



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2020-047

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	No documents
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	15
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**2 March 2020**

**By email:** epsdfoi@act.gov.au

FOI – Information Management Team  
Environment, Planning and Sustainable Development Directorate  
GPO Box 158  
CANBERRA ACT 2601

Dear Sir/Madam

**Request for information under the Freedom of Information Act 2016 (ACT)**


- 1 We assist [REDACTED] representing Mr Ken Williams, the plaintiff in a class action against Toyota Motor Corporation, *Kenneth John Williams v Toyota Motor Corporation Australia Limited (ACN 009 686 097)* (NSD 1210/2019) (**Toyota Class Action**). Mr Williams brings the Toyota Class Action on behalf of a large number of potential group members who own or have owned a Toyota diesel vehicle in the Hilux, Fortuner and Prado ranges (**Affected Vehicles**).
- 2 We write to you requesting the release of certain documents held by the ACT Environment Protection Authority (**EPA**) pursuant to the *Freedom of Information Act 2016 (ACT)* (**FOI Act**). We are uncertain as to which office of the ACT EPA holds these documents.
- 3 It is our view that the documents requested in this letter are relevant to the matters at issue in the Toyota Class Action, which include serious allegations that the Affected Vehicles are defective. On present information, we understand that there are over 200,000 people in Australia who purchased an Affected Vehicle in the relevant period and may therefore be group members in the Toyota Class Action. Consequently, in our view there is a general public interest in favour of the disclosure of the requested documents, and such disclosure could reasonably be expected to contribute to positive and informed debate on an issue which may affect a large number of people in Australia.

**Information request**

- 4 Our request for information under the FOI Act concerns the period between 1 October 2015 and 31 October 2019 (**Relevant Period**).
- 5 For the purposes of this request the term "documents" includes, but is not limited to, any written material correspondence, file notes, internal department memoranda, electronic records, emails, notes, forms, data, records, or reports (**Documents**).

**Request No. 1**

- 6 Please provide us with all Documents provided by the ACT EPA to ABC News and/or its reporters, Amy Bainbridge and/or Lucy Kent, in relation to, or in connection with, smoky vehicle



reports (as described in the article "Toyota diesel emissions expose broader problem with car pollution in Australia" published 5 September 2019 on the ABC News website (**ABC article**)). A copy of the ABC article is attached to this letter as Annexure A.

### **Request No. 2**

- 7 The ABC article refers to state and territory environment protection authorities sending warning notices to drivers about their polluting cars, including Toyota models (**EPA Warning Notices**):

*"State and territory environment protection authorities have sent more than 1,200 warning notices to drivers in the past year about their polluting cars, including hundreds of Toyotas with excessive smoke issues."*

- 8 Please provide us with copies of all EPA Warning Notices issued to drivers in the Relevant Period.

### **Request No. 3**

- 9 The ABC article also refers to reports of polluting cars recorded and/or received by state and territory EPAs:

*"In most states and territories, the EPA or an equivalent department receives and records reports of polluting cars."*

*The ABC contacted all state and territory authorities to ascertain how many cars are being reported for expelling excess smoke."*

- 10 Please provide copies of all reports recorded and received by the ACT EPA during the Relevant Period in respect of cars emitting excessive smoke and/or any information provided to ABC News and/or its reporters about the number of cars reported for expelling excessive smoke.

### **Request No. 4**

- 11 Please provide copies of all Penalty Notices issued by the ACT EPA to drivers in respect of cars emitting excessive smoke, and any Document(s) evidencing or recording a description of such Penalty Notices, including the makes and models of the vehicles the subject of the Penalty Notices.

### **Personal Information**

- 12 With respect to our request outlined above, we are not seeking any personal information. To the extent that the Documents requested include personal information, we request that the Documents are provided with the personal information omitted or redacted.

- 13 If you have any queries regarding this request, please do not hesitate to contact Rebecca Spigelman at the contact details below.

- 14 Thank you for your assistance in this matter.



ANNEXURE A



## Toyota diesel emissions expose broader problem with car pollution in Australia

By consumer affairs reporter Amy Bainbridge and the Specialist Reporting Team's Lucy Kent

Updated Thu 5 Sep 2019, 4:11pm

**Problems with diesel particulate filters in top-selling Toyota cars have exposed Australia's 'lagging' vehicle-emissions standards, public health and environmental advocates say.**

State and territory environment protection authorities have sent more than 1,200 warning notices to drivers in the past year about their polluting cars, including hundreds of Toyotas with excessive smoke issues.

Last month, the ABC revealed Toyota is being sued as part of a class action over faulty diesel particulate filters (DPFs) in the Hilux, Fortuner and Prado vehicles sold in Australia between October 2015 and July 2019.

Scores of drivers have told the ABC their faulty DPFs cause the cars to spew out smelly white smoke and use more fuel.

Suzanne Harter, a clean energy campaigner for the Australian Conservation Foundation, said Australia needed to tighten standards to stop it from becoming a dumping ground for less-efficient, more-polluting cars.

"Australia is currently lagging behind the rest of the world on vehicle-emissions standards," Ms Harter said.

"I think it speaks to a larger problem in Australia that we need to improve our standards, improve our testing regimes ... and make sure the vehicles that are coming into our country are both fuel efficient and are able to protect public health better."

Ms Harter said the lack of standards can put motorists who have recently purchased a vehicle with a failing system in a difficult position.

### Toyota drivers hit with notices for smoky vehicles

The DPFs are supposed to trap and burn off diesel particulates, stopping pollutants and particulates from going into the air.

Instead, mechanics and drivers familiar with the Toyota issue said the malfunctioning DPFs are clogging up, causing the excessive smoke and impacting on fuel efficiency.

Some Toyota drivers contacted the ABC after they were hit with notices warning them they could be fined if they didn't stop excessive smoke coming out of their vehicles.

Sydney woman Kyle Kinchela, who runs a hydraulic repair business with her husband, was shocked when she received a notice from the NSW Environment Protection Authority (EPA) in June last year.

Their 2015 Toyota Hilux had excessive smoke issues, and the notice told her to fix her car or face a fine of up to \$2,000 — even though her car had just been serviced.

"I obviously knew that it was blowing smoke at that particular time and it was quite bad, but it was not something I expected to receive," she said.

"I called the EPA and I was quite surprised by their response, they stated that they were aware of issues with Toyota vehicles.

"If I did not get the problem seen to within their time frame then they would fine us

"I called Toyota and tried to get in for a service and I couldn't get an appointment that suited within the EPA's time frame, so I had to get the next best thing and call the EPA for an extension."

The notice reads similar to a speeding fine, with a time, date and place the offending vehicle was spotted by authorities.

"You are advised that if an authorised officer reports your vehicle emitting smoke after Friday, 29 June 2018, a Penalty Notice ranging from \$300 to \$2,000 can be imposed," the notice said.

"Exhaust emissions from vehicles are the biggest cause of air pollution in urban areas and can cause health problems."

## EPAs and police monitoring car emissions

In most states and territories, the EPA or an equivalent department receives and records reports of polluting cars.

The ABC contacted all state and territory authorities to ascertain how many cars are being reported for expelling excess smoke.

A report of a smoky car is at least 10 consecutive seconds of smoke coming out of an exhaust.

The reporting of the issue varies between locations.

Victoria has the most comprehensive data, but does not breakdown the reports into much detail. For example, it does not specify whether the smoke is black or white.

Faulty DPFs are known to cause white smoke, while black smoke is an indicator of other problems.

Victoria's EPA received 5,271 reports of excessive smoke from vehicles in 2018-19, an increase of 445 reports from the previous year.

Last year, 339 of those reports were for people driving a Toyota Hilux — the most of any car — although the data does not specify if it was white smoke.

Victoria's EPA did not tell the ABC how many notices it sent, warning drivers to fix their cars.

The NSW EPA received 1,963 reports last financial year, an increase of almost 40 per cent, and issued a record number of 834 notices to drivers with smoky vehicles.

NSW did not break the figures down by car model.

The number of smoky vehicle reports in Queensland almost doubled in the past financial year to 3,169 reports, a 45 per cent increase on the previous year.

Western Australia had 454 reports of smoky vehicles and issued 398 notices to drivers.

In the ACT, there were 38 complaints about smoky vehicles last financial year, up from 21 complaints in the previous year.

There was no data available from South Australia and the Northern Territory, and Tasmania had fewer than 10 reports.

Adelaide driver Mike Stone was given a defect notice by South Australian police in November 2017 for excessive smoke coming out of his Hilux.

He has been back to the Toyota dealership four times to have the issue fixed.

"The first time was after receiving a defect warning from SAPOL [police] after leaving a smoke trail up the southern expressway," he said.

"This so-called fix lasted about five months before heading back to the dealership again."

Mr Stone said his fuel economy fluctuates and his car regularly leaves a big cloud of smoke when he takes off at the lights.

The ABC asked Toyota to comment on the notices sent to drivers, and the issue of emissions.

"We encourage any Toyota owners with questions or concerns about their DPF to contact their closest or preferred Toyota dealer," it said in a statement.

"Alternatively, customers can find out more via a comprehensive DPF FAQ on the Toyota website.

"We are unable to comment on matters before the courts but reiterate our commitment, as always, to helping our customers with any questions or concerns they have about their vehicle."

## Excessive diesel emissions harmful to health

Dr Vicki Kotsirilos from Doctors for the Environment said there was "no safe level" for diesel pollutants, and any cars expelling higher than normal emissions were of major concern.

"Diesel emissions are particularly toxic chemicals that are released into the air," Dr Kotsirilos told the ABC.

"When we inhale these chemicals, they can irritate the nasal passages, cause allergies and irritations, they can cause lung disease, trigger asthma in people who have asthma."

Dr Kotsirilos said all vehicle emissions are harmful, but diesel emissions are worse.

"They are a class one carcinogen that can cause lung cancer and can contribute to heart and lung disease," she said.

"Vehicles that rely on diesel, that don't have proper filters, are more likely to emit diesel particulates into the air, and this would contribute to part of the air pollution problem."

Dr Kotsirilos said the emissions are most harmful to people who live, work or attend school or child care near pollution "hotspots" like busy roads or intersections.

Australia has the "Euro 5" vehicle emissions standard, which limits the amount of noxious pollutants cars can emit.

However, Europe and most developed nations have tightened emissions standards to comply with what's called Euro 6, or the more-stringent Euro 6d.

"When the Euro 5 was put in place, the diesel filters were part of that requirement," the ACF's Suzanne Harter said.

"Those filters are required for a really important reason, and that is to protect public health.

"If those filters aren't working as they should, that means that there could be greater health impacts that we would want to accept from those vehicles."

Dozens of drivers have told the ABC the faulty Toyota filters cause excessive smoke and impact fuel efficiency by up to 30 per cent.

That means more particulates are going into the air, and more CO2 is being produced because more fuel is being used.

## No progress on vehicle emissions standards

Progress on changing car emissions and efficiency standards in Australia has stalled.

A range of issues are at stake, including the accuracy of emissions testing, which is performed in a laboratory before a car is sold to market.

Bodies such as the Australian Automobile Association (AAA) have argued for real-world testing, which would see cars driven over a 90km loop in a range of conditions to more accurately estimate a car's emissions.

There is no follow-up testing once a car is on the road, even if parts designed to comply with emissions allegedly fail to do the job.

A ministerial forum set up in 2015 has failed to progress Australia's emissions levels.

Ms Harter said as a result, Australia has become an "outlier" in the vehicles market.

"Some of the vehicles that are sold here are actually less efficient or more polluting than that same vehicle that would be sold overseas," she said.

Michael Bradley from the Australian Automobile Association would not comment on Toyota's DPF problems, but said the AAA has been supportive of a tighter emissions standards for years.

"The AAA has called for a comprehensive package of measures which address fuel standards, CO2 standards, noxious-emissions standards and real-world testing. These issues are intertwined and have to be addressed in one package," he said.

A spokeswoman for Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development Michael McCormack responded to the ABC's request for an interview in a statement.

"The Liberal and Nationals Government is currently considering the case for introducing the latest international noxious-emission standards for light and heavy vehicles [Euro 6d and Euro VI respectively], but has not made a decision on how or when these standards may be implemented and will continue to consult with stakeholders," she said.

"The Government is committed to developing a sensible framework that places savings for motorists and health benefits for the community front and centre, while ensuring that the vehicles that Australians value remain in the market."

**Topics** consumer-protection, automotive, law-crime-and-justice, environment, environmental-impact, environmental-policy, engadine-2233, nsw, australia, adelaide-5000, sa, melbourne-3000, vic

*First posted Thu 5 Sep 2019, 5:06am*

Contact Amy Bainbridge



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2020-047



## **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 3 March 2020, in which you sought access to:

1. All documents provided by the ACT EPA to ABC News and/or its reporters, Amy Bainbridge and/or Lucy Kent, in relation to, or in connection with, smoky vehicle reports (as described in the article "Toyota diesel emissions expose broader problem with car pollution in Australia" published 5 September 2019 on the ABC News website (ABC article)). A copy of the ABC article is attached to this letter as Annexure A.
2. The ABC article refers to state and territory environment protection authorities sending warning notices to drivers about their polluting cars, including Toyota models (EPA Warning Notices): "State and territory environment protection authorities have sent more than 1,200 warning notices to drivers in the past year about their polluting cars, including hundreds of Toyotas with excessive smoke issues." Please provide us with copies of all EPA Warning Notices issued to drivers in the Relevant Period.
3. The ABC article also refers to reports of polluting cars recorded and/or received by state and territory EPAs: "In most states and territories, the EPA or an equivalent department receives and records reports of polluting cars. The ABC contacted all state and territory authorities to ascertain how many cars are being reported for expelling excess smoke." Please provide copies of all reports recorded and received by the ACT EPA during the Relevant Period in respect of cars emitting excessive smoke and/or any information provided to ABC News and/or its reporters about the number of cars reported for expelling excessive smoke.



Please provide copies of all Penalty Notices issued by the ACT EPA to drivers in respect of cars emitting excessive smoke, and any Document(s) evidencing or recording a description of such Penalty Notices, including the makes and models of the vehicles the subject of the Penalty Notices.

### **Authority**

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

### **Timeframes**

In accordance of section 40 of the Act, CMTEDD was required to provide a decision on your access application by 1 April 2020.

### **Decision on access**

A search of CMTEDD records has failed to identify any documentation in relation to your request. The search was conducted using the information you provided.

I am satisfied that appropriate searches were completed and that no documents relevant to your request are held by CMTEDD.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because there are not any documents available to be processed.

### **Online publishing – Disclosure Log**

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. A description of the access application and my decision will be published in the CMTEDD disclosure log after 30 March 2020. Your personal contact details will not be published.

You may view CMTEDD disclosure log at

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,



Philip Dachs  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate  
24 March 2020