

# Samoa National Standard

SNS 001: 2021|CONSUMER INFORMATION STANDARD| Used Motor Vehicles |Vol.1.0.



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### TECHNICAL WORKING GROUP (TWG) REPRESENTATION

This standard was prepared by the Used Cars TWG. The membership of the TWG was approved and appointed by the National Standards Samoa (NSS).

The TWG consisted of the following:

Member	Interest	Representing
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TWG Member	Ministry of Customs and Revenue	Regulator customs and ports
TWG Member	Ministry of Police-Land Transport Authority	Regulator transportation and vehicle inspection/ licensing
TWG Member	Sai Motors Company	Industry- Importer
TWG Member	Great Motors Samoa	Industry –Importer
TWG Member	Pasefika Motors	Industry – Importer
TWG Member	Mash Motors	Industry – Importer
TWG Member	Autoland Car Dealers	Industry - Importer

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**AMENDMENTS**

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## Foreword

This consumer information standard requires motor vehicle traders offering to sell used motor vehicles to provide consumers with certain information about the vehicle and its supplier. This information must be attached to the used motor vehicle in a prominent position so that consumers can make better informed purchasing decisions. If purchase of the vehicle can be completed online this information must be displayed by the advertisement for that vehicle.

## Scope

This consumer information standard sets out who must comply with the requirements, what types of vehicles are covered and the information that must be disclosed. It is a breach of Competition and Consumer Protection Act 2016 (refer to Schedule 3, page 15 for further information) for a motor vehicle trader to supply, offer to supply, or advertise to supply used motor vehicles that do not comply with the consumer information standard.

## Abstract

The objective of this standard is to ensure:

- that all used vehicles sold in Samoa are roadworthy
- that the importation of low-quality vehicles is prevented
- that Samoa does not become a dumping ground for low quality vehicles.

## Interpretation and defined terms

### **Car market operator**

(a) means a person –

(i) who carries on the business of providing any premises or place for a market for the sale by other persons of used motor vehicles (whether or not the vehicles are subject to a bailment to the operator); or

(ii) who operates any facility (for example, an internet web page) for the primary purpose of facilitating the sale of used motor vehicles (which sale is completed through, or by means of, that facility); and

(b) includes a person who is commonly referred to in the motor vehicle trading industry as a car fair operator or a display for sale operator.

**Consumer information notice** means a notice that –

(a) discloses information about a used motor vehicle; and

(b) complies with the definitions of a motor vehicle.

**Motor vehicle** has following meanings:

### **Motorcycle –**

(a) means a motor vehicle running on 2 wheels, or on not more than 3 wheels when fitted with a sidecar; and

(b) includes any vehicle with motorcycle controls declared by the Director of Land Transport to be a motor cycle; but

(c) does not include a moped.

**Motor vehicle –**

(a) means any of the following:

(i) a road vehicle that is drawn or propelled by mechanical power and is of a kind ordinarily acquired by consumers for personal, domestic, or household use;

(ii) a vehicle of any other class or description declared by the Ministry of Police to be a motor vehicle for the purposes of this standard; but

(b) does not include any of the following:

(i) a moped

(ii) a motorcycle, the total cylinder capacity of which does not exceed 60 cubic centimetres

(iii) a tractor or farm machinery

(iv) a trailer

(v) a vehicle of any other class or description declared by the Ministry of Police not to be a motor vehicle for the purposes of this standard

(vi) a mobility device.

**Motor vehicle trader –**

(a) means any person who carries on the business of motor vehicle trading (whether or not that person carries on any other business); and

(b) includes –

(i) an importer

(ii) a wholesaler

(iii) a car auctioneer

(iv) a car consultant.

**Sale, in relation to any motor vehicle –**

(a) means the sale or lease or exchange or any other disposition of that motor vehicle or of any interest in that motor vehicle (for example, under a hire purchase agreement); and

(b) includes the display for sale or offer for sale or offer for lease or offer for exchange of that motor vehicle; but

(c) does not include a lease or offer for lease of a motor vehicle for a term not exceeding 4 months.

**Used motor vehicle –**

(a) means a motor vehicle that has, at any time before been offered or displayed for sale - (i) been registered by

A) the LTA or Police

B) any corresponding enactment or regulations of another country

(ii) been used for a purpose not connected with its manufacture or sale; and

(b) includes a motor vehicle that has been used for the purpose of demonstration in connection with the sale of another motor vehicle.

**Goods to which these regulations apply**

(1) These consumer information standards apply to a used motor vehicle that is offered or displayed for sale by a motor vehicle trader, whether or not the motor vehicle trader is acting—  
(a) as an agent for another person; or (b) through a car market operator.

(2) Despite subclause (1), these regulations do not apply to a used motor vehicle that is offered or displayed for sale by a motor vehicle trader if it is offered or displayed for sale exclusively to other registered motor vehicle traders or to licensed car wrecker.

## What information must be provided when selling a used motor vehicle?

There are two categories of information that must be provided when selling a used motor vehicle:

1. information about the supplier
2. Information about the vehicle.

### 1. Information about the supplier

The information required to be provided about the supplier includes the motor vehicle trader's name, address and registration number. The motor vehicle trader may also choose to include other contact information, for example their telephone number or email address.

### 2. Information about the vehicle

The information required to be provided about the vehicle includes:

- its cash price (if not sold by auction/tender)
- make and model
- vehicle year
- engine capacity
- odometer reading, and
- Vehicle identification number.

The consumer information standard requires additional information to be provided if you are selling imported used motor vehicles. This includes:

- the year the vehicle was first registered overseas, as stated on the Motor Vehicle Register
- the country where the vehicle was last registered before it was imported into Samoa
- Whether the vehicle was recorded as damaged on the Motor Vehicle Register at the time of its importation.

Most of the information required for this section has to be obtained from the Motor Vehicle Register. You can access the register, which is operated by the Land Transport Authority, at [www.lta.gov.ws](http://www.lta.gov.ws)

The full list of the information required to be provided is set out in Schedule 2 of this Consumer Information Standard.

## How should the information be displayed?

The Consumer Information Standard includes a template to display the information called a Consumer Information Notice (CIN). For vehicles that can be purchased online, the CIN (or a link to the CIN) must be clearly displayed on the same webpage as the vehicle offered for sale and on the same page as the contract that may be entered into for the sale of the vehicle.

The CIN can be displayed in a photo on the webpage as long as it is clearly visible and readable in the photo. For vehicles sold at car yards, CINs must be firmly attached to the motor vehicle in a prominent place. It must be clearly visible from the outside of the vehicle. The CIN must be in

the form set out in Schedule 1 of these Consumer Information Standards. It must:

- be easily readable
- be on white paper/card of A4 size (for vehicles sold online the CIN does not have to be printed)
- be completed clearly with the information set out in Schedule 2 of the Consumer Information Standard.

The CIN must also be updated when information about the vehicle changes. You may use a name, logo, mark or design associated with your business, or any trade association you belong to, on the top margin of the CIN as long as it does not detract from the contents of the CIN.

### **Who is responsible for making sure the Consumer Information Notice is provided?**

The motor vehicle trader is responsible for ensuring an accurately completed CIN is attached to the vehicle or displayed online. If a motor vehicle trader sells used cars at a car market, the car market operator must take reasonable steps to ensure the supplier of the vehicles completes and attaches a CIN. This may include providing the CIN form to be completed and instructions on how it is to be completed and displayed. Failure of the operator to do this is a breach of Competition and Consumer Protection Act 2016.

### **Do I need to give the buyer a copy of the CIN and do I need to keep a copy of it?**

Yes, you must give the buyer a copy of the CIN for the vehicle they have purchased. You must obtain a written acknowledgement from the buyer that they have received their copy immediately before completing the sale, or in the case of a vehicle sold by auction, as soon as practical after the sale. You should also sign the CIN to record you have supplied a copy. You must keep a copy of the CIN and the buyer's acknowledgement for every vehicle you sell for at least 6 years after the sale. You must also make the copies available for inspection by the motor vehicle trader's registrar, or a person acting on their behalf, at all reasonable times.

### **Can I provide extra information about the motor vehicle on the CIN?**

No. The CIN is not a marketing tool and it does not allow for listing information about the vehicle's features or quality. If you want to provide additional information about the vehicle, you could do this on a separate sheet or card.

### **Do car market operators need to provide CINs?**

Car market operators will breach the Competition and Consumer Protection Act 2016 if they fail to take reasonable steps to ensure any person selling through their car market has attached a CIN to the vehicle. The Consumer Information Standard is monitored and enforced by the MCIL through the Fair Trading Division-(Competition and Consumer Protection Unit). For more information see [www.mcil.gov.ws](http://www.mcil.gov.ws)

## Schedule 1

### Form of consumer information notice Consumer Information Notice

(The supplier must complete all relevant sections of this notice)

Name, address, and contact information of the supplier must be shown here.

Motor vehicle trader registration number \_\_\_\_\_

SALE INFORMATION			
Cash price (including VAGST, registration, and licensing)	Security interest* There is a security interest over this vehicle registered on the Personal Property Securities Register: <input type="checkbox"/> Yes <input type="checkbox"/> No Warning: A security interest means that this vehicle could be security for a loan and could be repossessed. You should check the back of this notice for information about the Personal Property Securities Register.		
Make and model	Vehicle year*	Engine capacity	
Actual distance vehicle has travelled*			
Radio receiver capability* Can receive 88 to 108 MHz without use of a band expander: <input type="checkbox"/> Yes <input type="checkbox"/> No	Vehicle Identification Number or Chassis Number		
Warrant or Certificate of Fitness <input type="checkbox"/> Yes <input type="checkbox"/> No	Warrant or Certificate of Fitness expiry date		
Vehicle licence <input type="checkbox"/> Yes <input type="checkbox"/> No	Vehicle licence expiry date		
Registered vehicle* <input type="checkbox"/> Yes <input type="checkbox"/> No	Registration plate number <small>(If not registered, state "not registered")</small>	Year first registered in Samoa	Re-registered vehicle* <input type="checkbox"/> Yes <input type="checkbox"/> No
Operating fuel type	Road user charges apply* <input type="checkbox"/> Yes <input type="checkbox"/> No	Outstanding road user charges* <input type="checkbox"/> Yes <input type="checkbox"/> No	
INFORMATION ABOUT USED IMPORTED VEHICLES			
Year first registered overseas	Country where last registered	Imported as damaged vehicle* <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>If you buy this motor vehicle, the trader MUST give you a copy of this notice to keep.</b>			
Trader confirmation: I _____ (name of trader) have supplied to the buyer a copy or electronic version of this notice, including a copy of the information on the back of this notice.		Buyer confirmation: I _____ (name of buyer) have received a copy or electronic version of this notice, including a copy of the information on the back of this notice.	
Trader signature:	Date:	Buyer signature:	Date:

\* SEE OVER FOR FURTHER INFORMATION Example Consumer Information Notice developed by the NSS August 2021

## CONSUMER INFORMATION NOTICE — IMPORTANT INFORMATION

### Things to Consider Before You Buy

There are protections under the Consumer Information Standard when you buy a motor vehicle from a motor vehicle trader. Motor vehicle traders include car dealers, car auctioneers, car importers, and car wholesalers.

Motor Vehicle Trader Registration under the Ministry of Commerce, Industry and Labour (MCIL), a motor vehicle trader must:

- be registered
- attach this notice to a used motor vehicle displayed for sale
- provide you with a signed copy or electronic version of this notice when you buy a used motor vehicle.

You can search the Motor Vehicle Traders Register to find out who is a motor vehicle trader or who is responsible for operating a particular motor vehicle trading business. You can also search for traders who have been banned. To find out more, visit [www.businessregistries.gov.ws](http://www.businessregistries.gov.ws) or free phone 24125

### Security interest

If a finance company or a person lends money to someone to buy a motor vehicle, the lender can register a security interest over the vehicle on the Personal Property Securities Register (PPSR) under the Ministry of Commerce, Industry and Labour. This means that the lender has rights over the vehicle. You should check the PPSR to ensure that the motor vehicle you intend to buy is free of a registered security interest. Visit [www.businessregistries.gov.ws](http://www.businessregistries.gov.ws).

If you buy a used motor vehicle from a motor vehicle trader and the trader does not disclose that a security interest is registered over it (see the front of this notice), then you receive the vehicle free of the security interest. Note that this protection does not apply to private sales.

**WARNING:** If you buy a used motor vehicle that has a security interest and the motor vehicle trader discloses the security interest (see the front of this notice), the vehicle could be repossessed.

### Vehicle year

For motor vehicles registered before 1 January 2011, “vehicle year” means the year of manufacture or the model year or the year of first registration. For motor vehicles registered after 1 January 2011, “vehicle year” means the year of

### Registration details

You can make an application to the Police to check whether a motor vehicle has been reported stolen or to check vehicle registration details. To get this information you will have to complete an application form, show identification, and pay a fee. Free phone the Motor Vehicle Registration Call Centre on 26712 for further information.

### Re-registered vehicles

Re-registration is necessary if a motor vehicle’s registration has been cancelled. Common reasons for registration being cancelled include a vehicle being “written off” by an insurance company, a vehicle being destroyed or rendered useless, or a vehicle being unlicensed for more than 1 year.

### Imported as damaged vehicle

MCR records whether or not imported used vehicles had any obvious structural damage or deterioration that was identified at the time of importation. However, the extent of the damage is not recorded. Any damage that may have occurred in Samoa is also not recorded. **You may wish to have a vehicle checked by a person with mechanical knowledge before you buy.**

### Your Consumer Rights

You can get further information about your consumer rights from the Ministry of Commerce, Industry and Labour [www.mcil.gov.ws](http://www.mcil.gov.ws). Under the Consumer Information Standard (Used Motor Vehicles), a vehicle must:

- be of acceptable quality, taking into account its age, price, and condition at the time of purchase
- be fit for any particular purpose you make known to the seller
- match its description
- match any demonstration model
- be free of any undisclosed security interest
- not be stolen.

Under the Consumer Information Standard (Used Motor Vehicles), information given to you by a motor vehicle trader about the vehicle you are buying must be true and the information on the front of this notice must be correct. Fair trading complaints can be taken to the MCIL Fair Trading Division-(Competition and Consumer Protection Unit). For information on how to lodge an official complaint, please click on the following link <https://www.mcil.gov.ws/services/consumer-protection/competition-and-consumer-protection/> or free phone 24125.

first registration anywhere in the world.

### **Actual distance vehicle has travelled**

You should not place too much importance on the odometer reading when buying a used motor vehicle. There is a risk with any used motor vehicle that the odometer has been wound back. A vehicle's mechanical condition is a better indicator of its quality. **You may wish to have a vehicle checked by a person with mechanical knowledge before you buy.**

On the front of this notice, the supplier must state **one** of the following:

- the odometer reading **or**
- "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". Stating an incorrect odometer reading is a breach of the Consumer Information Standard (Used Motor Vehicles)

### **Radio receiver capability**

This shows whether the vehicle has a radio receiver capable of receiving broadcasts in the range of 88 to 108 MHz without the use of a band expander. You should be aware that a band expander may not improve the quality and range of broadcasts you can receive on the radio.

MCIL FAIR TRADING DIVISION can hear and determine claims made against a motor vehicle trader under the Competition and Consumer Act 2016. Free phone 0 24125

### **Change of Ownership Responsibility**

Within 7 days after taking ownership of a motor vehicle you must complete a Notice of Change of Ownership and present it, along with the change of ownership fee and the necessary owner identification, to the Police. To find out more, visit [www.lta.gov.ws](http://www.lta.gov.ws) The motor vehicle trader may take care of this for you.

## Schedule 2

### Information required to be typed or written upon Consumer Information Notice

A Consumer Information Notice (CIN) attached to, or displayed in relation to, a used motor vehicle to which these regulations apply must have information that complies with the following requirements clearly and legibly typed or written upon it.

#### Motor vehicle trader information

##### *Motor vehicle trader's name, address, and contact information*

The motor vehicle trader must state the motor vehicle trader's name, address, and any other contact information the motor vehicle trader may voluntarily choose to provide (for example, the motor vehicle trader's telephone number or email address).

##### *Motor vehicle trader registration number*

The motor vehicle trader must state the registration number or other unique identifier given to the motor vehicle trader upon registration.

#### Sale information

##### *Cash price*

The motor vehicle trader must state the total cash price of the motor vehicle (including VSGST and any additional registration and licensing costs required in order to allow the motor vehicle to be used on the road), unless the motor vehicle is displayed for sale by auction or competitive tender.

If the motor vehicle is displayed for sale by auction, the motor vehicle trader must write the following statement on the consumer information notice in place of the cash price:

"For sale by auction".

If the motor vehicle is displayed for sale by competitive tender, the motor vehicle trader must write the following statement on the consumer information notice in place of the cash price:

"For sale by competitive tender".

##### *Security interest*

The motor vehicle trader must indicate, by ticking the appropriate box, whether or not there is a security interest over the motor vehicle recorded on the Personal Property Securities Register (PPSR) established under the Personal Property Securities Act 2013. The motor vehicle trader's indication must be consistent with the information recorded about the motor vehicle on the PPSR.

##### *Make and model*

The motor vehicle trader must state the make and model of the motor vehicle as recorded on the motor vehicle register maintained through the Consumer Information Standard (Used Motor Vehicles) required by the vehicle registration section of the Ministry of Police (the motor vehicle register).

### *Vehicle year*

The motor vehicle trader must state the vehicle year of the motor vehicle as recorded on the motor vehicle register. For motor vehicles registered before 1 January 2011, vehicle year means the calendar year in which the motor vehicle was manufactured, or the model year of the motor vehicle as designated by the manufacturer, or the year in which the motor vehicle was first registered anywhere in the world. For motor vehicles registered after 1 January 2011, vehicle year means the year in which the motor vehicle was first registered anywhere in the world.

### *Engine capacity*

The motor vehicle trader must state the engine capacity of the motor vehicle as recorded on the motor vehicle register.

### *Actual distance vehicle has travelled*

The motor vehicle trader must write either the reading on the motor vehicle's odometer or, if the motor vehicle trader has reason to believe that that reading may not be accurate, one of the following statements on the consumer information notice:

- "I [name of motor vehicle trader] 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".

### *Radio receiver capability*

The motor vehicle trader must indicate, by ticking the appropriate box, whether the motor vehicle has a radio receiver capable of receiving broadcasts in the range of 88 to 108 MHz without the use of a band expander.

### *Vehicle identification number or chassis number*

If the vehicle identification number of the motor vehicle is recorded on the motor vehicle register, then the motor vehicle trader must state the vehicle identification number as recorded on the motor vehicle register.

If this information is not recorded on the motor vehicle register but the chassis number of the motor vehicle is recorded on the motor vehicle register, then the motor vehicle trader must state the chassis number as recorded on the motor vehicle register.

### *Warrant or certificate of fitness expiry date*

If the motor vehicle has a current warrant or certificate of fitness, the motor vehicle trader must state the expiry date of the warrant or certificate of fitness.

### *Vehicle licence expiry date*

The motor vehicle trader must indicate, by ticking the appropriate box, whether or not the motor vehicle has a current vehicle licence. The motor vehicle trader must state the vehicle licence expiry date as recorded on the most recent licence (whether current or expired) issued by Ministry of Police (Traffic division). If the vehicle has never been issued with a licence, the motor vehicle trader must leave the entry blank.

### *Registered vehicle*

The motor vehicle trader must indicate, by ticking the appropriate box, whether or not the motor vehicle is currently registered as required by the Consumer Information Standard (Used Motor Vehicles).

### *Registration plate number*

The motor vehicle trader must state the number or distinguishing mark on the registration plate of the motor vehicle as recorded on the motor vehicle register. If the motor vehicle is not registered, the motor vehicle trader must state "not registered".

### *Year first registered in Samoa*

The motor vehicle trader must state the year that the motor vehicle was first registered in Samoa as recorded on the motor vehicle register.

### *Re-registered vehicle*

The motor vehicle trader must indicate, by ticking the appropriate box, whether or not the motor vehicle has been previously registered and then re-registered as recorded on the motor vehicle register.

### *Operating fuel type*

The motor vehicle trader must state the operating fuel type of the motor vehicle as recorded on the motor vehicle register.

### *Outstanding road user charges*

The motor vehicle trader must indicate, by ticking the appropriate box, whether or not there are any outstanding road user charges in relation to the motor vehicle.

## **Information about used imported vehicles**

Motor vehicle traders of used imported motor vehicles must also state the following information:

### *Year first registered overseas*

The motor vehicle trader must state the year the motor vehicle was first registered overseas as recorded on the motor vehicle register.

### *Country where last registered*

The motor vehicle trader must state the country where the motor vehicle was last registered prior to it being imported into Samoa as recorded on the motor vehicle register.

## **Signing and dating consumer information notice**

If a motor vehicle trader is a party to, or acts as an agent for a party to, a contract for the sale of the motor vehicle, the consumer information notice must contain a space for that motor vehicle trader to sign and date the consumer information notice beneath the following words:

"I [name of trader] have supplied to the buyer a copy or electronic version of this notice, including a copy of the information on the back of this notice."

The consumer information notice must contain a space for a buyer of a motor vehicle to sign and date the consumer information notice beneath the following words:

"I [name of buyer] have received a copy or electronic version of this notice, including a copy of the information on the back of this notice."

Both the motor vehicle trader and a buyer of a motor vehicle must sign and date the consumer information notice in order to provide written acknowledgement that the buyer has received a copy of the consumer information notice from the motor vehicle trader. If the consumer information notice is displayed in relation to a motor vehicle in accordance with this standard or

other related regulation, a form of written acknowledgement other than a signature may be used.

### Schedule 3

#### Consumer guarantees on vehicles

Under the Competition and Consumer Protection Act (CCA) 2016, there are numerous consumer guarantees that apply to used motor vehicles sold to a consumer. Table 1 outlines the automatic, statutory consumer guarantees relating to the supply of vehicles.

Table 1: The consumer guarantees relating to the supply of vehicles

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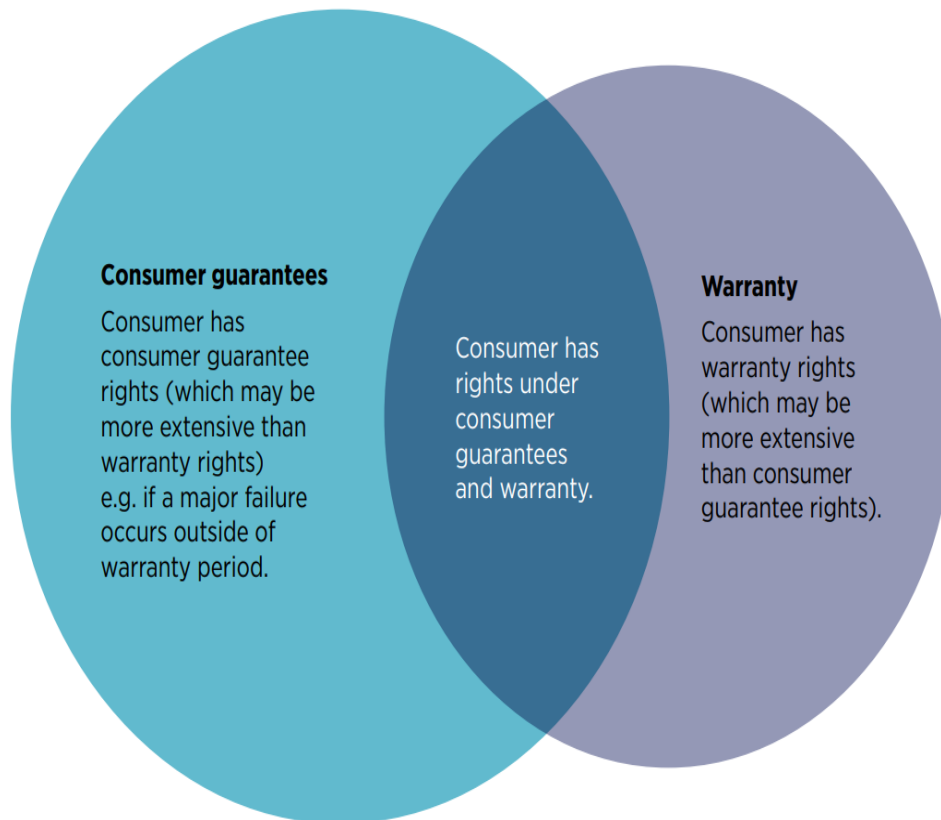
<b>A supplier guarantees:*</b>
<ul style="list-style-type: none"><li>• Goods will be of acceptable quality</li><li>• Goods will be fit for any purpose disclosed before sale</li><li>• Goods to comply with description</li><li>• Goods to comply with sample or demonstrational model</li><li>• Consumer have title to the goods</li></ul>

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Interaction between warranties and consumer guarantees A warranty does not change your responsibilities under the CCA 2016. Consumer guarantees cannot be replaced, limited or removed by any agreement, contract or warranty. Consumer guarantees apply for an unspecified but reasonable period, to be determined by a range of factors, including the nature and cost of the goods. The consumer guarantees apply in the same way regardless of whether a vehicle is covered by a manufacturer’s warranty, an express warranty or an extended warranty, and consumer guarantees may continue to provide protections after warranties have expired (warranties are discussed further at page 22).

When explaining customers’ rights under warranty, you should be careful not to represent that customers have no other legal right to address a defect. To ensure you do not risk breaching the CCA when dealing with your customers, you should ensure that consideration of customers’ consumer guarantee rights and your obligations as a dealer are embedded in all systems, policies and procedures that make up your complaints handling system. An updated complaints handling system will, as a matter of best practice, help ensure that a consumer’s statutory rights under the CCA are given due consideration at the outset of responding to a claim.

Figure 1: Remedies from consumer guarantees and warranties



**Example 1:**

A vehicle that was just over three years old suffered from a manufacturing defect that resulted in excessive jerking and shuddering when accelerating to such an extent that the vehicle was not drivable. The vehicle was substantially unfit for its normal purpose because despite many attempts at a repair, the dealer could not permanently fix the issue (see also discussion about 'major failure', at page 18). The vehicle has failed to meet the consumer guarantee of acceptable quality. As the vehicle is not drivable, the failure would constitute a major failure to comply with a consumer guarantee. The dealer cannot avoid providing a remedy merely because the problem occurred one month after the expiry of the manufacturer's three year warranty period applicable for that vehicle (or 1000 kms after the 100 000 km warranty distance, as the case may be). If the defect is a manufacturing defect, then the consumer may reject the vehicle and ask whoever supplied the vehicle (e.g. the dealer) to provide the consumer's choice of a repair, replacement or refund under the consumer guarantee provisions, regardless of whether the warranty has expired. There are several factors that make it reasonable for a consumer to reject a vehicle in response to a major failure (and seek a refund/replacement), more than three years after purchase. These factors include that the consumer's use of the vehicle was consistent with a reasonable consumer's likely use, and that it would be reasonable for the vehicle to be used for longer than three years before the manufacturing defect becomes apparent (see discussion about the 'rejection period', at page 20).

**Example 2:**

A manufacturing defect prevented a two-year-old vehicle from shifting into reverse gear. The vehicle has failed to meet the consumer guarantee of acceptable quality. The dealer spent two months unsuccessfully attempting to repair the vehicle, and the consumer then requested a replacement or refund under the consumer guarantees. Given the vehicle failed to meet a consumer guarantee and could not be repaired within a reasonable time (see discussion about 'major failure', at page 18), the failure is a major failure to comply with a consumer guarantee. The consumer may reject the vehicle and ask whoever supplied the vehicle (e.g. the dealer) to provide a replacement or refund under the consumer guarantee provisions. This applies regardless of whether the vehicle may have been able to be repeatedly repaired under the manufacturer's warranty. The consumer may, however, wish to keep the vehicle and have it repaired, in which case the dealer is entitled to repair the vehicle rather than replace it or provide a refund

As a matter of best practice, and also to minimise the risk of contravening the provisions of the CCA which prohibit misrepresentations and misleading or deceptive conduct (e.g. where the consumer has requested a remedy under the consumer guarantees), you should also:

- when providing a remedy, make it clear to the consumer when you are providing remedies under the consumer guarantee provisions— rather than simply describing such remedies as 'goodwill'
- When not providing a remedy, consider providing consumers with written reasons for refusing to provide a remedy under the consumer guarantee provisions.

**Acceptable quality**

The test for acceptable quality is whether a reasonable consumer, fully acquainted with a vehicle's condition (including any defects) would find it:

- fit for all the purposes for which vehicles of that kind are commonly supplied
- Acceptable in appearance and finish
- Free from defects
- Safe
- Durable

**This test takes into account:**

- The nature of the vehicle, for example: – a new vehicle would be expected to last longer than a used vehicle – a dedicated four-wheel-drive vehicle may have a higher standard for off-road use than a 'soft off-roader' – a high-performance vehicle may require more maintenance to keep up its performance level
- the price of the vehicle, for example, a consumer may reasonably expect a top-of-the-range model in a particular vehicle class to be more durable than a cheaper competing model in the same class
- Representations made about the vehicle; for example, in any advertising, on the manufacturer's or dealer's website or in the vehicle manual
- Anything the dealer told the consumer about the vehicle before purchase
- Any other relevant facts, such as the way the consumer has driven or used the vehicle.

**The guarantee of acceptable quality does not apply if:**

- The dealer alerts the consumer to the defect in the vehicle before the consumer agrees to the purchase
- The consumer examines the vehicle before buying and the examination should have revealed it was not of acceptable quality. The examination does not require the

consumer to find hidden defects or ones that are difficult to detect; for example, engine, brake or gearbox faults, which may not be easily detected

- the consumer causes the vehicle to become of unacceptable quality or does not take reasonable steps to prevent the vehicle from becoming of unacceptable quality, for example, the consumer puts petrol in a diesel vehicle the consumer uses the vehicle in an abnormal way. 'Abnormal' use has not been defined under the CCA. However, certain uses for vehicles will be inherently abnormal, for example, a small hatchback is not designed for towing a horse float. Information provided in the manufacturer's handbook and any other operating instructions may also be relevant.

### **Major vs minor failures**

When a vehicle fails to meet a consumer guarantee, your rights and your obligations to the vehicle owner depend on whether the failure is major or minor and whether you sold or otherwise supplied the vehicle to the consumer (e.g. see reference to 'supplier' in **table 1** and **table 2**).

### **Major failures**

A major failure to comply with the consumer guarantees includes the following:

- A reasonable consumer would not have bought the vehicle if they had known about the full extent of the problem. For example, no reasonable consumer would buy a new vehicle with so many recurring faults that the vehicle has spent more time off the road than on it because several qualified repairers have been unable to solve the problem
- The vehicle is significantly different from the description, sample or demonstration model shown to the consumer. For example, a consumer orders a vehicle with a diesel engine after test-driving the demonstration model, but the vehicle delivered has a petrol engine
- The vehicle is substantially unfit for its normal purpose and cannot easily be made fit within a reasonable time. For example, the engine of a vehicle with a stated towing capacity of 3500 kgs and normally used for towing, has a design flaw that cannot be easily fixed which causes it to overheat when it tows a load of more than 2500 kgs
- The vehicle is substantially unfit for a purpose that the consumer told the dealer about, and cannot easily be made fit within a reasonable time. For example, a vehicle does not have enough towing capacity to tow a consumer's boat, despite the consumer telling the dealer the specifications required to tow the boat
- The vehicle is unsafe. What is 'unsafe' will depend on the circumstances of each case. For example, a vehicle has faulty brakes that cause the vehicle to require a significantly greater braking distance than would be safe for normal use. When there is a major failure to comply with a consumer guarantee, the consumer can choose to:
  - reject the vehicle and choose a repair, refund or an identical replacement (or one of similar type and value if reasonably available) from whoever supplied the vehicle (e.g. the dealer), or
  - keep the vehicle and ask for compensation, from the dealer or the manufacturer, for any drop in its value caused by the failure of the vehicle to comply with a consumer guarantee, and compensation for any reasonably foreseeable loss suffered due to the failure of the vehicle to meet the consumer guarantees.

### **Additional guidance on criteria for determining a major failure**

While examination of a vehicle will likely be required to identify the nature of a fault, the CCA does not require an involved process of diagnosis to determine if a vehicle's failure is 'major'. You should approach consumer claims for remedies from the perspective of whether a reasonable consumer would have bought the vehicle if they had known of the full nature and extent of the failure at the time of purchase. In particular:

- if a manufacturing defect causes a vehicle to become immobile and not drivable, and this defect cannot be easily repaired with the result that the vehicle is not able to be used within a reasonable time, this is likely to constitute a major failure to comply with the consumer guarantee of acceptable quality
- Where a vehicle experiences multiple minor failures which necessitate multiple or repeated repairs with the result that the vehicle cannot be used by the owner for unreasonable periods of time (e.g. because the vehicle is not in the owner's possession), this is likely to constitute a major failure to comply with the consumer guarantee of acceptable quality.

**Example 1:**

Within the first 60 days after purchase, a manufacturing defect caused a vehicle to become immobile and not drivable, and the dealer was unable to repair the vehicle within a reasonable number of days. The vehicle is unlikely to meet the consumer guarantee of acceptable quality, and a reasonable consumer is unlikely to have bought a vehicle if they had known the vehicle would develop such serious defects shortly after purchase. Therefore, the failure is likely to be a major failure of the vehicle to comply with the consumer guarantee of acceptable quality.

**Example 2:**

Shortly after purchase, a manufacturing defect caused a vehicle to develop excessive noisiness. During each attempted repair, the vehicle was not able to be used by the consumer for extended periods (e.g. because the vehicle was not in the owner's possession), for a combined period of five weeks. The vehicle is unlikely to meet the consumer guarantee of acceptable quality, and moreover, a reasonable consumer is unlikely to have bought a new vehicle if they had known the full extent of the vehicle's problems. Therefore, the failure is likely to be a major failure of the vehicle to comply with the consumer guarantee of acceptable quality.

**Example 3:**

A vehicle is approximately three years old. During the three years, a few relatively minor issues have occurred. Firstly, after about one year, a piece of interior trim came loose and the dealer was able to repair it. After about two years the satellite navigation system developed a glitch, which the dealer was easily able to fix with a software update. At three years of age, the boot latch broke, which the dealer was able to quickly and easily replace. Each issue was able to be easily repaired, and the vehicle was able to be used normally. Therefore, even though each individual failure is likely to be a minor failure of the vehicle to comply with the consumer guarantee of acceptable quality, these failures, which occurred over a three-year timeframe and do not reflect a recurrent or systemic issue, do not constitute a major failure.

**Minor failures**

Minor failures to comply with the consumer guarantees of acceptable quality or fitness for purpose include those where a vehicle has a fault that significantly affects its operation, but can be fixed within a reasonable time. For example:

- A vehicle where the windscreen wipers stop working
- A vehicle fault that can be rectified with a software update

- A vehicle with a small fault in its transmission, which the manufacturer can quickly resolve by, for example, replacing the entire transmission rather than repairing only the faulty component.

A minor failure does not initially allow the consumer to reject the vehicle and demand a refund, replacement or compensation for the difference in value—even if the vehicle is immobile and not drivable for a short period of time (e.g. several days).

**Example:**

A consumer buys a new vehicle, and it soon develops a slight rattling noise that does not interfere with its normal operation. The consumer returns the vehicle to the dealer, who inspects it, determines the cause of the noise and offers to repair it in two days. The consumer refuses this offer and demands a refund, claiming a major failure to comply with the guarantee of acceptable quality. However, in these circumstances, the fault would most likely be considered a minor failure, if capable of being fixed within a reasonable time. The dealer would not have to offer a refund in this case.

When the failure to comply with a consumer guarantee is minor, you are not held to repairing it. You can choose between providing a repair or offering the consumer a refund or an identical replacement (or one of similar value if reasonably available).

If you have identified a minor failure, but have not been able to fix it within a reasonable time, the consumer can choose to get the job done elsewhere and charge you the reasonable costs of this repair or can treat the failure as major. This applies even if the delay is due to unavailability of parts. See ‘Inability to repair within a reasonable time’ on page 21.

**Major failure—when consumers are not entitled to reject goods**

A consumer cannot reject a vehicle if the:

- Rejection period has passed
- Consumer has lost, destroyed or disposed of the vehicle
- Vehicle was damaged after being delivered to the consumer
- Vehicle, part or component has been attached to, or incorporated in, some other property and cannot be detached without damaging it
- Consumer has caused the problem through their own action or inaction—see ‘Abnormal use’.

The ‘rejection period’ is the period commencing from the time a consumer bought a vehicle, during which it would be reasonable to expect a problem to appear.

The length of a vehicle’s ‘rejection period’ is yet to be the subject of significant judicial consideration, however, there is nothing in the CCA to suggest that its application is related to the concept of warranties. It is therefore entirely possible that the warranty period can end before the rejection period ends. It is also possible that a latent defect does not become ‘apparent’ until it has been identified and diagnosed. In determining whether the rejection period has passed, it is relevant to consider the:

- Type of vehicle
- Way in which the consumer is likely to use it
- Length of time, and amount of use, that would reasonably be expected to elapse before the problem becomes apparent.

**Abnormal use**

Vehicles are not expected to be indestructible; a consumer's use of a vehicle can affect its durability.

The guarantee of acceptable quality will not apply if the consumer:

- uses a vehicle abnormally
- causes the quality of a vehicle to become unacceptable
- fails to take reasonable steps to avoid the quality becoming unacceptable.

The law does not define 'abnormal use'. However, examples of abnormal use would include:

- A soft-top vehicle is left out in the rain with its roof open, resulting in damage to the interior
- A two-wheel drive vehicle being consistently driven in lower traction over rough surfaces that are better suited for four-wheel-drive vehicles.

There is a difference between damage caused by abnormal use, and gradual deterioration (also called 'wear and tear') caused by a consumer's normal use of a vehicle. Wear and tear involves the eventual wearing out of parts to the point where they no longer work, as well as such things as scuffing, scratching or discolouration that would predictably occur over time when the vehicle is used normally. Normal wear and tear is not a minor or major failure.

If a consumer uses a vehicle normally, and its condition deteriorates faster or to a greater extent than would usually be expected, then the vehicle may have failed to meet the guarantee of acceptable quality and the consumer may be entitled to a remedy.

**Example:**

A consumer buys a new vehicle, and takes due care to maintain the condition of the vehicle's exterior. One year after purchase the dealer conducts a routine service and determines the vehicle needs to be repainted to prevent the onset of rust. The dealer cannot refuse to repaint the vehicle by claiming the consumer's use of the vehicle was abnormal.

**Inability to repair within a reasonable time**

A reasonable repair time, for the purpose of determining whether a fault is major, is assessed taking into account the nature of the problem and the difficulty in identifying it. Otherwise, the assessment is on the basis of all things being normal or equal; for example, that parts are available. A failure that is initially assessed as minor but which is not fixed within a reasonable time, for example, because parts subsequently become unavailable, or because of any other reason beyond your control) gives the consumer the right to reject the vehicle. If multiple repair attempts are required to remedy a single minor failure, which is indicative of a systemic problem, you should consider the combined length of all the repair attempts (and not the individual length of each repair in isolation), when deciding if the repair time is 'reasonable'. Similarly, if multiple repair attempts are required to remedy different types of minor failure, this may ultimately constitute a major failure of the guarantee of acceptable quality, for example if a reasonable consumer fully acquainted with the combined length of those repair attempts would not have acquired the vehicle. If you initially consider the fault can be repaired within a reasonable time, the consumer must give you a chance to do so.

**Example 1:**

A two year old vehicle suffered from a manufacturing defect that caused the engine (and vehicle) to seize. The dealer initially assessed the repair as taking a day or two but despite the dealer's best attempts, the vehicle was unable to be repaired within five weeks. This indicates that the fault was not one that could be fixed within a reasonable time, there was a major failure to comply with the consumer guarantees, and the consumer was entitled to reject the vehicle under the consumer guarantees.

**Example 2:**

An 18-month-old vehicle had an intermittent electrical fault that caused a warning light to activate from time to time. The consumer accepted that the fault was minor and asked the dealer to repair it, but the warning light did not activate while the vehicle was in for repair, so it was not possible to identify the cause of the problem. The consumer returned the vehicle for a second and third attempted repair, and the dealer was eventually able to identify and repair the fault. The consumer was not entitled to reject the vehicle, as the time taken to remedy the fault was reasonable when the nature of the fault was taken into account.

**Change of mind**

You do not have to give a refund when a consumer simply changes their mind about a vehicle; for example, they no longer like it, or they found it cheaper elsewhere. However, you can choose to have a policy to offer a refund or replacement when a consumer changes their mind over and above your statutory obligations. If so, you must abide by this policy.

**Warranties****Warranties against defects or 'manufacturer's warranty'**

You, or the vehicle manufacturer, may provide a warranty that promises consumers that:

- Products (such as vehicles) or services will be free from defects for a certain period of time
- Defects will entitle the consumer to repair, replacement, refund or other compensation. This is called a 'warranty against defects', also commonly called a 'manufacturer's warranty'.

**Example:**

A consumer buys a vehicle that comes with a manufacturer's warranty. The warranty says the manufacturer will repair the vehicle at no cost if it has a mechanical failure within three years of the purchase date. A warranty against defects document must meet a number of requirements, including that it:

- contains the mandatory text: 'Our goods come with guarantees that cannot be excluded under the CCA. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'
- is expressed in a transparent way— in plain language, legible and presented clearly
- Prominently states the warrantor's name, business address, phone number and email address (if any)
- Sets out relevant claim periods or procedures.

Warranties against defects may set out requirements that consumers must comply with.

For example, a warranty against defects on a vehicle may require the consumer to ensure any servicing is carried out:

- By qualified staff
- According to the manufacturer's specification
- using appropriate quality parts where required.

If you wish to seek to restrict a consumer's freedom to choose, for example, who they use as a repairer, you should get legal advice on the prohibitions on 'exclusive dealing' found in the CCA 2016. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal. For more information, contact the Ministry of Commerce, Industry and Labour's Fair Trading division.

### **Warranty start date**

You need to be clear about the date that your warranty commences, particularly in circumstances where a sale is recorded, or a vehicle is registered or otherwise in use before it has been purchased by a consumer. This can be the case in instances such as the use of and subsequent sale of demonstrator vehicles and can cause a vehicle's warranty to commence before the vehicle is purchased by a consumer. If the vehicle's warranty starts before the consumer buys the vehicle, you should disclose this to the consumer at the time of purchase.

### **Express warranties**

An express warranty is different from a warranty against defects or 'manufacturer's warranty'. As one of the consumer guarantees, vehicles must satisfy any extra promises—'express warranties'—you or a manufacturer has made about them. An express warranty focuses on a promise or promises, for example, about what the vehicle will look like, will do (or is capable of doing) and for how long. Sometimes a warranty against defects may contain an express warranty.

#### **Example:**

When a consumer buys a utility vehicle, the written warranty (the warranty against defects) states that the tray can hold up to 1000 kgs, or if not, the tray will be replaced. This is an express warranty about what the vehicle can do. If the tray breaks after a load weighing 500 kgs is placed on it, the consumer can insist that the express warranty contained in the warranty against defects be honoured (i.e. a replacement tray). If not, they will be entitled to a remedy.

### **Extended warranties**

An extended warranty offered at the point of sale or at the end of a manufacturer's warranty extends the coverage provided in the original manufacturer's warranty, usually at an additional cost. The consumer guarantees provide rights to consumers that exist despite anything the dealer or manufacturer may say or do. Extended warranties are optional. They are in addition to, and do not replace, the consumer guarantees. If you are selling extended warranties, you need to ensure that you are offering something of value to the consumer— something that does not simply mirror consumers' rights under the law as this may be misleading.

You must not:

- Pressure consumers to buy an extended warranty
- tell a consumer that an extended warranty provides them with additional protections when such a warranty does not provide them with any benefits above and beyond their consumer guarantees rights.

When selling extended warranties, you should explain to the consumer what an extended warranty would provide, over and above the consumer's rights under the consumer guarantees.

Extended warranties may set out requirements that consumers must comply with. For example, an extended warranty on a vehicle may require the consumer to ensure any servicing is carried out:

- By qualified staff
- According to the manufacturer's specification
- using appropriate quality parts where required.

If you wish to seek to restrict a consumer's freedom to choose, for example, who they use as a repairer, you should get legal advice on the prohibitions on 'exclusive dealing' found in the Competition and Consumer Act 2016. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal. For more information, contact the Ministry of Commerce, Industry and Labour's Fair Trading division.

### **Warranties and consumer guarantees**

A warranty does not change your responsibilities under the CCA. The consumer guarantees apply in the same way regardless of whether a vehicle is covered by a manufacturer's warranty, an express warranty or an extended warranty, or whether those warranties have expired.

### **Used vehicles**

#### **Statutory warranties on used vehicles**

These warranties are in addition to the consumer guarantees. For example, when a person buys a second-hand vehicle from a dealer that was manufactured not more than 10 years before the date it was sold and has been driven for less than **160 000 kms**, that person has a particular statutory warranty that defects will be repaired or otherwise made good. After a statutory warranty has expired, the consumer may still have rights to a remedy under the CCA if there is a problem with the vehicle. However, the level of protection will depend on things such as the vehicle's age and condition.

#### **Used vehicles not covered by statutory warranties**

Even if a used vehicle sold by a licensed trader is not covered by a statutory warranty, it will still be covered by the consumer guarantees.

#### **Example:**

A consumer buys a used four-wheel drive vehicle which is not covered by a statutory warranty as it has travelled too many kilometres. However, it is a top-of-the-range vehicle and is only three years old, so when the engine seizes three months after purchase due to a manufacturing defect, rendering the vehicle immobile and not drivable, this is likely to be a failure to meet the guarantee of acceptable quality under the CCA and the dealer should provide an appropriate remedy.

### **Remedies available for a failure to meet the consumer guarantees relating to vehicles**

Under the CCA, there are numerous remedies available when the consumer guarantees that apply to new and used vehicles sold to a consumer haven't been met. Table 2 outlines the automatic, statutory consumer guarantees relating to the supply of vehicles.

**Table 2: Outline of remedies for consumer guarantees relating to vehicles**

Type of failure	The remedy that is available
<p><b>Major failures</b>                      These cannot be fixed or are too difficult to fix within a reasonable time. A failure is major if:</p> <ul style="list-style-type: none"> <li>• a reasonable consumer who was fully aware of the nature and extent of the failure would not have bought the vehicle, part or service, or</li> <li>• the failure prevents the consumer from using the vehicle, part or service for the purpose that vehicles, parts or services of that kind are commonly supplied for (or for a purpose they disclosed to the supplier before purchasing), and it cannot be fixed within a reasonable time, or</li> <li>• The vehicle, part or service is unsafe or creates an unsafe situation.</li> </ul>	<p>The <b>consumer</b> chooses between a repair, replacement or refund, or compensation for the drop in value of the vehicle or part from the supplier.*</p> <ul style="list-style-type: none"> <li>• The consumer may also recover damages from the supplier for any loss or damage they suffer.</li> </ul>
<p><b>Minor failures</b>                      These can normally be fixed or resolved in a reasonable amount of time.</p>	<p>The supplier* chooses between a repair, replacement or refund.</p> <ul style="list-style-type: none"> <li>• Repairs must be done within a reasonable time and without charge.                             <ul style="list-style-type: none"> <li>– If not, the consumer can request a free replacement or refund, or repair elsewhere and recover the costs from the supplier.</li> </ul> </li> </ul> <p>The consumer may also recover damages from the supplier for any loss or damage they suffer.</p>
<p>In some cases the consumer can approach the manufacturer directly to recover damages for both major and minor failures. If a manufacturer fails to meet a relevant consumer guarantee (including the guarantee of acceptable quality— as indicated in table 1), the consumer is entitled to recover damages from the manufacturer, and in some circumstances, additional damages for reasonably foreseeable consequential loss.</p>	