

A Guide for Motor Vehicle Traders

MOTOR VEHICLE DISPUTES TRIBUNAL | RŌPŪ TAKE TAUTOHENGA Ā-WAKA



THIS GUIDE CONTAINS INFORMATION FOR TRADERS WHO ARE THE RESPONDENT TO A MOTOR VEHICLE DISPUTES TRIBUNAL CLAIM

The Motor Vehicle Disputes Tribunal

Where there is a dispute relating to a vehicle purchased from a registered motor vehicle trader (or any other person who meets the definition of a motor vehicle trader) the purchaser of the vehicle can take a claim to the Motor Vehicle Disputes Tribunal (MVDT).

What claims can be considered by the MVDT?

The MVDT can hear claims about motor vehicles under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017.

The most common claims heard by the MVDT are about:

- the quality of the vehicle, for example if it has a fault or faults. These claims normally relate to the guarantees in the Consumer Guarantees Act 1993; or
- misleading and deceptive conduct, for example misleading representations about a vehicle's age, history or quality. These claims are normally brought under the Fair Trading Act 1986.

The MVDT can hear claims up to \$100,000, or more if both parties to the claim agree in writing. The Tribunal cannot hear counterclaims.

What happens when the MVDT receives a claim?

Once the MVDT receives a claim against you or your company, it will refer the claim to you by sending a copy of the application form and the other documents provided by the applicant.

You are then required to contact the applicant to discuss the claim and file a report on the outcome of those discussions within 14 days. Costs can be ordered against you if you fail to engage in those discussions.

If the claim is not settled following those discussions, the matter is set down for a hearing.

Responding to a claim

Although the applicant must prove its claim on the balance of probabilities, it is your responsibility to present your side of the story.

Before the hearing, you should collect and provide the following information to the MVDT:

1. A clear written chronology of all relevant events from your perspective
2. Your copy of the consumer information notice and the vehicle offer and sale agreement (if those documents have not been provided by the applicant or if the applicant's copy is different)
3. Any invoices for relevant costs you have incurred in relation to the vehicle and any quotes or estimates of costs relating to any relevant issues

4. All import and compliance documents for the vehicle – particularly if the claim relates to defects with, or representations made about, a recently imported vehicle
5. A copy of the pre-purchase warrant of fitness inspection sheet – if the claim relates to alleged warrant of fitness failures that arose shortly after purchase
6. A copy of all diagnostic or technical evidence you rely upon in your defence
7. A copy of the advertisement for the sale of the motor vehicle (if applicable)
8. A copy of all relevant correspondence with the applicant
9. Any other information requested by the MVDT.

Collecting that information in advance will assist you in thoroughly preparing to respond to the claim. Providing that information to the MVDT in advance enables the Tribunal to have a clear understanding of your defence and assists the Tribunal in determining what the relevant issues at the hearing are likely to be.

Information requests

MVDT applications are heard and determined by an adjudicator (who is an experienced lawyer), assisted by an assessor (who is an experienced automotive technician). Before the hearing, the adjudicator may request you to provide information which the adjudicator considers to be relevant to the claim or to any defence that you may have. You should provide that information if you have it or are reasonably able to obtain it.

The hearing

You will receive a Notice of Hearing from the case manager once a hearing date has been assigned.

The adjudicator decides where the hearing will be. Hearings are often held by audio-visual link, which enables to parties to attend remotely. The case manager will provide details in advance if the hearing is proceeding in this manner. Where an in-person hearing is held, that hearing will usually (but not always) held at the town/city where the sale occurred.

What do you need to do before the hearing?

Before you attend a hearing, you should:

- plan what you will say at the hearing
- make sure you have all the information and evidence together and have provided it to the MVDT in advance
- ensure your witnesses are available to attend the hearing. If your witness cannot attend in person, please notify the case manager and arrangements will be made for the witness to attend by audio-visual link
- ensure you have provided all the documents to the Tribunal in plenty of time before the hearing

In addition, please inform the MVDT immediately if you change your address, telephone number or email address. This is very important because the MVDT staff may need to contact you at any time up to the hearing.

Right to appear at hearings

The parties to a claim have the right to attend and be heard at any hearing of that claim. In appropriate circumstances, the adjudicator may permit a party to be represented at the hearing by someone else. This is always necessary where a party is a company.

Parties cannot be represented at the hearing by anyone who is or has been a lawyer or who has regularly been involved in advocacy work before other tribunals unless that person is the respondent or an officer (eg employee or director) of the respondent.

Any party (other than a company represented by an employee or director) who wishes to be represented by someone else should seek approval from the adjudicator before the hearing.

Do I need to attend the hearing?

Yes. If you do not attend, the case may be determined in your absence. Failure to attend the hearing without good cause may also result in an award of costs against you.

Can I have an interpreter?

Yes. If you need an interpreter, please ask the MVDT at least two weeks before the hearing to arrange for one to be present. This service is free of charge.

Adjournments

An application for an adjournment will only be granted if there are good reasons to justify the adjournment. The consent of the other party to an adjournment is not of itself a sufficient reason for an adjournment to be granted.

An application for an adjournment must be made at the earliest possible opportunity. The application must set out the reasons why an adjournment is necessary and be signed by the representative of the trader seeking the adjournment. The application must be accompanied by any documents that support the reasons for seeking an adjournment (such as a medical certificate, travel documents etc).

An application for an adjournment made less than five working days prior to the hearing date will not be granted unless there are extraordinary and compelling reasons for the matter to be adjourned. Where an adjournment is granted, the matter will not be adjourned indefinitely, but will be re-listed as soon as possible.

What happens at the hearing?

1. The applicant presents their claim. The adjudicator may permit the you to ask the applicant's witnesses some questions.
2. You then present your response and the evidence of any witnesses. The adjudicator may permit the applicant to ask your witnesses some questions.
3. The adjudicator may give the applicant an opportunity to briefly reply to what you have said.
4. Throughout the hearing, the adjudicator and the assessor will ask you and the applicant questions.

The decision

After the hearing, the Tribunal will issue a written decision.

If you are dissatisfied with a decision given by the MVDT you can appeal to the District Court within 10 working days after notice of the decision is given to you.

You should also refer to Schedule 1, clause 16 of the Motor Vehicle Sales Act 2003 and Part 18 of the District Court Rules 2014 to ensure that you are aware of the grounds for an appeal and the process you must follow. The District Court staff will help guide you through this process, but you may also wish to obtain legal advice from your lawyer or Community Law Centre.

MVDT contact details

Motor Vehicle Disputes Tribunal
Tribunals Unit
DX: EX11086

Ph: 0800 COURTS – 0800 268787
Fax: (09) 916 9806
Email: mvdt@justice.govt.nz

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