranty support regardless of the age of the Relevant</p>	<p>AF [154] (WBFM 132); Pt C tab 13.1.25 (JCAB 404); Pt B tab 12, item 94 (JCAB</p>

		Vehicle or the amount of kilometres it had travelled.	392)
34.	30-Jul-18	Caradvice.com.au published a news article titled <i>‘Toyota Hilux, Landcruiser Prado gain diesel particulate filter regeneration switch – Update’</i> .	Pt C tab 12.97 (JCAB 402); AF [123] (WBFM 123); J [91(4)] (JCAB 41)
35.	By Sep-18	By September 2018, TMCA had received at least 4,000 DPRs and more than 100,000 warranty claims from Dealers in relation to Relevant Vehicles presenting with DPF Issues.	AF [149], [155] (WBFM 131, 132); J [91(1)] (JCAB 41)
36.	Oct-18	TMCA commenced implementing the Second Field Fix as a second CSC (CSC 2). After the release of CSC 2, Relevant Vehicles continued to present to Dealers with DPF Issues.	AF [156], [158]-[159], [161], [163] (WBFM 132, 133); Pt B tab 12, items 106, 109 (JCAB 392); Pt C tab 12.114, 12.122 (JCAB 402)
37.	15-Nov-18	Mr Williams lodged another complaint with TMCA, which stated: <i>“Please call me, I have ongoing problems with my 2016 Prado, blowing smoke, this will be 9 times, three DPF have been changed. This Vehicle is affected [sic] my family health, it smells of Diesel, smoke comes in the cabin when it does a burn while sitting in traffic, it is dangerous.”</i>	J [143] (JCAB 53); Williams Affidavit [173] (JCAB 404); Pt C tab 17.1.25 (JCAB 404)
38.	17-Nov-18	Mr Williams lodged a complaint with Toyota Australia Finance Limited concerning the DPF problems with the Relevant Prado.	J [144] (JCAB 53); Williams Affidavit [174] (JCAB 404); Pt C tab 17.1.26

			(JCAB 404)
39.	13-Dec-18	The Second Field Fix was implemented on the Relevant Prado at an unscheduled service after Mr Williams again complained to Oldmac Toyota. The tax invoice for this service states: <i>“Carry out DPF field fix – vehicle blowing smoke”</i> .	Williams Affidavit [115], [179]-[181] (JCAB 404); J [149] (JCAB 54)
40.	21-Dec-18	Drive.com.au published a news article titled <i>‘Class action against Toyota over DPF issues being considered’</i> which stated: <i>“In a statement, Toyota Australia said it “launched the latest in a series of initiatives, a customer service campaign, to resolve the potential DPF Issue” in October.”</i>	J [91(5)] (JCAB 42); AF [123] (WBFM 123); Pt C tab 12.134 (JCAB 402)
		The Courier Mail published a news article titled <i>‘Oh what a failing, Toyota’</i> relating to the DPF issues which states: <i>“Toyota has written to customers offering to clean the filters and replace any that may be damaged. It is also retrofitting a switch to perform a manual burn-off in the filter.”</i>	Pt C tab 12.132 (JCAB 402); AF [123] (WBFM 123); J [91(5)] (JCAB 42)
41.	4-Jan-19	Drive.com.au published a news article titled <i>‘Toyota Hilux DPF drama update’</i> which stated (emphasis added): <i>“When asked what advice he would give to owners of affected vehicles Mr Hanley [Vice President, National Sales and Marketing Operations, TMCA] said: “I would say to people having a problem with DPF... we have a very clear and precise fix in place, and they know that</i>	Pt C tab 12.141, p 2 (JCAB 402); AF [123] (WBFM 123); J [91(5)] (JCAB 42)

		<i>they can come in and get those vehicles repaired”. He added that all affected customers had been “contacted directly”.</i>	
42.	7-Jan-19	Mr Hanley (Vice President, National Sales and Marketing Operations, TMCA) stated in an internal email (emphasis added): <i>“Class action potential – DPF – Based on long term condition – No clear fix”.</i>	Pt C tab 12.142 (JCAB 402)
43.	24-Jan-19	TMCA issued a fourth GRN (Fourth GRN) to TMC regarding the DPF issues. The Fourth GRN states: <i>“Vehicles which have received the latest CSC (ECU reprogram) continue to fail post repair. As the number of occurrences is increasing and a large number of vehicles are effected an urgent Field Fix and root cause investigation is necessary.”</i>	AF [164] (WBFM 133); Pt C tab 13.1.33 (JCAB 404)
44.	30-Jan-19	Drive.com.au published a news article titled <i>‘Toyota Hilux and Fortuner Diesel Particulate Filter (DPF) fix begins’</i> which states: <i>“Toyota Australia will provide a fix free of charge to customers, which will take between 1 to 2.5 hours to complete and will include an ECM update, the introduction of a ‘DPF custom mode’ and a manual inspection of the DPF for built up residual particulate matter. ...</i> <i>Toyota Australia said that it has</i>	Pt C tab 12.148 (JCAB 402); AF [123] (WBFM 123); J [91(5)] (JCAB 42)

		<p><i>actively worked to mitigate any ongoing issues with the release of this customer service notification.”</i></p>	
45.	25-Mar-19	<p>TMCA issued a fifth GRN (Fifth GRN) to TMC regarding the DPF issues. The Fifth GRN states: “...<i>As the number of occurrences is increasing and a large number of vehicles are effected [sic] an urgent Field Fix and root cause investigation is necessary.</i>”</p>	<p>AF [165] (WBFM 134); Pt C tab 42, T84.15-25 (JCAB 406)</p>
46.	12-Apr-19	<p>A DPF Switch was installed in the Relevant Prado during an unscheduled service, after Mr Williams took the vehicle to Oldmac Toyota in response to a letter he received from TMCA referring to a customer service exercise being undertaken by Toyota.</p>	<p>Williams Affidavit [115], [182]-[189] (JCAB 404); J [149] (JCAB 54)</p>
47.	7-Jun-19	<p>Carsguide.com.au published a news article titled <i>'Toyota Australia says DPF issues fixed'</i> which stated:</p> <p><i>“Toyota's [DPF] issues are over according to the company. ... [A]ccording to Toyota Australia head of marketing and sales, Sean Hanley – the DPF issue is behind the brand. “Through all our learnings of previous-generation diesel technology, we believe that with the new vehicles and the manual burn-off switch, the communication with our customers – what DPF</i></p>	<p>Pt C tab 12.168, pp 1-2 (JCAB 402); AF [123] (WBFM 123); J [91(5)] (JCAB 42)</p>

		<i>represents, how it works, what to look for, the support that we provide – we believe it is fixed”, he said.”</i>	
48.	11-Jun-19	An internal TMCA email from Jason Gillard (Senior Technical Operations Manager, TMCA) expressed frustration on behalf of his team with the statement <i>“the DPF issue is behind the brand”</i> attributed to Mr Hanley in the 7 June 2019 Carsguide.com.au article, stating: <i>“It would indicate in our mind from this and previous comments that management are sheltered from this ongoing issue.”</i>	Pt C tab 12.170 (JCAB 402)
49.	Jun-19	TMCA commenced offering refunds or replacement vehicles to hundreds of customers under the <i>“DPF Consumer Redress Program”</i> in recognition of a <i>“major failure”</i> of the subject vehicles to comply with statutory guarantees.	J [21(3)], [185] (JCAB 22, 64); Nelson Affidavit [153]-[158] (JCAB 403); Pt C tab 42, T103.39 40 (JCAB 406)
50.	1-Aug-19	Proceedings commenced.	Originating application dated 1 August 2019 (Pt C tab 50 (JCAB 407))
51.	Sep-19	Mr Williams <i>“became so frustrated with the Prado that”</i> he ceased using the vehicle for work purposes.	William Affidavit [110], [190] (JCAB 404)
52.	5-Sep-19	TMCA launched a webpage which was dedicated to the DPF System and this litigation (DPF Webpage). Between September 2019 and April 2020, the DPF	J [91(6)], [113] (JCAB 42, 47)

		Webpage was viewed between 2,713 to 4,544 times per month. The DPF Webpage did not disclose any defect in the Relevant Vehicles nor any of the consequences of the Core Defect.	
53.	20-Nov-19	The DPF Switch in the Relevant Prado, which was faulty, was repaired during a service by Oldmac Toyota.	Williams Affidavit [114], [191]-[194] (JCAB 404)
54.	17-Dec-19	Drive.com.au published a news article titled <i>“Toyota HiLux DPF fault fixed, company claims, as it urges more customers to come forward”</i> in which it was stated that TMCA insists it has solved the DPF issues and in which Mr Hanley is quoted as saying <i>“We have a customer service action in play, and anybody that’s got any concerns with Hilux in relation to DPF – or any Toyota (with a DPF complaint) – should contact their Toyota dealer... We believe we can address the issues at hand and we urge (customers) to contact their Toyota dealer”</i> .	Pt C tab 12.230 (JCAB 403); J [47], [246], [250] (JCAB 29, 80, 81); 1RR [11] (WBFM 10)
2020			
55.	20-Mar-20	Oldmac Toyota carried out a superburn and additional injector cleaning on the Relevant Prado during an unscheduled service.	Williams Affidavit [115], [204]-[211] (JCAB 404); J [149] (JCAB 54)
56.	23-Apr-20	Relevant Period ends.	J [6] (JCAB 16)

57.	From May-20	<p>TMCA began offering the 2020 Field Fix to existing Relevant Vehicles at no cost to owners.</p> <p>The 2020 Field Fix was effective and will continue to be effective in remedying the Core Defect and the symptoms and the Defect Consequences.</p> <p>The date by which the 2020 field fix “in fact became practically available” to consumers has been remitted to the primary judge, however, by the time of the initial trial, it was known that the 2020 field fix was available.</p>	<p>J [15(10)] (JCAB 20); FC [70],[81]. [134] (JCAB 278, 280, 293-924); AF [171]-[174], [176]-[177], [180] (WBFM 135-136,137)</p>
58.	From Jun-20	<p>All new vehicles of the relevant types were supplied with the countermeasure which prevented the Core Defect from manifesting.</p>	<p>FC[17] (JCAB 267); J[15(11)] (JCAB 20)</p>
59.	22-Oct-20	<p>During a service of the Relevant Prado by Oldmac Toyota, Mr Williams was told: <i>“We will need to replace to DPF again. You’ll have to book it for another service once we have the replacement parts”.</i></p>	<p>J [151] (JCAB 55); Williams Affidavit [114], [212]-[213] (JCAB 404)</p>
60.	23-Oct-20	<p>The First Referee Report (defined earlier as “1RR”), delivered on 15 October 2020, was adopted save for two notations in Annexure F to the report.</p>	<p>J [14], [41] (JCAB 18, 27); 1RR (WBFM 5)</p>
		<p>Carsales.com.au published a news article titled <i>‘Toyota DPF savaged by expert technical report’</i>. In a statement to Carsales, TMCA said that <i>“we are confident that the most recent</i></p>	<p>Pt C tab 12.262 (JCAB 403); AF [123] (WBFM 123)</p>

		<i>countermeasure will remedy the DPF issue...”</i>	
2021			
61.	31-Jul-21	By this date, at least 154,916 Relevant Vehicles had received servicing related to issues with the DPF System.	J [65] (JCAB 34)
		By this date, around 30,875 Relevant Vehicles had received the 2020 Field Fix.	[179] (WBFM 136)
62.	7-Sep-21	The Supplementary Referee Report, delivered on 31 August 2021, was adopted.	J [14], [41] (JCAB 18, 27); Pt C tab 12.463 (JCAB 403)
63.	28-Sep-21	By this date, TMCA had provided 438 consumers with refunds and replacement vehicles under the DPF Consumer Redress Program at a cost of \$21,413,138.23.	Nelson Affidavit [164] (JCAB 403); J [21(3)], [185] (JCAB 22, 64)
64.	As at 29-Nov-21	Mr Williams continued to use the Relevant Prado.	Index Part B, item 41 at T60.10 (JCAB 387)
65.	29-Nov-21 – 24-Dec-21	Initial Trial before Lee J.	JCAB 5
2022			
66.	7-Apr-22	Reasons for judgment delivered following Initial Trial (<i>Williams v Toyota Motor Corporation Australia Limited (Initial Trial)</i> [2022] FCA 344).	JCAB 5
67.	16-May-22	Orders giving effect to the reasons for judgment made by Lee J.	JCAB 158
68.	10-Jun-22	Notice of Appeal filed by TMCA.	JCAB 198
69.	20-Jun-22	TMCA’s Notice of Appeal served on the respondents.	JCAB 198

70.	14-Nov-22 – 16-Nov-22	Hearing of TMCA’s appeal before Full Court comprised of Moshinsky, Colvin and Stewart JJ.	JCAB 263
2023			
71.	16-Feb-23	The Full Court sends a letter to the parties setting out a possible approach to the assessment of damages awarded under s 272(1)(a) and granting leave to the parties to file and serve supplementary written submissions concerning that possible approach (FFC’s Letter).	WBFM 230
72.	3-Mar-23	The parties file supplementary written submissions in response to the FCC’s Letter.	Williams Parties’ Supplementary Submissions (WBFM 232) TMCA Supplementary Submissions (Toyota's Book of Further Materials) (TBFM) (TBFM 25)
73.	14-Mar-23	The parties file supplementary written submissions in reply to each other’s submissions responding to the FCC’s Letter.	TMCA Supplementary Submissions in Reply (TBFM 30)
74.	27-Mar-23	Reasons for judgment delivered by the Full Court (<i>Toyota Motor Corporation Australia Limited v Williams</i> [2023] FCAFC 50).	JCAB 261
		Orders giving effect to the reasons of the Full Court.	JCAB 329

75.	12-May-23	Reasons for judgment (regarding consequential orders) delivered by the Full Court (<i>Toyota Motor Corporation Australia Limited v Williams (No 2)</i> [2023] FCAFC 70).	JCAB 332
		Orders giving effect to the reasons of the Full Court (regarding consequential orders).	JCAB 348
76.	17-Nov-23	High Court of Australia grants special leave to appeal in S37/2023 and S38/2023.	JCAB 410, 417
77.	30-Nov-23	TMCA files a notice of appeal in S37/2023.	JCAB 412
78.	1-Dec-23	Williams Parties file a notice of appeal in S38/2023.	JCAB 419

Dated 26 February 2024



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