

# Consumer Protection

## **Booklet | Consumer Guarantees Act**

Your consumer rights when buying a motor vehicle



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
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# Words to know

## **Terms and definitions used in this booklet:**

**Breach:** when a rule under the law has been broken – e.g. it is a breach of the Fair Trading Act for a trader to mislead you about the vehicle's age.

**Car-yard trader:** the term we use in this book to describe registered motor vehicle traders who usually sell vehicles from car-yards.

**Registered motor vehicle trader:** all people who are in the business of selling motor vehicles must be registered. This includes vehicle traders, vehicle importers, vehicle wholesalers and auctioneers.

**Security interest:** when a vehicle is purchased on credit (using a loan or hire purchase to pay for it), the finance company may register a security interest to show that they have a right to the vehicle if the money owed is not re-paid. Security interests are registered on the Personal Property Securities Register ([www.ppsr.govt.nz](http://www.ppsr.govt.nz)).

**Compensation:** money to put a problem right – e.g. "I am asking for \$1,200 compensation from the seller for being misled about the condition of the car's engine."

**Private seller:** a consumer selling their own vehicle to another consumer.

# Contents

## **SECTION ONE:**

What you should know before you buy

Before you start – information for all buyers 3

Buying from a motor vehicle trader 8

Buying from an auction 12

Buying from a car market, car fair or 'display for sale' 15

Buying from a private seller 18

Buying a motor vehicle on credit 20

Checking for wear and tear 24

After purchasing 26

## **SECTION TWO:**

What you should know after buying

Information in this section 28

Misleading or false information 29

Faulty or defective vehicles 33

Money owing by a previous owner 45

Resolving your dispute 50

Motor Vehicle Disputes Tribunal (MVDt) 52

The Disputes Tribunal 56

# SECTION ONE:

What you should  
know before you buy



# Before you start – information for all buyers



To avoid a bad deal it makes sense to do some homework before you buy. Some things to think about are:

- › do your homework on the market – check out the vehicle market by looking at adverts in the paper and visiting traders' yards. Talk to friends and family about their recent vehicle purchases
- › get an independent mechanical check of the vehicle before you agree to buy it – some traders may have already arranged a check of the vehicles they have for sale. If you want to rely on this check, make sure you know when the test was done, what was checked, who carried it out and what the test results were.

This section sets out the different checks you should do before you buy a vehicle and the protections the law gives you. These protections depend on whether you buy your vehicle from:

- › a motor vehicle trader – a registered motor vehicle trader
- › an auctioneer
- › a car market operator – also known as a car fair or "display for sale" operator

OR

- › a private seller.



## REMEMBER

The Motor Vehicles Sales Act (MVSA) requires motor vehicle dealers and other traders who sell motor vehicles to be registered.

Once you've got an idea of the current market and the mechanical state of the car you're in a better position to make a decision. If there are any mechanical problems with the car you could negotiate on the price to take account of the problems, or ask the seller to fix the problems before you buy the vehicle. If the seller agrees to fix the problems, ask for this in writing.

NZ Transport Agency has information on their website on buying a used car and what to look for when checking the quality of a used vehicle.

Visit **[www.nzta.govt.nz](http://www.nzta.govt.nz)** for more information.

## Checking the vehicle's Warrant of Fitness

All sellers of motor vehicles must ensure that the vehicle has a Warrant of Fitness (WoF) issued no more than one month before the date the vehicle is delivered to the buyer.

If you buy a vehicle with a recently issued Warrant of Fitness but the vehicle does not appear to be in warrantable condition, contact NZ Transport Agency. They can investigate testing situations or garages that incorrectly issue Warrants.

### **"As is, where is"**

If the vehicle does not have a current WoF it must be sold "as is, where is". In this case, you should give the seller a written understanding that the vehicle will not be driven on the road except for the purpose of getting a new WoF – this is a protection for the seller.

Visit **[www.nzta.govt.nz](http://www.nzta.govt.nz)** for more information.

## Trader registration

All motor vehicle traders are required to be registered under the Motor Vehicle Sales Act (MVSA).

Registered motor vehicle traders will have a certificate with their trader number on it and the date their registration expires. You can ask to see this registration certificate.

You can check whether a trader is registered by visiting the Motor Vehicle Traders Register online at **[www.motortraders.govt.nz](http://www.motortraders.govt.nz)** or phone 0508 MOTOR TRADERS (0508 668 678). This service is free.

You can also check the Motor Vehicle Traders Register for a list of people who have been banned from operating as a registered motor vehicle trader.

If a trader is not registered, you can report this to the Motor Vehicle Traders Registrar. Motor vehicle traders who are not registered can be fined up to \$200,000.

## Consumer Information Notice

All motor vehicle traders must attach a Consumer Information Notice to every used vehicle they offer for sale. (Private sellers do not have to display a notice.) Read the Consumer Information Notice carefully – it contains important information about the vehicle you're buying.

If the notice is missing, inaccurate, not completed, or misleading you can report this to the Commerce Commission on 0800 943 600 or by email to:

**[contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)**

The Motor Vehicle Sales Act requires the trader to get a written acknowledgement from you before the sale that you received a copy of the Consumer Information Notice. If you buy the car at an auction, this acknowledgement must happen as soon as is practical after the sale.

## **Checking if there is money owed on the vehicle (when bought from a trader)**

A previous owner may still owe money to a finance company for the vehicle. You can check whether money is owed on the vehicle by checking the Personal Property Securities Register (PPSR) website **[www.ppsr.govt.nz](http://www.ppsr.govt.nz)**. If you buy a vehicle from a motor vehicle trader knowing that money is owed on it, then the finance company could take the vehicle from you.

If the vehicle carries a Consumer Information Notice, check to see if the following statement is on the front of this notice. . .

***“There is a security interest  
registered over this motor vehicle”***

If it is, then the person or company who has registered the security interest may repossess the vehicle from you.

Read the Consumer Information Notice carefully to make sure this statement is not included. The notice provides more information about what a security interest is.

If you do buy the vehicle with this statement, you take it knowing there is money owing on it and you risk losing it to the person or company that registered the security.

If the statement does not appear on the notice, this means you take the vehicle free of any earlier security interest. The vehicle **cannot** be repossessed from you.

## **Buying from a private seller or at a car market or car fair**

To check if a vehicle has money owing on it, search the PPSR online at **[www.ppsr.govt.nz](http://www.ppsr.govt.nz)**. Just because the seller can show you the vehicle registration or “ownership” papers, it doesn’t prove that any money owing on the vehicle has been paid off.



## How do I check the register?

You can search the Personal Property Securities Register (PPSR) online to find out if there is security interest on a vehicle. To check the PPSR you must first register as a user at the PPSR website at **[www.ppsr.govt.nz](http://www.ppsr.govt.nz)**. There is no charge to register but there is a small fee for searches, which is payable by credit card when you search online, or charged to your mobile when using the TXTB4UBUY service.

You can use your mobile phone to access the PPSR by sending a text message to FIND (3463), with the motor vehicle registration number and/or Vehicle Identification Number (VIN) or vehicle chassis number (if the vehicle does not have a VIN).

You will receive a result telling you whether there seems to be a registered security over the motor vehicle or not. This service will cost you \$2.30. You can check your results by completing a motor vehicle search online at **[www.ppsr.govt.nz](http://www.ppsr.govt.nz)**. Remember to keep a copy of your search results for future reference.

Or, you can check a security interest by using the services of a business which provides vehicle information checks. Look for these in the Yellow Pages under 'Vehicle Inspection Services'.



# Buying from a motor vehicle trader



This section applies to buying from a motor vehicle trader operating from a car-yard (car-yard traders). This information also applies to motor vehicle wholesalers, importers, brokers and motor vehicle traders selling on the Internet.

The rules for auctioneers and car market operators are different – see pages 12 and 15 for more information.

## **What to check**

### ***Trader registration, Consumer Information Notice and money owed on the vehicle***

All car-yard traders who sell motor vehicles must be registered as motor vehicle traders and they must attach a Consumer Information Notice to every used vehicle they sell. See page 5 onwards for information on this and how to check if money is owed on the vehicle.

## **Quality of the vehicle**

Although you may be entitled to a remedy from the motor vehicle trader if the vehicle is faulty (see further on), we suggest you have the vehicle checked before deciding if you wish to purchase it. If any problems are found you can talk to the motor vehicle trader about putting any problems right before the sale is finalised; or you can choose not to buy the vehicle.

## **Trade-in offers**

Be wary of unrealistic trade-in offers (high prices offered for trade-ins with lower actual value). The price of the vehicle you want to buy could be increased to cover the difference. Compare the prices of similar vehicles in other traders' yards to work out the best deal.

## **Extended warranty offers**

Many car-yards sell extended warranties. These are also known as:

- › mechanical breakdown insurance
- › breakdown insurance
- › mechanical insurance
- › mechanical warranty.

## **Checking the terms and conditions of the warranty**

If you are buying the vehicle for a business purpose, you may not be covered by the Consumer Guarantees Act. If you consider buying an extended warranty, ask:

- › what parts and problems does it cover?
- › what does it exclude?
- › do I have to pay an excess, and if so how much?
- › what are the rules about servicing? Many warranties state you must get the vehicle regularly serviced by certain mechanic every 5,000 kms. Will you be able to do this?
- › check whether the warranty or insurance will become invalid if you use another mechanic.

If you are told the warranty or insurance is free, make sure that the cost has not been added to the price of the vehicle by checking the price of similar vehicles at other yards.

If the trader tells you that you can't buy the vehicle at the advertised price unless you also buy a mechanical warranty, this is a breach of the Fair Trading Act.

## **Before you sign**

- › don't be pressured into buying before you are really sure. If a trader tells you they're offering you a good deal, compare the price of similar vehicles at other yards
- › read very carefully what you are signing. Don't get caught out by signing something you haven't read properly

- › decide how you're going to pay for the vehicle. Many motor vehicle traders offer finance deals but look into other finance sources too. Remember that using hire purchase or taking out a loan will usually add to the overall price. See page 20.

## **If things go wrong – your legal protections**

### ***Consumer Guarantees Act***

The Consumer Guarantees Act applies to both new and used vehicles of a kind ordinarily bought for a 'personal or domestic purpose'. It doesn't cover vehicles bought for business or commercial purposes.

If you buy from a trader, this law gives you a number of guarantees about the quality of the vehicle.

The vehicle you buy must:

- › be of acceptable quality, including:
  - fit for its usual purpose
  - safe
  - free of small faults (unless they are obvious or pointed out to you before you buy)
  - acceptable in look and finish considering its age, condition and price
- › match its description
- › be fit for any particular purpose you made known to the seller – e.g. if you tell the trader you need a car that can tow a boat, the car must be able to do this.

The Consumer Guarantees Act sets out what the trader must do if the vehicle you buy fails to meet these guarantees. For more information see Section Two: What You Should Know After Buying in this booklet and *Your Consumer Rights (Goods) – A Guide to the Consumer Guarantees Act*.



### BE AWARE

Traders can contract out of the Consumer Guarantees Act if you are buying the vehicle for business use. They will usually do this by getting you to sign a clause in the sale contract acknowledging that the vehicle is for business use. If the trader does not contract out, the Consumer Guarantees Act will apply.

## The Fair Trading Act

The motor vehicle trader must not mislead or deceive you, or make false representations about the vehicle.

This means that everything on the Consumer Information Notice must be true and correct, and anything the trader tells you about the vehicle must also be true (this includes: information in adverts, car-yard signs, and statements made by the trader).

The Fair Trading Act gives you the right to claim compensation from a car-yard trader if you end up with a bad deal because you were misled or deceived. Check out Section Two: What You Should Know After Buying for more information.

If you believe you have been misled you can report this to the Commerce Commission's contact centre – phone 0800 943 600 or email: **[contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)**



### BE AWARE

The legal protections under the Consumer Guarantees Act and Fair Trading Act also apply to sales to consumers by unregistered motor vehicle traders.

# Buying from an auction



## What to check

### *Trader registration, Consumer Information Notice & money owed on the vehicle*

All auctioneers who sell motor vehicles must be registered as motor vehicle traders and they must attach a Consumer Information Notice to every used vehicle they sell. See page 5 onwards for information on this and how to check if money is owed on the vehicle.



### **BE AWARE**

The Consumer Guarantees Act now covers vehicles sold at auction and by tender. This means when you buy at an auction or by tender you have the same protection as when you buy from a car-yard trader. However, these rules don't apply to auctions such as those on sites like Trade Me or to charity auctions. This is because in an online auction like Trade Me, goods are sold directly by a seller to a winning bidder, and not through an auctioneer.

## Quality of the vehicle

Some auctioneers offer vehicles for sale which have been mechanically checked. Make sure you know how thorough the check is. If it is not as thorough as you would like, arrange for an independent mechanical check.

Some auctioneers also sell break-down insurance or extended warranties. If you agree to buy this, check the terms and conditions of the warranty or insurance.

Ask:

- › what parts and problems does it cover?
- › what does it exclude?
- › do you have to pay an excess on any claims?  
If so, how much?
- › what are the rules about servicing? Many warranties say you must get the vehicle regularly serviced at certain mechanics. Will you be able to do this? Check whether the warranty or insurance will become invalid if you use another mechanic.

## **If things go wrong – your legal protections**

### ***Fair Trading Act***

The auctioneer cannot mislead or deceive you, or make false representations about the vehicle. This means that everything on the Consumer Information Notice must be true and correct, and anything the auctioneer tells you about the vehicle must also be true (this includes adverts, signs on the car, and statements made by the auctioneer).

The Fair Trading Act gives you the right to claim compensation from the auctioneer, if you were misled or deceived about the vehicle. For more information see Section Two: What You Should Know After Buying in this booklet.

If you have been misled by the auctioneer you can report this to the Commerce Commission's contact centre – phone 0800 943 600 or email **contact@comcom.govt.nz**.

### **Contract and Commercial Law Act (previously the Sale of Goods Act)**

Under the Contract and Commercial Law Act the vehicle needs to be of merchantable quality and fit for its purpose – that is, the vehicle is reasonably roadworthy and in a good enough condition to be sold.

The auctioneer must also have the right to sell the vehicle. If these guarantees are not met you may have a right to a refund, partial reimbursement or compensation.



## BE AWARE

Auctioneers can contract out of the Contract and Commercial Law Act (see part 3) at the time of sale. They may do this by making a statement at the auction or posting a notice in the auction rooms that the Contract and Commercial Law Act (previously the Sale of Goods Act) does not apply.

### *Online auctions*

The Fair Trading Act applies to all traders. They can't mislead, deceive or make a false statement. Check the terms and conditions of the seller and the website to see how the law applies.





# Buying from a car market, car fair or 'display for sale'



## **BE AWARE**

Car market, car fair or "display for sale" operators do not arrange the sale.

The contract to buy the vehicle is between you and the seller. In most cases, the operator merely provides a place for its sales to take place. Although many vehicles sold at car markets are offered for sale by private sellers, traders may also sell through car markets.

## **What to check**

### *Trader registration*

All motor vehicle traders selling through car markets must be registered. See page 5 for more information.



## **BE AWARE**

It is important to check whether the seller is a trader or a private person. Your legal rights and remedies will change depending on what type of seller you purchased your vehicle from.

## **Consumer Information Notice**

### *Private sales*

If you buy from a private sale at a car fair you are in the same situation as if you were buying from a private seller. See page 18. However, a private seller who sells more than six motor vehicles in a 12-month period may be treated as a motor vehicle trader and be required to register. See pages 8-11.

### **Sales by motor vehicle traders**

Registered motor vehicle dealers who sell vehicles at car markets must attach Consumer Information Notices to these vehicles. See page 5 for information on the Consumer Information Notice.

If car market operators do not take reasonable steps to make sure that motor vehicle traders attach the Consumer Information Notice, they could be in breach of the Motor Vehicle Sales Act and may be subject to prosecution.

If the Consumer Information Notice is missing, inaccurate, not completed or misleading you can report this to the Commerce Commission's contact centre – phone 0800 943 600 or email [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz).

## **Quality of the vehicle**

### *Private sales*

The Consumer Guarantees Act does not apply to vehicles sold by a private person at a car market. This means that there are no legal guarantees about quality with this type of sale. We recommend you get an independent mechanical check before you buy, because it may be hard to track down the seller to fix things after you have bought the vehicle.

### **Sales by motor vehicle traders**

The Consumer Guarantees Act does apply to vehicles sold by registered motor vehicle traders at a car market. This means that you may be entitled to a remedy if the vehicle is faulty. But we recommend getting an independent mechanical check before deciding whether to purchase the vehicle. If there are problems, you can then ask the trader to fix them before the sale is finalised, or choose not to go ahead with the purchase.

## **Money owing on the vehicle**

### *Private sales*

Check that the vehicle does not have any money owing on it before you buy. See page 6 on how to check if money is owing on the vehicle.

### *Sales by registered motor vehicle traders*

Check the Consumer Information Notice for a statement about any security interest on the vehicle. If there is no such statement, you buy it free from any prior security interest. This means that the vehicle cannot be repossessed from you. This protection does not apply to private sales.

## If things go wrong – your legal protections

### Private sales

The Contractual Remedies Act gives you some protection if you can show that:

- › you were persuaded to buy the vehicle by what the seller said, and
  - › what the seller said was untrue, and
  - › the seller's false statements have caused you to lose money – e.g. by having to pay to repair the engine when the seller told you it was in excellent condition.
- Compensation from the seller would be based on the difference between what the vehicle is actually worth and what it would have been worth if the seller's statements about the vehicle had been true.

Get independent vehicle information and mechanical checks before you buy rather than relying on what the seller tells you about the vehicle.

For more information on your rights if you have a problem with a vehicle bought from a private seller, see *Section Two: What You Should Know After Buying in this booklet*.

### Sales by motor vehicle traders

If the seller of a vehicle is a registered motor vehicle trader the legal protections under the Consumer Guarantees Act and Fair Trading Act will apply. For more information see the section *Buying from a car-yard trader* on page 8.



#### BE AWARE

The legal protections under the Consumer Guarantees Act and Fair Trading Act also apply to sales to consumers by unregistered motor vehicle traders.

# Buying from a private seller

A private sale is one where an individual person sells their vehicle to another consumer – perhaps through a classified advertisement in a newspaper, from a roadside sale area, or through a car market or car fair.

Although you may get a cheap deal, you have less legal protection if things go wrong.

## What to check

### *Quality*

The Consumer Guarantees Act **does not** apply to vehicles sold by a private person. This means there are no legal guarantees about quality with this type of sale. We recommend you get an independent mechanical check before you buy, because it may be hard to track down the seller to fix things after you have bought the vehicle.

### *Money owing on the vehicle*

See page 45 on how to check if money is owing.

## If things go wrong – your legal protections

### *Contract and Commercial Law Act (previously the Contractual Remedies Act)*

The Contract and Commercial Law Act (see Part 2, Subpart 3) gives you some protection if you can show that:

- › you were persuaded to buy the vehicle by what the seller said, and
- › what the seller said was untrue, and
- › the seller's false statements have caused you to lose money – e.g. by having to pay to repair the engine when the seller told you it was in excellent condition.

Compensation from the seller would be based on the difference between what the vehicle is actually worth and what it would have been worth if the seller's statements about the vehicle had been true.

For more information on your rights if you have bought a vehicle from a private seller see *Section Two: What You Should Know After Buying* in this booklet.

### **Checking if a vehicle is stolen**

When you buy a vehicle from a private seller, be careful to look out for signs that either the vehicle is stolen or the seller is not the true owner of the vehicle.

The New Zealand Police advise that:

- › if the deal seems too good to be true or the price too cheap, be suspicious. Criminals selling stolen vehicles make the sale exceptionally attractive to prevent questions being asked and to move the property fast
- › when telephoning the seller, do not describe the vehicle but say you are enquiring about the vehicle advertised for sale. Be cautious where the seller is a private individual but indicates they have more than one vehicle for sale
- › don't deal with a seller at the side of the road. Always confirm an address
- › go to where the vehicle is on sale rather than have the person bring the vehicle to you. A dishonest seller is unlikely to allow a prospective purchaser to visit a home address.

# Buying a motor vehicle on credit



Thinking about buying a vehicle on credit? Here's a checklist to work through to make sure this is an option for you:

- › work out how much you can comfortably afford in repayments. Remember to include running costs like petrol and licensing fees
- › if you need some help with your budget, contact the Budget Advice Service (local contact details in the White Pages) for confidential and skilled budget advice
- › interest and other charges will add to the cost of the vehicle, so try to keep the amount you borrow and the duration of the loan to a minimum. Remember – the longer you take to pay off the vehicle, the more interest you pay
- › saving for a deposit means you will have less interest to pay and may have more choice about who you borrow from.



## Look around

Shop around for the best finance deal and the best interest rates. Although most vehicle traders will offer to arrange finance, it may be cheaper to find your own. You can compare loan or credit terms against others by checking:

- › the monthly repayments over the same period of time e.g. three years
- › the total amounts you will pay
- › the cash price of the goods – if the sellers are arranging finance
- › the interest rate.

Using the Ministry's TrueCost Checklist you can see how much the cost of finance really is. Take the Checklist (overleaf) to the dealer and ask them to fill it in. The Checklist is designed to be used to:

- › help you decide if the finance is a good deal
- › take the Checklist home and talk about the deal, the car and the finance with someone you trust, a law centre or budget advisor
- › look at other cars on other dealers' yards. Take the Checklist to them and ask if they can give you a better deal on the finance
- › take the Checklist to a bank, Credit Union, or other finance companies; and ask if they can give you a better deal
- › ask the dealer what any fees are for – they have to be reasonable
- › if there are insurances or warranties added, ask the dealer what they cover. If you are not paid in employment, insurance for redundancy is of no use.

# TrueCost Check List

## What car am I thinking about buying?

Make

Model

The total amount I will have to pay is: \$

## This amount is made up of:

The cash price of the car:

\$

**LESS** a trade-in or deposit of:

\$

**PLUS** a total interest of: \$  at  % per annum

**PLUS** insurances and warranties of:

\$

*Please list the type of insurance  
and the costs separately:*

\$

\$

## PLUS fees of:

*Please list separately each fee  
charged and the cost:*

\$

\$

\$

## PLUS other amounts:

*For example; cash backs,  
amounts to pay off other loans:*

\$

\$

\$

I WILL BE PAYING OFF THE CAR FOR  YEARS  MONTHS

Amount I will pay per week:

\$

Amount I will pay per fortnight:

\$

Amount I will pay per month:

\$

## What should i do now?

- ▶ You can ask the dealer if they can reduce or remove some of the fees and charges.
- ▶ You can take these figures to your bank or credit union and ask if they can give you a cheaper loan.
- ▶ But the best thing you can do is take the checklist away and think about it.

**IF YOU'RE NOT SURE, DON'T SIGN!**

*The checklist is also available in Samoan and Tongan  
at [www.truecost.govt.nz](http://www.truecost.govt.nz)*



## The paperwork

- › if you decide to get a loan to buy a car, read the whole contract before you sign, especially the part of your contract that is headed *What could happen if you fail to meet commitments*. This will tell you what the penalties are and what can be repossessed from you if you don't pay
- › if you buy the car on finance then you should be given one contract for buying the car and another contract for the loan
- › check that the cash price of the car on the Consumer Information Notice is the same as the cash price on the loan contract
- › you must be given a copy of your loan contract and 'disclosure statement' when you sign (or within five working days of signing it). You must also be given copies of any credit-related insurance policies within 15 working days of the day it is arranged. If you're not given all this information within the required time, you are entitled to some money back
- › if you haven't taken the car home yet, you can change your mind about buying it. You have three working days from the day you get your contract to cancel the whole deal.

# Checking for wear and tear

## Odometers

There's always a risk with any used vehicle that the odometer may have been wound back.

While the odometer gives some indication of the vehicle's value, don't rely on it as the main measure. It gives no indication of the quality of the mileage or the driving, and it does not reflect all the engine's running and wear in many circumstances.

## Consumer Information Notice

When a trader offers a vehicle for sale they can include a statement on the Consumer Information Notice warning consumers not to rely on the odometer reading.

If the trader believes the odometer reading is incorrect they must include the words:

*"I [name of supplier] cannot accurately determine the actual distance this motor vehicle has travelled because the odometer reading may be inaccurate."*

**OR**

*"This motor vehicle's odometer reading is inaccurate."*

If either of these statements is included on the Consumer Information Notice for your vehicle, it will be very difficult for you to make a claim against the trader for an inaccurate reading.

## Checking the vehicle's condition

As odometer tampering can be very difficult to detect, a vehicle's mechanical condition is a much better indication of quality.

Look out for the following signs of wear and tear which may indicate the vehicle has been used more than the odometer reading indicates:

### ***Inside***

The steering wheel and gear lever will start to look shiny after about 60,000kms.

If the carpet under the pedals is wearing, then the vehicle has done a fair mileage – also look for plating wearing off the ignition key, worn rubbers on the pedals, original seat covers wearing thin, or seatbelts fraying.

### ***Outside***

Areas of bright or mismatched paint (view the vehicle in good light) indicate recent repairs. If the paint looks dimpled, this may indicate bad quality repairs. Look around the doors and other panels to see that they line up – use something with a straight edge such as a credit card to check the line. And look out for uneven or mismatched tyres.

### **Engine**

If a vehicle is burning oil, this is a sign of a worn engine. Feel under the bumper bar, close to the exhaust pipe. If it feels oily and slippery, then the vehicle is burning oil. Open the bonnet and check that the dipstick indicates a good oil level and that the oil isn't black and sludgy. If it is an automatic, also check the transmission dipstick under the bonnet. The oil should be clean (not black) and smell sweet.

Listen for heavy noises like rumbling, clattering and knocking. These are not good signs!

Warm the engine and leave the vehicle in neutral. If blue clouds of smoke gush from the vehicle when it's revved, it's bad news – it's burning oil.

Black smoke is also bad news, indicating excessive fuel usage.

White smoke indicates water loss (but white smoke or steam can be normal on a cold day).

While driving the vehicle, check when braking that there is not excessive pedal travel, or pulling to the left or right.

# After purchasing

## **Changing registration**

After you have bought a vehicle you should notify NZ Transport Agency of the change of ownership by lodging a form within seven days of the purchase date.

You can lodge the form, with the fee, at a NZ Transport Agency agent which include the AA, NZ Post Shops, On Road New Zealand, Vehicle Inspection New Zealand (VINZ), and Vehicle Testing New Zealand (VTNZ). You'll need valid identification to take to the agent.

## **Where can I find out more?**

For further information on changing registration of the vehicle, contact NZ Transport Agency on 0800 108 809 or visit **[www.nzta.govt.nz](http://www.nzta.govt.nz)**.

## SECTION TWO:

What you should  
know after buying



# Information in this section



Different laws apply to different types of vehicle sales and sellers, this section provides information on:

- › the common types of problems consumers may experience after buying a vehicle
- › what remedies are available for those problems, depending on the type of seller the vehicle was bought from
- › taking a claim to the specialist Motor Vehicle Disputes Tribunal or the general Disputes Tribunal, when you have been unable to resolve your problem with the seller.

## **Keeping a record of the problem**

You should keep an accurate record of the problem and your attempts to resolve it – no matter who you bought your car from. Here are some things you should do:

- › keep all the paperwork relating to purchase including any advertisements for your vehicle and your signed copy of the Consumer Information Notice. A copy of the Consumer Information Notice should have been given to you by the trader when you purchased the vehicle
- › note the details of the problems and the dates and times they happened
- › keep a record of the names of any witnesses
- › keep a note of any discussions you have had with the seller about problems
- › keep any records of vehicle inspections – e.g. mechanical report, quotes for repairs, or receipts for repairs.

# Misleading or false information about the vehicle

## **Fair Trading Act**

A person in trade can breach the Fair Trading Act if they provide you with misleading or false information about the vehicle. This information could be an advertisement, notice or sign with the vehicle, or simply a statement made by the trader. A person in trade includes motor vehicle traders (registered or unregistered), or anyone else selling a motor vehicle in the course of business.

All information about the vehicle must be correct and must not be misleading, including the information in the Consumer Information Notice.

If a trader has made a misleading or false representation, and you have suffered loss as a result of that representation, you may be able to claim compensation from the trader.

## ***What amount of compensation am I entitled to?***

The amount will depend on the nature of the misrepresentation and how much it may have affected the vehicle's value.

### **For example:**

Bethany bought a car which she thought was manufactured in 2010, as this was stated on the Consumer Information Notice. She later found out it was actually a 2008 model. If Bethany can prove that she paid more than the reasonable price for a 2008 model car, her compensation may be based on the difference between what she paid for the vehicle and what the vehicle was actually worth when she bought it.

### ***Claiming compensation***

If you are unable to resolve the matter with the trader you could take the claim to the specialist Motor Vehicle Disputes Tribunal or to the general Disputes Tribunal. For more information see page 52.

The Fair Trading Act gives Tribunals a wide range of remedies, where they are satisfied that a trader has breached the Act and that you have suffered or are likely to suffer a loss.

#### ***A Tribunal can order:***

- › that your contract with the trader be varied, or changed in a way that compensates you for your loss
- › that your money be refunded, or your trade-in returned
- › that the trader pays you an amount of money to compensate you for the loss you have suffered as a result of being misled
- › that the trader repairs the vehicle or provides parts for it.





## **Who can I report Fair Trading Act breaches to?**

You can report misleading conduct by a trader to the Commerce Commission. The Commission will also accept reports of motor vehicle traders offering vehicles for sale where the Consumer Information Notice is missing or the information on the notice is inaccurate, incorrect or misleading.

### **Contact the Commission's contact centre –**

Phone 0800 943 600

email [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

or write to PO Box 2351, Wellington.

## **Consumer Guarantees Act**

The Consumer Guarantees Act applies to any vehicle sold by a person in trade where the vehicle is of a kind ordinarily acquired for personal or domestic purposes. 'Ordinarily acquired' means something usual or common to buy.

A person in trade includes car-yard traders, importers, and wholesalers that sell to the public. It also includes unregistered motor vehicle traders. The Act does not apply to private sales.

The Act provides a guarantee that the vehicle will match its description.

### **For example:**

Helen sees a car advertised on a trader's website. She orders the car based on its picture and description. When the car is delivered to her, the colour is different to the photo and information provided.

If the difference is minor, Helen could ask the dealer to fix the problem. If the description is substantially different, the remedy may be a refund.

For more information on the remedies available under the Consumer Guarantees Act see page 37.

## **For private sales**

### ***Contract and Commercial Law Act (previously the Contractual Remedies Act)***

Under this Act you may have rights against a private seller if you can prove that:

- › you were persuaded to buy the vehicle by what the seller said
- › the seller's statements are untrue
- › the seller's false statements have caused you loss.

If you can show these three things, you may have a right to be compensated by the seller. You may have a right to compensation or you can cancel the contract and get your money back.

#### **For example:**

Tem tells Lisa that the car he is selling recently had its engine reconditioned. She finds out one week later that the engine has not been reconditioned. Lisa can claim compensation from Tem or, because the misrepresentation was so serious, Lisa can cancel the purchase and get her money back.

Claims for compensation against private sellers can be made to the general Disputes Tribunal. For more information, see page 56.

# Faulty or defective vehicles

## **Consumer Guarantees Act**

The Consumer Guarantees Act provides you with rights and remedies for a faulty or defective vehicle.

The Act applies to the sales of motor vehicles to consumers by a business if motor vehicles are of a kind ordinarily bought for personal or domestic purposes including:

- › new and used motor vehicles
- › motor vehicles bought for cash, on lease or on credit contract
- › motor vehicles bought as a gift
- › motor vehicles sold by a trader “on behalf” of a private seller. Where the trader arranges and carries out the sale.

The Act does not apply to:

- › motor vehicles by private sale
- › motor vehicles of a kind ordinarily bought for commercial purposes – e.g. trucks, buses. This rule applies even if you choose to use any of these motor vehicles for personal or family use.

## **Buying a motor vehicle for business use**

If you told the trader you were purchasing for a business purpose, the trader may have contracted out of the Consumer Guarantees Act at the time of sale. The trader has to do this in writing.

Look for a statement in your contract such as:

*“The purchaser acknowledges that they are buying the car for a business purpose and that the Consumer Guarantees Act does not apply.”*

If you find a statement like this, you will probably find that the seller may have also contracted out of the implied quality terms of Part 3 of the Contract and Commercial Law Act (previously the Sale of Goods Act”).

In these scenarios, you will not be able to rely on the remedies available in the Acts for problems with your vehicle. Your rights may be limited to those available under a manufacturer's warranty or under any seller's warranties contained in the contract itself.

**For example:**

Shirley buys a car to use as a taxi. The trader gets her to sign the part of the contract that says the Consumer Guarantees Act does not apply, as the purchaser is acquiring the car for business use. This means that if there are problems with the car, Shirley will have no rights under the Act.

## **Guarantees under the Consumer Guarantees Act**

### ***Acceptable quality guarantee***

When you buy a vehicle it must be of acceptable quality.

A vehicle will be of acceptable quality when it:

- › is fit for all the purposes it would normally be used for
- › does not have any minor faults
- › is acceptable in appearance and finish
- › is safe to use
- › is durable.

### **The test for deciding whether goods are of acceptable quality**

"Would a reasonable consumer find the vehicle acceptable taking into account. . ."

- › the type of the vehicle, its distance travelled, its age, its engine size
- › the price paid for it
- › any information provided about the vehicle
  - e.g. in advertising or in the vehicle manual
- › anything the seller told them about the vehicle
- › how much it has been driven since purchase.
- › the nature of the supplier and the context in which the supplier supplies the goods.

**For example:**

Debbie bought a car six months ago from a trader. It cost her \$12,000. The car was four years old. The trader told her it was a very reliable car and should last for a long time. When she takes the car for a Warrant of Fitness it fails because of an electrical problem affecting the headlights.

Compare Debbie's car with this one:

Angeline bought her car six months ago from a trader. It cost her \$2,000. The car was 15 years old, and not in a good condition. The paintwork was scratched and there were some dents in the body. When she takes the car for a Warrant of Fitness, it fails because of an electrical problem affecting the headlights.

Most people would not be surprised if a 15-year-old car which cost \$2,000 had some electrical problems requiring repairs within six months of purchase. However, a person who buys a car for \$12,000 and is told that it is reliable would not expect it to fail a Warrant of Fitness within six months because of electrical problems.

**What if the trader points out the vehicle problem before I buy the vehicle?**

If the trader advised you of the problem in writing before you purchased the vehicle, you cannot ask the trader to fix the problem under the Consumer Guarantees Act.

**What if I caused the problem because of the way I drive?**

If the problem was caused by your misuse or neglect or the vehicle, you have no right to a remedy from the trader for that problem – e.g. you take your car off-road but it is not a four-wheel drive and the suspension is damaged. You cannot expect the trader to fix the damage you caused.

## Other guarantees

As well as the guarantee of acceptable quality, your vehicle must also be:

- › fit for any particular purpose you tell the trader you need the vehicle for – *e.g. Alyssa tells the trader she needs a car that will be able to tow her boat. She carefully explains to the trader the type of boat and how far she needs to tow it. If the trader tells her the car will be able to tow her boat, she will have a remedy against the trader if the car cannot tow the boat to the local lake*
- › match the sample or demonstration model – *e.g. if you place an order for a vehicle based on a showroom example*
- › able to be legally sold – the trader must have the right to sell the car. If this is the problem with your car, see *Money owing by a previous owner on page 45*
- › a reasonable price, if no agreement has been made about the price – *e.g. George orders a car from a friend who is a car importer. George explains exactly what type of car he wants, but they do not discuss the price of the car. When the car arrives in New Zealand, the importer can only charge George a 'reasonable price' for the car – this is likely to be based on the market value of a similar car.*

## Guarantee of spare parts and repair facilities

The Consumer Guarantees Act makes manufacturers, importers and distributors responsible for ensuring that spare parts and repair facilities are available for the vehicles they assemble or import. They can supply the parts and service themselves or ensure that they are available through agents.

The guarantee applies to all goods being sold in New Zealand for the first time. It covers imported second-hand vehicles when they are first offered in New Zealand and all new vehicles.

If you have a complaint that spare parts or repair facilities are not available, you should take this up with the manufacturer or importer.



### **BE AWARE**

This guarantee does not apply if you are advised when you buy the vehicle that spare parts or repair facilities are not available, or are only available for a certain period of time.

## **Remedies**

The remedy you are entitled to for a breach of a guarantee depends on the seriousness of the problem. If the problem is serious, you may claim from a choice of remedies. If the problem is not serious, the trader may choose the remedy.

The trader should look at the vehicle and discuss the faults with you before deciding on an option. If you and the trader can't agree whether the problem is serious, or if the trader refuses to do anything at all, take the vehicle for an independent report on the fault and the cost to fix it. You can then work out what remedy you can claim from the trader.

### **If the fault is minor and can be remedied**

The trader can choose to remedy the fault either by repairing the vehicle free of charge or by replacing it with an identical vehicle or refunding the purchase price.

If a trader refuses to do something about a problem, or if they take more than a reasonable time to put it right, you can claim the cost of having the vehicle repaired elsewhere. You will have to pay for this repair, but you can claim the cost back from the trader.

Or, you can reject the vehicle and claim either:

- › a refund; or
- › a replacement of the same type and similar value if one is available in the trader's stock.

You do not have to get their agreement before taking the vehicle elsewhere. However, it is a good idea to keep the trader informed about this – it may assist you in recovering the repair costs at a later date.

## **How long should the trader take to repair the problem?**

The trader should do the repairs within a reasonable time. What is 'reasonable' will depend on the type of problem. The trader needs to take into account that many people rely on their cars for work, family, and recreational activities so would need their vehicle fixed quickly. You could ask the trader for a 'courtesy car' or to meet your costs of having to use other transport – e.g. taxi or bus fares – while the repairs are carried out. Or, if you were to hire a car to get to work, you may be able to claim the cost of this (or other alternate transport) as consequential loss. See page 44.

## **My car has broken down out of town, what should I do?**

Contact the trader to advise that there is a problem. The trader may ask you to take the car to an agent or a mechanic whom they do business with. If the trader tells you to return the car to them, they may be responsible for meeting the cost of transporting the car.

## **The trader wants to give me a refund, can I demand a repair instead?**

No, you cannot force the trader to repair the vehicle. If a trader thinks that the repairs will be too expensive, they can choose to give you a refund.

### ***Extended warranty claims***

If you purchased an extended warranty with the vehicle or it was part of the vehicle's price, the trader may tell you to make a claim under this warranty to fix the vehicle.

If the problem is one that the trader should fix under the Consumer Guarantees Act, you should not have to claim under your warranty.

## **Serious faults or faults that can't be remedied**

To decide if a fault is "serious" ask yourself the following questions:

- › how soon after purchase did the vehicle develop the fault? The shorter the time, the more serious the fault



- › what was the purchase price of the vehicle? The more expensive the vehicle, the less acceptable any fault is
- › what was I told about the vehicle – in the advertising, on the Consumer Information Notice, or by the trader? If the vehicle is very different from what you were told, this may make the problem serious
- › does the fault make the vehicle unsafe? If the vehicle is unsafe, the fault is serious
- › have there been any other faults with the vehicle? If yes, then this will mean the fault is more likely to be considered as serious. Several minor faults with the same vehicle can add up to a serious fault
- › how much will the repair cost? If the cost of the repair adds up to a large percentage of the purchase price the fault is likely to be serious. Even if the repairs are not expensive, the fault makes the vehicle unsafe
- › if the vehicle is not fit for a particular purpose that you made known to the seller and it cannot easily and quickly be made fit for this purpose, this is a serious failure – e.g. you needed the vehicle to tow a boat, but it does not have the power to do this and it can't be altered.

### **What if the trader does not agree that the problem is serious?**

Take the vehicle for an independent check. Ask for a written report on the fault and a quote for the repairs. If a report supports your claim that the fault is serious, return to the trader. You will have to pay for this report yourself, but you could claim the cost back.

### **Remedies for a serious fault**

Where there is a serious fault, or one that cannot be fixed, you can choose between:

- › rejecting the vehicle and claiming a refund
- › rejecting the vehicle and claiming a replacement of the same type and similar value (if no one is available in the trader's stock)
- › keeping the vehicle but getting some of your money back.

Often where there is a serious fault, the trader will offer to repair it. It is **your** choice whether to accept this offer. If you agree to a repair and it does not fix the problem properly, or if the vehicle develops further faults, you will still have the same rights under the Act.

### ***A note on our language***

*In this booklet we have used the phrase 'serious fault'. This is a simplified way of explaining the term 'failure of substantial character' which is the wording used in the Act.*

## **Refunds**

### ***Rejecting the vehicle***

To claim a refund for a serious fault you must first reject the vehicle. The Act says you must tell the trader that you've decided to reject the vehicle and your reasons for doing so.

We suggest the best way to do this, is to write a letter to the trader stating you are rejecting the car. Make sure you date the letter and keep a copy.

#### **Here is a sample 'rejection' letter...**

*The car I purchased from you on [date] has a serious fault. The fault is [describe the problem]. I have included a mechanic's report that proves this. I am entitled to reject the car under the Consumer Guarantees Act. This letter is to inform you that I am rejecting the car today. I now require that you refund me the purchase price [and/or return my trade-in]. Please contact me to arrange this. I will return the car once you have agreed to refund the purchase price and/or the trade in. I would appreciate a reply within two working days of your receipt of this letter.*

If the trader refuses to take the vehicle back or refuses to refund your money, it is important that you have a written record that you tried to reject it. You can request that the trader collects the vehicle, if it cannot be driven because of the fault or if you were to incur significant costs (e.g. towing fees). The cost of transporting the vehicle should be met by the trader.

If the trader will not refund the money to you, you do not have to return the car, but it is important you inform the trader of your intention to reject.

### **How long do I have to reject the vehicle?**

If you want to claim a cash refund or a replacement vehicle because of a serious fault you must make your claim within a “reasonable time”. A reasonable time is the time in which such a defect would normally become noticeable. In deciding what is a reasonable time for a defect to be noticed, consideration is given to:

- › the type of vehicle
- › how the vehicle has been used
- › the amount of use.

#### **For example:**

Six months after being bought, William’s car fails its Warrant of Fitness check due to rust in the chassis. William should inform the trader at this time that he is rejecting the car. If he waited several months after the warrant check before telling the trader he wanted to reject the car, he may lose the right to reject the car.



#### **BE AWARE**

It is important that you advise the trader you are rejecting the vehicle as soon as possible after you discover a serious fault, whether or not the trader agrees with you that the fault is serious.

### ***Refunds in cash***

The Act requires refunds to be given in cash. You do not have to accept a replacement vehicle. If you paid by cheque and the cheque has not been cleared, the trader can wait until it clears before giving the cash refund.

***Can the trader reduce my refund because the vehicle's value has been depreciated?***

No. The Act says the trader must refund the price paid for the vehicle.

***Will the refund include the value of my trade-in?***

You should also receive, as part of the refund, an amount equal to the value you were given for the traded-in vehicle. The trader can return the trade-in vehicle instead – if you agree.

***I want to keep the vehicle – can I get compensation for the fault?***

Yes. You are entitled to be compensated for the difference between the value of the vehicle with the fault and the value it would have if the fault did not exist.

**Vehicles on credit contract/credit**

If you bought your vehicle on a credit contract, your rights are the same as a cash buyer. If the fault is minor the trader is responsible for fixing the problem. If it is serious the trader or the finance company will have to refund the deposit, the value of any trade-in, and money paid on the credit contract.



**BE AWARE**

Did the car dealer arrange the finance for the purchase of the vehicle? If so, the finance company is also responsible under the Consumer Guarantees Act and has the same obligations as the car dealer.

## Remember

### *If the fault is minor*

Do not stop making payments on your credit contract while the vehicle is being fixed. This could result in you being charged penalty interest or late payment fees, or the finance company taking steps to repossess.

### *If the fault is serious*

You should tell both the trader and the finance company that you are rejecting the vehicle. Send a copy of the rejection letter to the finance company and the trader.

If the trader and the finance company will not refund your money do not stop your payments until you get an independent mechanic's report showing there is a serious fault, and you have sent the letter explaining that you are rejecting the vehicle.

If you stop making payments without taking steps to inform the trader and the finance company, the car may be repossessed. Once the vehicle is repossessed it may be difficult for you to prove it was faulty.

Visit **[www.consumerprotection.govt.nz](http://www.consumerprotection.govt.nz)** for more information about what to do when a faulty vehicle is repossessed.



## **General questions about the Consumer Guarantees Act**

*What if I'm entitled to a replacement vehicle but the trader does not have any similar cars?*

The trader must give a replacement if a suitable replacement vehicle is reasonably available to them. If no similar vehicle is available, you will have to choose another option.

### **I received my car as a gift. Do I have rights?**

Yes. If you received the car as a gift, you have the same rights to claim under the Act as the person who bought the vehicle.

### **Damage and other loss (consequential loss)**

You may be able to claim for damage and extra loss caused by a problem with a vehicle. This extra loss is called "consequential loss", and covers any additional loss you suffer as a result of the problem – e.g. cost of taxi fares, phone calls.

Your claim is limited to loss or damage that could have been expected to result from the fault with the vehicle.

#### **For example:**

Alan has found that his station wagon, which he bought three weeks ago, has an oil leak. Oil has stained his driveway leaving a costly mess to clean up. If Alan can show that the damage to the driveway was caused by the oil leak, he could ask the trader to repair the leak and pay the cost of having the driveway cleaned.

### **Private sale (or private sale from a car fair or market)**

The Consumer Guarantees Act does not apply to private sales, but the Contractual Remedies Act might. See page 32.

# Money owing by a previous owner



What happens if a finance company contacts you claiming the right to repossess the vehicle because a prior owner still owes them money for it? The finance company may say it has a “security interest” registered under the Personal Property Securities Act (PPSA).

This section explains whether the finance company is entitled to take your car.

## **Sales by registered motor vehicle trader**

### ***Personal Property Securities Act (PPSA)***

The Personal Property Securities Act (PPSA) protects consumers who buy vehicles from registered motor vehicle traders where there is an existing security interest over the vehicle.

If the security interest is not disclosed in writing to you, the law provides that you will purchase the vehicle from the motor vehicle trader free of any security interest. This means that the finance company must recover their money from the motor vehicle trader and not from you.

If a security interest is disclosed, you will buy the vehicle subject to the security interest. This means the finance company has rights over the vehicle.

## **Consumer Information Notice**

If you bought your vehicle from a registered motor vehicle trader, and there was no warning on the Consumer Information Notice that said “There is a security interest registered over this vehicle”, the finance company has no right to take the vehicle.

You must tell the finance company to contact the registered motor vehicle trader for their money.

**For example:**

Reginald bought a car from Cheep Cars Ltd (a registered motor vehicle trader). There was no security interest noted on the Consumer Information Notice. A few weeks later Key Loans Ltd calls him to say there is still money owing on the car by a previous owner. Reginald tells Key Loans to go and see Cheep Cars for their money because they have no right to claim the car or any money from him.

**Private sales, private sales through car markets and fairs*****Personal Property Securities Act (PPSA)***

If a finance company had a registered security interest in the vehicle at the time you bought the vehicle, then they will have the right to claim the vehicle from you. But there are some exceptions to this rule:

**Exception 1:** The PPSA has a special rule for consumer goods worth less than \$2,000 at the time the previous owner used them as security – e.g. buying the goods on credit contract, or using them to get a loan. Consumers who buy these types of goods take them free of any security interest even if the interest is registered.

If you bought a cheaper car, ask the finance company to prove that it was worth more than \$2,000 at the time the loan was taken out or credit contract was signed.



**Exception 2:** If at any time between when the security interest was created and when you bought the vehicle, the vehicle passed through a registered motor vehicle trader.

**For example:**

Henrietta bought a car from her friend Ellie. Ellie had bought the car for cash a few months before from Easy Cars Ltd, a registered motor vehicle trader. Henrietta gets a call from a finance company to say that the car is still on a credit contract to a past owner. Henrietta finds out that the person who sold the car to Easy Cars Ltd used the car as a security on a cash loan.

Henrietta tells the finance company to get their money from Easy Cars. The finance company can't take Henrietta's car because it was sold through a registered motor vehicle trader after it became subject to the security interest.



**Exception 3:** If there was something wrong with the information which the finance company included on the Personal Property Securities Register (PPSR) – e.g. if the registration or Vehicle Information Number is incorrect.

**For example:**

Hammond bought a car at a car fair and he paid for a PPSR search before he bought the car. He was very surprised when a finance company called him and said they were coming to take the car because it still had money owing on it. Hammond asked the company to send him proof that they could take the car. When he gets the information he finds out that the finance company listed the wrong VIN number on the PPSR when they registered their interest. Hammond tells the finance company that this means they cannot take his car.

Even if Hammond has not checked the PPSR before he bought the car, the result would have been the same. The fact that the finance company entered the wrong VIN number means the registration of the security interest is invalid.

### **Claiming your money back**

If the finance company does have the right to take the vehicle, you may be able to claim your money back from the seller.

### **Contract and Commercial Law Act (previously the Sale of Goods Act)**

The Contract and Commercial Law Act (see Part 3 of this Act) gives you the right to cancel a contract or claim compensation where, unknown to you, the seller did not have the right to sell the goods, or the goods were being used as security. You can claim your money back from the seller because they sold you a vehicle when they did not have the right to.

**For example:**

Elizabeth buys a car from a friend. She's had the car for two weeks when she gets a call from a finance company saying that the car was on a credit contract, and they want it back. Elizabeth can take a claim to the Disputes Tribunal to recover her money from her friend.

**Odometer problems*****Penalties for odometer tampering***

It is a serious offence under the Motor Vehicle Sales Act for a motor vehicle trader to tamper with odometers. Traders convicted of odometer tampering can be fined up to \$200,000.

If you have information that a motor vehicle trader is tampering with odometers, you can report this to the Motor Vehicle Traders Registrar online at **[www.motortraders.govt.nz](http://www.motortraders.govt.nz)** or phone 0508 MOTOR TRADERS (0508 668 678).

# Resolving your dispute

If you have tried to resolve the problem you have with the seller and they will not accept that they have to provide you with a remedy, try taking these steps:

- › talk to the manager of the business, if you bought from a trader
- › write a letter to the seller setting out the problem and the remedy you believe you are entitled to
- › get a second opinion on the problem from a qualified independent vehicle specialist
- › think about what the seller is offering and ask yourself “is this a reasonable compromise?”

If you are unable to resolve the problem with the seller, you may be able to take a claim to a Disputes Tribunal.

## **The Disputes Tribunal**

Two different types of Disputes Tribunals can hear disputes concerning motor vehicle purchases:

- › the specialist Motor Vehicles Disputes Tribunal (MVDT) for disputes with motor vehicle traders
- › the general Disputes Tribunal – for disputes with private sellers and motor vehicle traders.

The tribunals are informal courts where you represent yourself.

## **Taking a claim to a tribunal**

### ***Gathering information and evidence***

You will need to gather information that supports your claim:

- › if the vehicle is faulty you should ask a qualified vehicle specialist to provide a list of defects, the work required to fix those defects, and the estimated cost of that work. Take this report and any other relevant papers to your tribunal hearing – e.g. the Certificate of Registration papers, your copy of the Consumer Information Notice, the sale advertisement, WOF inspection reports, invoices and AA reports

- › if you are claiming that the vehicle is different from the information on the Consumer Information Notice, or that the seller made false representations about the vehicle, you should have valuations prepared by a registered motor vehicle trader showing the difference in value (as at the date of sale) between the vehicles as described, and the vehicle you bought.

Keep a written record of:

- › the dates and times problems occurred – write down a timeline of when things happened
- › details of what happened
- › the names of any witnesses who were with you when you bought the car or when you had problems with it
- › any correspondence you have had with the seller
- › what was said and agreed to at any meetings with the seller, and the dates of those meetings
- › mechanical inspections, quotes, or receipts for repairs
- › evidence of any costs you've incurred, like rental car invoices.

### **Preparing for the tribunal hearing**

Before you attend a hearing you should ensure you have all the information you need:

- › decide what result you want – what do you want to achieve?
- › plan what you will say at the hearing, have a timeline of events
- › write down a detailed description of the problem and take photographs if appropriate
- › make sure you have all your information and evidence together – take four copies of everything to the hearing, it will save time when you are at the hearing
- › ask witnesses if they will give evidence for you
- › decide what result you want.

For help to prepare for your claim you can ask:

- › a Citizens Advice Bureau (check the telephone book for locations)
- › a Community Law Centre, if there is one in your area.

# Motor Vehicle Disputes Tribunal (MVDT)

## **What types of claims can the MVDT hear?**

If you bought the vehicle from a registered motor vehicle trader, you can take a claim to this tribunal. You can even take a claim against a vehicle trader who is not registered, if you can show that they were in the business of selling motor vehicles.

You can take a claim to the MVDT for:

- › quality issues, faults with the vehicle – covered by the Consumer Guarantees Act or Contract and Commercial Law Act (previously the Sale of Goods Act)
- › misleading and deceptive conduct and false representations covered by the Fair Trading Act, and misrepresentation under the Contract and Commercial Law Act (previously the Contractual Remedies Act)
- › if you were sold a vehicle by an unregistered motor vehicle trader that was subject to an undisclosed security interest.

The MVDT can hear claims of up to \$100,000.

## **What does it cost to use the MVDT?**

It costs \$50.00 (GST Incl) to take a claim to the MVDT.

## **How do I make a claim?**

Visit the website of the MVDT at [www.justice.govt.nz/tribunals/motor-vehicle-disputes-tribunal](http://www.justice.govt.nz/tribunals/motor-vehicle-disputes-tribunal) to get a claim form and for all the information you need about how to make a claim.

Or call the MVDT on 0800 367 6838 and they will send out a claim for you to fill in.

## **Processing the claim**

The MVDT must refer your claim to the trader by sending them a copy of the claim form along with a notice requiring them to discuss the claim with you.

The trader then has 14 days to file a report with the MVDT on the outcome of these discussions and must include in this report either:

- › a written statement from you saying that the claim has been settled
- › a statement that the claim is not settled.

If the claim is not settled, or if the MVDT adjudicator does not hear back from the trader within 14 days, then you will be notified of the date and time of the hearing.

The MVDT hearing will be held at a venue nearest to where the motor vehicle purchase took place. If the vehicle was bought on the internet, it will be held nearest to the trader's place of business.

## **Considering the trader's settlement offer**

Before you accept or refuse a settlement offer from a trader consider:

- › is the trader offering a reasonable compromise?
- › do you have good evidence to prove your claim? Your claim is likely to be more successful with good evidence of the problem and your right to the remedy
- › do the trader's arguments highlight a possible problem with your case? Take time to consider their side of the story
- › are you prepared to put in the time and the effort required to both prepare properly and attend a hearing?

## **What can I claim for?**

At the MVDT you can claim for:

- › the MVDT to order that the trader repair your vehicle
- › the money you have paid someone else to repair your vehicle
- › a refund of all of the money you paid for the vehicle, if it is a serious fault or a serious false representation
- › compensation for the loss you have suffered as a result of the fault, the problem, or the false representations. This can be the cost of any repairs or an loss in the value of the vehicle – e.g. if the vehicle was represented as a 2007 model and you found out that it was actually a 2004 model
- › any extra losses or costs to you that directly resulted from the problem with the vehicle – e.g. the cost of renting a vehicle or hiring taxis while your vehicle was being repaired.

## **Order for vehicles on credit contract**

If the MVDT accepts that you have the right to reject the vehicle under the Consumer Guarantees Act because it has a serious fault, or if the MVDT orders that your contract for the purchase of the vehicle be cancelled because of a breach of the Fair Trading Act, then the MVDT can order that your rights and obligations under the credit contract be transferred to the motor vehicle trader. This means that the motor vehicle trader, not you, must pay off the finance company.

## **At the hearing**

The adjudicator must give the decision in writing, including the reasons for the decision.

## **If your claim is successful**

*Decisions made by the MVDT are not automatically enforced*

If the trader does not comply with the MVDT order you can go to the District Court and fill out a form asking for the order to be enforced. You will need the name and address of the trader, and a copy of the MVDT decision.



You may apply for a Distress Warrant (to have a bailiff demand payment from the seller) or an Order of Examination (the seller will be ordered to attend a hearing to examine their financial situation with a view to determine how payment should be made).

You cannot apply for the order to be enforced until the appeal period of 10 working days has expired.

If you have trouble getting the trader to pay up, make a complaint to the Registrar of Motor Vehicle Traders at the Ministry of Business, Innovation and Employment.

### **Appealing a decision**

If you want to appeal the decision of the MVDT, you must lodge an appeal with the District Court within 10 working days.

If your claim is less than \$12,500, then the claim can only be appealed on the grounds that the proceedings were conducted in an unfair way and prejudiced the result of the proceedings.

If your claim is over \$12,500 the District Court may consider whether the MVDT's decision was in fact or law, or that the proceedings were unfair.

- › wrong in fact means that the adjudicator did not properly consider the facts presented, or came to the wrong conclusion based on the evidence presented
- › wrong in law means the adjudicator's decision did not follow the law correctly.

You cannot appeal simply because you do not like the decision.

### **Can the trader appeal the decision?**

Yes, the trader has the same rights to appeal as you do. If the trader appeals the decision within the 10 working days allowed, then you cannot enforce the decision until the appeal has been heard.

# The Disputes Tribunal

The general Disputes Tribunal can hear claims against traders, registered and unregistered motor vehicle traders, and private sellers. If your claim is against a registered motor vehicle trader you can choose whether to use the specialist MVDT or the Disputes Tribunal.

The Disputes Tribunal can hear disputes about:

- › faulty or defective vehicles – under the Consumer Guarantees Act or Contract and Commercial Law Act (previously the Sale of Goods Act)
- › false or misleading statements about the vehicle – under the Fair Trading Act or the Contract and Commercial Law Act (previously the Contractual Remedies Act)
- › money owing on the vehicle, or where the seller didn't have the right to sell the vehicle
- › finance deals for vehicles – *e.g. problems with your credit contract or loan agreement.*

The Disputes Tribunal can deal with claims up to \$15,000 (or up to \$20,000 if both parties agree).

## **What does it cost?**

You need to pay a \$50 fee to the Tribunal when you lodge your claim.

## **How do I make a claim?**

Visit the website of the MVDT at **[www.justice.govt.nz/tribunals/disputes-tribunal](http://www.justice.govt.nz/tribunals/disputes-tribunal)** to get a claim form and for all the information you need about how to make a claim. Get a 'Notice of Claim' form from your nearest District Court. Fill in the form giving details of the dispute. Bring the completed form to the court staff and pay the hearing fee.

Staff at the District Court can also answer questions about the Disputes Tribunal. Disputes Tribunals are part of the District Court and are listed under "justice" in the telephone book.

### **For more information**

Contact your nearest District Court or Disputes Tribunal for more information – look under Courts in the Blue pages of your telephone book. Or visit the Ministry of Justice website at **[www.justice.govt.nz](http://www.justice.govt.nz)**.

The Ministry of Justice publishes several pamphlets on the Disputes Tribunal (available from District Courts and the Citizens Advice Bureau) or visit the Consumer Protection website at **[www.consumerprotection.govt.nz](http://www.consumerprotection.govt.nz)**.

### **Related Ministry resources**

- › What you should know when borrowing money or buying goods on credit
- › Your Consumer Rights (Goods)

## **Consumer Protection**

Ministry of Business, Innovation and Employment

**P** 0508 426 678 (0508 4 CONSUMER)

**E** [cpinfo@mbie.govt.nz](mailto:cpinfo@mbie.govt.nz)

**W** [www.consumerprotection.govt.nz](http://www.consumerprotection.govt.nz)

**A** P O Box 1473, Wellington 6140

Disclaimer: This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

ISBN 978-1-98-853530-2 (print)

MB14391 | MBCA0011 | October 2017