

MOTOR VEHICLE SALES ACT  
AND RELATED LAWS

SECOND EDITION

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# INTRODUCTION

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This is a guide to the Motor Vehicle Sales Act 2003 (MVSA) and related legislation. The MVSA replaced the Motor Vehicle Dealers Act 1975.

The first part of this guide looks at the MVSA, including:

- terms and definitions used in the MVSA
- registering yourself or a company as a motor vehicle trader
- disclosure obligations
- offences and enforcement
- the Motor Vehicle Disputes Tribunal.

The second part of the guide sets out legal obligations under:

- the Fair Trading Act
- the Personal Property Securities Act
- the Consumer Guarantees Act.

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## DISCLAIMER

The purpose of this Business Note is to provide a general explanation on the law relating to the sale 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.

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# MOTOR VEHICLE SALES ACT KEY TERMS AND DEFINITIONS

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This list sets out the key definitions from the MVSA that are referred to throughout the MVSA section of this guide.

**Banned person** – You can be banned from being a motor vehicle trader if you have had two or more convictions in 10 years for any of the following offences:

- trading as, or holding yourself out to be, a motor vehicle trader without being registered under the MVSA
- falsifying information on a contract of sale
- giving false information to the Registrar when registering.

You can also be banned if you have more than once within a 10-year period done any of the following things:

- failed to comply or managed a company that failed to comply with an order of the Motor Vehicle Disputes Tribunal
- been concerned in the management of a company that was a registered motor vehicle trader and that went into liquidation because of the company's inability to pay its debts
- been concerned in the management of a company that is banned
- been concerned in the management of a company that failed to provide compensation for any loss incurred by a finance company as a result of selling a motor vehicle for which that finance company held a security interest.

You may also be banned if, while registered as a motor vehicle trader, you have been:

- disqualified under the Companies Act 1993 from managing a company
- convicted of a crime involving dishonesty
- convicted under the Fair Trading Act of any of the following:
  - offering gifts and prizes with the intention of not providing them as offered
  - bait advertising
  - referral selling
  - demanding or accepting payment without intending to supply as ordered
  - pyramid selling
  - importing goods with a false trade description
- more than once in the last 10 years been bankrupt or have failed to provide compensation for loss by a finance company as a result of you selling a vehicle over which the finance company held a security interest
- convicted of odometer tampering.

**Car auctioneer** – A person who conducts sales of motor vehicles by auction.

**Car consultant** – A person who, for payment, is contracted by anyone except a motor vehicle trader to act as their agent for anything to do with the sale or purchase of a motor vehicle.

**Car market operator** – A person whose business is to provide another person with premises or a place of market to sell used motor vehicles, or who operates a facility to sell used motor vehicles. This includes internet websites and webpages.

**Customs information** – Information about any person who the Comptroller of Customs believes has imported more than three vehicles in 12 months. The information may include the person's full name, residential address, occupation and date of birth or, in the case of a company, the company's name and registered office.

**Importer** – A person who carries on the business of importing vehicles into New Zealand.

**Motorcycle** – A vehicle over 60ccs that runs on two wheels or three with a sidecar, but does not include a moped.

## Motor Vehicle Sales Act Key Terms and Definitions ... continued

**Motor vehicle** – A road vehicle that is mechanically propelled and of a type ordinarily acquired by consumers for personal, domestic or household use.

This does **not** include:

- an invalid carriage
- a moped
- a motorcycle with less than 60cc total cylinder capacity
- tractors/farm machinery
- trailers.

**Motor vehicle trader** – Any person whose business is motor vehicle trading and includes:

- a car market operator
- an importer
- a wholesaler
- a car auctioneer
- a car consultant.

A person is treated as a motor vehicle trader if they hold themselves out to be carrying on the business of motor vehicle trading. They will also be treated as a motor vehicle trader if they sell more than six vehicles in a 12-month period or import more than three vehicles in 12 months, unless they can prove they are not doing so for gain.

**Motor Vehicle Dealers Act 1975** – the Act replaced by the MVSA on 15 December 2003. It is sometimes referred to in this guide as the “former Act”.

**Motor vehicle trading** – The sale of motor vehicles by someone (whether they are the principal or the agent).

**Register** – An electronic register of all the motor vehicle traders in New Zealand. It operates 24 hours a day, seven days a week. It gives the public information about a trader’s contact details and their registration status.

**Registrar** – The Registrar of Motor Vehicle Traders is appointed under the Motor Vehicle Sales Act 2003.

**Sale** – The sale, lease, exchange or any other disposition of a motor vehicle, or any interest in a motor vehicle. This includes display for sale or offer for sale/lease/exchange but does not include a lease or offer of lease for a term of four months or less.

**Tamper** – In relation to odometers means to alter or cause to be altered the motor vehicle’s odometer so that it appears to have travelled other than the true distance; or to remove the odometer altogether.

**Vehicle registration information** – Information about any person who the Secretary of Transport believes has sold more than six vehicles in 12 months. The information may include the person’s full name, residential address, occupation and date of birth or, in the case of a company, the company’s name and registered office.

**Wholesaler** – A person selling new or used motor vehicles to other motor vehicle traders.

**Working Day** – Any day other than:

- Saturday and Sunday; and
- Waitangi Day
- Good Friday
- Easter Monday
- Anzac Day
- Queen’s Birthday
- Labour Day
- anniversary days of the local provinces
- the period between 25 December and 15 January.

# MOTOR VEHICLE SALES ACT 2003

## Registration requirements

### Who is required to be registered?

Any person meeting the definition of “motor vehicle trader” set out in the MVSA must be registered to legally carry on the business of trading in motor vehicles. See page 4 under Key Terms and Definitions.

Either an individual or a company can register as long as they have not been disqualified from registration.

### Grounds for disqualification as a motor vehicle trader

An **individual** is disqualified from registration if he or she is a person who:

- is under 18 years of age
- is a banned person
- is an undischarged bankrupt
- has had their motor vehicle dealer’s licence<sup>1</sup> suspended within the previous 12 months (or cancelled within the last five years) under the former Act
- has had their salesperson’s registration suspended within the last 12 months (or cancelled within the last five years) under the former Act
- held a motor vehicle dealer’s licence under the former Act, and may be pursued by the Motor Vehicle Dealers Institute for a claim made against the Fidelity Fund within the previous five years
- has had their registration cancelled by the Registrar within the previous five years
- is prohibited or disqualified from managing a company under the Companies Acts 1955 or 1993
- has been convicted of a crime involving dishonesty within the last five years

- has been convicted of specific offences under the Fair Trading Act within the last five years
- is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992
- is subject to a property order made under the Protection of Personal and Property Rights Act 1988.

A **company** is disqualified from registration if:

- the company is a banned person
- the company’s motor vehicle dealer’s licence, under the former Act, has been cancelled within the last five years
- the company held a motor vehicle dealer’s licence under the former Act and may be pursued by the Motor Vehicle Dealers Institute for an amount arising out of a claim made against the Fidelity Fund within the previous five years
- the company is in liquidation
- the company’s name has been removed from the register of companies
- a manager of the company is disqualified from registration in their own right
- the company’s registration as a motor vehicle trader has been cancelled within the previous five years.

<sup>1</sup> The terms “licensed dealer” and “registered salesperson” applied under the former Motor Vehicle Dealers Act.

## Can anyone seek an exemption from registering as a motor vehicle trader?

Yes, anyone can seek an exemption from registration by applying to the Minister of Consumer Affairs. There is a format for applying for exemption which is set out in the MVSA regulations.

## How do I register?

If you want to register as a motor vehicle trader you must:

- complete and sign an application form
- complete a statutory declaration declaring that you are not disqualified from registration
- pay a registration fee.

In the case of a company, a person involved in the management of the company (eg, a director or manager) carries out these steps. Each person involved in the management of the company must complete a statutory declaration.

Registrations can be made online at the Motor Vehicle Traders Register (MVTR) – **[www.motortraders.med.govt.nz](http://www.motortraders.med.govt.nz)** – operated by the Ministry of Economic Development, or on paper. Paper registration forms can be requested by phoning 0508 MOTOR TRADERS (0508 668 678) or can be downloaded from the MVTR website.

More information on the registration process is available online at the MVTR website or by phoning 0508 MOTORTRADERS (0508 668 678) for assistance.

A company that registers as a motor vehicle trader will have obligations and responsibilities under the Companies Act that are separate from the requirements of the MVSA. For more information visit **[www.companies.govt.nz](http://www.companies.govt.nz)**.

## Information required for applying

When making your application, you must give:

- your full name, residential address, date of birth and occupation
- the proposed trading name of your business
- any other information required.

If a company is applying, the manager must give:

- the name of the company, the date and place of incorporation, the registered address and principal type of business

- the company's incorporation number
- the full name, residential address, date of birth and occupation of each individual concerned with the company's management
- the proposed trading name of the motor vehicle trading business
- address for service
- any other information required.

## Application accepted

If your application is accepted, the Registrar will enter your name on the Register and give you written notice of the date your registration takes effect. You will also be sent a Certificate of Registration.

## Certificate of Registration

All registered motor vehicle traders will be supplied with a Certificate of Registration that includes a registration number and the expiry date. The Certificate of Registration should be displayed at your place of business. You must also show your Certificate of Registration, or a copy of it, to anyone who asks to see it.

## Application refused

If the Registrar refuses your application, you will be notified in writing of the decision and the reasons for it, within 10 working days after the decision is made. You can appeal this decision to the District Court (for more information see MVSA, section 64 – Right of appeal).

## How long is the registration effective?

Your registration is effective for 12 months unless it is cancelled or surrendered earlier. Registration cannot be transferred.

## Renewal of registration

You must renew your motor vehicle registration every 12 months and must include a new statutory declaration(s). Your application for renewal must be made to the Registrar before your original registration expires. Renewal notices will be automatically sent to registered traders prior to expiry – as long as their current address details are correct. Traders can select the “maintain application” option from the Traders Services section of the Motor Vehicle Traders Register – **[www.motortraders.med.govt.nz](http://www.motortraders.med.govt.nz)**.

### What if an application for renewal is not decided before the expiry date?

Your current registration stays valid until the application is decided, as long as it was received before the expiry date.

### What about renewal after the expiry date?

Renewals after the expiry date will be treated as new applications, not renewals.

### What happens if there is a change in circumstances?

You must notify the Registrar within 10 working days if any of your registration details change. You can maintain your address and details or your company information online by using your MVT Number and Key (a personal identification code) sent to you when you applied for registration. Otherwise you must notify the Registrar in writing.

### Removing a motor vehicle trader from the Register

The Registrar must remove you from the Register if:

- your registration is cancelled
- you surrender your registration
- your registration expires.

### Cancellation of registration

Registration can be cancelled if the Registrar is satisfied that:

- your application fee has been dishonoured
- any representations or declarations you made are false
- you ceased trading
- you are disqualified from registration.

### The cancellation process

The Registrar must notify you in writing that your registration will be cancelled. The notice must give reasons for the cancellation and the date it will take effect. You then have 10 working days to give written reasons why your registration should not be cancelled.

If no written representations are received, the Registrar will record the cancellation. If the Registrar decides to cancel a registration despite your representations, you will be notified as soon as possible.

### What happens if registration is cancelled because the motor vehicle trader is a “banned person”?

The Registrar will record the name of a “banned person” on the Banned Persons list. The list will be accessible online at the MVTR website [www.motortraders.med.govt.nz](http://www.motortraders.med.govt.nz).

### Registered trader stops trading

If you stop trading, you must notify the Registrar and surrender your registration within 20 working days. You can do this by surrendering your registration online at the MVTR website – [www.motortraders.med.govt.nz](http://www.motortraders.med.govt.nz) – or by notifying the Registrar in writing.

### Applications to ban traders

Any person can apply to a District Court to have a person banned from participating in the business of motor vehicle trading. The Court may ban someone if the person has been convicted of a specified offence and the Court considers (or if there is sufficient evidence before it to indicate) that the person is not a fit and proper person to be in the business of motor vehicle trading. Some bans are automatically imposed by the MVSA, which means registration or renewal as a motor vehicle trader is prohibited because the trader committed offences under the MVSA while they were registered. See page 3 for the definition of “banned person” and page 9 for more information on Enforcement of the MVSA.

### Other Motor Vehicle Sales Act legal obligations

#### Contracts for sale

When you sell a motor vehicle you must keep a record of every sales contract for at least six years. The record must include certain information required by regulations made under the MVSA. This information is:

- the names of the parties to the contract
- the agreed price
- a description of the motor vehicle sold including its VIN, make, model and vehicle year.

The records may be kept in an electronic form as long as they can be retrieved easily. The records can be inspected by the Registrar or the Police.

## Buyer's copy of Supplier Information Notice

You must get written confirmation from the vehicle buyer that they were given a copy of the Supplier Information Notice (see page 11 for more information on the Supplier Information Notice). This confirmation must be obtained as soon as is practical after the sale.

You must keep a copy of every Supplier Information Notice and buyer's confirmation for at least six years.

## Sales "on behalf"

The MVSA requires that, where you act as an agent for another person (the principal) in the sale by consignment of a used motor vehicle, you must:

- pay the principal all money received for the sale immediately on demand by them, or
- if no demand is made by the principal, within five working days after the money is received from the purchaser.

This duty is subject to any written authority or instructions given to you by the principal.

You are not allowed to use the funds from the sale for the payment of your debts, or to be attached to or taken to execute a court order initiated by a creditor's claim. The money also cannot pass, as part of a bankruptcy, to either the Official Assignee (in the case of individuals) or to a liquidator (in the case of a company).

If you cannot find the principal after making reasonable enquiries, you are still required to pay the money to the principal as soon as you do become aware of their whereabouts.

## Providing a written account of sale

You must provide the principal with a written account setting out:

- the particulars of the money you received on the principal's behalf in respect of the sale, and
- the manner in which you have applied that money.

You must provide the account on demand or, if no demand is made, within five working days after the sale was completed.

## Does consumer law apply to sales by consignment?

Yes. The Fair Trading Act (FTA) applies to sales by consignment. You must not mislead, deceive or make false representations to either the buyer or seller of a vehicle on sale by consignment. You are also required to display the Supplier Information Notice with vehicles for sale by consignment (see page 11 for more information on FTA and the Supplier Information Notice).

The Consumer Guarantees Act applies to sales of consumer goods where the trader acts as an agent for another trader or for a consumer – this covers sales "on behalf of" or by consignment.

### Be aware

Auction sales and sales by competitive tender are not covered by the Consumer Guarantees Act.

## Offences under the MVSA

### Infringement offences

Under the MVSA there are a number of infringement offences which carry a fine of up to \$2,000. These are:

- failure by a car market operator to take reasonable steps to ensure a seller has attached a Supplier Information Notice to the vehicle being sold
- entering false information into a record of sale
- otherwise failing to comply with requirements to keep records of contracts for sale
- being unable to show your Certificate of Registration without a good reason
- not giving notice to the Registrar of any changes in your registration details
- preventing an inspection by the Registrar, or giving false or misleading information
- preventing the carrying out of a search warrant.

If the Registrar considers you have committed an infringement offence, the Registrar may either:

- a) issue you with a notice requiring you to pay a fine of \$500, or
- b) seek a court hearing against you.

If (a) applies, you may pay the \$500, but if you wish to contest liability you may request a court hearing. If you request a court hearing and lose the case, you may be required to pay up to \$2,000.

### Serious offences

These offences carry a fine of up to \$50,000 for an individual and up to \$200,000 for a company, and other penalties may also be added.

These offences are:

- trading without being registered
- carrying on trading while being banned
- failing to comply with a ban
- tampering with an odometer
- making a false statutory declaration or supplying false or misleading information to the Registrar.

### Enforcement of the MVSA

The National Enforcement Unit (NEU), part of the Ministry of Economic Development, will enforce the MVSA. The NEU will identify, and where appropriate, take action against individuals or companies, including importers, who have not registered and are trading illegally, or who are otherwise violating sections 95-119 of the MVSA, including odometer tampering. The NEU can receive written complaints against traders via their Motor Vehicle Sales Act 2003 Complaint Form. For more information visit [www.enforcement.med.govt.nz](http://www.enforcement.med.govt.nz). The NEU does not ban traders, only a Court can do that – see page 7, Applications to ban traders.”

The Supplier Information Notice under the Fair Trading Act is enforced by the Commerce Commission (see page 11).

## Motor Vehicle Disputes Tribunal

The Motor Vehicle Disputes Tribunal (MVDT) can hear claims under the Consumer Guarantees Act, the Fair Trading Act, and the Sale of Goods Act. The MVDT is administered by the Ministry of Justice.

### Jurisdiction

The MVDT can only decide claims where one party is a motor vehicle trader, and the other party is not.

It can decide claims of up to \$50,000 (or more with the written consent of the parties).

However, claims can still be brought to the non-specialist Disputes Tribunal for up to \$7,500 (or \$12,000 with the consent of the parties).

### Filing a claim

Claims can be filed directly with the MVDT. The MVDT can be contacted by phone on 0800 FORMVDT (0800 367 6838), or write to Motor Vehicle Disputes Tribunal, PO Box 5027, Wellington, or visit the District Court Building, 49 Ballance Street, Wellington.

The MVDT will refer a claim to the other party, known as the respondent, and require both parties to discuss and attempt to resolve the claim.

The respondent must then give a written report of the discussion to the MVDT within 14 days.

If the claim was not resolved or if the applicant wants to carry on with the claim, then the MVDT will set a date for a hearing and notify both parties.

### The hearing

Hearings are not open to the public and lawyers are not allowed to attend. Both parties must attend the hearing. Parties cannot be represented by someone else unless the adjudicator agrees or a party is either a minor or has a disability.

The adjudicator is a lawyer with at least five years' experience, and may be assisted by an assessor who will have technical expertise.

## Orders

The MVDT may make any of the orders it has available to it under the Consumer Guarantees Act, Fair Trading Act, or Sale of Goods Act depending on the claim that was brought.

Where a vehicle is on credit sale or purchased with finance arranged by the trader, and the MVDT finds that the applicant can reject the vehicle under the Consumer Guarantees Act, or cancels the sale under the Fair Trading Act, the MVDT may order that the rights and obligations of the buyer vest in the trader. This means that the trader becomes liable to the creditor for the outstanding debt under the credit contract.

## Decisions

The adjudicator must give their decision in writing, including the reasons for the decision. If an order is made against you as a motor vehicle trader and you do not abide by the decision, the consumer can go to the District Court to enforce the order.

## Appeals

You can choose to appeal the decision of the MVDT. You must file your appeal at the District Court within 10 working days after being given notice of the decision.

If the total claim is over \$12,500 the District Court may consider whether the MVDT decision was wrong in fact or law, or that the proceedings were unfair to the appealing party and this prejudiced the result. If the claim is less than \$12,500 then the claim can only be appealed if the proceedings were conducted in a manner that was unfair to the appealing party and this prejudiced the result.

## Publicising details of an order

Where the MVDT finds against a trader the notice will be published in the *New Zealand Gazette*. This lists the name of the individual or company, and/or their trading names and the amount awarded against them. A copy of the Tribunal's decision may be obtained from the Disputes Tribunal.

The list will also be provided on the Ministry of Consumer Affairs website at [www.consumeraffairs.govt.nz](http://www.consumeraffairs.govt.nz) in the Consumer Information – Motor Vehicles section.

## Key information for auctioneers

If you are an auctioneer selling motor vehicles:

- you are required to be registered as a motor vehicle trader on the Motor Vehicle Traders Register
- you are not required to be licensed under the Auctioneers Act if you are properly registered as a motor vehicle trader, although you must comply with the Auctioneers Act requirements
- you must comply with the requirement to display a Supplier Information Notice with used motor vehicles for sale at auction
- you must disclose whether there is a security interest on any motor vehicle you offer for sale
- you must comply with the Fair Trading Act
- you may not be required to comply with the Consumer Guarantees Act. However, if you pre-sell a vehicle before auction, you may be required to comply with the CGA.

## Key information for car market operators

If you operate a car market, car fair or “display for sale”, including on a website or webpage, you are:

- required to be registered as a motor vehicle trader if you meet the definition of “car market operator” in the MVSA
- required to take reasonable steps to ensure sellers display a Supplier Information Notice with vehicles they offer for sale at your car market
- required to comply with the Fair Trading Act in relation to information you provide to sellers and buyers
- not required to comply with the Consumer Guarantees Act unless you are the supplier of the vehicles for sale.

# FAIR TRADING ACT 1986

## General information

The Fair Trading Act (FTA) prohibits any person in trade from engaging in misleading or deceptive conduct or from making false representations. A person in trade includes registered and unregistered motor vehicle traders, importers, car market operators and auctioneers.

### Examples

*You will breach the Act if you mislead a consumer about the age or condition of a motor vehicle for sale.*

*You will breach the Act if you represent yourself as a registered motor vehicle dealer when you are not registered or when your registration has expired and has not been renewed.*

The Commerce Commission takes prosecutions under the FTA. Individuals can be fined up to \$60,000 for breaching the FTA. Companies can be fined up to \$200,000. The Commission may also seek civil remedies such as injunctions, corrective advertising and damages.

FTA breaches can be reported to the Commerce 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.

The Commission has a range of publications available on the FTA for traders. Visit the Commerce Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz) or contact the Commission's contact centre (phone 0800 943 600) to order their publications.

Buyers can choose to take civil claims against you through the MVDT or Disputes Tribunal for any loss they suffered as a result of an FTA breach, unless, in the case of a Disputes Tribunal, the breach relates to the generally misleading and deceptive conduct provisions of section 9 of the FTA.

## The Consumer Information Standard – Supplier Information Notice

The FTA also requires motor vehicle traders to comply with the provisions of the Consumer Information Standard regulation.

All registered motor vehicle traders must prominently display a Supplier Information Notice on used motor vehicles they are selling as required by the Consumer Information Standard regulation.

The Ministry has provided a sample on its website – [www.consumeraffairs.govt.nz](http://www.consumeraffairs.govt.nz) – under Business Information/Motor Vehicle Sales. You are **not** required to display a Supplier Information Notice with any vehicle that does not meet the definition of “motor vehicle” as set out in the MVSA.

### Car market operators

Under the MVSA, car market operators must take reasonable steps to ensure private sellers attach the Supplier Information Notice to a motor vehicle they are selling. Car market operators who do not take reasonable steps to make sure private sellers display the notice can be fined up to \$2,000 (see Offences under the MVSA – page 8).

At the very least, reasonable steps would involve car market operators informing sellers of the requirement to display the notice, and making copies of the notice available to sellers for their use. It would be prudent for car market operators to have systems in place for checking whether sellers have the Supplier Information Notice displayed.

### Enforcement

The Consumer Information Standard is a regulation under the FTA and is enforced by the Commerce Commission.

Motor vehicle traders will breach the FTA if they either fail to display the Supplier Information Notice, or display a Supplier Information Notice containing inaccurate or incomplete information with vehicles for sale. This does **not** apply to car market operators unless they are also the vehicle seller. The Supplier Information Notice must comply with the format specified in Section 7 and Schedule 1 of the Regulations.

The Commerce Commission has published a resource for traders on their enforcement of the Consumer Information Standard Supplier Information Notice. It is available online at [www.comcom.govt.nz](http://www.comcom.govt.nz), under Fair Trading/Consumer Information Standards/Used Motor Vehicles, or phone the Commission's Contact Centre on 0800 943 600, or email [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz) to request a copy.

Civil claims under the Fair Trading Act may be made by purchasers if false or misleading information is entered onto the Supplier Information Notice.

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# PERSONAL PROPERTY SECURITIES ACT 1999

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## Security interest must be disclosed to buyers

Under the Personal Property Securities Act (PPSA), anyone buying or leasing a vehicle from a registered motor vehicle trader will take the vehicle free of a security interest if:

- the buyer is a consumer, and
- the buyer is not a party to the transaction where the security interest was formed, and
- the buyer had no knowledge of the security interest before they bought the vehicle.

The Supplier Information Notice must set out this effect of the PPSA.

If the vehicle is subject to a security interest, you must use the following statement on the Supplier Information Notice:

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

## Undisclosed security interest

If you sell a vehicle without disclosing a security interest, you will be responsible for that money owing. This applies whether you knew about the security interest or not.

You should check the Personal Property Securities Register at [www.ppsr.govt.nz](http://www.ppsr.govt.nz) to obtain information about any security interest on any vehicle you are buying or selling.

## Checking the Personal Property Securities Register

The Personal Property Securities Register (PPSR) provides a simple, accessible securities register for anyone wanting to register a security against personal property, or for those wanting to find out about a security interest. It is an electronic register, and new or updated information is recorded immediately.

Checking the PPSR is easy, cheap, and requires only the registration, chassis and/or VIN numbers of the vehicle. Access to the PPSR is available 24 hours a day, seven days a week online at the PPSR website ([www.ppsr.govt.nz](http://www.ppsr.govt.nz)). Each search costs \$1 and can be paid either by credit card or by direct debit account. You can also use your mobile phone to *Txt b4 u buy*. You can find out more about this option at the PPSR website.

## Selling a vehicle

Motor vehicle traders looking to trade, sell or auction a vehicle should search the PPSR. If you sell a motor vehicle that has money owing on it to a consumer, then you will be responsible for any outstanding debt if you do **not** alert the buyer to the fact there is money owing.

## Purchasing a vehicle

Motor vehicle traders buying second-hand motor vehicles should also check the PPSR to see if there is any money owing on the vehicle. If money is owed on a vehicle, it may still be repossessed from you.

The Consumer Guarantees Act (CGA) sets out:

- guarantees that goods and services must comply with when sold by someone in trade
- remedies that either the seller, manufacturer, importer or service provider is required to provide if a guarantee is not complied with.

## Application of the CGA

The CGA covers all motor vehicles sold by a person in trade that are of a kind ordinarily acquired for domestic, personal or household use. The definition of a person in trade includes both registered and non-registered motor vehicle dealers and any other person in the business of supplying goods or services.

Sales covered by the CGA include:

- new and used motor vehicles
- motor vehicles of a kind ordinarily acquired for personal use – *eg, sedans, station wagons, 4-wheel drives or SUVs, motorcycles, camper vans*
- vehicles that can be ordinarily acquired for both personal and business use – *eg, utes or small vans.*

## Exceptions

The CGA does **not** apply to

- motor vehicles of a kind ordinarily acquired for a commercial use – *eg, trucks, buses*
- motor vehicles sold at auction
- motor vehicles sold by a competitive tender process
- motor vehicles sold for re-sale or re-supply – *eg, importer selling to another motor vehicle trader*
- motor vehicles sold privately.

## Contracting out of the CGA

If you sell a vehicle of a kind ordinarily acquired for domestic or personal purposes to a person who intends to use it in a business, you can choose to contract out of the CGA. You must give the buyer written notice that you are contracting out of the CGA at the time of sale.

You can do this by providing a written agreement that says that the vehicle will not be subject to the CGA.

If you attempt to contract out of the CGA under any other circumstances, you will be breaching the FTA because it prohibits people in trade misleading consumers about their rights. The penalties for breaching the FTA are substantial – fines of up to \$60,000 for an individual and \$200,000 for a company.

## Guarantees

The CGA gives consumers six guarantees about vehicles.

### 1. The vehicle must be of acceptable quality

The vehicle must be:

- fit for the purposes goods of that type are normally used – *eg, a 4-wheel drive is suitable for off-road travel*
- acceptable in finish and appearance – *eg, a new vehicle should be free of scratches*
- free from minor defects – *eg, the dashboard clock should be functional*
- safe
- durable – *ie, the vehicle is able to be used for its normal purposes for a reasonable time after purchase.*

There is a test for deciding whether goods meet acceptable quality. It is called the “reasonable consumer” test:

“Would the reasonable consumer find the vehicle acceptable?” taking into account:

- the nature of the vehicle – *eg, new or second-hand, the type of vehicle*
- the price paid
- any information on the vehicle (including vehicle details on the Supplier Information Notice)
- any statement you made about the vehicle.

### What if the consumer has caused the problem?

If a vehicle develops a fault as a result of the consumer’s misuse or abuse, a claim cannot be made for a remedy under the guarantee of acceptable quality.

#### From the Courts

In a case about a second-hand car the Court decided that, just because the car had a current Warrant of Fitness, this did not mean that a trader could claim the car met the acceptable quality test.

A Warrant of Fitness is “information about the goods”. In this case, it meant that the vehicle was safe when inspected. It does not mean that a trader may not have to provide a remedy for a problem unrelated to the Warrant of Fitness – *eg, a problem with the car’s CD player.*

## 2. The vehicle must be fit for a particular purpose

The guarantee applies when:

- the consumer tells you about or implies that the vehicle is required for a particular purpose, and
- you advise the consumer that the vehicle can be used for that purpose, and
- the consumer relies on your knowledge.

### Example

*If a customer asks if a vehicle will tow their boat, and you say it will, it must be able to tow their boat without damaging the vehicle.*

Fitness for a particular purpose is a guarantee that is additional to fitness for “normal” purpose. Vehicles must be fit for their normal purposes under the guarantee of acceptable quality.

We recommend that if you advise the customer the vehicle is fit for a particular purpose, this is noted in writing at the time of sale. This may assist you in the event of a dispute at a later date about the fitness of the vehicle.

## 3. The vehicle must match its description

As the trader you are liable for any description given with the vehicle.

This guarantee is of particular importance if consumers are purchasing vehicles sight unseen – *eg, from a website.*

The FTA also applies to information that you supply about vehicles for sale. Under the FTA you cannot mislead, deceive or make false representations about the vehicles you sell. For more information on the FTA, visit the Commerce Commission website at [www.comcom.govt.nz](http://www.comcom.govt.nz).

## 4. The vehicle must comply with the sample

If a vehicle is ordered from a showroom or demonstration model, it must correspond with the model. The consumer must be given the opportunity to inspect the vehicle against the model it was ordered from.

## 5. You will give the consumer good title to the vehicle

In addition to the provisions of the PPSA, the CGA provides the consumer with a guarantee that:

- you have the right to sell the vehicle
- the vehicle is free of any undisclosed security interest
- they will have undisturbed possession of the vehicle.

## 6. Reasonable price

This guarantee only applies where you have not agreed on a price with the purchaser at the time of sale. This situation will not occur often in trader-to-consumer motor vehicle sale transactions.

## Manufacturers' and importers' guarantees

### Spare parts will be reasonably available

Manufacturers and importers must ensure that spare parts and repair facilities are available for a reasonable time after the vehicle is sold to the consumer. The responsibility does **not** apply to used vehicles unless they are being sold in New Zealand for the first time.

Manufacturers and importers can contract out of this guarantee by giving consumers written notice at the time of purchase that spare parts and repair facilities will not be available.

### Remedies for breach of guarantees

The rights of a consumer to redress will depend on the type of problem they have with the vehicle.

#### Minor faults

If the fault is minor or can easily be repaired, you can choose to fix the problem by repairing the vehicle or giving the consumer a replacement vehicle.

Where a repair is being provided, the consumer must give you a reasonable time to carry this out. They must also provide you with reasonable access to the vehicle to allow this repair to be carried out.

#### What is a reasonable time for carrying out a repair?

A reasonable time to fix a problem is not defined in the CGA. It will depend on the type of vehicle and the nature of the problem. For a vehicle that is in daily use by the consumer, a reasonable time may only be a few days. If the repair takes a longer time, you can offer a courtesy vehicle to the consumer.

If you require time to identify a fault, or to decide whether a fault is serious or minor, you should discuss this thoroughly with the consumer and seek their agreement.

If you refuse to do anything about the problem when it is possible to repair it, or you take an unreasonable time to repair the problem, the consumer can choose to get:

- the vehicle repaired elsewhere and reclaim the cost from you
- a replacement vehicle
- a refund.

#### What if the fault occurs when the consumer has the vehicle out of town?

If the consumer has the vehicle out of town when it develops a fault, they should let you know that there is a problem with the vehicle before getting repairs done elsewhere. You may refer the consumer to an agent if it is impractical to get the vehicle to you for repairs. If you do not have an agent, the consumer can recover a reasonable cost from you of having the vehicle repaired by someone else. The consumer must be able to document the vehicle repairs and cost.

The consumer may lose any right to recover the repair cost from you if they had the vehicle repaired elsewhere and did not notify you or give you a reasonable time to fix it.

#### What if the repair will be expensive?

If the cost of repair will be more than the value of the vehicle, you do not have to choose to repair. You can either replace the vehicle or provide a refund.

#### What type of replacement would I have to give?

The CGA requires that you provide an identical replacement that is readily available. This may be a practical option to select for new vehicles where you do not want to repair or refund. If the vehicle is second-hand, your options will be limited to either repair or refund if an identical replacement cannot be easily found.

#### What if the fault was pointed out at the time of sale?

You will not be liable for any fault you made known to the consumer at the time of sale – *eg, where a consumer buys a vehicle with notification of a dented bonnet, the consumer cannot claim a remedy for that fault.*

#### Value of vehicle improved by repair

If the repair results in the vehicle being improved, or more valuable than it was when you sold it, you may claim payment for this difference from the consumer.

However, if a repair will result in the vehicle being improved or more valuable, you should discuss this with the consumer before undertaking the repair.

## Serious faults

If a vehicle has a serious fault, the consumer may choose between these remedies:

- rejecting the vehicle and seeking a refund or replacement vehicle (of similar value and type), or
- keeping the vehicle and seeking compensation for the loss in value.

Even if a serious fault can be fixed, the consumer may choose a refund rather than a repair.

## What is a serious fault?

A serious fault is one where:

- a reasonable consumer would not have bought the vehicle if they had known the fault existed
- the vehicle is significantly different from the demonstration model or its description
- the vehicle is substantially unfit for its normal purpose and cannot be made fit for purpose by a repair
- the vehicle is substantially unfit for the particular purpose it was purchased for – *eg, you informed the consumer that the car will be able to tow their boat and it cannot.*
- the vehicle is unsafe.

### From the Courts

The Courts have decided that a fault might be considered serious when:

- the cost of the repair is high compared with the price paid for the vehicle – *eg, repairs of \$1,000 required on a car bought for \$5,000*
- the vehicle has a number of small faults, which on their own may be minor, but together may be serious.

If you accept that the fault is serious, and that you are responsible under the CGA, you are obliged to accept the remedy that the consumer has chosen.

## Rejecting the vehicle

If the consumer wishes to seek a refund, they must reject the vehicle. We recommend the consumer advises you in writing of the reasons for rejecting the vehicle.

The vehicle cannot be rejected when:

- it has been disposed of, destroyed, lost or damaged after delivery
- the consumer has run out of time to reject. The right to reject runs from the date of purchase only until a time that such a fault is likely to appear with reasonable use.

## What if the customer has asked me to collect the rejected vehicle?

This request is acceptable if the vehicle is in an unfit condition to be driven to your premises. The transportation would be at your expense.

## What if I dispute the claim that the fault is serious?

If you do not accept that the fault is serious, or your responsibility, you may reject the consumer's claim. However, either you or the consumer should seek an independent report on the problem to support your views.

The consumer is entitled to seek a remedy through a claim against you at the Motor Vehicle Disputes Tribunal (MVDT) or Disputes Tribunal. See page 9 for more information on the MVDT.

### From the Courts

The Courts decided that if a consumer was not given enough information about the fault by the trader at the time to make it clear the fault was serious, the consumer may still have a right to reject the vehicle after a repair is carried out and fails to fix the problem.

In a case about a four-wheel drive vehicle, the Court decided that the customer should consider the type of goods and the amount of reasonable use such goods could be put to before the fault becomes apparent.

We recommend you provide the consumer with enough information about the fault to allow them to make an informed decision on the extent of the fault – to either pursue their choice of remedy or accept your offer to repair or replace.

## Refunds

### Do refunds have to be in cash?

Refunds must be given in cash. The consumer does not have to accept a credit note or another vehicle. In our view it is reasonable to provide the refund in the form of a cheque because of the high value of motor vehicles compared to other consumer goods.

If the vehicle is subject to a credit agreement, this must be cancelled. Any rights and obligations under that agreement may be taken over by you.

### From the Courts

The Court decided in a case about a serious fault with a vehicle, that it was reasonable for the consumer to retain the vehicle (but not use it) until a refund had been made.

### Refunding when vehicles are bought on credit

You must refund the deposit, the value of any trade-in and all money paid on the credit sale agreement except for reasonable interest charges (charges payable from the beginning of the credit agreement until the time the right to reject the goods arose). The consumer will have the choice of claiming a refund from you or from a financier (if the credit agreement has been assigned to one).

### Depreciation

The CGA says that you must refund the price paid for the vehicle. There is no provision under the CGA for you to be compensated for the depreciation of rejected goods.

### Traded-in goods

If you still have the traded-in goods in the same condition, they can be offered to the consumer instead of their cash value. Otherwise, the consumer can claim the amount allowed for them as well as any cash paid for the vehicle.

### What if the consumer wants a replacement and I don't have any similar vehicle?

The consumer can choose a replacement of similar value and type if the problem is serious or cannot be fixed. You must give a replacement if a suitable replacement vehicle is reasonably available to you. This may mean ordering one from the manufacturer or buying one from another trader. If no such vehicle is available, the consumer must choose another option.

### Compensation where the vehicle is kept by the consumer

If the problem is serious and the consumer wants to keep the vehicle, they are entitled to be compensated for the difference in the value of the vehicle had the fault not existed.

This may occur with rare vehicles, or where the problem is to do with the vehicle's description – *eg, if you sell a car described as a 1999 model, when in fact it is a 1996, you may be liable for any difference in value.*

## Damage and extra loss

The consumer can claim compensation for any additional damage or costs (called consequential loss) incurred as a direct result of a problem with the vehicle.

### Example

*A consumer takes the car out of town for a weekend trip several weeks after purchase. While away, the car's engine develops a fault. The consumer is entitled to recover from the trader the reasonable costs related to getting themselves and the vehicle back to town, such as breakdown and towage fees.*

### Limiting liability for extra loss

Your responsibility for consequential loss is limited to loss or damage that could have been reasonably expected to have occurred as a result of a fault.

## Frequently Asked Questions

### How long does the consumer have to claim a remedy?

Claims can be made under the CGA for up to six years from the time the problem appears.

However, a delay in the consumer taking action may affect or limit the range of remedies available to them.

If the consumer wants to claim a cash refund or a replacement vehicle because of a serious fault, the claim must be made within a “reasonable time”. A reasonable time is the time in which the 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.

### Can consumers claim a remedy from the vehicle manufacturer?

The CGA provides consumers with the choice of claiming from you **or** from the manufacturer or importer, if a vehicle is not of acceptable quality or does not comply with a description attached to a vehicle by the manufacturer.

The CGA gives the consumer the right to claim directly from the manufacturer for remedies specific to the manufacturer’s guarantee of spare parts and repair facilities.

A consumer might choose to claim from the manufacturer or importer if a vehicle is being recalled because of a specific fault and the manufacturer is offering repairs or compensation directly to the buyer. Or they may go to the manufacturer or importer because the trader who sold them the vehicle has gone out of business.

You will be breaching the FTA if you suggest to a consumer that they must seek a remedy from the manufacturer or importer, rather than you, when the consumer is entitled to make that choice. Under the FTA you cannot mislead a consumer about their rights or remedies.

### What about the manufacturer’s own warranty?

A manufacturer’s warranty is given in addition to the guarantees in the CGA. As the seller of the vehicle you will be responsible for meeting the guarantees included in the CGA but you are not responsible for any of the promises made in the manufacturer’s own warranty.

Buyers of new vehicles that have manufacturers’ warranties can choose to claim from the manufacturer under the warranty or from you under the CGA. You must accept responsibility if the consumer chooses to come to you. You cannot insist that the consumer use the manufacturer’s warranty. You will be breaching the FTA if you tell a consumer that they must go to the manufacturer. Under the FTA you cannot mislead a consumer about their rights or remedies.

### What about extended warranties (also known as “breakdown insurance”)?

Extended warranties paid for by the consumer are in addition to the guarantees given under the CGA. You cannot avoid responsibilities under the CGA by telling the consumer to claim under the extended warranty instead.

In our view, the extended warranty must provide the consumer with greater rights and remedies than the CGA guarantees and remedies provide. If the warranty provides no more than the CGA guarantees and remedies, then you may risk breaching the FTA for misrepresenting the warranty as “extended”.

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## FOR MORE INFORMATION

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### Ministry of Consumer Affairs

Website: [www.consumeraffairs.govt.nz](http://www.consumeraffairs.govt.nz)

See back cover for contact details.

#### **Publications**

*Consumer Guarantees Act – A guide for retailers*

*Consumer Guarantees Act – A guide for tradespeople and service providers*

*Consumer Guarantees Act – A guide for manufacturers and importers*

*Credit Sales – A guide for retailers*

### Ministry of Economic Development

Companies Office

Website: [www.companies.govt.nz](http://www.companies.govt.nz)

Phone: 0508 COMPANIES (0508 266 726)

Email: [info@companies.govt.nz](mailto:info@companies.govt.nz)

Address: Companies Office, Private Bag 92061  
Auckland Mail Centre, Auckland

Motor Vehicle Traders Register

Website: [www.motortraders.med.govt.nz](http://www.motortraders.med.govt.nz)

Phone: 0508 MOTORTRADERS (0508 668 678)

Email: [info@motortraders.med.govt.nz](mailto:info@motortraders.med.govt.nz)

Address for registration enquiries:

National Processing Centre, Private Bag 92061,  
Auckland.

Address for the Registrar: Registrar of Motor Vehicle Traders, Private Bag 92061, Auckland Mail Centre, Auckland.

The Ministry of Economic Development also publishes MVTR Factsheets and online Frequently Asked Questions (FAQ) on registration processes and the Motor Vehicle Traders Register.

Personal Property Securities Register (PPSR)

Website: [www.ppsr.govt.nz](http://www.ppsr.govt.nz)

Phone: 0508 PPSR INFO (0508 777 746)

Email: [info@ppsr.govt.nz](mailto:info@ppsr.govt.nz)

Address: Registrar, Personal Property Securities,  
Private Bag 92061, Auckland Mail Centre,  
Auckland

#### **Publications**

*Introduction to the Personal Property Securities Register*

*Registering in the Personal Property Securities Register*

*Searching the PPSR*

*Accessing the PPSR*

*Information for Consumers*

*Personal Property Securities Register Government to Business Connection*

*Txt b4 u buy*

### Commerce Commission

Website: [www.comcom.govt.nz](http://www.comcom.govt.nz)

Phone: 0800 943 600

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

Address: PO Box 2351, Wellington

#### **Publications**

*Fair Trading Act – a guide for advertisers and traders*

*Fair Trading Act – Enforcement of the used motor vehicles consumer information standards regulations*

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## LEGISLATION

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Copies of the Acts and Regulations mentioned in this guide can be accessed online for free at [www.legislation.govt.nz](http://www.legislation.govt.nz).

Printed copies are sold by Bennetts Bookshops and some Whitcoulls stores.

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