

# TOYOTA

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## TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED

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Mr David Salisbury  
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Australian Competition & Consumer Commission  
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21 November 2017

BY EMAIL: [newcars@acc.gov.au](mailto:newcars@acc.gov.au)

Dear Mr Salisbury

**RE: ACCC New Car Retailing Industry Market Study – further information request  
Toyota Motor Corporation Australia Limited submission**

This submission (**Submission**) is made by Toyota Motor Corporation Australia Limited (**Toyota Australia**) in response to the ACCC's letter of 11 October 2017 (**Request**) for further information in relation to:

1. access to technical information to repair and service new cars; and
2. dealership agreements and certain related policies and procedures.

In this submission, 'Toyota Australia' includes Lexus Australia unless the context otherwise requires or as specifically noted. Lexus Australia is a division of Toyota Motor Corporation Australia Limited.

The questions in the Request have been set out in full in this response (in blue text), together with Toyota Australia's responses to each. All answers set out below are correct as at the date of this response, to the best of Toyota Australia's knowledge and based on having made reasonable enquiries and searches of its records as set out in the response below. Kindly note that unless otherwise defined herein, capitalised terms have the meaning attributed to them in the Request.

## CONFIDENTIAL INFORMATION REMOVED FROM THIS VERSION OF SUBMISSION

Confidential information concerning the business, commercial and financial affairs of Toyota Australia and its parent company, Toyota Motor Corporation in Japan (**Toyota Japan**), and related entities elsewhere, including in North America, has been removed from this version of Toyota Australia's submission. The disclosure of such information without Toyota Australia's consent would unreasonably and adversely affect Toyota Australia, in respect of its lawful business, commercial and financial affairs.

## INTRODUCTORY COMMENTS

### A. INDUSTRY AGREEMENT AND CODE RELEVANT TO ACCESS TO SERVICE AND REPAIR INFORMATION

Toyota Australia refers to the Federal Chamber of Automotive Industries' *Voluntary Code of Practice Access to Service and Repair Information for Motor Vehicles* dated February 2015 (**FCAI Code**) to which Toyota Australia is a signatory. The FCAI Code was developed following the execution of the *Agreement on Access to Service and Repair Information for Motor Vehicles (Agreement)*<sup>1</sup> by relevant industry bodies in 2014 and the Commonwealth Consumer Affairs Advisory Council's report on *Sharing of Service and Repair Information in the Automotive Industry* in 2012.

The FCAI Code sets out the bases upon which original equipment manufacturers (**OEMs**)<sup>2</sup> are to make certain technical information available to independent repairers. Other parties to the Agreement have also developed voluntary codes of practice to reflect the terms of the Agreement.<sup>3</sup>

Toyota Australia submits that it has complied, and will continue to comply, with the FCAI Code and consequently with the spirit of the Agreement. It further submits that its response to the Request as set out in this letter ought to be read in the context of the provisions of the Agreement and the FCAI Code.

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<sup>1</sup> Parties to the Agreement are the Federal Chamber of Automotive Industries, Australian Automotive Dealer Association Limited, Australian Automobile Association, Australian Motor Industry Federation, and Australian Automotive Aftermarket Association.

<sup>2</sup> OEM is defined in the FCAI Code as a manufacturer or authorised importer of motor vehicles that is a member of the FCAI and which has agreed to be bound by the FCAI Code.

<sup>3</sup> Australian Automotive Dealer Association Limited *Access to Service and Repair Information for Motor Vehicles Voluntary Code of Practice*; Australian Automobile Association *Code of Practice for Access to Service and Repair Information for Motor Vehicles* dated May 2015; Australian Motor Industry Federation *Access to Service and Repair Information Retail Motor Trades Code of Conduct* dated April 2015; and Australian Automotive Aftermarket Association *Choice of Repairer – Code of Practice* dated April 2015.

Of particular note are the following aspects of the FCAI Code:

- The FCAI supports a reasonable approach to ensuring that the public have an opportunity to choose the repair or service facility that best suits their particular needs (clause 1.3);
- The FCAI Code does not require the provision of certain information including that relating to particular aspects of security, safety and environmental compliance or performance by OEMs (clause 1.3);
- Under the FCAI Code, OEMs are required to make Repair Information<sup>4</sup> available to Independent Repairers<sup>5</sup> at Commercially Reasonable Prices<sup>6</sup> (clause 4.1(a)); and
- The definition of Repair Information<sup>7</sup> excludes certain information including the following:
  - Any source code for software or full copies of any software programs;
  - Diagnostic service and repair information necessary to reset an immobiliser system or security related electronic modules;
  - Any information (including vehicle computer updates) that may result in non-compliance with any relevant safety, emissions or any other legislation affecting Motor Vehicles or OEM compliance with applicable Federal, state or territory laws;
  - Any commercially sensitive information of an OEM; and
  - Intellectual property of an OEM (other than information that is produced specifically for repair and maintenance purposes) or any information that might disclose intellectual property, trade secrets or confidential information of an OEM.

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<sup>4</sup> 'Repair Information' is defined in the FCAI Code as "service, maintenance and repair information which is in the possession of an OEM and which has, for a period of at least six months, been made available to Authorised Dealers by an OEM. Service and Repair Information comprise workshop repair manuals, body repair manuals and wiring diagrams but does not include" certain information that is listed in sub-clauses (i)-(xvi) (clause 2.1(h)).

<sup>5</sup> 'Independent Repairers' is defined in the FCAI Code as "a company, person or other entity that is not an Authorised Dealer but is otherwise in the business of providing, and is appropriately qualified to provide, Motor Vehicle or servicing services to customers" (clause 2.1(d)).

<sup>6</sup> 'Commercially Reasonable Prices' is defined in the FCAI Code as "the price set by each individual OEM at their discretion or (in relation to Special Tools) their respective independent Special Tool supplier with the written approval of the OEM for access to Repair Information or the purchase of Special Tools", and certain factors that may be taken into account are listed in sub-clauses (i)-(v) (clause 2.1(b)).

<sup>7</sup> At clause 2.1(h) of the FCAI Code.

- The Repair Information will be provided to Independent Repairers subject to certain terms and conditions (in clause 5.1) regarding: (a) the applicability of the information only to new general parts; (b) information required to be given to customers where new genuine parts are not used; (c) protection of the intellectual property rights of the OEMs; and (d) the fact that access to technical information does not give rise to implied authorisations of independent repairers.

In addition, the Agreement includes the following agreed principles:

- Independent repairers “are free to provide” various servicing and repairs to consumers “if this is the fully informed choice of the consumer” and the independent repairers “are appropriately licensed (where applicable), qualified, equipped and skilled with the necessary training and knowledge to meet consumer, business, legislative and regulatory requirements” (paragraph 7);
- “The provision of service and repair information does not extend to manufacturers providing any trade secrets or information that would or could bypass or affect the integrity of a vehicle’s security, design standards, regulatory compliance, performance or legislated requirements” (paragraph 8);
- “The aftermarket component and repair industries acknowledges the importance of obtaining and using the service and repair information that is provided by OEMs to ensure that repairs are carried out correctly to assure the safety of consumers and will advocate and encourage the use of the information consistent with OEM specifications” (paragraph 11);
- “There is some information that may not be able to be shared. This may, for example, result from confidentiality arrangements, security, legislative, regulatory or privacy considerations; the lack of robust monitoring or enforcement mechanisms to assure the protection of information or the bona fides of those who may access it, or intellectual property or proprietary considerations” (paragraph 12); and
- “There is a recognition that while dissemination of service and repair information is critical, the industry also acknowledges the importance of ongoing repairer training to ensure that the sector is proficient and efficient” (paragraph 14).

## **B. CORRECTION TO DRAFT MARKET STUDY – TABLE 4.1**

Toyota Australia submits that Table 4.1<sup>8</sup> of the Draft Market Study dated 10 August 2017 (**Draft Market Study**) is not correct in its assessment of the availability of technical information from Toyota Australia’s Australian-model website. Toyota Australia provides a broad range of technical information on its website, both as free public access and through a subscription portal. More details on the information provided is set out below, particularly in response to Question 1(c) of the Request.

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<sup>8</sup> Page 68 of the Draft Market Study dated 10 August 2017.

## ACCESS TO TECHNICAL INFORMATION TO REPAIR AND SERVICE NEW CARS

### 1 Can Toyota please provide a detailed overview of the information contained on Toyota's Australian technical information sharing website regarding:

#### (a) The price charged for each class of subscription (e.g. price per daily subscription, per weekly subscription, etc)

Toyota Australia provides Australian independent repairers and owners of Toyota and Lexus vehicles with access to technical information on the Toyota Australia website<sup>9</sup> and the Lexus Australia website<sup>10</sup> respectively. The type of information and any subscription fees are the same across both websites and therefore any reference in this Submission to the **Toyota Service Website** is applicable to both the Toyota Australia website and the Lexus Australia website.

As well as providing a variety of information that can be accessed at no cost, the Toyota Service Website also provides information through subscription to the Toyota Service and Repair Manuals website (**Portal**). The subscription prices for access to the Portal are as follows:

- a) Daily - \$16.50;
- b) Weekly – \$66.00;
- c) Monthly – \$198.00; and
- d) Yearly - \$1,980.00.

All prices are inclusive of GST.

Given the above pricing, access to the Portal can be obtained for as low as \$5.42 a day if an annual subscription is taken out.

#### (b) The software/internet browser required to access the portal

Access to the Portal requires the following software:

**Operating system:** Microsoft® Windows® 98 - Windows® 7

**Internet browser:** Microsoft® Internet Explorer 8 - 11 (32 bit Operating System only)

**Additional software/plugin required:** Adobe SVG Viewer

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<sup>9</sup> At [https://toyotamanuals.com.au/#/?\\_k=s93nk8](https://toyotamanuals.com.au/#/?_k=s93nk8)

<sup>10</sup> At [https://lexusmanuals.com.au/#/?\\_k=dxnynv](https://lexusmanuals.com.au/#/?_k=dxnynv)

- (c) **The types of information available on Toyota's website for Australian independent repairers, and in particular, whether independent repairers can access the following technical information about Toyota 's new cars:**
- (i) **technical service bulletins**
  - (ii) **(re)initialisation codes**
  - (iii) **software updates or ECU calibration files**
  - (iv) **new cars' environmental systems or standards and**
  - (v) **the composition of engine oils**

## **Overview of Channels and Content**

The Toyota Service Website and the Portal contain a variety of information relating to Toyota and Lexus vehicles sold in Australia, such as owners' manuals, detailed repair instructions, diagnostic charts, component removal / replacement procedures and electrical wiring diagrams. The information relates to Toyota and Lexus vehicles sold in Australia starting from the current model plus generally one model back.<sup>11</sup> This information is identical to that provided to dealers that are authorised by Toyota Australia to sell, service and repair new Toyota and Lexus motor vehicles manufactured and/or imported by Toyota Australia (**Dealers**).

In addition, technical service bulletins that are applicable to Australia and provided to Toyota Australia by Toyota Japan (**Technical Service Bulletins**) are distributed outside of the dealer network through the Victorian Automobile Chamber of Commerce (**VACC**) and various other motoring organisations such as Royal Automobile Club of Victoria (**RACV**).

The Portal was built locally due to differences in systems used across the Toyota group globally. To the best of our knowledge, there is no such platform in Japan, and there are independent platforms in the United States of America and the European Union.

Prior to the introduction of the Toyota Service Website and the Portal in 2013, hard copies of manuals were available for purchase from Toyota Australia and Toyota Japan. However, in order to improve logistical efficiency and an effective use of resources, access to the technical information has now been digitised and placed on the Toyota Service Website and the Portal.

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<sup>11</sup> NB In some cases, there have been no substantial model changes.

The following information is available at no cost from the Toyota Service Website:

- a) owners' manuals;
- b) warranty and service manuals (for selected vehicles);
- c) multimedia guides;
- d) towing guide;
- e) emergency response guide;
- f) genuine accessory fitting instructions; and
- g) diesel fuel filter brochure.

All owners' manuals contain the information and necessary steps to assist owners with operating features of their vehicle.

In addition, the following information relating to each vehicle is available by subscription to the Portal:

- a) general repair manual<sup>12</sup>;
- b) Technical Service Bulletins;
- c) new car features manual;
- d) diagnostics;
- e) engine repair manual;
- f) electrical wiring diagram manual;
- g) component removal / replacement procedures;
- h) service data sheets (inclusive of oil specifications);
- i) body repair manual for collision damage; and
- j) the documents available on the Toyota Service Website as listed above.

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<sup>12</sup> Please note that the information described in (c) to (i) is contained within a vehicle's repair manual.



## RESPONSES TO SPECIFIC QUESTIONS

In relation to the specific categories of information referred to in Question 1(c) of the Request, we refer to and note the following provisions of the FCAI Code and the Agreement:

- The repair information to be given to Independent Repairers under the FCAI Code does not include: software source codes or programs; diagnostic service and repair information necessary to reset an immobiliser system or security related electronic modules; any information that may result in OEM non-compliance with any relevant safety, emission or any other applicable Federal, state or territory laws; any commercially sensitive information of an OEM; and intellectual property of an OEM.<sup>13</sup>
- The provision of service and repair information does not include “*any trade secrets or information that would or could bypass or affect the integrity of a vehicle’s security, design standards, regulatory compliance, performance or legislated requirements*”.<sup>14</sup>

We otherwise respond to Question 1(c) as set out below.

### **(i) technical service bulletins**

As noted earlier, Technical Service Bulletins are available on the Portal.

### **(ii) (re)initialisation codes**

Toyota Australia provides all re-initialisation codes to Dealers and independent repairers with the following limited exceptions:

- vehicle locking system codes; and
- immobiliser system codes.

### **(iii) software updates or ECU calibration files**

This information is not currently available on the Toyota Service Website or the Portal. Software updates and calibrations are sensitive and highly specific, requiring the appropriate administration to ensure that they are installed correctly and do not result in damage to the vehicle.

Toyota Australia is aware of numerous examples of unauthorised alterations to vehicles’ systems that risk vehicle damage and we believe the provision of software to the aftermarket would make this more prevalent. For this reason, Toyota Australia does not disseminate these materials for unauthorised or unmonitored use.

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<sup>13</sup> Clause 2.1(h) of the FCAI Code.

<sup>14</sup> Paragraph 9 of the Agreement.



**(iv) new cars' environmental systems or standards**

This information is publicly available through the Portal in the relevant vehicle repair manuals.

**(v) the composition of engine oils**

Toyota Australia provides engine oil specification information including recommendations, maintenance and details such as grade, viscosity and oil classification standard. Toyota Australia does not provide specific proprietary information relating to the precise composition of the oils. However it supports optimal maintenance of its vehicles through provision of specialty oils for sale through Dealers.

**(d) The types of information not available on Toyota's website for Australian independent repairers that are available to dealers (through any means), and whether there is some process for independent repairers to access such information.**

Toyota Australia believes that all information reasonably necessary for independent repairers to repair or service Toyota vehicles is available publicly through the Toyota Service Website and the Portal. This accords with the principles underlying the Agreement and the provisions of the FCAI Code.

Please note that the request made in Question 1(d) refers to information that is confidential and commercially sensitive to Toyota Australia, which was provided to the ACCC on a confidential basis and has not been included in this version of the Submission.

**2. In relation to question 1(d), can Toyota please detail whether the technical information that is not made available to independent repairers in Australia (for example, safety and security information) is made available to independent repairers in the European Union (EU) and/or the United States (US)?**

The Toyota Service Website and the Portal are specifically designed for the Australian market, and Toyota Australia operates them in accordance with the requirements of that market, independently of any foreign affiliates. As a result, Toyota Australia is unaware of the extent of service and repair information available to independent repairers in the EU and/or the US.

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3. **Can Toyota please confirm to what extent Toyota's new cars (released to the Australian market in the last 5 years) require (re) initialisation codes to perform the following tasks:**
- (a) **replacing a car's battery**
  - (b) **replacing engine oil**
  - (c) **servicing the car's air conditioning system**
  - (d) **replacing the car radio**
  - (e) **replacing brake pads**
  - (f) **resetting the service light; and**
  - (g) **any other process generally considered in the industry to be a routine service or a minor repair.**

Toyota Australia advises there are a small number of instances in which new vehicles will require the input of (re) initialisation codes to function. Specifically, Toyota Australia confirms that these codes may be required for new vehicles (released to the Australian market in the last 5 years) in order to perform the tasks identified below in limited circumstances. Otherwise, (re) initialisation codes are not required to perform the tasks listed from (a) through (g) above.

**(i) Replacing a vehicle's battery – limited situations**

Initialisation codes will not be required to be inputted where a vehicle's correct battery is replaced. To be clear, no (re)initialisation is required where the correct battery is installed in a vehicle.

**(ii) Replacing the vehicle radio**

While no Toyota specific re-initialisation codes are required to be inputted when replacing a vehicle's audio or radio units, some earlier vehicle units are fitted with an anti-theft security system that renders the audio or radio unit non-operational when the security system is activated. Vehicle owners have the ability to program their own unique security code into the unit. In the event that the security code is lost or forgotten, the unit can be reset by the original audio manufacturer or a Dealer. In addition, if the vehicle battery is removed for some reason, then a small, temporary battery can be used as an alternate power source to prevent the security system from being activated and any requirement for the security code.

### **(iii) The Toyota Safety Sense (known as TSS)**

In a limited set of circumstances, such as after windscreen replacement, smash repair, or camera replacement, some of the TSS safety features such as forward cameras and radar sensors must be re-programmed using GTS. Independent repairers would be able to identify these requirements in the relevant vehicle repair manual.

### **(iv) Automatic headlights in some Lexus vehicles**

On some high grade Lexus vehicles with automatic headlights, GTS needs to be used to re-align the headlight after replacement. Independent repairers would be able to identify these requirements in the relevant repair manual.

Toyota Australia further advises that it is presently studying the feasibility of making a generic form of the GTS available to the aftermarket.

In respect of the balance of the items listed in Question 3, Toyota Australia otherwise confirms that (re) initialisation codes are not required to replace the vehicle's engine oil, service the vehicle's air conditioning system, replace the vehicle's brake pads, or reset the service light.

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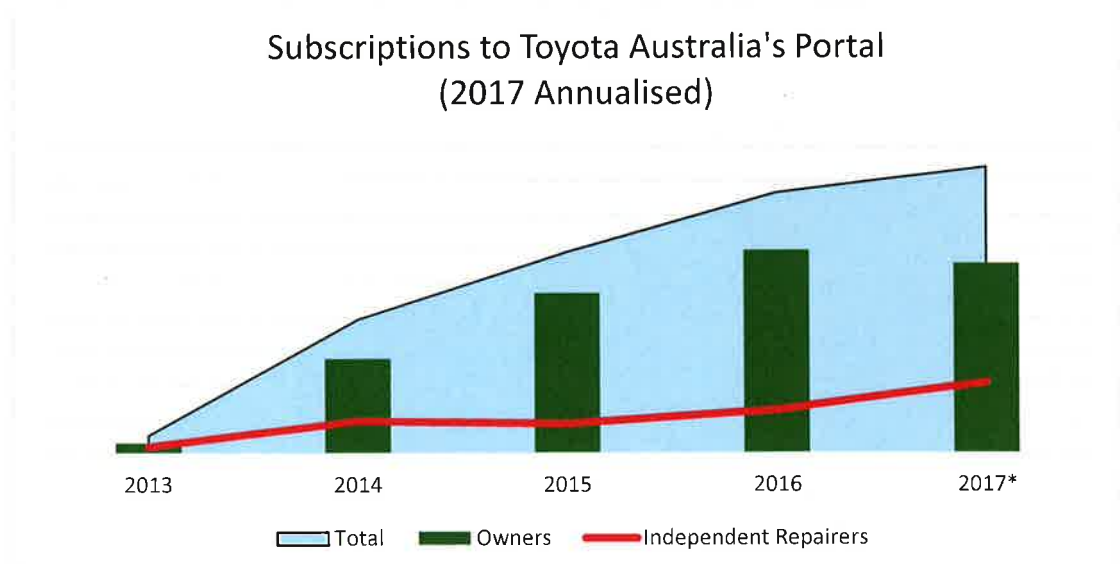
**4. Can Toyota please provide the date of release for Toyota's Australian, EU and US based independent repairer technical websites and a breakdown for at least the past three years of:**

Toyota Australia launched the Toyota Service Website and the Portal in September 2013. For this version of our Submission, Toyota Australia responds to questions 4(a), (b) and (c) in relation to its Toyota Service Website and the Portal only.

**(a) the total number of subscriptions, with a breakdown by subscription period in the relevant jurisdiction (e.g. daily, weekly, yearly)**

The subscription numbers to the Portal were provided to the ACCC on a confidential basis and have not been included in this version of the Submission.

The growth in subscription numbers to the Portal across different types of customers from 2013 to 2017 (1 January to 16 October) is depicted in the graph below.



**(b) the frequency with which subscribers accessed the relevant service for subscriptions in excess of a day**

Information about frequency with which subscribers accessed a subscription service on the Portal was provided to the ACCC on a confidential basis and has not been included in this version of the Submission.

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## Analysis

The year on year data provided to the ACCC shows a trend in increased use across all types of subscriptions to the Portal since 2013. It also shows a trend in increased *repeated* use across all types of subscriptions since 2013.

In Toyota Australia's view, this overall growth indicates that:

- (a) the subscription fees for the Portal are "commercially fair and reasonable" in accordance with paragraph 8 of the Agreement and clause 4.1(a) of the FCAI Code; and
- (b) the level of information provided on subscription to the Portal meets or exceeds the aftermarket's expectations and requirements.

However, despite the considerable growth in subscriptions in overall terms, Toyota Australia notes that there is a relatively low take-up of subscriptions from independent repairers (indicated by the red line in the graph under question 4(a) above). This low take-up of subscriptions is highlighted in a comparison of subscriptions from Toyota owners (indicated by orange bars in the graph under question 4(a)) which is almost threefold on the independent repairer subscription rate. Given that the subscription cost would be a minor business cost, Toyota Australia submits that the subscription numbers of independent repairers are far lower, and arguably less than ideal in terms of the aftermarket accessing the necessary technical information required to service and repair vehicles particularly taking into account that purchase of a Toyota subscription captures just under approximately 20% of the current total number of vehicles in Australia.

- (c) **the type of information subscribers predominantly accessed (e.g. technical service bulletins, reinitialisation codes, ECU/software updates, repair manuals, etc).**

Toyota Australia does not track the type of information that subscribers predominantly accessed through their subscriptions.

- 5. In relation to developing and maintaining Toyota's technical website for Australian independent repairers, can Toyota please detail:**

- (a) **the approximate upfront costs of developing the technical information sharing website for the Australian market**

Toyota Australia incurred significant upfront costs in developing the Toyota Service Website and the Portal for the Australian market. Details of these costs were provided to the ACCC on a confidential basis and have not been included in this version of the Submission.

**(b) the approximate ongoing yearly costs of maintaining the technical information sharing website for the Australian market**

The ongoing yearly cost to Toyota Australia of maintaining the Toyota Service Website and the Portal for the Australian market is significant. Details of the ongoing yearly cost were provided to the ACCC on a confidential basis and have not been included in this version of the Submission.

**(c) whether the cost of developing and maintaining the technical information website is passed on to the consumer, and if so, the average additional cost per passenger car that is passed on**

Toyota Australia's revenue from subscriptions to the Portal was provided to the ACCC on a confidential basis and is not included in this version of the Submission.

Toyota Australia notes that the costs of developing and maintaining the Toyota Service Website and Portal have not been recouped by the subscription fees charged to date. Further, the current annual subscription revenue does not cover the annual ongoing cost of the Toyota Service Website and Portal.

Toyota Australia considers the above-mentioned investment recoup and ongoing revenue gaps as a cost of doing business. As a result they are not specifically attributed to the prices of any Toyota products or passed onto the consumer.

Toyota Australia acknowledges that:

- Dealers and independent repairers together have a role in meeting consumer requirements for servicing and repairs and providing efficient customer service.
- The provision of technical information to the independent repairers is important to safeguard the quality of aftermarket servicing and repairs. This ensures that work is carried out in accordance with manufacturer specifications and regulatory requirements, thereby ensuring the safety of consumers. To that end, we note the Agreement (as described above) contains agreed principles about the importance of independent repairers' use of the technical information provided by OEMs and obtaining ongoing training to ensure repairs are carried out correctly to assure the safety of consumers.

These matters also align with the principles underpinning the Agreement and the FCAI Code.

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**(d) whether Toyota has or will conduct user testing with independent repairers of its technical information sharing website, and whether Toyota has or will include training for using the website (e.g. videos, walkthroughs etc)**

Toyota Australia does not conduct user testing of the Toyota Service Website or Portal with independent repairers, however it does receive some feedback from independent repairers and individuals. Upon request, Toyota Australia responds to queries and provides assistance to anyone accessing the information. Anecdotal experience has shown that enquiries most often arise as a result of errors in applying the instructions in a relevant manual, rather than from difficulty in accessing or using the Toyota Service Website and Portal.

Toyota Australia is of the view that user training for the Toyota Service Website and the Portal is not necessary because:

- i. all repair manuals contain a 'how-to' guide; and
- ii. the layout and functionality of both the Toyota Service Website and the Portal have been designed to be intuitive and straightforward for qualified automotive technicians. Further, Toyota Australia has in the past and will continue to address any individual queries we receive relating to the access to and navigation of the information contained on the Toyota Service Website and the Portal.

**(e) whether the framework or platform for the technical information sharing website for the Australian market (as distinct from the content) is the same or adapted from that used elsewhere by your brand (e.g. the in the EU or the US)**

The framework or platform for the Toyota Service Website and the Portal is specifically designed for and unique to the Australian market.

**(f) if relevant, why the same technology to deliver the content/information is not used/adapted to Australia**

There were 2 key drivers for Toyota Australia's decisions to use an Australia specific framework or platform for the Toyota Service Website and the Portal. Firstly, unlike other Toyota group companies, our Toyota Service Website and Portal are used for multiple purposes, including the provision of publicly available owners' manuals and product guides, as well as service and repair manuals upon subscription. Secondly, based on the studies conducted prior to the design and implementation of Toyota Australia's Toyota Service Website and the Portal, the technological platforms used overseas would not have been compatible with locally used business systems. Therefore, adoption of an overseas framework or platform would have resulted in a very limited system which was not integrated with other key technological infrastructure of Toyota Australia and / or the Dealers.

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## CONSUMER GUARANTEES AND WARRANTIES

- 6. Over the past three years, how many instances of fraudulent warranty claims by Toyota's authorised dealers in Australia were identified by Toyota? What proportion of overall claims made to Toyota in Australia do these represent? What action was taken?**

The response to this question was provided to the ACCC on a confidential basis and has not been included in this version of the Submission. Toyota Australia has robust policies and monitoring and compliance procedures in place, designed to prevent such issues from arising and to address them promptly and appropriately if they do arise. Toyota Australia works in close cooperation with Dealers on compliance with its warranty system, to ensure that consumers are not adversely affected in any circumstances.

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## DEALERSHIP AGREEMENTS, POLICIES AND PROCEDURES

7. **At the round table on 25 September 2017 and in submissions by dealer representatives in response to the ACCC's draft report, dealership agreements and related policies and procedures stipulated by manufacturers have been raised as impacting on ACL compliance by dealers. The ACCC welcomes Toyota's views on the concerns raised by dealer representatives that car manufacturers' policies and procedures for dealing with customer complaints can hinder dealers from complying with the ACL.**

Toyota Australia has reviewed the submission of the Australian Automotive Dealer Association (**AADA**) dated 19 September 2017 (**AADA Submission**) in response to the ACCC's New Car Retailing Market Study draft report dated 10 August 2017. It notes that the AADA Submission contains some brief statements of a general nature about dealer agreements and related policies and procedures. Otherwise, Toyota Australia was not privy to the concerns that the ACCC has advised were raised by dealer representatives at the round table on 25 September 2017. As a consequence, Toyota Australia is not in a position to respond to any specific matters and instead submits the following.

In detailed information provided to the ACCC on a confidential basis, Toyota Australia explained the process that developed the standard form Dealer Agreement (**Dealer Agreement**), and the Warranty Procedure & Policy Manual (**WPPM**). Toyota Australia believes that the information provided to the ACCC on a confidential basis demonstrates that neither of these documents hinder Dealers in any way from complying with the ACL. To the contrary, Toyota Australia considers that the Dealer Agreement and the WPPM provide a supportive and generous framework within which its Dealers can engage with consumers and comply with the ACL.

The Dealer Agreement emphasises a highly cooperative approach between Toyota Australia and Dealers, both in connection with the ACL and more broadly. It is designed and structured to facilitate close collaboration and a sense of commonality of purpose between Toyota Australia and Dealers.

Both the Dealer Agreement and the WPPM are documents that support Dealers in their compliance with the ACL in all of their dealings with customers, from the beginning of the customer relationship through to the processing of any claims that may be made under express or statutory warranties.

Toyota Australia also notes that Dealers are afforded other legislative protections in connection with the Dealership Agreement, including those under the Franchising Code of conduct<sup>15</sup> and, where applicable, the extension of the unfair contracts provisions of the ACL to small business.

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<sup>15</sup> The Franchising Code of Conduct is Schedule 1 to the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*.

**8. Please confirm whether Toyota has updated its dealership agreements, policies and procedures to reflect ACL obligations to consumers and indemnification to dealers? If so, provide details of the extent to which ACL obligations are reflected in Toyota's commercial arrangements with dealers.**

At the outset, we note that Toyota Australia's obligations under the ACL regarding consumers and indemnification to dealers are already reflected in both the Dealer Agreement and the WPPM.

Essentially the ACL provides consumers with statutory rights that overlay the contractual rights they have under the express warranty provided by Toyota Australia. In the majority of cases, the remedies available to a consumer under the contractual warranty are the same as under the ACL and vice versa. In the few instances when a consumer has greater rights under one than the other, Toyota Australia recognises that it is obliged to provide the consumer with the remedy that gives them the greater rights.

Similarly, Dealers have rights under the ACL that reflect their contractual rights for reimbursement from Toyota Australia for any loss suffered as a result of a consumer enforcing their rights under a consumer warranty.

#### **The Dealer Agreement**

As mentioned in the response to Question 7, Toyota Australia has provided details of the Dealer Agreement to the ACCC on a confidential basis. The Dealer Agreement is designed to ensure a collaborative and supportive approach. Toyota Australia is confident that the Dealer Agreement reflects ACL obligations and complies with all relevant requirements.

#### **The Warranty Procedure & Policy Manual**

As mentioned in the response to Question 7, Toyota Australia has provided the ACCC with details of the WPPM on a confidential basis. Toyota Australia is confident that the WPPM reflects ACL obligations.

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## **CLOSING REMARKS**

In summary, Toyota Australia's Submission clearly demonstrates that independent repairers have the necessary technical information required to service and repair Toyota and Lexus vehicles. There are no significant barriers to the access of this information or the ability to service and repair vehicles. To the contrary, this information is made readily available on the Toyota Service Website and the Portal, in line with the spirit and provisions of the Agreement and the FCAI Code.

In addition, Toyota Australia strongly believes that, given the collaborative nature of the relationship we have with our network of franchisees, and the current provisions of our standard Dealer Agreement, Dealers are in a strong position to afford consumers their rights under the ACL.

Yours sincerely

**TOYOTA MOTOR CORPORATION LIMITED**



**Simone Zerial**  
**Senior Solicitor / Legal Manager**