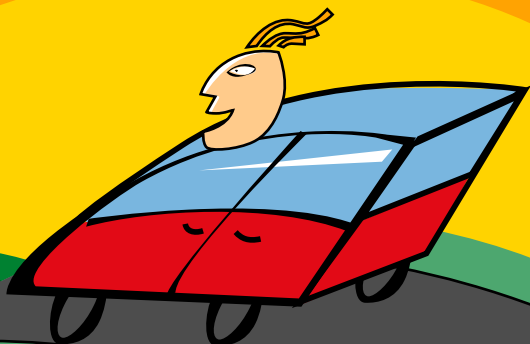


Back on the Right Road

Consumers' rights AFTER
buying a motor vehicle



Check before you drive 



MINISTRY OF CONSUMER AFFAIRS
MANATŪ KAIHOKOHOKO

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Watch your language !

Terms and definitions used in this booklet:

Breach - when a rule under a law has been broken - *eg, it is a breach of the Fair Trading Act for a trader to mislead you about the car's age.*

Compensation - money to put right a problem - *eg, "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.

Registered motor vehicle trader - includes car-yard traders, wholesalers, importers, auctioneers, and car market operators. The Motor Vehicle Sales Act requires all people who are in the business of selling motor vehicles to be registered.

Security interest - when a car 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 car if money owed is not re-paid. Security interests are registered on the Personal Property Securities Register (www.ppsr.govt.nz).

Disclaimer

The purpose of this booklet is to provide a general explanation on the law relating to the purchases of motor vehicles. It is not intended as a source of specialist legal advice. You may wish to contact a lawyer for further advice. The Ministry does not accept any responsibility for the manner in which this information is interpreted or for the consequences of relying on it.

Information in this booklet

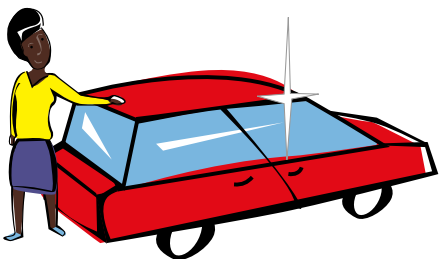
This booklet sets out your rights if you bought a vehicle after 15 December 2003 and are now having problems with it. On this date the Motor Vehicle Sales Act came into effect. This law affects the way vehicles are sold by traders.

If you bought your car before 15 December 2003, your rights may differ. If this is the case, go to www.consumeraffairs.govt.nz, then click on the 'Consumer Information' section and then 'Motor Vehicles'. Here you will find two factsheets titled *Buying from a Licensed Dealer* and *Buying from an Unlicensed Dealer, Privately or at Auction*. This information may be more appropriate to your situation. If you do not have internet access and would like either of these brochures, contact the Ministry of Consumer Affairs, PO Box 1473, Wellington. The Ministry no longer formally prints these brochures however single copies are available free of charge if required.

The factsheets *Buying from a Licensed Dealer* and *Buying from an Unlicensed Dealer, Privately or at Auction*, are no longer being distributed. If you do not have access to the Internet, you can place a special order for single copies of these titles by writing to the Ministry of Consumer Affairs, P O Box 1473, Wellington. There is no charge for this service. This service will not be available after 15 December 2005.

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

- the common types of problems consumers may experience after buying a vehicle
- what remedies are available to fix 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 Supplier Information Notice. A copy of the Supplier 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 the problems.
- Keep any records of vehicle inspections (eg, mechanical report), quotes for repair, or receipts for repairs.



Misleading or false information about the vehicle

Fair Trading Act

The Fair Trading Act is breached if any person in trade provides you with misleading or false information about the vehicle. For example, the information could be in the form of an advertisement, notice or sign with the vehicle or a statement made by the trader. A person in trade includes motor vehicle traders (registered or unregistered), importers, wholesalers, vehicle auctioneers and car market operators, or anyone selling a motor vehicle in the course of a business.

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

If a trader has made a false or misleading 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.

Example

The Supplier Information Notice on the car Merita bought stated that the car was manufactured in 1998, but she later finds out that it is actually a 1994 model. Merita can prove that she paid more than the reasonable price for a 1994 model.

Merita's 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 a claim to the specialist Motor Vehicle Disputes Tribunal or to the general Disputes Tribunal. For more information see page 31.

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 Supplier 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
or write to PO Box 2351, Wellington.

Consumer Guarantees Act

The Consumer Guarantees Act (CGA) 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 sales by auction or tender or to private sales.

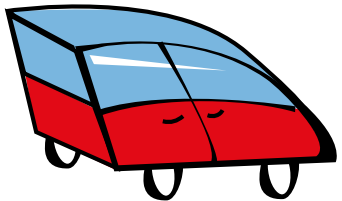
The CGA provides a guarantee that the vehicle will match its description.

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 CGA see page 13.



For private sales

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, and
- the seller's statements are untrue, and
- 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. Compensation would be based on the difference between what the vehicle is actually worth and what the vehicle would have been worth if the seller's statements had been true.

Example

Tem tells Lisa that the car she is buying from him recently had its engine reconditioned. She finds out one week later that the engine has not been reconditioned. Lisa can claim compensation from Tem for the cost of having the engine reconditioned.

Claims for compensation against private sellers can be made to the general Disputes Tribunal. See page 38 for more information.

Faulty or defective vehicles

Consumer Guarantees Act

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

The CGA applies to sales of motor vehicles to consumers by traders (including unregistered motor vehicle traders), where the 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 hire purchase
- motor vehicles bought as a gift
- motor vehicles sold by a trader "on behalf" of a private seller.

The CGA does not apply to:

- motor vehicles sold at auction, by tender, or by private sale
- motor vehicles of a kind ordinarily bought for commercial purposes - eg, trucks, buses. This rule applies even if you choose to use any of these motor vehicles for personal or family use
- motor vehicles sold by one trader to another motor vehicle trader to sell on to consumers.



Buying a motor vehicle for business use

If you bought a vehicle of the kind ordinarily used for personal or domestic use or to use for a business purpose, the trader who sold it to you may have contracted out of the Consumer Guarantees Act at the time of sale.

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 Sale of Goods Act or the implied quality terms of the Hire Purchase Act. You will not be able to rely on the remedies available in these 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.

Example

Shirley buys a car to use as a taxi. The trader gets her to sign the part of the contract that says the CGA 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 not have rights under the CGA.

The guarantees under the CGA

Acceptable quality guarantee

Under the CGA a vehicle you buy 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 small 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 - *eg, in advertising or in the vehicle manual*
- anything the seller told them about the vehicle
- how much it has been driven since purchase.

Example

Charlotte bought her 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 her a long time. When she takes the car for a warrant, it fails because of an electrical problem affecting the headlights.

Compare Charlotte's car with this one:

Moana bought her car six months ago from a trader. It cost her \$800. 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, it fails because of an electrical problem affecting the headlights.

Most people would not be surprised if a 15-year-old car that cost \$800 had some electrical problems needing 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 problem before I buy the vehicle?

If the trader advised you of the problem before you purchased the vehicle, or noted it on information with the vehicle, you cannot ask the trader to fix it under the CGA.

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

If the problem was caused by your misuse or neglect of the vehicle, you have no right to a remedy from the trader for that problem - *eg, 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 CGA 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

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 - *eg, if you place an order for a vehicle based on a showroom example*
- match any description given of the vehicle
- 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 24

- a reasonable price, if no agreement has been made about the price.

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

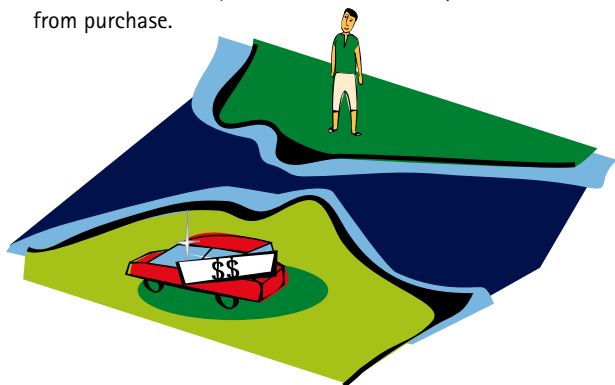
The CGA makes manufacturers, importers and distributors responsible for ensuring that spare parts and repair facilities are available for the vehicles they assemble or import. They can supply the parts and service themselves or ensure that they are available through agents.

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 for sale 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 from purchase.



Remedies

The remedy you are entitled to for a breach of a CGA 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.

If you do not know how serious the problem is, the trader should look at the vehicle and discuss the faults with you before you decide 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.

The fault is not serious

If the problem can be fixed, the trader must fix it.

The trader can choose to do this either by repairing the vehicle or by replacing it with an equivalent vehicle. The trader must act within a reasonable time and provide the repair or replacement free of charge.

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 choose to claim:

- a refund, or
- a replacement, or
- the cost of having the vehicle repaired elsewhere.

You should always give the trader the chance to fix the vehicle first. If they refuse to do anything or take longer than a reasonable time to fix the problem, you can take the vehicle elsewhere for repair. You will have to pay for this repair, but you can claim the cost back from the trader.

If the trader refuses to fix a problem, you do not have to get their agreement before taking the vehicle elsewhere. 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. The time taken will likely 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. If it is not possible for repairs to be done quickly, you could ask the trader for a "courtesy car" or to meet your costs of having to use other transport - eg, *taxi or bus fares* - while the repairs are carried out.

If a trader does not fix a problem within a reasonable time, you have the right to reject the vehicle and get a refund. See page 17 for more information on refunds.

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

Contact the trader to advise that there is a problem with the vehicle. The trader may ask you to take the car to an agent or a mechanic that they do business with. If the trader tells you to return the car to them, they will 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 direct you to make a claim under this warranty to fix the vehicle.

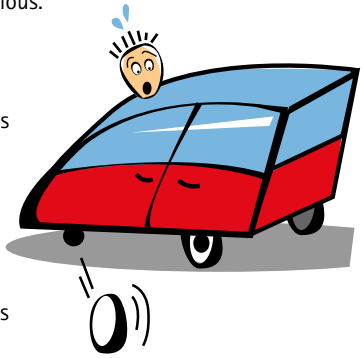
If the problem is one that the trader should fix under the CGA, you should not have to claim under your warranty.

Serious faults

A serious fault is one where a reasonable consumer would not have bought the vehicle if they had known that the fault existed.

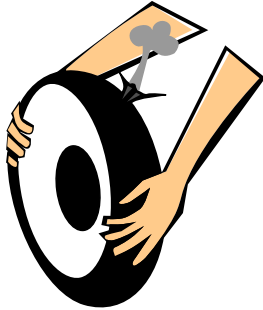
To decide if a fault is "serious" ask yourself the following questions:

- 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 Supplier 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 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 may still be serious - *eg, if 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 - *eg, 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.



Remedies for serious fault

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

- a refund
- a replacement vehicle of similar value and type, or
- 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 CGA.

Refunds

Rejecting the vehicle

To claim a refund for a serious fault you must first reject the vehicle.

To do this, write a letter to the trader stating you are rejecting the car under the CGA. Make sure you date the letter and keep a copy. Take the car back to the trader and deliver the letter. Post, fax or email the letter to the trader if you cannot return the vehicle to the trader because of the fault, or if the vehicle is already in their possession.

If the trader refuses to take the vehicle back, it is important that you have a written record that you tried to reject it.

You can request the trader to collect the vehicle, if it cannot be driven because of the fault. The cost of transporting the vehicle should be met by the trader.

Example "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 would appreciate a reply within two working days of your receiving this letter.

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.

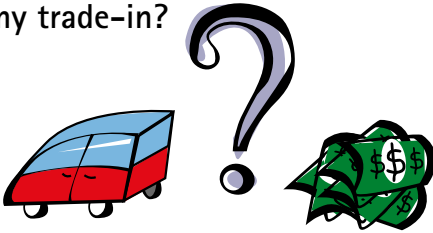
Refunds in cash

The CGA requires refunds to be given in cash. Refunds can be in the form of a cheque or bank transfer, if you accept this. 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 depreciated ?

No. The CGA 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 hire purchase

If you bought your vehicle on hire purchase, your rights are the same as a cash buyer. The CGA states that both the finance company and the trader are responsible for the quality guarantees. It makes sense to go back to the trader first and ask them to fix the problem.

If the fault is minor

The trader will be responsible for fixing the problem. Do not stop making payments on your hire purchase while the vehicle is being fixed. This could result in your being charged penalty interest or late payments fees, or the finance company taking steps to repossess.

If the fault is serious – do I have the right to a refund?

Yes, you have the same rights as a cash buyer. The trader or the finance company will have to refund the deposit, the value of any trade-in, and all money paid on the hire purchase agreement except for a reasonable interest charge. The interest charge should be based on the period from the time you signed the contract to the time the problem first occurred.

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 to the finance company and trader it was faulty.

See our booklet *Buying on Hire Purchase – A guide for consumers* for more information about what to do when a faulty vehicle is repossessed.

General questions about the CGA

How long after buying the vehicle can I request a remedy from the trader?

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 these things will be considered:

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

Example

If, after six months, your car fails its Warrant of Fitness check due to rust in the chassis, you should inform the trader you are rejecting at this time. If you wait for several months after the warrant check before you tell the trader you want to reject the car, you may lose your right to reject the car.

What if a claim for a serious fault is not made within a reasonable time?

You may lose the right to reject the vehicle and ask for either a refund or a replacement. It will then be the trader's choice which remedy you are entitled to.



Does this mean I can go back to the trader seven years later for a fault we found three weeks after purchase?

No. Claims can be made under the CGA up to six years from the time the problem appears. We recommend you take action as soon as possible after you find the fault.

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 a car as a gift, you have the same rights to claim under the CGA as the person who bought the vehicle.

Damage and other loss (consequential loss)

Under the CGA you can 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 - *eg, 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.

Example

Todd has found that his station wagon, which he bought three weeks ago, has an oil leak defect. Oil has stained his driveway leaving a costly mess to cleanup.

If Todd can show that the damage to the driveway is directly connected to the oil fault with the car, he should ask the trader to repair the leak and pay the additional cost of having the driveway cleaned.

Auctioneers and vehicles sold by tender

The Consumer Guarantees Act does not apply to vehicles sold at auction or by tender.

If you were misled about the fault (or lack of faults), you may have a claim under the Fair Trading Act. See page 4 for more information on this Act.

Sale of Goods Act

The Sale of Goods Act may provide you with a remedy from an auctioneer for a defective car. Under this Act vehicles must be fit for their purpose and of merchantable quality - this means they must be in a fit state for sale.

Be aware

Auctioneers can contract out of the obligations under the Sale of Goods Act at the time of sale.

Extended warranty or breakdown insurance

If you bought an extended warranty or breakdown insurance from the auction house, you may be covered for any fault that occurs. Read the terms and conditions of the contract or policy to see if you are covered and how to make a claim.

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

The Consumer Guarantees Act does not apply to private sales.

Contractual Remedies Act

You may have the right to claim under the Contractual Remedies Act if the seller misrepresented faults in the vehicle to you and you based your decision to buy on this information. See page 7 for more information on this Act.

Money owing by a previous owner

A finance company has contacted you claiming the right to repossess the vehicle because a prior owner still owes them money for it. The finance company says 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

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 the finance company must recover their money from the motor vehicle trader 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.

Supplier Information Notice

If you bought your vehicle from a registered motor vehicle trader, and there was no warning on the Supplier Information Notice that said "There is a security interest registered over this vehicle", the finance company has no right to take the vehicle (as explained under Personal Property Securities Act above).

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

Example

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

Checking if the trader is registered

You can check if the motor vehicle trader is registered by searching the Motor Vehicle Traders Register online at www.motortraders.med.govt.nz or phone 0508 MOTOR TRADERS (0508 668 678). The register search is free.

Checking for a security interest

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 (www.ppsr.govt.nz). There is no charge to register but searches cost \$3. Searches are payable by credit card.

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 VIN). You will receive a result telling you if there seems to be a registered security over the motor vehicle or not. You can check your results by completing a motor vehicle search online at www.ppsr.govt.nz. Remember to keep a copy of your search results for future reference.

Or, you can check a security interest through using the services of a business which provides vehicle information checks. See listings in the telephone book or Yellow Pages under car, vehicle, or automobile "information" or "inspection".

For more information on searching the register, see our booklet *Fit for the Road – What consumers should know before buying a motor vehicle*, visit the PPSR website, or phone 0508 PPSR INFO (0508 777 746).

Consumer Guarantees Act (CGA)

The CGA provides a guarantee of title. The trader must have the right to sell the vehicle.

- If your vehicle is taken because someone else owed money on it, you can claim your money back from the trader.
- If the vehicle you bought from the trader was stolen, you do not get title to it.

You may have to return the car. The CGA entitles you to claim compensation from the trader in this situation.

The Act does not apply to private sales, sales by auction or sales by tender.

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 - *eg, buying the goods on hire purchase, 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 cheap car, ask the finance company to prove that it was worth more than \$2,000 at the time the loan was taken out or hire purchase 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.

Example

Sione bought a car from his friend Etta. Etta had bought the car for cash a few months before from Easy Cars Ltd, a registered motor vehicle trader. Sione gets a call from a finance company to say that the car is still on hire purchase to a past owner. Sione finds out that the person who sold the car to Easy Cars Ltd used the car as security on a cash loan. Sione tells the finance company to get their money from Easy Cars. The finance company can't take Sione'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 the finance company included on the Personal Property Securities Register (PPSR) - *eg, if the registration or Vehicle Information Number is incorrect.*

Example

John 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. John 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. John tells the finance company that this means that they cannot take his car.

Even if John had 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.

Sale of Goods Act

The Sale of Goods 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.

Example

Tusi 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 hire purchase, and they want it back. Tusi can take a claim to the Disputes Tribunal to recover her money from her friend.

Odometer problems

Odometer readings on used vehicles in New Zealand may be unreliable. There is always a chance with any used vehicle that the odometer may have been tampered with.

If the trader believes the odometer reading is incorrect they must include the following words on the Supplier Information Notice:

I (name of supplier) cannot accurately determine the actual distance this motor vehicle has travelled because the odometer reading may be inaccurate.

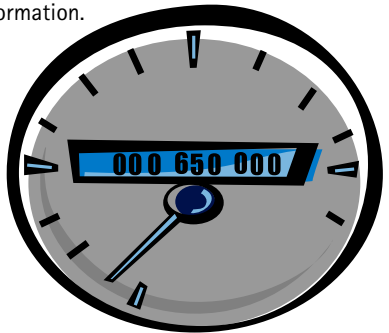
Or

This motor vehicle's odometer reading is inaccurate.

If either of these statements is included on the Supplier Information Notice for your vehicle, you will not be able to make any claim against the trader for an inaccurate reading.

What if the trader included the odometer reading on my car's Supplier Information Notice?

If the reading was included, then it must represent the actual distance that the vehicle has travelled. If you can prove that the reading is incorrect, you may have a right to a remedy. See page 29 for more information.



Evidence of odometer tampering

To prove your odometer has been tampered with you will need to gather very good evidence.

This is a list of some of the things you will need to do to gather sufficient evidence of tampering:

- Contact the nearest franchise dealer for your make of vehicle and see if they can access any overseas service records. (These records can be used as supporting evidence only and are not in themselves enough to prove your claim.)
- Get a mechanic to give you a report on the vehicle. The mechanic can look for things such as expected wear and tear to indicate the probable mileage of the vehicle.
- If you have kept records of all faults and repairs, ask a mechanic (preferably in writing) to comment on whether these repairs are to be expected in a vehicle that has travelled the distance shown on your odometer.
- Take your vehicle to an automotive instrument specialist. Ask if they are able to find any evidence of tampering and whether they can say how much the odometer is likely to have been wound back.

Remedies

The Fair Trading Act

Under the Fair Trading Act you may be able to claim compensation from a trader if you can prove the car's odometer reading is a false representation about the previous use of the vehicle.

Be aware

The Fair Trading Act does not apply to private sales.

Consumer Guarantees Act

Under the Consumer Guarantees Act, if the vehicle does not match its description, or it is not of acceptable quality given the distance travelled against the odometer reading, you may have a right to a remedy from the trader.

It will be difficult to get a refund unless you purchased the vehicle recently and the difference in mileage is substantial.

But you may have a claim for compensation for the amount lost in the vehicle's value. The simplest way to determine compensation is to compare the difference in value between what you paid for the vehicle and what it would have been worth if the odometer had shown the true mileage. Request a written valuation from a registered motor vehicle trader.

The Consumer Guarantees Act does not apply to vehicles sold at auction, by tender or by private sale.

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 by email info@motortraders.med.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 Tribunals

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

- the specialist Motor Vehicle 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 either 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 - *eg, the Certificate of Registration papers, your copy of the Supplier Information Notice, or the advertisement for sale.*

- If you are claiming that the vehicle is different from the information on the Supplier 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 vehicle as described, and the vehicle you bought.

Keep a written record of:

- the dates and times problems occurred
- 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.

Preparing for the tribunal hearing

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

- plan what you will say at the hearing
- write down a detailed description of the problem
- make sure you have all your information and evidence together
- ask witnesses if they will give evidence for you
- decide what result you want.

If you want help to prepare 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 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 Sale of Goods Act
- misleading and deceptive conduct false representations - covered by Fair Trading 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 up to \$50,000.

What does it cost to use the MVDT?

It costs \$50 to take a claim to the MVDT.

How do I make a claim?

You can get claim forms from the MVDT. You can contact the MVDT by phone on 0800 FORMVDT (0800 367 6838), write to PO Box 5027, Wellington or visit Level 5, District Court Building, 49 Ballance Street, Wellington.

The MVDT claim form must be filed with the MVDT in Wellington. You can file the form in person (with the \$50 filing fee) or post it to them. If you are mailing the form you will need to enclose a cheque or postal order for the \$50 filing fee. Cheques should be made payable to the Ministry of Justice. Information on the MVDT will be provided with claim forms.

If you are unsure as to whether you can make a claim in the MVDT, contact the MVDT staff for information.

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, or
- 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 claim form must be filed with the MVDT in Wellington. You can file the form in person (with the \$50 filing fee) or post it to them. If you are mailing the form you will need to enclose a cheque or postal order for the \$50 filing fee. Cheques should be made payable to the Ministry of Justice. Information on the MVDT will be provided with claim forms.

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 any loss in the value of the vehicle - *eg, if the vehicle was represented as a 1998 model and you found out that it was actually a 1996 model*
- any extra losses or costs to you that directly resulted from the problem with the vehicle - *eg, the cost of renting a vehicle or hiring taxis while your vehicle was being repaired.*

The MVDT can award costs against a party who behaves improperly during the settlement process, including by not accepting a settlement.

Orders for vehicles on hire purchase

If the MVDT orders that the trader must take back the vehicle and refund any money you paid, the MVDT can also order that you are no longer responsible for paying off the HP 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 is cancelled because of a breach of the Fair Trading Act, then the MVDT can order that your rights and obligations under the Hire Purchase contract are 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 hearing is in private. It is not open to the public. The hearing is held in front of the adjudicator and assessor.

The hearing is not formal. No lawyers are allowed, and you must present the case yourself unless you get permission for someone to represent you. Consumers can request a representative to present their case if:

- they are under 18 years old
- they have a disability
- the adjudicator is satisfied that the consumer is unable to appear in person or could not present their case adequately.



The representative cannot be a lawyer or an experienced advocate.

An adjudicator is responsible for running the hearing and making the decision. The adjudicator has legal training. The assessor is someone with knowledge of motor vehicles and helps the adjudicator with his or her understanding of the evidence produced at the hearing. They are both independent officers of the court.

After the hearing

The adjudicator must give the decision in writing, including the reasons for the decision. If the MVDT decides that the trader must pay you money or fix a problem, and the trader does not do this within the required time, you can go to the District Court to request enforcement of the decision.

Enforcing the decision

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 the trader to attend a hearing to examine their financial situation or apply to have a bailiff demand payment from the trader.

You may apply for a Distress Warrant (to have the 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.

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 wrong 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 Sale of Goods Act
- false or misleading statements about the vehicle - under the Fair Trading Act or 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 - *eg, problem with your hire purchase or loan agreement.*

The Disputes Tribunal can deal with claims up to \$7,500 (or up to \$12,000 if both parties agree).

What does it cost?

The cost of filing a claim with the Disputes Tribunal is:

- \$30 for claims under \$1,000
- \$50 for claims from \$1,000 to less than \$5,000
- \$100 for claims from \$5,000 to less than \$7,500
- \$100 for claims from \$7,500 up to \$12,000.

How do I 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.

Processing the claim

The court staff will tell you the date, time and place of your hearing. Your claim will be heard in the Disputes Tribunal nearest to where the claim is made.

A copy of your claim will be sent to the trader.

A hearing is usually held within six weeks of making a claim.

At the hearing

A Disputes Tribunal hearing is held by a Tribunal Referee in private with you and the seller.

The Referee helps you and the seller try to reach an agreement. If you can't agree, the Referee will look at the law and the facts of your case and decide what is fair.

Who can help me at the hearing?

You can have someone speak for you, if you:

- are under 18
- have a disability
- need help to prepare your case.

This person cannot be a lawyer. Tell the Disputes Tribunal staff that you will need someone to help you.

If you need an interpreter, apply in writing (someone could do this for you) to the Disputes Tribunal as soon as possible after filing your claim. You can also ask for a support person to sit with you during the hearing but the support person can't speak for you.

What if I don't go to the hearing?

You must go to the hearing on the day scheduled. If you made the claim and you do not go to the hearing the case is dismissed. It may be difficult to get a new hearing.

If you go to the hearing and the trader does not turn up, the Disputes Tribunal Referee can either hear the case and make a decision, or set a new date for the hearing.

After the hearing

Enforcing a Disputes Tribunal decision

Decisions made by the Disputes Tribunal are not automatically enforced.

If the Tribunal Referee makes a decision in your favour, the seller has 28 days to do what the Referee ordered.

If the seller does not comply with the Disputes Tribunal 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 seller and a copy of the decision.

You may apply for the trader to attend a hearing to examine their financial situation or apply to have a bailiff demand payment from the trader.

You may apply for a Distress Warrant (to have the 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).

Rehearings

You (or the seller) can apply to the Disputes Tribunal for a rehearing within 28 days if:

- you couldn't get to the hearing and you have a good reason
- an important witness couldn't get to the hearing
- you find out new facts about the dispute after the hearing is over.

Appealing against a decision

You can appeal a Disputes Tribunal decision where you believe the Referee conducted your hearing in a way that was unfair and that their conduct affected the outcome.

You cannot appeal a decision simply because you didn't like the decision the Referee made.

You have 28 days to file an appeal against the decision. You must be able to show the District Court judge that the hearing was conducted in an unfair way. Staff at the District Court can tell you how to file an appeal.

Appeals are heard by a District Court judge but not in a courtroom. The judge can:

- send the claim back to the Disputes Tribunal for a rehearing, or
- refer the claim to the District Court, or
- dismiss the claim.

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.

The Ministry of Justice publishes several pamphlets on the Disputes Tribunal (available from District Courts and Citizens Advice Bureaux):

- Disputes Tribunals - General Information
- If a Decision is in Your Favour - Enforcing Tribunal Decisions
- If a Decision is against You - Appealing Tribunal Decisions

The Ministry of Justice also has information on the specialist Motor Vehicle Disputes Tribunal available on their website www.justice.govt.nz.

For more information

From the Ministry of Consumer Affairs

Booklets

Fit for the Road – What consumers should know BEFORE buying a vehicle

'Credit – What you need to know when borrowing money or buying goods on credit'

Consumer Guarantees Act – Goods, a guide for consumers

Factsheets

Buying Second-hand Goods

The Disputes Tribunal

The Fair Trading Act

Website

www.consumeraffairs.govt.nz

From the Ministry of Economic Development

Pamphlet

Buying a Car? Don't buy someone else's debt

Motor Vehicle Traders Register

www.motortraders.med.govt.nz

Freephone: 0508 MOTOR TRADERS (0508 668 678)

Personal Property Securities Register

www.ppsr.govt.nz

Ministry of Consumer Affairs

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