

REVIEW OF THE OPERATION OF THE MOTOR VEHICLE SALES ACT 2003

Presented to the House of Representatives
pursuant to section 163 of the Motor Vehicle Sales
Act 2003

March 2006



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CONTENTS

EXECUTIVE SUMMARY	III
Registration - The Motor Vehicle Traders Register (MVTR)	iii
Information Disclosure - The Supplier Information Notice (SIN)	iv
Disputes Resolution - The Motor Vehicle Disputes Tribunal (MVDT)	v
Overall conclusions	vi
Recommended amendments to the Motor Vehicle Sales Act 2003.....	vii
Recommended amendments to the Consumer Information Standards (Used Motor Vehicles) Regulations 2003.....	ix
INTRODUCTION	1
Scope of the review	1
Consultation.....	2
MVSA Monitoring and Evaluation Project 2003-2005.....	2
MARKET CONTEXT.....	4
PROMOTING THE NEW ACT	6
Education and Information Campaign 2003-2004	6
Effectiveness of the campaign.....	8
Other public relations activities	9
MOTOR VEHICLE TRADERS REGISTRATION REGIME	10
Motor Vehicle Traders Register (MVTR).....	10
Key elements of the registration regime	10
Implementation	12
Assessment against the registration objectives	15
Specific Issues.....	20
Concluding comments on the motor vehicle trader registration regime	25
Recommended amendments to the MVSA in relation to registration	26
MOTOR VEHICLE INFORMATION DISCLOSURE	27
Supplier Information Notice (SIN)	27
Key elements of the information disclosure regime	27
Implementation	28
Assessment against the consumer information disclosure objectives	30
Specific Issues.....	35
Concluding comments on motor vehicle information disclosure	42
Recommended amendments to the MVSA in relation to information disclosure	43
Recommended amendments to the Consumer Information Standards (Used Motor Vehicles) Regulations 2003.....	43
MOTOR VEHICLE DISPUTES RESOLUTION REGIME	45
Motor Vehicle Disputes Tribunal (MVDT)	45
Key elements of the disputes resolution regime	45
Implementation	47
Assessment against the disputes resolution objectives	49
Specific Issues.....	58
Concluding comments on disputes resolution under the MVSA	62

Recommended amendments to the MVSA in relation to disputes resolution	63
OVERALL SUMMARY OF MVSA REVIEW FINDINGS	64
Registration	64
Information disclosure	64
Disputes resolution	65
General.....	65
Recommended amendments to the MVSA	65
Recommended Amendments to the Consumer Information Standards (Used Motor Vehicles) Regulations 2003.....	68
APPENDIX ONE:	69
APPENDIX TWO:.....	70
APPENDIX THREE:.....	96

EXECUTIVE SUMMARY

The Motor Vehicles Sales Act 2003 (MVSA) came into force in December 2003. This legislation made fundamental changes to the way in which sales of motor vehicles were regulated. A registration regime, administered and enforced by government agencies, replaced the previously industry controlled licensing regime. Some restrictions on who could participate and how they could participate in this market were lifted. The Motor Vehicle Fidelity Guarantee Fund was discontinued and the scope of claims that could be taken to the Motor Vehicle Disputes Tribunal was widened. New information disclosure requirements were introduced in the form of a Consumer Information Standard under the Fair Trading Act 1986.

Section 163 of the MVSA requires the Ministry of Consumer Affairs to undertake a review of the operation of the MVSA within two years of its commencement, and to report back to the Minister with recommendations on whether any amendments to the MVSA are necessary, or desirable.

The MVSA put in place three core operational mechanisms or instruments. This report focuses its discussion on these core instruments -

- Registration - the Motor Vehicle Traders Register
- Information disclosure - the Supplier Information Notice
- Disputes resolution - the Motor Vehicle Disputes Tribunal.

Registration - The Motor Vehicle Traders Register (MVTR)

Under the MVSA all motor vehicle traders must be registered. A motor vehicle trader is defined as any person who carries on the business of motor vehicle trading and includes a car market operator, a car auctioneer and a car consultant. A motor vehicle trader is also any person, who in any way represents that they are carrying on the business of motor vehicle trading, or sells more than six vehicles within a 12 month period, or imports more than three vehicles within a 12 month period.

The major focus of the Motor Vehicle Traders Registrar in the first 18 months to June 2005 was to manage the transition from an industry controlled licensing regime, to ensure that all those participating in the business of motor vehicle trading were informed of their obligations to register and to encourage voluntary compliance with those obligations.

Systems for administering the registration regime are established and operating well. As of 30 June 2005, the Registrar had handled 6,274 applications and there were 3,182 motor vehicle traders registered under the MVSA, which exceeds the pre 2003 estimate and includes motor vehicle importers (12.4 percent), auctioneers and those operating car markets or selling through the internet (6.3 percent). Seventy percent of registered traders made an online application.

The final six months of the review period have seen an increase in prosecution activity, signalling a move from a voluntary compliance approach to a more enforcement oriented approach.

It is suggested that the removal of the requirement for motor vehicle traders to operate from a physically located car yard has introduced a less visible type of trader into the retail market and that consumers are more vulnerable to “fly-by-night” operations. Some traditional operators have felt compelled to change their own methods of operating, to reduce overheads, in order to compete with those not maintaining an independent car yard. Internet sales, both private and commercial, have also increased markedly.

In the two years of operation, 83 applicants were refused registration. Ninety-five people have had their registration cancelled or surrendered. People who have their registration cancelled are disqualified from registration for a further five year period, while those struck-off must meet the Registrar’s requirements before re-registration will be considered. Two people have been banned outright and convictions have been entered against the names of three others for illegal trading. There are currently 14 cases before the courts and 13 under investigation.

At this early stage of the MVSA, it is considered that for the most part the registration criteria have been set at an appropriate level and that the legislation has sufficient tools within it to deal adequately with those who are prepared to behave unethically. There are some minor changes that could be made to the MVSA to reduce unnecessary compliance costs, but overall the registration aspects of the regime are functioning well.

Information Disclosure - The Supplier Information Notice (SIN)

The information disclosure requirements are commonly referred to as the Supplier Information Notice (SIN). The SIN relates to used motor vehicles only and contains detailed information about the particular motor vehicle offered for sale as well as general consumer information relevant to motor vehicle purchases. The vehicle information relates to details about the vehicle’s age, usage, make and model, whether another person has a security interest in it, etc. A SIN must be attached to all used motor vehicles that are offered or displayed for sale by a motor vehicle trader, or by persons selling through a car market operator. The New Zealand Commerce Commission is charged with responsibility for enforcing the SIN.

By December 2005 (after two years of operation of the MVSA) the Commission had received 187 complaints or enquiries about the MVSA. It had undertaken 185 inspections, from which 65 warning notices have been issued. In 79 instances compliance advice was provided, in 3 cases settlements were negotiated, and 1 prosecution was undertaken.

In the first year of operation of the MVSA, monitoring activity has shown that SIN display compliance was poor. This could be attributed to the fact it was the initial education phase where motor vehicle traders were coming to grips with their obligations. More recent investigation has shown that SIN display compliance has

improved, providing customers with the required information relating to their purchase.

There is a general impression, however, that the levels of compliance vary within different parts of the industry. Traditional traders, particularly those operating from a physical car yard and who are supported through their membership of an industry association, appear more likely to meet the SIN requirements than those trading either through the internet or through car fairs or display for sale operations.

Other concerns have been raised which impact on whether consumers are provided with accurate and meaningful information. There is also demand from motor vehicle traders and consumers to have additional information such as features and accessories as well as information about the number of owners on the SIN. Presently including such information on the SIN is not permitted, but it may be supplied on a supplementary form.

It is considered that the concept of the SIN remains sound. It is an important information tool for providing essential and meaningful details about a particular motor vehicle that a consumer is considering purchasing and is a fundamental means to assisting consumers to transact with confidence.

There are concerns, however, that the SIN attempts too much, and in doing so, negates its effect as an effective information resource. Due to its prescriptive nature several issues have arisen with the information required and the form in which it is to be provided. These issues are mainly minor and technical in nature but the way in which the information is currently presented detracts from the value of that information.

There are many different viewpoints and concerns regarding the SIN. Proposals to address the concerns raised need to be more fully developed and consulted widely with both industry and consumer interests. An early and comprehensive review of the SIN is, accordingly, recommended and is underway.

Disputes Resolution - The Motor Vehicle Disputes Tribunal (MVDT)

The Motor Vehicle Disputes Tribunal (MVDT) is a special Tribunal set up to hear claims relating to purchases of motor vehicles. It is administered by the Tribunals Unit of the Ministry of Justice.

There are currently four Motor Vehicle Disputes Tribunals; three permanent and one travelling Tribunal. There are 3 adjudicators, 2 based in Auckland and 1 based in Wellington. Each Tribunal consists of an adjudicator and an assessor.

On average, for the period 15 December 2003 to 30 June 2005, the MVDT 0800 telephone number received 533 calls per month, 141 information packs were sent out per month and 31 applications were filed per month. In the same period the MVDT received a total of 390 claims. More than half of the disputes were filed at the Auckland MVDT and the majority of claims heard at the MVDT were founded upon consumer protections set up in the Consumer Guarantees Act 1993.

The MVDT is intended to be an efficient means of redress for consumers and largely, this is the case. There are concerns relating to the frequency and geographic location of hearings, delays in hearings, and lack of both consumer and industry awareness and understanding of the full provisions of the MVDT. This is not unexpected given the short period of operation, and the need for the MVDT to complete claims arising under the previous regime before it could fully focus on the new Act. However Schedule 1 of the MVSA which outlines the administrative procedures for dealing with applications should be reviewed to allow more appropriate administrative support for the adjudicators.

For many consumers the purchase of a motor vehicle is not just based on the particulars of the vehicle but may rest equally on the finance that may be made available for the purchase. The motor vehicle trader often takes an active part in facilitating these finance arrangements and consideration should be given to extending the jurisdiction of the MVDT to also include claims made under the Credit Contract and Consumers Finance Act 2003.

Consideration also needs to be given to providing wider information on the role of the MVDT and to regularly promoting its existence as well as emphasising the benefits of the specialist expertise of the MVDT.

The MVDT should have a focus on dealing more firmly with non-compliant traders who flout the processes of the Tribunal so that consumers gain more confidence in the MVDT and thus the wider industry. It will also be important that information is shared across agencies in relation to claims that are made but cannot be pursued because the trader has ceased trading. This will enable better utilisation of the banning powers under s68(b) or s69 of the MVSA .

The removal of the Motor Vehicle Dealers Fidelity Guarantee Fund has denied some consumers a full remedy. For others, the wider application of the MVDT to enable access to redress under the Consumer Guarantees Act has brought better remedies. It will be important to continue to monitor trader behaviour in this area and for government agencies to develop robust information sharing arrangements.

Overall conclusions

Compliance is a key component of the successful implementation of the MVSA. It is not unexpected therefore that the agencies charged with the various administrative and enforcement functions of the MVSA have focussed their activity in the first two years of operation, on ensuring that industry participants are informed about their obligations and encouraged to meet these through voluntary compliance.

The report has identified some minor amendments to the Act that would be desirable. In addition a full and comprehensive review of the regulations prescribing the Supplier Information Notice is recommended and is underway.

In the longer term it will be critical to the effectiveness of the regime, and for optimal protection for consumers, that the enforcement agencies develop a visible enforcement profile, particularly in those areas where the traders themselves are not as clearly identified in the market to consumers. Between them, the Registrar, National Enforcement Unit, Commerce Commission and the Motor Vehicle Disputes

Tribunal collect considerable information about trading activity and behaviour. More regular information sharing between agencies will assist in prioritising enforcement effort.

It has been suggested that the number of agencies involved in administering and enforcing the MVSA has the potential to confuse consumers and deter them from following through with reporting incidences of non-compliance. The nomination of at least four agencies holding consumer information on the Supplier Information Notice highlights the range of agencies a consumer may have to deal with. It is recommended that consideration be given to the creation of a single central consumer contact point.

Recommended amendments to the Motor Vehicle Sales Act 2003

A specific requirement of this review is to make recommendations on whether any amendments to the MVSA are necessary or desirable.

Recommendation 1

Renewal of registration of motor vehicle traders

It is recommended that section 39(2) be amended to remove the requirement for motor vehicle traders to make an annual statutory declaration of their trading details where these have not changed. This would be replaced by the requirement to confirm with each annual renewal that details have not changed (see discussion pages 20 and 21).

Recommendation 2

Provision of IRD number as part of the details required on registration application

It is recommended that consideration be given to amending section 32 to include the requirement that applicants for registration as a motor vehicle trader provide details also of their IRD number (see discussion page 21).

Recommendation 3

Technical amendment to the CC rating of motor cycles

It is recommended that section 6 (b)(iii), the definition of motor vehicle, be amended to exclude motor cycles up to 50cc (not 60cc as currently worded) to reflect ratings used on other relevant legislation (see discussion page 23).

Recommendation 4

Amendment to banning provisions

It is recommended that section 68(1)(c) be amended to ensure that persons convicted of breaches of the MVSA that would invoke the banning provisions while registered, are similarly banned regardless of their registration status at the time of conviction (see discussion pages 24 and 25).

Recommendation 5
Clarification and tightening of requirements on car market operators to provide SIN

It is recommended that section 14 be clarified as to the responsibilities placed on car market operators with regard to providing the SIN, in particular in relation to internet sales and that consideration be given to removing the section 14 (2) provision that requires car market operators only to take reasonable steps to ensure that a consumer provides a SIN, thereby strengthening car market operators responsibility in this area (see discussion pages 37 to 39).

Recommendation 6
Extension of inspection powers to Commerce Commission

It is recommended that consideration be given to amending the inspection powers of sections 124 to 129 to also include the Commerce Commission to allow appropriate enforcement of the information provisions of the MVSA (and this should be explored in conjunction with work already in progress regarding similar powers under the Fair Trading Act 1986) (see discussion page 41).

Recommendation 7
Exemption from requirements to provide a SIN when transactions are exclusively between registered traders

It is recommended that section 14 and section 16 be amended to exempt from the SIN requirements, transactions that are exclusively between registered motor vehicle traders, and between registered motor vehicle traders and car wreckers as defined in the MVSA (see discussion pages 41 and 42).

Recommendation 8
Ability to award costs to any party for non attendance at Motor Vehicle Disputes Tribunal hearings

It is recommended that section 14 of Schedule 1 be amended to allow costs to be awarded against any party to a claim, for non attendance at a hearing for no good cause (see discussion page 51).

Recommendation 9
Administrative procedures of the Tribunal

It is recommended that Schedule 1 be reviewed and administrative procedures amended to reflect those of the ordinary Disputes Tribunal, where appropriate (see discussion page 52).

Recommendation 10
Submission of Adjudicators' annual reports

It is recommended that section 87 be amended to provide a timeframe within which the Adjudicators' annual reports are to be submitted and to deal appropriately with the receipt of multiple reports (see discussion page 54).

Recommendation 11**Extension of the jurisdiction of the Motor Vehicle Disputes Tribunal**

It is recommended that section 89 be extended to allow the Motor Vehicle Disputes Tribunal to also consider claims under the Consumer Credit and Consumer Finance Act 2003 (see discussion pages 56 and 57).

Recommendation 12**Publication of decisions of the Motor Vehicle Disputes Tribunal**

It is recommended that consideration be given to amending section 94 to allow the Motor Vehicle Disputes Tribunal to direct the publication of a notice of a decision made against the applicant, where there is a public benefit in so doing (see discussion page 60).

Recommended amendments to the Consumer Information Standards (Used Motor Vehicles) Regulations 2003**Recommendation 13****Review of the Supplier Information Notice**

It is recommended that a comprehensive review of the information requirements and the form in which the information be provided as set out in Schedules I and II of the Regulations be undertaken. This review is underway (see discussion pages 31 to 33).

Recommendation 14**Exemption from requirements to provide a SIN when transactions are exclusively between registered traders and car wreckers.**

It is recommended that the exemption in section 4 of the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 be extended to include transactions between registered motor vehicle dealers and car wreckers as defined in the MVSA (see discussion pages 41 and 42).

INTRODUCTION

1. The Motor Vehicles Sales Act 2003 (MVSA) came into force in December 2003. This legislation made fundamental changes to the way in which sales of motor vehicles were regulated. A registration regime, administered and enforced by government agencies, replaced the previously industry controlled licensing regime. Some restrictions on who could participate and how they could participate in this market were lifted. The Motor Vehicle Fidelity Guarantee Fund was discontinued and the scope of claims that could be taken to the Motor Vehicle Disputes Tribunal was widened. New information disclosure requirements were introduced in the form of a Consumer Information Standard under the Fair Trading Act 1986.
2. Section 163 of the MVSA requires the Ministry of Consumer Affairs to undertake a review of the operation of the MVSA within two years of its commencement, and to report back to the Minister with recommendations on whether any amendments to the MVSA are necessary, or desirable. In preparing this report the Ministry is required to consult with interested parties, including representatives of consumer interests in relation to motor vehicles.
3. The Ministry has been directed by Government to have particular regard to
 - the level of compliance by motor vehicle traders,
 - the incidence of insolvencies involving motor vehicle traders, and
 - the impact on consumers of the loss of the Motor Vehicle Fidelity Guarantee Fund; and
 - to report on whether the regulatory regime, on balance, meets its purpose of promoting and protecting the interests of consumers in relation to motor vehicle sales.

Scope of the review

4. The MVSA put in place three core operational mechanisms or instruments. This report focuses its discussion on these core instruments, outlining what arrangements have been put in place and describing the activities undertaken since the commencement of the MVSA.
5. The core mechanisms are:
 - Registration - the Motor Vehicle Traders Register (MVTR).
 - Information disclosure - the Supplier Information Notice (SIN).

- Disputes resolution - the Motor Vehicle Disputes Tribunal (MVDT).
6. The report discusses whether the criteria established under the MVSA for each of these operational areas are achieving the objective of providing adequate consumer protection. It considers process issues, in particular any that may hinder the achievement of the consumer protection outcome, or which may impose unnecessary compliance costs. Lastly the report considers whether there are any obstacles to enforcement.

Consultation

7. Section 163(2) of the MVSA provides that in preparing this report, the Ministry must consult with interested parties, including representatives of consumer interests in relation to motor vehicle sales.
8. In October 2005, a consultation paper was sent out to some 60 identified interested parties, inviting their comment on any issues arising from the operation of the MVSA since its commencement in December 2003. The review was also advertised in the Motor Vehicle Traders Newsletter and Business Update, on the Ministry of Economic Development website.
9. 16 submissions were received. A list of those making submissions is attached as Appendix One. The comments received from those making submissions have been incorporated into this report and informed findings.
10. A series of meetings were held with the various government agencies involved in the regulation of motor vehicles and their sale. These included the Ministry of Transport, New Zealand Land Transport, New Zealand Customs Service, Ministry of Justice, the Companies Office, National Enforcement Unit of the Ministry of Economic Development and the New Zealand Commerce Commission.
11. Discussions with government agencies, industry and consumer representatives have informed findings and the drafting of this report. Information received from government agencies is also incorporated into this report.

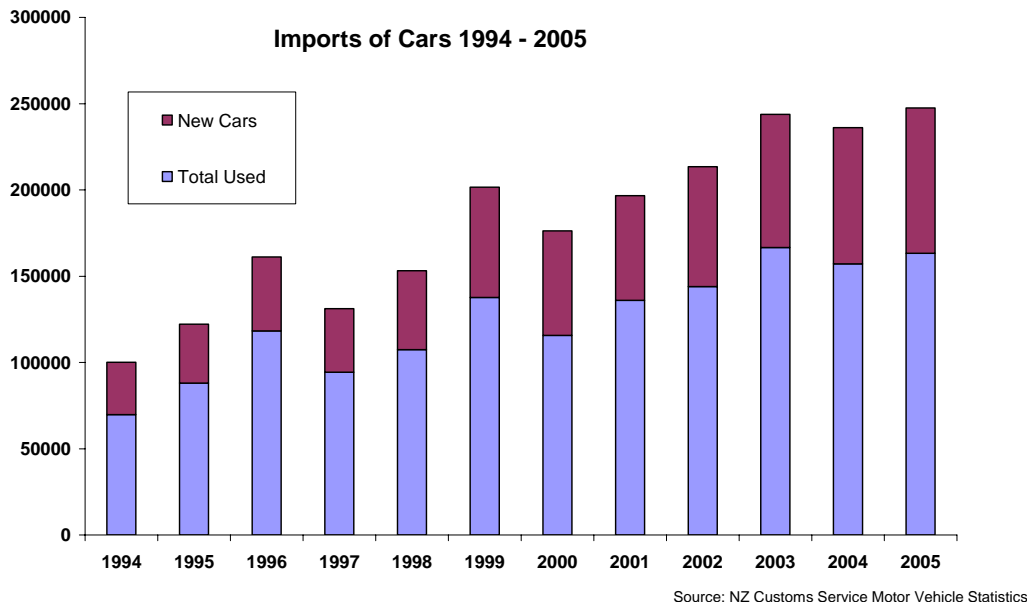
MVSA Monitoring and Evaluation Project 2003-2005

12. Co-incident with the commencement of the MVSA, the Ministry of Consumer Affairs developed a monitoring and evaluation plan to inform the review of the operation of the MVSA required by section 163 of the Act. Key operational mechanisms of the MVSA were identified and arrangements made with the government agencies responsible for the various operational functions to provide statistical data on their activities. The data collected from these agencies is the primary source of operational data used in this report. Reports were prepared on a quarterly basis and the final MVSA Monitoring and Evaluation Report,

which reports on activities from December 2003 to June 2005 is attached as Appendix Two.

MARKET CONTEXT

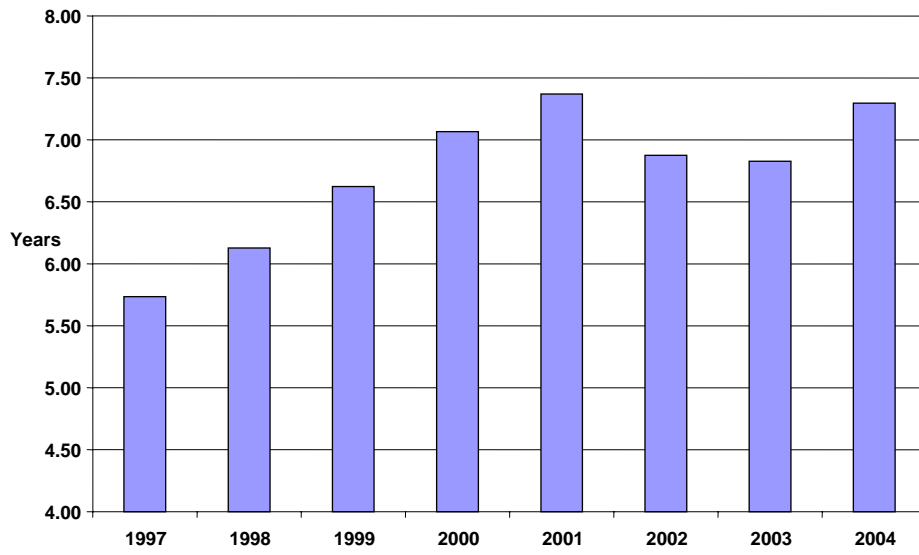
13. The MVSA is an important piece of consumer legislation as New Zealand has one of the highest rates of car ownership in the world. In June 2004 the total fleet size for New Zealand vehicles was 3,668,577. Car ownership is highest in Auckland at 33 percent of total licensed cars in the country. The second highest is Christchurch and Wellington third at 9 percent.
14. In 2004, New Zealand Customs reported 236,096 imported motor vehicles to New Zealand: 67 percent were used cars and 33 percent new. There were 815,252 cars sold and 38.35 percent of these were purchased from a motor vehicle trader.
15. In the first 11 months of 2005 there were 151,512 used cars imported and 77,375 new cars.



16. Statistics NZ reports that in 2003/2004 weekly household expenditure on motor vehicles was \$49.20 compared to \$37.40 in 2000/2001. The \$49.20 includes \$44.40 for the purchase of motor vehicles and \$4.80 on credit costs, which relate to the purchase of the vehicle¹.
17. In 2004, there were 228,787 first time car registrations on the Motor Vehicle Register. For the first half of 2005 there were 114,908 registrations, a drop of 0.2 percent on the same period in 2004.

¹ New Zealand Statistics, 'Household Economy Survey: Standard Tables 2003/04 and 2000/01'.

Average Age of Used Vehicles Entering Fleet: 1997 to 2004



Source: NZ Customs Service Motor Vehicle Statistics October

PROMOTING THE NEW ACT

Education and Information Campaign 2003-2004

18. With the commencement of the MVSA, there was a public education and information campaign delivered between November 2003 and May 2004. The campaign contract was initially funded at \$375,000. The objective of the information campaign was to ensure that consumers, business and relevant community agencies received information, or knew where to find information about the law changes regarding sales of motor vehicles. Additional funding was made available post-commencement of the campaign as contingency funds were utilised.

Information for consumers

Published resources - print and electronic

19. Two consumer resources were developed. The resources were Fit for the Road, an information booklet on buying a vehicle, and Back on the Right Road, an information booklet on what to do if the transaction or vehicle was defective. The booklets were initially distributed to Citizens' Advice Bureaux, Budget Advice Services (BAS), Motor Vehicle Disputes Tribunal (Back on the Right Road), the Ministry of Consumer Affairs regional offices, NZ Immigration Service and the Maori Women's Welfare League. Community law centres are also now holding stocks of both titles. Electronic versions of these publications are also available on the Ministry of Consumer Affairs website.

Advertising

20. An advertising programme was delivered between December 2003 and May 2004. It involved a mixture of print, radio and direct to consumer advertising through targeted household mailing, and was focussed on three key messages resulting from the change in motor vehicle sales legislation:
- traders now have to be registered (and where consumers can find that information),
 - traders now have to display a Supplier Information Notice (SIN) window card (and what information it must contain),
 - the Motor Vehicle Disputes Tribunal (MVDT) is now more accessible.
21. Advertising campaigns were carried out during December 2003, February 2004 and April/May 2004. All advertising directed consumers to where they could obtain either a copy of the Fit for the Road or Back on the Right Road publications and to visit the Ministry of Consumer Affairs website for more information.

22. Printed advertisements were placed in motoring sections of metropolitan and provincial newspapers. Advertisements targeting the wider population were also placed in community newspapers adjacent to or within motoring information and advertising. These publications are delivered free to households, and were considered more likely to be accessible to low-income households. A full colour version of the advertisement was placed in the Road Code for a 12 month period with a view to reaching new drivers, particularly youth and new migrants. Print advertisements were also placed in Auto Trader and Trade and Exchange magazines to target those consumers wishing to buy or sell vehicles. Advertising was placed in two major Auckland Chinese language newspapers to reach new migrants.
23. Radio advertisements were run at peak and off-peak times on mainstream network radio, youth oriented radio networks, iwi networks, Pacific Island stations such as Niu FM and PI 531, and Korean and Chinese language community stations. There were three versions of the advertising for the December, February and April runs. The April version focused on the MVDT message.
24. A multi-language flyer, Check Before You Drive, containing the three key messages was delivered to 300,000 households in low income areas throughout New Zealand during February. Languages featured were English, Maori, Samoan, Arabic, Tongan, Niuean, Korean and Chinese.

Information for business

Published resources – print and electronic

25. Ministry of Consumer Affairs developed an MVSA Business Note resource which was mailed directly to some 2,100 traders, identified as licensed dealers, car fair operators and vehicle auctioneers.
26. A traders' motor vehicle section was added to the Ministry of Consumer Affairs Business Information webpage. Frequently Asked Questions on the SIN were also developed and an example SIN in PDF was also made available. A graphic file of the SIN example was made available to traders wishing to use a designer to develop a branded SIN form. The Motor Trade Association, Independent Motor Vehicle Dealers Association, trader software management companies, and individual traders took up this free offer.

Advertising

27. Printed advertisements were placed in industry magazines - two each in Radiator (the Motor Trade Association publication for its members) and in Autofile (an industry information publication).

Trader seminars

28. A motor vehicle trader seminar series was developed to provide key information about the changes in the legislation to industry participants. The seminar series was delivered throughout New Zealand from early November to early December 2003 by officials representing the Motor Vehicle Trader Registrar, the Commerce Commission and the Ministry of Consumer Affairs. Over 2,000 traders attended these sessions.

Effectiveness of the campaign

Consumer awareness

29. Prior to the introduction of the MVSA in December 2003, AC Nielsen were commissioned to carry out an omnibus telephone survey to test awareness of the impending law changes. This benchmark survey targeted licensed drivers only and indicated that as few as 18 percent of respondents were aware that the law relating to the way vehicles are sold was about to be changed. Unprompted awareness was very low about the nature of the changes – for example, only 3 percent of respondents were aware traders would have to be registered. On prompting, roughly one in four people were aware about registration, although they may have been confusing this with the obligation to be licensed under the then current Motor Vehicle Dealers Act.
30. AC Nielsen conducted a further omnibus telephone survey in March 2004 following the first two flights of advertising. Forty-seven percent of respondents were aware of motor vehicle law changes (up from 18 percent). In unprompted responses there was only a small rise in consumer awareness of the nature of the law changes - from 3 percent to 6 percent awareness of trader registration and from 1 percent to 6 percent regarding the need to display a window notice. Prompted responses, however, saw a significant change from the benchmark survey – from 27 percent to 80 percent awareness of motor vehicle registration and from 14 percent to 41 percent regarding the window notice display.
31. Interestingly, respondents recalled television advertising. Although the Ministry of Consumer Affairs campaign did not use television, an advertising campaign was run by Autosure during November/December 2003, and this may have raised general awareness about the law changes. Only 15 percent of respondents recalled newspaper advertising.

Response to published resources

Printed resources

32. Orders for printed copy of the consumer motor vehicle titles have come mainly from Citizens' Advice Bureaux, Budget Advisory Services and Community Law Centres. At 30 June 2004, Ministry of Consumer Affairs

had supplied over 3,000 motor vehicle titles to community agencies and consumers. In addition to this the New Zealand Immigration Service (NZIS) had received 3,500 copies to be included within new migrants' information packs. The MVDT also includes the consumer booklet, Back on the Right Road in its information package sent out to consumers following requests over its 0800 information line.

33. By March 2004, a further 260 Business Note guides had been ordered directly by traders. This lower figure was expected given the earlier direct mail-out of the trader publication. Electronic versions are also available on the Ministry of Consumer Affairs website and this may account for a lower amount of paper copies being ordered. Industry associations have continued to make steady orders for their own training purposes.

Website data

34. In the six months to 30 June 2004 (following two flights of public awareness advertising), the Consumer Information "Motor Vehicles" section of the Ministry of Consumer Affairs website had recorded 3,190 visits. Between October and December 2003, prior to the changes coming into force, the website had had 908 visits.
35. The Business Information on Motor Vehicles also received a considerable number of visits and ranked 11th in the list of site entry points. The Supplier Information Notice (SIN), which is available in PDF form on the Ministry of Consumer Affairs website, is the site's most downloaded file. Between 1 January and 30 June 2004 there were 8,137 downloads of the form listed from this site.

Other public relations activities

36. Other public relations activities included the Ministerial launch of the MVSA on 16 December 2003 at an Auckland car fair (organised in conjunction with the Motor Trade Association), delivery of a package of resources to all Members of Parliament, media releases to Pacific Island and Maori media, Ministry of Consumer Affairs officials participation on radio spots, the publication of various media releases and a series of articles through the Ministry's A Word of Advice (a news bulletin published fortnightly), and the electronic newsletter MVTR Matters.

MOTOR VEHICLE TRADERS REGISTRATION REGIME

Motor Vehicle Traders Register (MVTR)

37. The strategic aim of the registration regime is to ensure adequate protection for consumers purchasing motor vehicles. It is expected that this can be achieved through ensuring that
- All those who carry on the business of motor vehicle trading, by whatever means, are subject to the regulatory regime
 - Consumers can have confidence that, when purchasing in the retail motor vehicle market they are dealing with a registered motor vehicle trader, and that that person has met the requisite criteria for conducting that business
 - Consumers and enforcement agencies can locate the trader in the event of a dispute or breach
 - Unsuitable people or companies engaged in the business of selling motor vehicles are disqualified from doing so.

Key elements of the registration regime

38. The MVTR is a public register that contains information about whether a motor vehicle trader is registered and information about the trader's business, including its physical address. The MVTR is operated under the auspices of the Companies Office, which is a business unit of the Business Services Branch of the Ministry of Economic Development. Applications for registration may be made in writing or through the on-line facility at www.motortraders.med.govt.nz.

All motor vehicle traders to be registered

39. Under the MVSA all motor vehicle traders must be registered. A motor vehicle trader is defined in sections 7 and 8 of the MVSA as any person who carries on the business of motor vehicle trading and includes a car market operator, a car auctioneer and a car consultant. Also treated as a motor vehicle trader is any person, who
- in any way represents that they are carrying on the business of motor vehicle trading, or
 - sells more than six vehicles within a 12 month period, or
 - imports more than three vehicles within a 12 month period.

Certain persons disqualified

40. Certain persons are disqualified from registration and therefore may not legally carry on the business of motor vehicle trading. For individuals this means a person who is either under 18 years of age, or banned, or an undischarged bankrupt, or either has had certain rights cancelled under the Motor Vehicle Dealers Act 1975 (the former Act), or been convicted of crimes of dishonesty or of offences against specified provisions of the Fair Trading Act 1986, or had their registration cancelled under the MVSA within the preceding five years, or has been disqualified or prohibited under specified provisions of the Companies Act (1955 and 1993) from managing a company.
41. A company is disqualified from registration and may not legally carry on the business of motor vehicle trading if it is either banned, or in liquidation, or its licence under the former Act or registration under the MVSA has been cancelled within the preceding five years, or its name has been removed from the Register of Companies, or if a person concerned in its management is disqualified from registration in his or her own right.

Banned persons

42. Certain persons are banned. These persons may not participate or be employed or engaged in any capacity by other persons, including companies, in the business of motor vehicle trading.
43. Section 68(1)(a) bans any person who has two or more convictions entered against their name over a 10 year period for any of the following offences: trading while unregistered, failure to pay monies to a principal, providing false (or falsifying) information relating to motor vehicles sales or trader registration details.
44. Section 68(1)(b) bans any person who has more than once within a 10 year period, done any of the following: failed to comply with a Disputes Tribunal order, been concerned in the management of a company that is a banned person or is registered as a motor vehicle trader and has gone into liquidation, or has failed to provide compensation owing in relation to a finance company's loss of security interest, or who has failed to comply with a Disputes Tribunal order.
45. Section 68(1)(c) bans any person who, while registered as a motor vehicle trader, is disqualified under the Companies Act 1993 from managing a company, is convicted of a crime of dishonesty, is convicted under specified sections of the Fair Trading Act 1986, or who has more than once in a 10 year period been adjudged bankrupt or failed to provide compensation owing in relation to a finance company's loss of security interest.
46. Section 68(1)(d) bans a person who is convicted of tampering with odometers under section 99.

Offences and penalties.

47. Convictions for breaches such as failing to register, participating in motor vehicle trading while banned, tampering with odometers, or knowingly providing false or misleading information in relation to registration attract a maximum fine of up to \$50,000 for individuals and \$200,000 for companies.
48. Convictions for engaging a banned person and for failing to provide account for monies owing, attract a maximum fine of up to \$20,000 for individuals, and \$40,000 for companies.
49. Convictions for providing false information, falsifying information or obstructing inspection, and for failing to provide any changes in registration details attract a maximum fine of \$2,000. These latter are also infringement offences.
50. In addition to the above penalties, convictions across the range of offences are linked to the banning criteria under the MVSA. Thus, two or more convictions for the lesser offences in a 10 year period will also invoke the banning provisions.

Implementation

51. Prior to the MVSA coming into effect in December 2003, it was estimated there were some 3,000 persons (including companies) in New Zealand participating in the business of selling motor vehicles. These persons accounted for 28 percent of used motor vehicle sale transactions. About 2,250 were licensed under the Motor Vehicle Dealers Act (MVDA). This figure does not include car market operators, importers and car auctioneers, as they were not required to hold a licence under the MVDA, or persons that were operating outside of the licensing regime.
52. At the commencement of the MVSA in December 2003, the MVT Registrar contacted those parties identified as participating in the business of selling motor vehicles, inviting them to register and reminding them of their obligation to register. Follow-up letters were sent and in the event of any continued failure to respond the matter was referred to the National Enforcement Unit (NEU) of Ministry of Economic Development for further action.
53. Information sharing arrangements were set up with the New Zealand Customs Service and the Ministry of Transport, as envisaged by sections 120 and 122 of the MVSA, to allow the Registrar to identify those persons deemed by the MVSA to be motor vehicle traders and to determine whether or not they should be banned or registered under the MVSA.

Registration

54. As of 30 June 2005, there were 3,182 motor vehicle traders registered under the MVSA. This included 101 completing the registration renewal process with a further 37 pending expiry and cancellation. In the same period, 83 applicants were refused registration on the grounds that they were disqualified from registration under sections 24 and 25 of the MVSA.
55. In total, by June 2005, the Registrar had handled 6,274 applications. This included some 2,083 applications that were either deleted or abandoned during the process – such cases occur when applicants make the wrong type of application (individual instead of company), or decide not to pursue an application, or have not completed an application within a set period. Seventy percent of all registrants have used the online registering facility.
56. Eighty-one percent of motor vehicle traders registered as a company and 19 percent registered as individuals. The breakdown in terms of type of trader is as follows:

Dealer or retailer	78.9 percent
Importer	12.4 percent
Wholesaler	5.0 percent
Motorcycle/scooter dealer	5.4 percent
Other (car fair operators, auctioneers, internet sellers, auto repairs etc)	6.3 percent

Note: the sum of traders exceeds 100 percent because of multiple responses as to principal business.

Compliance

Importers of motor vehicles

57. Under the information sharing arrangements, Customs data has been used to identify those persons importing more than three motor vehicles per year, the threshold for registration. In the first full year of operation this monitoring revealed 154 such persons who were not registered. Seventy-four persons were either registered under different names (33) or were not required to register (41). Forty registered after further warning. Fourteen have ceased trading and one person has been successfully prosecuted. In April 2005, a further 41 unregistered importers were identified and sent warning letters, resulting in a further 7 applications for registration. There have been a significant number (25 percent) who have failed to respond.

Market surveillance

58. The Registrar can receive complaints from registered traders and the public regarding breaches of the MVSA. Between December 2003 and March 2005, 82 complaints were received: 29 traders were required to register, 15 complaints were referred to the Ministry of Economic Development's Legal Unit, 16 complaints were referred to the National Enforcement Unit, and 22 cases awaited further investigation. A further 77 complaints had been received by June 2005.

Enforcement

59. The National Enforcement Unit, a business unit of the Ministry of Economic Development, has responsibilities to enforce those parts of the MVSA which relate to non-compliance or breaches of the registration requirements, including illegal trading, and odometer tampering. This does not include offences related to the Supplier Information Notice (SIN) which are enforced by the Commerce Commission.

Car fairs and car yards

60. Since the commencement of the MVSA, the National Enforcement Unit has visited 127 places of business (car yards and car fairs) throughout the country, either in response to referrals from the Registrar or through conducting general enquiries. Illegal traders identified in the course of these visits are now either registered or in the process of registering.

Registration project

61. The Unit has undertaken several targeted projects. One concerned illegal trading. A total of 76 cases were opened and investigated. Thirty-five (35) of those cases registered, 28 are no longer trading, 1 was prosecuted and 12 cases were closed with no evidence of illegal trading.

Importers/Customs project

62. Another targeted project was a 6 month project aimed at identifying individuals and companies that have imported more than 3 motor vehicles over a 12 month period, in co-operation with NZ Customs. Ninety-five (95) un-registered traders were identified. Of those 95 files, 94 were successfully resolved and compliance achieved. One file is currently before the courts.

Other

63. As at June 2005, in addition to the projects identified above, the National Enforcement Unit has fully investigated and resolved 38 files. Four cases have been successfully prosecuted (three convictions for illegal trading and one for odometer tampering) and one infringement notice has been issued and paid. Thirteen cases are currently under investigation and fourteen cases are before the courts.

Banned persons

64. Since its commencement, two individual persons have been banned under the MVSA; Mark Gregory was banned under section 68 for 5 years from 17 May 2005 for a conviction under section 99 (for odometer tampering), and Timothy Andrew Whittle was given an indefinite ban from registering as a motor vehicle trader. The judgement of the Christchurch District Court in the Whittle matter marks the first court-ordered prohibition made under the MVSA. The ban on Mr Whittle, made pursuant to section 69 will last until such time as he successfully reapplies to Court to have it varied or cancelled.

Assessment against the registration objectives

65. In assessing the effectiveness of the new registration regime it is important to acknowledge that the motor vehicle trader legislation has only been in operation since December 2003 and that the full effect of this Act may be difficult to gauge within such a short period. This early review, however, provides an opportunity to signal any major shortcomings in the MVSA and to identify where there may be process issues that can be fine-tuned to better achieve the consumer protection outcomes. Each of the four objectives of the MVTR (as listed on page 10) are now evaluated.

Objective: All motor vehicle traders are subject to the regulatory regime

66. Compliance is a key component of the successful implementation of the MVSA. As was to be expected with the introduction of new legislation, the major focus of the Registrar in the first 18 months to June 2005 was to manage the transition from an industry controlled licensing regime, to ensure that all those participating in the business of motor vehicle trading were informed of their obligations to register and to encourage voluntary compliance with those obligations.
67. Systems for administering the registration regime are established and operating well. Seventy percent of registered traders made an online application. A paper based process is also available to those without access to, or who are uncomfortable with, the electronic medium.
68. The Registrar has entered into information sharing arrangements with various government agencies in regard to trader activity, to assist with the monitoring of import and market transactions. This has enabled the Registrar to follow up and subsequently have registered a significant number of motor vehicle traders. The number of traders now registered (3,182) has exceeded the pre 2003 estimate and includes motor vehicle importers (12.4 percent), auctioneers and those operating car markets or selling through the internet (6.3 percent). The final six months of the review period have seen an increase in prosecution activity, signalling a

move from a voluntary compliance approach to a more enforcement oriented approach.

69. The proximity of the Motor Vehicle Trader Registrar to the Companies Office means that information can be efficiently collected and maintained.

Objective: Consumers can have confidence they are dealing with registered traders

70. The MVTR is available to any consumer to confirm the registration status of a motor vehicle trader. An evaluation of the consumer education campaign showed that immediately after the campaign there was a significant increase in consumer awareness (after prompting) of the registration system. Whether this awareness has been retained, however, is debatable. Submissions indicated there is little general knowledge about the Register or Banned Persons list and, therefore, that relatively few consumers would know how to check either. Consumer representatives have suggested that the number of agencies involved in administering and enforcing the MVSA has the potential to confuse consumers and deter them from following through with reporting any unregistered traders they come across.
71. Industry representatives have highlighted the fact that the significant majority of used motor vehicle transactions continue to be conducted as private sales, despite an overall increase in the number of used vehicle transactions. It is suggested that the removal of the requirement for motor vehicle traders to operate from a physically located car yard has introduced a less visible type of trader into the retail market and that consumers are more vulnerable to “fly-by-night” operations. Some traditional operators have felt compelled to change their own methods of operating, to reduce overheads, in order to compete with those not maintaining an independent car yard.
72. These are important observations and it will be critical to the effectiveness of the overall regime in the longer term that enforcement effort is directed towards those less visible in the retail market. For instance, internet sales, both private and commercial, have increased markedly. Attention should be directed to this area, particularly the importance of providing consumers with information about the kind of seller with whom they are transacting. Consumers have many reasons for preferring private transactions, not least because they consider they will obtain a better price without third party involvement. For others, it is the availability of finance that directs where they go to make their purchases.
73. The above analysis suggests that consumer confidence could be improved. Possible approaches could be initiatives to improve consumer awareness and through the creation of a single consumer enquiry centre. At this early stage, there is insufficient evidence to support any fundamental change to the registration regime.

Objective: Traders can be located

74. There is concern in the industry and from consumers that in some cases when transactions have gone wrong, the unscrupulous trader has made some minor change to their trading name as a means of evasion. The Motor Vehicle Disputes Tribunal (MVDT) has also experienced difficulties in some instances in locating a trader against whom a claim has been made.
75. Registration details must include an “address for service”. A formal notice sent to this address is deemed to have been served. In addition traders must provide their “full name” which includes under the MVSA all the trading names under which they are carrying out their business. These details are available to the consumer and any change in these details is required to be notified to the Registrar within 10 working days. Failure to provide these details is an offence under the MVSA and can ultimately lead to a person being banned.
76. It is considered that on balance, the MVSA contains an appropriate range of measures to ensure that a trader can be located. At the implementation stage a more cautious and conciliatory approach was taken to ensure traders were aware of their obligations and to gain voluntary compliance. However, to be fully effective, the enforcement and disputes resolution agencies may need to toughen their approach and serve notice that evasion tactics will not be tolerated. Between them the Registrar, National Enforcement Unit and MVDT collect a considerable amount of information about trading activity and behaviour and increased communication between these agencies could assist in identifying priority enforcement targets.

Objective: Unsuitable persons are prevented from participating in motor vehicle trading

77. This objective is arguably the most contentious aspect of the registration regime. Motor vehicle trading has always attracted some characters with dubious ethics and media attention has ensured that questionable behaviour in this industry retains a highly visible profile. Views on how to deal with the less scrupulous element of the industry tend to be polarised. The difficulty is setting criteria that will provide sufficient protection for consumers while at the same time safeguarding the benefits that arise from competition and preventing industry capture.
78. Concerns raised with regard to the eligibility criteria for motor vehicle traders included:
 - the lack of defined entry standards to the industry
 - no “fit and proper” test (lack of applicant screening and inability to challenge applicants pre-registration)

- levels of penalties failing to provide sufficient disincentives to illegal trading
- resourcing, and direction of enforcement effort.

Entry standards

79. Industry representatives have proposed that before registration, traders should be able to demonstrate knowledge of the motor trading industry and the relevant legislation (Motor Vehicle Sales Act, Consumer Guarantees Act 1993, Fair Trading Act 1986, Personal Property Securities Act 1999, Credit Contracts and Consumer Finance Act 2003). This could be administered in the form of a trader qualification, similar in concept to the four-day training course used by the Queensland Government in Australia and it is suggested that the Ministry of Consumer Affairs booklet “Motor Vehicle Sales Act and Related Laws” would serve as a good starting point in the development of such a qualification.
80. Industry qualifications are certainly supported as a complement to government regulation. These can, however, be introduced in the form of voluntary self-regulation and can provide a strong promotional tool for those who can demonstrate compliance with them. In the context of a market in which the majority of transactions take place without the protections available (private sales are not covered by the MVSA), the imposition of trader qualifications may be considered rather heavy handed.

“Fit and Proper” test

81. Of particular concern to industry and consumers is that there are persons who have been allowed to register who later prove to be manifestly unsuitable. Industry representatives assert that this is because insufficient screening of applicants is undertaken, there is no public notification of applications received, and hence no facility to challenge those who do apply. This, it is argued, provides easy entry of undesirable/rogue traders who, once registered, are not easy to challenge.
82. Under the repealed Motor Vehicle Dealers Act, the Motor Vehicle Dealers Institute (MVDI) could refuse to grant a licence to any person whom it did not consider a “fit and proper” person in respect of motor vehicle trading. Under the MVSA, the assessment of “fit and “proper” was removed from the registration process as it was considered too subjective. Eligibility criteria that could be substantiated were developed based on a trader’s recorded history (i.e. convictions for serious offences) and the power to assess whether or not a person was “fit and proper” was placed with the District Court.
83. Concerns have been expressed that there seems to be too heavy a reliance on the ability and willingness of private individuals to proceed to

the District Court with concerns about a registered trader's fitness to trade. Submissions to the MVSA review further recommended that the scope of the National Enforcement Unit be expanded to receive complaints from the public, and the powers of the National Enforcement Unit, where appropriate, be extended to the ability to investigate and pursue traders who may not be banned under section 68 but who on first impression appear not to be fit and proper persons in terms of section 69 of the Act (the banning provisions ordered by Court).

84. The National Enforcement Unit can, and does, receive complaints from the public about both registered and unregistered traders. A single enquiry point for consumers and the establishment of a regular communication strategy between agencies could help to build the necessary evidence base for applications to the District Court. Publication of applicants for registration was rejected in the development of the MVSA because of issues relating to privacy. However, this does mean that greater responsibility is placed on the enforcement agencies to proactively monitor the "character" of those participating in this market. The highly publicised case of Mr Whittle, who was convicted on multiple counts of fraud in relation to sales of motor vehicles, has highlighted one area of the banning provisions that require attention. This is discussed more fully as a specific issue below.

Penalties not a disincentive

85. Industry representatives have also expressed disappointment at the level of fines imposed and suggest that these do not provide sufficient disincentives to unethical traders. The low level of fines is not surprising – the Courts cannot be expected to come down hard on what at this early stage can only be presented to them as a failure to comply with administrative requirements. Consideration needs to be taken, however, of the extremely severe consequences, automatic banning, should these traders be convicted of further breaches. Any trader, who elects to carry on their business without being registered, places their future ability to carry on, or participate in, the business of motor vehicle trading at risk.

Resourcing and direction of enforcement effort

86. There is concern from both industry and consumer representatives that most of the enforcement action taken to date appears to have centred on the traders most visible – those who follow the traditional model with a yard, signage and stock. There is also concern that insufficient resources have been provided or committed to monitor and enforce compliance.
87. In examining the effectiveness of the regime it is important to consider the eligibility criteria in their totality; that is the interrelation of the disqualification and banning criteria with the right to register. The disqualification provisions establish an objective test based on recorded history of behaviour (primarily criminal history or insolvency) while the

banning provisions target persistent, unethical or unlawful behaviour and need to be considered for their effectiveness over the longer term.

88. In the two years of operation, 83 applicants were refused registration. Ninety-five people have had their registration cancelled or surrendered. People who have their registration cancelled are disqualified from registration for a further five year period, while those struck-off must meet the Registrar's requirements before re-registration will be considered. Two people have been banned outright.
89. Convictions have been entered against the names of three others for illegal trading. There are currently 14 cases before the courts and 13 under investigation. Successful prosecutions have been described as "strike one" in a regime which allows two strikes only; the banning provisions are invoked for two or more breaches and these need not be offences which individually attract the highest fines.
90. At this early stage of the MVSA, it is considered that for the most part the criteria for entry have been set at an appropriate level and that the legislation has sufficient tools within it to deal adequately with those who are prepared to behave unethically. In the longer term it will be critical to the effectiveness of the regime, and for optimal protection for consumers, that the enforcement agencies develop a visible enforcement profile, particularly in those areas where the traders themselves are not as clearly identified in the market to consumers. More regular information sharing between agencies will assist in prioritising enforcement effort and a single consumer enquiry point will improve access for consumers to the information and assistance they may require.

Specific Issues

91. Additional registration issues identified, including those raised in submissions and discussions, not previously addressed, are now considered.

Requirement for statutory declaration in renewal of registration

92. Registration applies for a period of 12 months. Section 39 of the MVSA requires the same process for renewal of registration as for an original application (sections 31 to 38), thus statutory declarations from each director of a company must be submitted each year. This requirement has been identified as unnecessarily onerous and, in particular, problematic for those companies that have directors residing outside of New Zealand. By way of comparison, renewal of registration under the Companies Act requires a simple confirmation that the particulars have not changed.

93. There are no perceived difficulties in reducing this administrative burden. Under the MVSA, changes in circumstances are required to be notified within 10 working days (section 40) and therefore the statutory declaration requirement on renewal is redundant.

Recommendation:

94. *It is recommended that section 39(2) be amended to remove the requirement for motor vehicle traders to make an annual statutory declaration of their trading details where these have not changed. This would be replaced by the requirement to confirm with each annual renewal that details have not changed.*

Notification period for changes in details

95. Section 40 requires that written notice be given to the Registrar within 10 working days of any change in circumstances, including company details and the particular details of directors. Some difficulties have been identified in meeting this requirement in respect of changes in details of directors residing outside of New Zealand. In some cases the New Zealand company is not aware of the change of director before the 10 working day period has elapsed. It has been suggested that the 10 day period be extended.
96. The Ministry of Consumer Affairs understands that there are genuine difficulties with complying with the Act regarding changes to overseas directors. It is important, however, that individual and company details are accurate and current. There is anecdotal evidence that some traders may change their name to evade receiving notices with regard to a disputes claim to the MVDT and extending the notification period may open up loopholes or potential means of evasion for less scrupulous traders.
97. No changes to the MVSA are recommended.

Proposal to require IRD number

98. It has been suggested that an applicant for registration be required to provide their IRD number. Traders must enter their “full name” on registration and under the MVSA this is defined to include also any trading name that they may operate under. However, advice from the MVDT indicates that some traders will change their name in a small way to evade customers who have raised a claim against them. Matching company details with an IRD number will help to verify the company’s trading status and assist enforcement of the requirement to provide all trading names under which a trader is operating.

Recommendation:

99. *It is recommended that consideration be given to amending section 32 to include the requirement that applicants for registration as a motor vehicle trader provide details also of their IRD number.*

Requirement to define place of business

100. It has been suggested that applicants for registration be required to define their place of business and provide evidence of local authority approval to operate from these premises. These proposals have been recommended in the current review of Queensland's Property Agents and Motor Dealer Act 2000.
101. As noted earlier, the MVSA has removed the requirement to operate from a physical car yard and has thereby legitimised internet based sales, car fairs and roadside displays. This provides a lower cost approach (lower overheads and operating costs), but also means traders are less visible and can shut up shop if the situation demands it. There is also concern that many traders are now operating from residential addresses.
102. One of the factors driving the introduction of the MVSA was the changing nature of the motor vehicle sales market and the differing means of offering vehicles for sale. The registration details require a physical address to be provided and while this may not be the actual place of business it serves as the formal contact point for the trader. Local bodies have powers to issue by-laws in relation to where business is conducted and have therefore the means to address any physical or local problems that arise with less formal sales approaches.
103. Local bodies can also, and should be encouraged to, pass on any information about potential illegal trading to the appropriate agencies.
104. A clear need for, or significant advantage from, having a defined place of business and local authority approval to operate from these premises have not been established.
105. No changes to the MVSA are recommended.

Definition of motor vehicle trader – deeming provisions

106. Section 8 of the MVSA provides that any person who sells more than 6 motor vehicles, or imports more than 3, in a consecutive 12 month period is deemed to be a motor vehicle trader. Industry interests have requested that these transactions be reduced to sales of 3 and importation of one vehicle only in a consecutive 12 month period. These concerns stem mainly from the possibility that some persons and their families can be involved in a significant number of motor vehicle transactions by sharing the sale and import over a range of family members' names.

107. There would be significant increases in administrative costs if numbers were to be reduced, (both processing further registrations and exemption requests). It is considered that this behaviour can be effectively dealt with through the information sharing arrangement with Customs, through close monitoring of the trading names provided with registration and through a targeted enforcement approach. The proposal to require an IRD number may also assist in identifying traders who are hiding behind multiple names.
108. No changes to the MVSA are recommended.

Definition of motor vehicle - motor cycle

109. The MVSA currently does not require a person who deals in motor cycles under 60cc to register as a motor vehicle trader. The definition of motor vehicle under section 6 of the MVSA specifically excludes motor cycles which have a cylinder capacity which does not exceed 60 cubic centimetres (60cc).
110. The MVSA reference to 60cc motor cycles does not align with the Land Transport Rules or with the Customs import tariff categories. The Land Transport Rules categorise a motor cycle as a two wheeled vehicle exceeding 50ml (equivalent to 50cc) while the tariff categories under which Customs operates identify motor vehicles in bands under 50ccs; or from 50ccs to 250ccs.
111. Under the MVSA there is an information sharing arrangement between Customs and the Registrar, and between the Ministry of Transport and the Registrar. The discrepancy between the Act and the tariff category has been identified by the enforcement agencies and industry representatives.
112. The Ministry of Consumer Affairs has been unable to find out why the decision was taken to use an above 60cc rating for motor cycles under the MVSA. However, it would seem desirable to ensure that the various administrative and regulatory controls regarding motor cycles operated within a common classification..

Recommendation:

- 113. It is recommended that section 6 (b)(iii), the definition of motor vehicle, be amended to exclude motor cycles up to 50cc (not 60cc as currently worded) to reflect ratings used on other relevant legislation.*

Definition of motor vehicle – list of vehicle classes

114. Currently under the MVSA a motor vehicle is defined as 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 and as a vehicle of any other class or description declared by the Governor-General, by Order in Council, to be a motor vehicle for the purposes of

the Act (there is a list of exceptions to this definition). Industry has suggested modifying the definition of motor vehicle from that as described in section 6 of the MVSA to a prescribed list of vehicle classes to avoid any doubt as to what is considered a motor vehicle.

115. A prescribed list of vehicle classes may be too constraining a definition of motor vehicle. If the definition of motor vehicle was changed to a list of prescribed vehicle classes, the Act would have to be amended every time a vehicle class was changed or modified. The current definition is in line with the Consumer Guarantees Act and other transport regulations. Altering the definition would potentially have an inappropriate ripple effect across many areas including the Consumer Guarantees Act and Customs data programs.

116. No changes to the MVSA are recommended

Requirement for dual registration

117. The Motor Trade Association recently expressed concern that second hand dealers are unnecessarily paying dual compliance fees under the MVSA and Secondhand Dealers and Pawnbrokers Act 2004 as a result of quad and farm bikes being classified as motor vehicles under the MVSA.

118. There is widespread anecdotal evidence that quad and farm bikes are targeted for theft from farms and are subsequently illegally traded. The Secondhand Dealers and Pawnbrokers Act aims to hinder such activity.

119. If quad and farm bikes are classified as motor vehicles under the MVSA, the issue is essentially about whether the current legislation requires secondhand dealers to incur unnecessary compliance costs. Based on the information available, the Ministry of Consumer Affairs has concluded that as the Acts provide different consumer and market protection functions and create different obligations it may be necessary for a dealer/trader to pay compliance fees under both Acts.

120. While the dual compliance costs increase costs for traders, these costs do not overlap. The fees assist with the administration of the Acts and provision of different services such as the Secondhand Dealers and Pawnbrokers Act's requirement of record keeping pre-sale to help recover stolen vehicles. On balance the benefits of requiring traders and second hand dealers to comply with both acts outweigh the dual fees requirement.

121. No changes to the MVSA are recommended

Banning provisions

122. The case of Tim Whittle has highlighted a loophole in section 68(1)(c), which provides for the banning of a trader who may have only been convicted of one serious offence. At the time of Whittle's conviction (he

was convicted on 73 counts of fraud in 2005), Whittle's registration had lapsed. This meant the automatic banning provisions could not be applied because he was no longer a registered motor vehicle trader.

123. The problem in this case arose because the banning provisions are conditional on the status of the person convicted (i.e. a registered motor vehicle trader or not) rather than being attached to a conviction for specified unlawful activities.
124. This means that the section 68(1)(c) banning provisions of the MVSA are unequally applied across the industry – the unregistered trader, already operating outside the law, cannot be automatically banned for offences for which a registered trader may be automatically banned.
125. In Whittle's case, a successful application was made to the District Court under section 69 of the MVSA and Whittle was subsequently banned indefinitely. However, taking a claim to court can be a resource consuming process and it would be more appropriate if the banning provisions automatically applied to unregistered as well as registered traders.

Recommendation:

126. *It is recommended that section 68(1)(c) be amended to ensure that persons convicted of breaches of the MVSA that would invoke the banning provisions while registered, are similarly banned regardless of their registration status at the time of conviction.*

Concluding comments on the motor vehicle trader registration regime

127. The administrative systems for registration are in place and working well. The proximity of the Motor Vehicle Trader Registrar to the Companies Office means that information can be efficiently collected and maintained.
128. Registration numbers have exceeded 2003 estimates which suggests a relatively high level of compliance, although there continues to be some concern from both industry and consumers that there are traders who are continuing to operate outside the system and that some traders although registered are not operating within the confines of the MVSA.
129. Activity over the first two years has been primarily directed towards education and voluntary compliance. However, in the last six months a more enforcement oriented approach has been signalled.
130. In the longer term it will be critical to the effectiveness of the overall regime that enforcement effort is directed towards those less visible in the retail market, and in particular towards transactions conducted through car fair operators and over the internet. Between them, the Registrar, National Enforcement Unit and the Motor Vehicle Disputes

Tribunal collect considerable information about trading activity and behaviour and increased communication between these agencies could assist in identifying priority enforcement targets.

131. The number of agencies involved in administering various aspects of the regime is confusing for consumers and may provide a barrier to consumers seeking remedies that are available to them, or from passing on information about unethical traders.
132. Consideration should be given to the establishment of a single consumer enquiry centre.

Recommended amendments to the MVSA in relation to registration

Renewal of registration of motor vehicle traders:

It is recommended that Section 39(2) be amended to remove the requirement for motor vehicle traders to make an annual statutory declaration of their trading details where these have not changed. This would be replaced by the requirement to confirm with each annual renewal that details have not changed (see discussion pages 20 and 21).

Provision of IRD number as part of the details required on registration application.

It is recommended that consideration be given to amending section 32 to include the requirement that applicants for registration as a motor vehicle trader provide details also of their IRD number (see discussion page 21).

Technical amendment to the CC rating of motor cycles

It is recommended that section 6 (b)(iii,) the definition of motor vehicle, be amended to exclude motor cycles up to 50cc (not 60cc as currently worded) to reflect ratings used on other relevant legislation (see discussion page 23).

Amendment to banning provisions

It is recommended that section 68(1)(c) be amended to ensure that persons convicted of breaches of the MVSA that would invoke the banning provisions while registered, are similarly banned regardless of their registration status at the time of conviction (see discussion pages 24 and 25).

MOTOR VEHICLE INFORMATION DISCLOSURE

Supplier Information Notice (SIN)

133. The strategic aim of the information disclosure regime is to enable consumers to make informed decisions in relation to their purchases of used motor vehicles. It is expected that this can be achieved through the provision of

- accurate and meaningful information relating to their purchase
- clear title when existing prior claims are not disclosed
- information about their rights and where to progress those rights when seeking redress
- documentary evidence of the information disclosed in the event of a dispute.

Key elements of the information disclosure regime

134. The information disclosure requirements are commonly referred to as the Supplier Information Notice (SIN). The relevant provisions in the legislation are sections 14 to 18, and sections 101 to 102 of the MVSA and the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 made under the Fair Trading Act 1986. The New Zealand Commerce Commission is charged with responsibility for enforcing the SIN.

Vehicle details must be provided

135. The SIN relates to used motor vehicles only and contains detailed information about the particular motor vehicle offered for sale as well as general consumer information relevant to motor vehicle purchases. The vehicle information relates to details about the vehicle's age, usage, make and model, whether another person has a security interest in it, etc. A sample notice which is provided on the Ministry of Consumer Affairs website is attached as Appendix Three.

Traders responsibility to provide SIN

136. A SIN must be attached to all used motor vehicles that are offered or displayed for sale by a motor vehicle trader, or by persons selling through a car market operator. When motor vehicles are physically displayed for sale, the SIN must be attached to the vehicle in a prominent position that makes it clearly visible from the exterior of the vehicle. When the avenue for sale or display is via the internet and a contract for sale may be entered into on the internet, the SIN (or access to it, for example, through a hypertext link) must be clearly and

prominently displayed on the same web page as the offer or display, and the contract for sale relating to that vehicle.

Acknowledgement of SIN to be obtained

137. Where a motor vehicle trader is a party to, or acts as an agent for a party to a contract for sale, that motor vehicle trader must obtain a written acknowledgement that the buyer has received a copy of the SIN. This must be obtained immediately before the sale of the vehicle, or in the case of a car auctioneer as soon as practicable after the sale.

Records to be kept

138. A copy of the SIN and its acknowledgement must be kept for 6 years and be made available for inspection on request of the Registrar.

Penalties and offences

139. Failure to comply with the requirement to provide a SIN and the information required in the SIN is a breach of section 28 of the Fair Trading Act 1986 and attracts a maximum fine of \$60,000 for individuals and \$200,000 for companies. Failure by a car market operator to take reasonable steps to ensure that a consumer selling through them attaches a SIN, is an offence under the MVSA and attracts a maximum fine of \$2,000. This is also an infringement offence.

Implementation

140. The Commerce Commission is the agency responsible for enforcing the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 which establish the SIN requirements. From the data it has provided, it would appear that compliance with the consumer information requirements was initially poor. Recent investigation suggests that compliance has improved, but certain issues remain, as discussed below.

Compliance activity

141. In July 2004, six months in to the new regime, the Commerce Commission inspected 89 premises in Auckland, Wellington and Christchurch and reported significant non-compliance through either failure to display the SIN, or displaying incomplete information on the SIN.

142. From July 2004 to June 2005 inspections were conducted around the country, with degrees of non-compliance ranging from incorrect formats and incomplete information through to inaccurate vehicle prices. These types of non-compliance resulted in consumers being given inaccurate information about the price of the vehicle. They were also hindered from being easily able to make comparisons among vehicles. In total, 101 warning and compliance advice letters were issued during the year and

two cases were approved for prosecution in relation to the failure to display SINS, for failing to provide buyers of used motor vehicles with copies of the SIN, and for not obtaining written acknowledgements from buyers that they had received copies of the SIN.

143. Inspections were also carried out of the SINS displayed by cars being offered for sale at car fairs. Guidance was provided to the car fair operators as to the requirements of the Regulations. Initially the level of compliance at these car fairs was low; however, in the two cases where follow-up visits were conducted, the level of compliance was shown to be much improved.
144. In the first quarter of the 2005/06 financial year, 14 warnings and compliance advice letters were sent. Issues included failure to complete all parts of the SIN (principally the Warrant of Fitness and security interest information), failure to display SINS on used motorcycles and one instance of making a misleading representation that the trader was offering cars for sale as a private individual.

Summary of activity

145. By December 2005 (after two years of operation of the MVSA), the Commission has received 187 complaints or enquiries about the MVSA. It has undertaken 185 inspections, from which 65 warning notices have been issued, in 79 instances compliance advice has been provided, in 3 cases settlements were negotiated and 1 prosecution was undertaken.
146. Commission issues with non-compliant traders were initially:
- Use of non-compliant SINS, including the formatting, scheduling, and re-ordering of information on the SIN, and the appearance of “Features” or “Comments” panels on SINS.
 - Security Interest Warning panels incorrectly filled out.
 - Warrant of Fitness expiry date disclosure.
 - Non-display of SINS.
 - Price disclosure issues, especially on road costs disclosure.
 - Odometer reading inaccuracy.
147. Following inspection and enforcement activity by the Commission, the most prevalent issues are now:
- Non-display of SINS. Cases where traders fail to display SINS are more often related to failure to display on some vehicles on a car yard, rather than providing no SINS at all.

- Odometer reading inaccuracy and vehicle Imported Damaged disclosure have continued to be brought to the Commission's attention through consumer contact.
- Security Interest Warning panels incorrectly filled out.
- Warrant of Fitness expiry date disclosure.

Ministry of Consumer Affairs / Citizens Advice Bureaux monitoring exercise

148. In the period September 2004 to March 2005, the National Association of Citizens' Advice Bureaux and the Ministry of Consumer Affairs undertook a limited monitoring exercise of enquires related to the MVSA. During this period there were 150 enquires. With respect to the SIN, 59 percent (89 people) said a SIN was displayed in cars, 21 percent had no SIN at the time of purchase and the remaining 20 percent could not recall if a SIN was displayed or not. Fifty-two percent said they received a copy of the SIN when they purchased the vehicle, 23 percent did not receive a copy and 25 percent were not aware whether a copy was received or not.

Telephone survey (commissioned by Ministry of Consumer Affairs)

149. Between June and August 2005 a telephone survey, commissioned by the Ministry of Consumer Affairs, was conducted, targeting purchasers of used motor vehicles from motor vehicle traders. The survey of 617 people, who had purchased a vehicle in the past 12 months, found four out of five purchasers recalled the SIN being displayed. Just under half recalled signing the SIN. Follow up focus groups to that survey found that people appeared to lack awareness of the purpose of the SIN or the legal requirements associated with the SIN.

Assessment against the consumer information disclosure objectives

150. In assessing the effectiveness of the information disclosure requirements, it is relevant to note that the new requirements met with some initial scepticism and reluctance from the motor vehicle industry. Consumers had to adjust to the new practice as well.
151. Under the former Motor Vehicle Dealers Act 1975 motor vehicles had to be sold under one of four warranty categories. Each warranty category had a different standard and the window card had to state the category under which the motor vehicle was being sold. These warranty categories were in conflict with the general consumer protection provisions of the Consumer Guarantees Act 1993. The introduction of the MVSA in 2003 removed these warranties and placed warranty issues under the wider scope of the CGA.

152. After a residual resistance both industry and consumers have adjusted to the current regulations. Consumer group responses to the SIN have been largely positive.

Objective: Accurate and meaningful information is provided

153. In the first year of operation of the MVSA, monitoring activity has shown that SIN display compliance was poor. This could be attributed to the fact it was the initial education phase where motor vehicle traders were coming to grips with their obligations. More recent investigation has shown that SIN display compliance has improved, providing customers with the required information relating to their purchase.

154. There is a general impression, however, that the levels of compliance vary within different parts of the industry. Traditional traders, particularly those operating from a physical car yard and who are supported through their membership of an industry association, appear more likely to meet the SIN requirements than those trading either through the internet or through car fairs or display for sale operations. If the information disclosure requirements are to be effective, these latter avenues of trading will require closer enforcement attention.

155. Other concerns have been raised which also impact on whether consumers are provided with accurate and meaningful information. The SIN has been variously described as too rigid, inconsistent in its use of yes/no entries (or requiring the entries to be left blank), and confusing where there are also associated date entry requirements. Specific examples include:

Warrant of fitness

156. The SIN requires that it be noted (by a Yes/No entry) whether a Warrant or Certificate of Fitness (WoF) exists or not. The actual expiry date must also be noted. Often a WoF will expire whilst being displayed for sale on a car yard or waiting for auction. This means that the SIN must be updated. On larger car yards this can be an onerous compliance cost.

157. Under Land Transport Rules the WoF must be displayed on the window screen of any motor vehicle. It is further required that a WoF be no more than 28 days old at point of sale. This is important consumer information about which the SIN is silent.

158. The current requirements relating to the WoF therefore do not appear to be meeting the needs of either the industry or consumers. Consideration needs to be given to finding a more effective means of providing the relevant details and obligations that attach to the WoF.

Vehicle registration and vehicle licence

159. Confusion has arisen as to the meanings of “registration” and “licence” and their placement together on the SIN. Registration refers to the

registration for the vehicle on the Motor Vehicle Register which utilises the Vehicle Identification Number (VIN) of the vehicle. Licensing a motor vehicle is obtaining licence plates and thus the right to drive the vehicle on the road and is commonly referred to by the public as “registration”. This causes confusion when the two words are placed together on the SIN.

160. It is common for vehicles to be auctioned with a current registration but no current licence. A consumer on viewing that the SIN has been ticked “yes” indicating that the vehicle is registered may also assume that the vehicle has a current licence. This is regardless of the date of licence expiration being noted in the same panel. Consideration needs to be given to finding a way of avoiding possible confusion.

Cash price

161. There is concern that the cash price, as required on the SIN, excludes what are referred to as “on road costs” (for instance, licensing the vehicle, or registering it in the case of a new import) and this is potentially misleading for consumers. Industry has recommended that an additional “on road costs” panel be introduced to the SIN (this is similar to the inclusive or exclusive of GST stated approach often taken when advertising a product for sale).
162. Most consumers expect the cash price to include all on road costs. It is considered that the cash price should be, wherever possible, the total costs of the vehicle. Where these cannot be stated, for example at auction, any additional charges that will be payable should be clearly indicated.
163. There is a further issue here for cars sold at auction. Consumers prefer to see an indicative price of the vehicle that it may go for at auction. An entry in the cash price field noting such a price is not currently allowed. Consideration needs to be given to find a way to provide for this information to be displayed.

Notice title

164. The purpose of the SIN is to provide individual vehicle details to consumers and on the reverse side there is general consumer protection advice relating to buying a used motor vehicle. The legislative instrument is called a Consumer Information Standard. However the Notice itself is called the Supplier Information Notice. This can cause confusion for the consumer.
165. SIN confusion is compounded further as the vehicle details page makes reference to both “you” as the supplier, and “you” as the buyer of the vehicle. Both of these issues need to be addressed.

Features and additional information facility

166. There is demand from motor vehicle traders and consumers to have additional information such as features and accessories as well as information about the number of owners on the SIN. Presently including such information on the SIN is not permitted, but it may be supplied on a supplementary form.
167. When the SIN form was originally developed, the required motor vehicle details were limited to those that could be independently verified and were meaningful in regard to the basic performance attributes of the vehicle. There were concerns that “sale” features would be given greater prominence on the SIN and that this would detract from details that were more meaningful, even if less attractive, to the buyer.
168. It appears that consumers still value this information and are prepared to make their own judgements as to its merit. Concerns about visibility of prescribed information could be dealt with by a simple requirement that such information is given prominence.
169. Consideration should be given to allowing additional information such as features and accessories, and previous owners, to be placed on the SIN.
170. In terms of whether the SIN provides accurate and meaningful information, responses from consumer groups and industry are extremely varied regarding the success of the SIN. There are parties in both groups that support the SIN and would like to see it continue (with minor amendments) for a longer period so that its effectiveness can be properly measured. On the other hand, there are parties in both groups that consider that the SIN does not give consumers all the information that they want, is difficult for consumers to read and is confusing. Some of the information, such as the Personal Property Securities Register (PPSR) free phone number has become outdated and is therefore no longer helpful (this is discussed below in more detail).

Recommendation

171. *It is recommended that a comprehensive review of the information requirements and the form in which the information be provided as set out in Schedules I and II of the Regulations be undertaken.*

Objective: Buyer has clear title when existing prior claims are not disclosed

172. Every year there are over 250,000 debts registered on vehicles. At any one time there could be 255,000 debts hidden on past plates. In addition there are 23,000 vehicles stolen each year and 55,000 illegally sold vehicles each year². These figures suggest there is a large part of the

² Source: www.motocheck.co.nz

used vehicle market that involves the sale of vehicles with security interests.

173. A motor vehicle trader must disclose on the SIN if there is a registered security interest over the motor vehicle. If a security interest exists and it is not disclosed on the SIN any liability for that interest is assumed by the motor vehicle trader. The Commerce Commission has reported one instance of failure to disclose a security interest and one claim before the Motor Vehicle Disputes Tribunal centred on this issue.
174. Rights to clear title appear to be well established. However, confusion may arise with regard to the security interest panel on the SIN. If no security interest is vested in the motor vehicle this panel must currently remain empty. This lack of direction can be confusing. For the sake of clarity, the panel should state either that there is or there is not a security interest over the vehicle. A statement recorded in this panel would be unequivocal as to the security interest status of the vehicle.
175. A further issue has arisen with the PPSR information provided in the consumer information section of the SIN. This section directs consumers to use a free phone number which implies that it can be rung to determine if there is a security interest over the vehicle. Such a service is not actually provided by this number. It is more of a general information service regarding the PPSR.
176. In addition, the email address info@ppsr.govt.nz is being wound down and the PPSR website is currently being enhanced. Thus, the most appropriate contact address to remain on the on the reverse of the SIN is the website address (www.ppsr.govt.nz). This site explains how the PPSR can identify any security interest, how to register as a user, and how to carry out the search. There is a function on the website homepage where the user is able to ask questions.

Objective: Consumers are provided with information about their rights and know how and where to seek redress

177. Many of the factors which will help to ensure that this objective is achieved have already been discussed. Consumers must first be provided with the SIN and the information contained in the SIN must meet consumer needs. Ironically, in the consumer awareness survey commissioned by the Ministry of Consumer Affairs, the consumer protection information that must be provided on the back of the SIN has been likened to “the fine print” of a contract and therefore mostly ignored.
178. As noted earlier in the discussion of the registration regime, the number of agencies involved in administering and enforcing the MVSA and

related motor vehicle matters has the potential to confuse consumers and prevent them pursuing the redress to which they may be entitled. The provision of four different contact points in the consumer information section of the SIN illustrates this fragmentation.

179. The security interest consumer information section, discussed above, also highlights the difficulty of prescribing set information where that information is subject to change. This is particularly relevant when the information relates to the activities of other agencies that are not the administering agency for the particular regulations. If the information is to be helpful it must also be up to date. However, every time the information is changed this would need to be reflected in a change to the regulations and impose additional compliance costs on business.
180. This discussion reiterates the need for consideration to be given to establishing one central contact point for consumers, which could deal with general enquiries across a range of motor vehicle issues and ensure that consumers were then directed, if need be, to the appropriate agency. The general consumer information provided on the SIN could be limited to the information about security interest required under section 15 of the MVSA and the contact details for a central consumer information point.

Objective: Documentary evidence of the transaction is available in the event of a dispute.

181. The SIN is required to be retained for a period of 6 years after the sale as documentary evidence of the sale. This is particularly important when an encumbered vehicle is being sold for future evidentiary purposes. The Ministry has seen no evidence to suggest if this requirement is being followed or not.
182. Given that the consumer focus groups survey found that 4 out of 5 people did not recall seeing a SIN and that only one in two actually signed a copy of the SIN card, it would suggest that compliance with the need to display and retain and give a copy of the SIN to the purchaser is not being followed.

Specific Issues

183. Additional information disclosure issues identified, including those raised in submissions and discussions, not previously addressed, are now discussed.

Vehicle year

184. There is a potential issue arising from an incompatibility between the Motor Vehicle Register protocols and the SIN requirements in respect of data capture of “vehicle year” on the Register. The Register is run by Land Transport New Zealand.

185. The SIN requirements came into effect on 15 December 2003 and provide that the definition of “vehicle year” is either the “Year of Manufacture” (YOM) or “Model Year” (MY) as recorded on the Motor Vehicle Register. YOM and/or MY, was considered to provide additional information as to the age of the vehicle and the standards to which it had been manufactured. A separate entry for “Year of First Registration” (YOFR) was maintained as this gave information as to the years of use of the vehicle. These additional pieces of information were considered necessary given the inability in many instances to confirm the accuracy of the odometer reading of the vehicle.
186. Prior to December 2003, industry convention followed that where a YOM or MY, was unable to be determined, the “Year of First Registration” (YOFR) was used. This is a particularly common practice with Japanese imports due to difficulties in obtaining data from the Japanese motor industry. Therefore motor vehicles that were entered onto the Motor Vehicle Register prior to December 2003 but have since been placed on the market may have any one of the three dates entered into the vehicle year field.
187. The Ministry of Transport is currently exploring ways of resolving this situation. That will likely require an amendment to the regulations.
188. The Ministry of Consumer Affairs is maintaining close liaison with the Ministry of Transport.

Car market operations (car fairs, display for sale operations and internet sales)

189. Selling used motor vehicles by way of car fairs, display for sale operations and over the internet has become a common feature of the New Zealand used motor vehicles sales market. An important aspect of these avenues for sale is that they are used by both private individuals selling their cars and by motor vehicle traders.
190. Vehicles offered for private sale or by a trader in the course of business may be displayed side by side and there is often little to alert consumers buying in these circumstances whether they are engaged in a private sale between individuals or whether they are purchasing from a trader. It is important that this distinction is made because if things go wrong in the transaction, the remedies that may be available to the buyer are different for private sales than for sales made by traders. Private sales tend to be a “buyer beware” situation in which, if things go wrong, the buyer has no rights under the Consumer Guarantees or Fair Trading Acts (although they may have some recourse to common and civil law remedies). Where sales are made through a trader, however, these Acts have full effect and the buyer may also take a claim to the Motor Vehicle Disputes Tribunal.
191. Both industry and consumer representatives have expressed concern that some traders selling through car fairs and on the internet may be

attempting to evade their obligations under the MVSA by giving the impression that they are making private sales. Examples of such activity include trading activity by unregistered motor vehicle traders (against whom Consumer Guarantees Act claims can be made) and the use of the trader's individual name rather than the name of the car dealership thereby suggesting a private sale rather than one conducted in trade.

192. Compliance in this area is important and enforcement activity should be targeted here to ensure the effectiveness of the regime. It needs to be noted, however, that car fair and display for sale operations are generally conducted on the weekend and that to strengthen enforcement here may have funding implications.

Obligations placed on car market operators

193. The obligations placed on car market operators with regard to the SIN are worded differently in the MVSA than in the regulations. This has given rise to some confusion as to the exact nature of those obligations and how they apply, particularly with regard to internet sales.
194. A car market operator under the MVSA means a person who carries on the business of providing any premises or place for a market for the sale by other persons of used motor vehicles or 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). A car market operator 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. A car market operator is deemed to be a motor vehicle trader and must be registered.
195. Section 14 of the MVSA focuses primarily on the situation where the vehicle can be physically examined and the SIN can be physically attached. It requires that a motor vehicle trader must ensure that all used motor vehicles offered for sale through them, have a SIN prominently attached to the vehicle.
196. This responsibility is lessened, to some degree, when a consumer is offering a vehicle for sale through a car market operator. Section 14(2) provides that in this situation the car market operator must "take reasonable steps" to ensure that consumers selling through them, attach the SIN to the motor vehicle in a prominent position.
197. For car fair operators and display for sale operations the nature of the obligations are clear. What constitutes taking "reasonable steps" is less clear and there is concern that this provides an avenue for exploitation by unscrupulous traders.
198. With regard to internet sales the nature of the obligations are also unclear. As noted, a car market operator is also a person "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)”.

199. Section 14 of the MVSA requires the car market operator to provide a SIN but is silent as to how this should be done in regard to an internet sale. Section 6(2) of the Consumer Information Standard (Used Motor Vehicle) Regulations 2003 sets out that if a used motor vehicle is offered or displayed for sale on the internet and a contract for sale in relation to that motor vehicle may be entered into on the internet then the SIN, or access to the SIN (for example through a hypertext link) relating to that vehicle must be clearly and prominently displayed on the same internet web page as the offer or display for sale and the contract for sale that may be entered into in relation to that vehicle.
200. It further provides that the SIN must be attached by the motor vehicle trader who offers or displays the motor vehicle for sale or by the person who offers or displays the motor vehicle for sale through a car market operator. But it is silent as to the requirement for a car market operator to take reasonable steps in the case of a consumer offering a vehicle for sale through a car market operator.
201. There are several New Zealand based internet sites that facilitate the sale of used motor vehicles. There are over 300 motor vehicle sales per day via one internet car market operator alone, nearly 110,000 per year. While this operator does advise in their terms and conditions that a seller is required to display a SIN, it appears many other New Zealand auction sites do not give such advice.
202. A limited Ministry examination of New Zealand internet sites (that would most likely meet the definition of a car market operator) suggests that it is common practice for the SIN to not be displayed either on the web page or even physically attached to the vehicle itself (judging by photos of the vehicles displayed on such sites). This is regardless of whether the seller is a consumer conducting a private sale or a motor vehicle trader engaging in the business of trade.
203. There is cause for concern here. It is in the interest of consumers that in venues where sales of motor vehicles may be either private sales or sales by a motor vehicle trader, that the type of sale is clearly indicated. The SIN provides a tool for making this distinction and ensures that the consumer making a decision in this arena has access to the same kind of information on all the vehicles on display. The private individual selling through these venues is also availing themselves of the benefit of a market type venue. It should not therefore be considered an onerous burden for them to be required to provide basic information about their motor vehicle, and for those who carry on the business of facilitating such sales to ensure that this information is provided.

Recommendation:

204. *It is recommended that section 14 of the MVSA be clarified as to the responsibilities placed on car market operators with regard to providing the SIN, in particular in relation to internet sales and that consideration be given to removing the section 14 (2) provision that requires car market operators only to take reasonable steps to ensure that a consumer provides a SIN, thereby strengthening car market operators responsibility in this area.*

Imported as a damaged vehicle

205. The SIN has an “imported as damaged vehicle” panel. Land Transport New Zealand records whether or not the vehicle had obvious structural damage or deterioration at the time of import and this is flagged to the vehicle. The extent of damage is not recorded and the SIN only notes if the vehicle was flagged as a damaged vehicle.
206. An industry perspective is that the flag does not identify whether the damage is (was) major or minor and that it should not therefore be used as a “definitive categorisation of the vehicle as structurally damaged or incorrectly repaired”. It is suggested that consumers will not give proper consideration to cars with such a flag, believing the car to have major damage when in fact a simple repair may have been affected. Further, in any private sale such a disclosure is not made and this creates an uneven playing field for sellers of used motor vehicles. A car may be written off, repaired and put back on the road without the consumer ever realising it.
207. In fact, a flag is retained on the Motor Vehicle Register records only in the case of “obvious structural damage or deterioration of a vehicle”. The key word here is “structural”, as this determines whether the flag remains on the vehicle or not. Vehicles with damage that is not necessarily structural – such as a minor dent to a door panel – may be flagged initially, but the flag will be removed following subsequent inspection by a Land Transport New Zealand approved entry certifier. No information on the damage will be retained on the record and, therefore, will not be disclosed on the SIN.
208. The damaged vehicle panel on the SIN provides important information for the consumer and should remain. It is acknowledged that this type of information is not made available through private sales and also is not required for vehicles that have been involved in an accident while in use on New Zealand roads. The former situation is generally conducted under the caveat “buyer beware” and the consumer purchasing in this manner does so knowing the risks.
209. In the latter situation, there may be avenues to ensure that this information is made available, such as requiring vehicles that have been structurally damaged to be written off and deregistered. Such vehicles would have to pass the same road worthiness test as imported vehicles

before being re-registered and this information would be recorded on the Motor Vehicle Register. These matters fall within the area of vehicle safety and cannot be dealt with further by this report.

210. No changes are recommended.

Odometer readings

211. The SIN requires that the correct distance the vehicle has travelled must be on the SIN. If the correct data is not displayed, a statement noting the inability to determine the actual distance travelled must be made.

212. There is industry concern that the requirement to note on the SIN solely the “actual distance the vehicle has travelled” is too strict for certain situations. They point out that there can be legitimate reasons why a vehicle’s odometer reading may differ from the vehicle’s true mileage. For example, the odometer may have gone around the clock or in manually recording the odometer reading, numbers may have been transposed. They contend, therefore, that in such situations a responsible motor vehicle trader is obliged to note on the SIN that the “vehicle odometer reading may be inaccurate” and that this will give the consumer the impression that there has been tampering with the odometer thus discouraging consumers from buying what could have been a suitable vehicle for purchase.

213. Consumer and industry concerns regarding odometer tampering are widely documented. There are strict penalties for those who tamper with or misrepresent odometer readings. Consumer confidence that an odometer has not been tampered with continues to be vital because, even though a vehicle’s mechanical condition may provide a better indicator of its current and likely future capability, many consumers consider the odometer mileage reading as a significant indicator as to a car’s condition and factor such information into their purchase decision.

214. It is considered that any variation to the requirement to enter the actual distance travelled on the SIN could create an avenue for misrepresentation of the actual miles travelled. This risk is considered greater than any reason for relaxing the current requirement.

215. No changes are recommended.

Display provisions for motor cycles

216. Industry has voiced concern that the requirement to display an A4 sized SIN card on motorcycles displayed outdoors is impractical. Whereas the SIN housed inside a car is safe from the weather, a SIN on a motorcycle is not. Motorcycle dealers have been unable to produce a cost effective means of displaying a SIN on the motorcycle which is both water proof and that will not damage the paint finish of the motor cycle in blustery conditions, or blow free of the motorcycle.

217. The problems raised here may be somewhat overstated. The way in which a SIN is displayed for motor cycles should, however, be taken into account in any revision of the consumer information standard.

Powers of enforcement

218. Persons authorised by the Registrar, or the Police may inspect a trader's records at all reasonable times, upon request (sections 124 to 129 MVSA). The MVSA does not extend these powers to the Commerce Commission which is charged with the enforcement of the information disclosure provisions. The adequacy of the enforcement powers available to the Commerce Commission under the Fair Trading Act 1986 are being examined as part of a Review of the Enforcement and Redress Provisions of Consumer Protection Law, a project currently being conducted by the Ministry of Consumer Affairs.

219. As an interim measure, and without prejudging the recommendations arising from that review, it would seem appropriate that the Registrar and Commerce Commission enter into a formal agreement under which arrangements could be made for the Registrar to authorise the Commission to act on his behalf. More long term solutions could be to amend section 21 of the MVSA to include officers authorised by the Commerce Commission, or to amend the Fair Trading Act 1986 to allow such powers.

Recommendation:

220. *It is recommended that consideration be given to amending the inspection powers of sections 124 to 129 to also include the Commerce Commission to allow appropriate enforcement of the information provisions of the MVSA (and this should be explored in conjunction with work already in progress regarding similar powers under the Fair Trading Act 1986).*

Exemption from SIN requirements in transactions exclusively between registered motor vehicle traders.

221. Currently section 4 of the Consumer Information Standards (Used Motor Vehicle) Regulations which establishes the SIN requirements under the Fair Trading Act 1986 specifically excludes from the regulations, and therefore the requirement to provide and obtain receipt of a SIN, transactions of used motor vehicles that are made exclusively between registered motor vehicle traders. The MVSA does not allow that exemption. There is no consumer benefit in the provision of a SIN in these transactions and to do so imposes unnecessary business compliance costs.

222. The exemption under the Consumer Information Standard should also be extended to include transactions between a registered motor vehicle trader and a car wrecker. This is because the same considerations apply, but under the MVSA definitions, a car wrecker is not treated as a

registered motor vehicle trader where the sole business of the wrecker is the wrecking or dismantling of a vehicle.

Recommendations:

223. *It is recommended that section 14 and section 16 be amended to exempt from the SIN requirements, transactions that are exclusively between registered motor vehicle traders, and between registered motor vehicle traders and car wreckers as defined in the MVSA.*
224. *It is recommended that the exemption in section 4 of the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 be extended to include transactions between registered motor vehicle dealers and car wreckers as defined in the MVSA.*

Concluding comments on motor vehicle information disclosure

225. It is considered that the concept of the SIN remains sound. It is an important information tool for providing essential and meaningful details about a particular motor vehicle that a consumer is considering purchasing and is a fundamental means to assisting consumers to transact with confidence.
226. There are concerns, however, that the SIN attempts too much, and in doing so, negates its effect as an effective information resource. Due to its prescriptive nature several issues have arisen with the information required and the form in which it is to be provided. These issues are mainly minor and technical in nature but the way in which the information is currently presented detracts from the value of that information. There are many different viewpoints and concerns regarding the SIN. Proposals to address the concerns raised need to be more fully developed and consulted widely with both industry and consumer interests. An early and comprehensive review of the SIN is, accordingly, recommended.
227. Concerns about compliance with the requirement to display a SIN card are centred mainly in the car fair and internet sectors.
228. Both industry and consumer representatives have urged that enforcement activity be broadened to include those traders who operate solely or in part without physical premises. Consumers would be better protected if the authorities put more effort into policing traders.

Recommended amendments to the MVSA in relation to information disclosure

Clarification and tightening of requirements on car market operators to provide SIN

It is recommended that section 14 be clarified as to the responsibilities placed on car market operators with regard to providing the SIN, in particular in relation to internet sales and that consideration be given to removing the section 14 (2) provision that requires car market operators only to take reasonable steps to ensure that a consumer provides a SIN, thereby strengthening car market operators responsibility in this area (see discussion pages 37 to 39).

Extension of inspection powers to Commerce Commission

It is recommended that consideration be given to amending the inspection powers of sections 124 to 129 to also include the Commerce Commission to allow appropriate enforcement of the information provisions of the MVSA (and this should be explored in conjunction with work already in progress regarding similar powers under the Fair Trading Act 1986) (see discussion page 41).

Exemption from requirements to provide a SIN when transactions are exclusively between registered traders

It is recommended that section 14 and section 16 be amended to exempt from the SIN requirements, transactions that are exclusively between registered motor vehicle traders, and between registered motor vehicle traders and car wreckers as defined in the MVSA (see discussion pages 41 and 42).

Recommended amendments to the Consumer Information Standards (Used Motor Vehicles) Regulations 2003

Review of the Supplier Information Notice

It is recommended that a comprehensive review of the information requirements and the form in which the information be provided as set out in Schedules I and II of the Regulations be undertaken, commencing early 2006 (see discussion pages 31 to 33).

Exemption from requirements to provide a SIN when transactions are exclusively between registered traders and car wreckers

It is recommended that the exemption in section 4 of the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 be extended to include transactions between registered motor vehicle dealers and car wreckers as defined in the MVSA (see discussion pages 41 and 42).

MOTOR VEHICLE DISPUTES RESOLUTION REGIME

Motor Vehicle Disputes Tribunal (MVDT)

229. The strategic aim of the disputes resolution regime is that consumers have access to adequate redress in relation to their purchase of motor vehicles. It is expected that this will be achieved through the Motor Vehicle Disputes Tribunal (MVDT) by ensuring that:

- Consumers have an informal, accessible and low cost forum for redress
- Disputes are adjudicated by an independent party
- All relevant consumer rights specific to motor vehicles and general law are taken into account in disputes assessment.
- The consequences of non-compliance with an order from the MVDT are understood by traders and act as a deterrent to unethical behaviour.

Key elements of the disputes resolution regime

230. The MVDT is a special Tribunal set up to hear claims relating to purchases of motor vehicles. It is administered by the Tribunals Unit of the Ministry of Justice. The relevant provisions of the MVSA are sections 82 to 94, section 142 and Schedule 1 which sets out the procedures of the MVDT.

Members of the tribunal

231. Each Disputes Tribunal consists of an adjudicator who must be a barrister or solicitor of the High Court of not less than 5 years practice; and an assessor appointed by the adjudicator for the purposes of each hearing from a panel of assessors (approved by the Minister of Consumer Affairs). The role of the assessor is to act as an extra member of the Tribunal to assist in the determination of the claim, but the adjudicator alone determines the claim.

Scope of the tribunal

232. The MVDT may hear disputes regarding sales of motor vehicles by motor vehicle traders. The claims may relate to the Consumer Guarantees Act 1993 (for example, quality issues and faults with the vehicle), the Fair Trading Act 1986 and Sale of Goods Act 1908 (misleading and deceptive conduct or false representations).

233. Claims may not exceed \$50,000, unless consent is given to a higher figure by all parties.

234. Claims that relate to private sales cannot be heard by the MVDT.

Parties to a claim

235. One of the parties to a claim must be a motor vehicle trader, whether registered or not. The Tribunal can, if it wishes to, include another party in the hearing if it considers their presence to be necessary to enable the Tribunal to fully determine the claim.

Claim process

236. Proceedings are commenced by the filing of an application in a prescribed form together with the filing fee (if any) at the Disputes Tribunal. A copy of the application must be sent to the respondent who is given 14 days to submit a report or settle the claim. If the claim is not settled, a hearing date and venue is set. A consumer must present their own case unless they receive permission for someone else to represent them because they are under 18, have a disability or the adjudicator is satisfied that the consumer is unable to appear in person or could not present their case adequately. The representative cannot be a lawyer or an experienced advocate.

237. Once the hearing is held, a decision is issued.

Notice deemed to have been served

238. Under section 142 of the MVSA any notice or any other document required to be served to any person under the Act is sufficiently served if in the case of an applicant for registration, or a registered motor vehicle trader, it is delivered or posted to the address for service, or sent to the fax number or email address provided to the Registrar for the purposes of registration; and in the case of any other person is sufficiently served if it is delivered to the person or is left at that person's last known place of residence or business in New Zealand, or posted to that person's last known place of residence or business in New Zealand.

239. The notice or document is treated as received by that person 2 days after it was sent with regard to a fax or email, or 7 days after it was posted, unless the intended recipient proves that it was not received, and that this was not through fault on their part.

Enforcement of an MVDT decision and rights of appeal

240. Decisions of the MVDT are enforceable by the District Court. If necessary, any party may apply to the District Court to have the Tribunal's decision enforced.

241. Where the amount of a claim does not exceed \$12,500, an appeal may be made only on the ground that the proceedings were conducted by the Tribunal in a manner that was unfair to the appellant and prejudicially affected the result.
242. Where the amount of a claim exceeds \$12,500, an appeal may be made on the grounds the Tribunal's decision was wrong either in fact or law, or in both fact and law and that the proceedings were conducted by the Tribunal in a manner that was unfair to the appellant and prejudicially affected the result.

Banning provisions of the MVSA

243. Under section 68(b)(i) a person who has more than once, and within a period of 10 consecutive years, failed to comply with an order of the MVDT, is banned from participating in the business of motor vehicle trading.

Publication of certain decisions

244. Where the Tribunal finds against a motor vehicle trader, for the purpose of protecting the public, the Tribunal must publish in the Gazette the name of the individual and their trading name, or the name of the company and the trading name of its motor vehicle trading business, and the amount of any award made against them.

Annual report

245. The adjudicators must submit an annual report. This report must summarise the claims dealt with, mention any special cases and make any recommendations for amendments to the MVSA.

Implementation

246. The Tribunals Unit of the Ministry of Justice is responsible for the operation of the MVDT.
247. There are currently four Motor Vehicle Disputes Tribunals; three permanent and one travelling Tribunal. There are 3 adjudicators, 2 based in Auckland and 1 based in Wellington. All three adjudicators hear cases in the main cities as well as other cities depending on the demand. Each Tribunal consists of an adjudicator and an assessor. Claims are generally heard at the Tribunal closest to the place where the purchase took place, and in the case of internet sales, at the closest venue to the trader's premises. This is subject to the adjudicator's discretion as there are instances where the hearing is heard in the city where the purchaser resides.
248. The process a consumer follows for bringing a claim to the MVDT usually begins with the consumer contacting the MVDT office by telephone (0800 FORMVDT number). The consumer's query will either

be resolved on the telephone or the consumer may request that an information pack and application form be sent to them (the application form is included in the pack). If the consumer submits an application and filing fee to the MVDT, the MVDT will first establish whether it has jurisdiction and the claim will be registered. However, sometimes jurisdiction issues are not established until the application is heard. A copy of the application will then be sent to the trader (to inform them of the claim) and applicant (acknowledging receipt of the claim and informing them of the process).

Summary of complaints

249. Information provided by the Ministry of Justice Tribunals Unit for the period 15 December 2003 to 30 June 2005, indicates that on average the MVDT 0800 telephone number received 533 calls per month and that 141 information packs were sent out per month. On average 31 applications were filed per month.
250. In the same period the MVDT received a total of 390 claims. More than half of the disputes were filed at the Auckland MVDT.
251. The claims covered a range of issues regarding motor vehicle sales. Eighty-six percent (336) raised quality issues (primarily mechanical fault), 8 percent (33) concerned both quality and misrepresentation, 4 percent (16) concerned misrepresentation only and 1 percent (5) raised other issues. The majority of claims heard at the MVDT are founded upon consumer protections set up in the Consumer Guarantees Act.
252. Thirty two percent (116) of the disputes filed with the MVDT were withdrawn as a result of settlement being reached between the parties before the hearing date. Twenty-seven were yet to be resolved and 247 were resolved at formal hearings.
253. The outcomes of the 247 claims that went to formal hearing were as follows:

Dismissed	96
Settled between parties before judgment	8
Fully compensated	66
Partially compensated	8
Contract/sale rescinded	28
Contract/sale rescinded with compensation	36
Other	5

254. As at 31 December 2005 there were 59 outstanding cases, 13 were not ready for hearing, 9 were waiting for hearing dates to be set, 17 had hearing dates allocated and 16 were awaiting reserved decisions.

Assessment against the disputes resolution objectives

255. In assessing whether the MVDT is providing consumers with adequate redress in relation to their purchase of motor vehicles, regard must be given to the transition from the Motor Vehicle Dealers Act (MVDA) to the MVSA. The transition to the MVSA has meant that disputes filed with regard to vehicles purchased prior to 15 December 2003 from licensed motor vehicle dealers continued to be dealt with by the MVDT until December 2004. By 31 March 2005 all claims under the previous legislation had been resolved. Thus, there has been less than a year of focus exclusively on the new disputes resolution processes.

Objective: Consumers have an informal, accessible and low cost forum for redress

256. Consumers now have direct access to the MVDT. This has made the Tribunal more accessible than under the MVDA where the Tribunal could only hear cases referred by the Motor Vehicle Dealers Institute (MVDI).

257. In discussions with stakeholders and in some submissions, however, it has been suggested that there are MVDT access concerns related to:

- Filing Fees
- Language
- Place of hearing
- Delays in hearing process
- \$50,000 claim limit
- Lack of awareness

Filing fees

258. Under the MVSA, claims must be accompanied by a \$50 filing fee whereas under the MVDA, the MVDT was free. It has been suggested that the filing fee to the MVDT may be a barrier to redress for some cases and that the requirement to pay a filing fee should either be removed for all applicants to the MVDT or that the MVDT should be able to waive the filing fee at its discretion. For example, if a consumer has a complaint relating to a motor vehicle that has been bought on hire purchase and the consumer is struggling to keep up payments then

having to pay a filing fee could cause further financial burden and thus a claim is not taken.

259. Whilst previously access to the MVDT was free, it was also more difficult for a consumer to take a claim to the MVDI because the claimant first had to get through the MVDI complaints processes. There is no hard evidence that the filing fee is preventing claims being filed and in most cases the fee is refunded to the consumer if their claim is successful. The filing fee is within the range (\$30 and \$100) set for access to the ordinary Disputes Tribunal, which considers claims of considerably smaller value. On balance the filing fee is not considered onerous.
260. No changes are recommended.

Language

261. It has been suggested that language may create a barrier to accessing information on the existence and function of the MVDT and may be a contributing factor for a consumer choosing not to take a claim before the MVDT.
262. In all MVDT hearings interpreters are provided/allowed if requested by either party. The ethnic diversity of New Zealand and the need to make sure that there is help available to those with English as a second language in accessing the MVDT was also recognised in the advertising programme that occurred between December 2003 and May 2004. A multi-language flyer "Check before you drive" was delivered to 300,000 households in low-income areas.
263. Consumer awareness prior to entering the process needs to be lifted, however, and any future campaign or education resource development needs to bear in mind the ethnic diversity of New Zealand. There are various networks established with immigrant communities and use of these networks could be explored.

Place of hearing

264. It is current practice to hold an MVDT hearing at a venue nearest to where the motor vehicle purchase took place. If the transaction took place over the internet the hearing is held at the MVDT closest to the trader's premises. It has been suggested that it is too onerous on the consumer to travel to where the car was sold and pointed out that by way of contrast the ordinary Disputes Tribunal holds its hearings in the Tribunal nearest to where the claim is made. The Ministry of Justice has advised that there have been instances where the place of hearing has been an issue for the consumer but not enough to warrant having MVDT hearings at every centre. Furthermore, the adjudicators have in the past heard claims in the region where the purchaser resides. If at some future date the jurisdiction of the MVDT was to be changed, issues of location and accessibility would need to be further considered.

Delays in hearings

265. Various concerns have been raised surrounding how long it takes between a claim being filed and a dispute being resolved by both consumers and traders.
266. Delays in hearing a case can mean that defects with a car are exacerbated by use prior to the hearing. This compounds the problem for both the consumer and the motor vehicle trader who may be required to remedy a fault bigger than that of the original claim. Submissions indicate that trader concern with timeliness may be leading to pre MVDT settlements being offered because this is a cheaper option and less disruptive to ongoing business.
267. As at 30 June 2005, the Tribunals Unit statistics indicate that 363 of the total 390 disputes filed had been resolved or withdrawn, and 27 were still to be resolved. The 247 resolved disputes took an average of 4 months and 17 days from application of claim to dispute resolution.
268. One reason suggested for the delays in the hearing process is the failure of a party to turn up to the hearing. When a party fails to attend, the hearing must be adjourned. Evidence can still be taken but it must then be referred to the trader for comment. If an interim decision is made then it must be issued with a reserved right for the trader to be heard. These processes contribute to delays in final decisions being made.
269. The MVDT procedures should be subject to the rules of natural justice and the MVDT does its utmost to ensure that both parties are informed and have the opportunity to respond so that natural justice can be seen to be done. Schedule 1 clause 2(b) of the MVSA states "the adjudicators must fix the time and must notify each party to the application of the time and place fixed". The MVDT makes every effort to ensure that traders are informed of the claims and of the hearing dates. Notices of hearings are sent by registered mail, in instances where a trader has not replied within the 14 day negotiation period. A follow up phone call prior to the hearing date is also made to the parties.
270. There is a fine balance, however, when a trader is deliberately avoiding the process.
271. Currently under the rules of the MVDT the adjudicator may only award costs against any party if the applicant fails to attend a hearing without good cause. The MVDT adjudicators have advised that it is more likely that a trader will not turn up to a hearing than the consumer who is generally the applicant. As costs cannot be awarded against a trader for not turning up to a hearing, there may be a perverse incentive not to attend. To encourage all parties to attend a hearing, it is recommended that it be possible to also award costs against either the applicant or motor vehicle trader for failure to attend a hearing. This may provide some additional incentive to adhere to the proper process.

272. It has also been suggested that delays in the hearing process are caused by the small number of MVDTs. The Ministry of Justice has indicated that statistics do not support this. Apart from one-off claims at small centres, applications are heard within four to five weeks, including the two-week settlement timeframe, after the claim has been received. Delays are experienced in remote areas but this is not due to a lack of MVDTs but to the remoteness of the area and the expense of sending an adjudicator, assessor and clerk with only one case to be heard.
273. The Ministry of Justice has completed an evaluation of the workload of the Tribunal. The Ministers of Justice and Consumer Affairs have agreed to a proposal which will replace the appointment of three part time adjudicators with one full-time adjudicator and one part-time adjudicator. It is considered that this will enable the Tribunal to schedule and deal with workload demands with a far greater degree of certainty and will improve accessibility of staff to informed advice and information on the merits and status of applications before the MVDT. Given the geographic spread of the claims it is expected that the full-time adjudicator would be based in Auckland and the part-time adjudicator would cover the lower North Island and the South Island.
274. It is also noted that under the MVSA Schedule which establishes the procedure of the MVDT that the adjudicator is given responsibility for many of the administrative functions of the Tribunal. To help facilitate some of the administrative aspects of the Tribunal, which do not require the legal expertise of the adjudicator, it is recommended that the Schedule be reviewed and administrative procedures amended to reflect those of the ordinary Disputes Tribunal, where appropriate.

Recommendation:

275. *It is recommended that section 14 of Schedule 1, be amended to allow costs to be awarded against any party to a claim, for non attendance at a hearing for no good cause.*
276. *It is recommended that Schedule 1 of the MVSA be reviewed and administrative procedures amended to reflect those of the ordinary Disputes Tribunal, where appropriate.*

Claim limit

277. Section 90 states that the MVDT has jurisdiction only if the total sum of the application or claim does not exceed \$50,000. There has been a suggestion that consumers have limited access to justice as a result of this claim limit. Currently, the claim limit means that if a dispute is taken to the MVDT that is in excess of \$50,000, rescission of contract is not a possible remedy because the contract would be worth more than the claim limit and partial rescission is not possible.
278. The MVDT operates like the ordinary Disputes Tribunal by providing a low cost alternative for consumers with claims below a defined amount

to seek redress. If consumers have a claim over the defined amount they can access the District Court to seek redress. This process, however, has a higher cost. The principle behind both the MVDT and Disputes Tribunal is to provide low cost access to the court system for claims that do not justify the expenses that are likely to be incurred in accessing the District or High Courts. Little evidence is available or collected relating to claims above \$50,000 as the MVDT does not hear claims above this amount. This is not to suggest that these disputes do not exist. However, consumers with such claims have little or no chance of having them heard by the MVDT because they are unlikely to get consent from the trader to do so. It is considered that the \$50,000 limit is not unreasonable and that it should cover most disputes over motor vehicles. For higher value claims, it is appropriate that they are filed in the District Court.

Awareness of MVDT and disputes resolution regime

279. It has been suggested that consumers are unaware of where to go if they have a problem with their purchase of a motor vehicle.
280. The Motor Industry Association estimates that the consumer complaint rate to MVDT works out at about 1 complaint per 1000 sales/changes of ownership. Currently consumers consult all sorts of bodies on how to seek redress from a motor vehicle trader including the Motor Trade Association (MTA), Citizens Advice Bureaux (CAB) and Ministry of Consumer Affairs' Call Centre.
281. The MTA has a service to help customers using an MTA member. On average their call centre handles 400 calls a month. Ninety percent of complaints are resolved within 24 hours.
282. Consumers are also approaching the CAB about the MVSA. During the period September 2004 to March 2005 CAB received a total of 150 enquiries about the MVSA. Of these enquiries, only 15 were referred to the MVDT. 73 were referred back to the trader. It is not known whether the consumer was informed that the MVDT was available if talking to the trader did not rectify their problem.
283. The Ministry of Consumer Affairs' Call Centre received a total of 587 MVSA related calls from April 2004 to June 2005. This is an average of 2 calls a day. In the recent national consumer survey on awareness and experience of consumer legislation prepared for the Ministry of Consumer Affairs 104 out of 635 people that had bought a car had experienced some type of problem. Of this 104, 42 resolved the problem by going direct to the seller, 32 sought third party advice and none went through the formal MVDT disputes resolution process.
284. From various comments in submissions and discussions with stakeholders, it is apparent that consumer awareness needs to be raised about the operation and process of the MVDT. This needs to include raising consumer's comprehension of the jurisdiction of the MVDT,

including that the MDVT hears claims under the Fair Trading Act 1986 and Consumer Guarantees Act 1993 with respect to motor vehicle sales.

285. There also needs to be better awareness of the MVDT process. For example, there seems to be a lack of awareness that at each MVDT hearing there is an industry expert present (the assessor). In particular, industry groups seem to have lack of knowledge of this and therefore have wondered what distinguishes the MVDT from a Disputes Tribunal, making it more suited to hearing claims about motor vehicle sales.
286. One way to raise the profile of the MVDT may be through providing a central contact point for consumers seeking information about their rights and avenues for redress regarding motor vehicle purchases. This could be in the form of a call centre as well as perhaps a well designed website with good links. It is also recommended that there are regular information and awareness campaigns to educate industry and consumers about the MVSA and MVDT.

Objective: Disputes are adjudicated by an independent party

287. The composition of the MVDT consists of a single neutral adjudicator (a barrister or solicitor of at least 5 years experience) and an assessor appointed from a panel of pre-approved assessors. The assessor's role is one of independent expert witness.
288. Section 83 of the MVSA requires that every adjudicator must be appointed by the Governor-General on the joint recommendation of the Ministers of Consumer Affairs and Justice. These checks are to ensure that the adjudicator is an independent party. Additionally, the assessor must take an oath before the adjudicator that the assessor will faithfully and impartially perform his duties.
289. It would be useful to receive formal feedback from the independent adjudicators as to how they view the MVSA. Section 87 of the MVSA requires adjudicators to submit an annual report. This report should provide important information on the operation of the MVDT as the report must summarise the claims dealt with, mention any special cases and make any recommendations for amendments to the MVSA. Currently the MVSA does not specify the time frame in which the reports are to be submitted. It does not also adequately take account of the fact that where there is more than one tribunal there will be multiple reports. It is recommended that this section be reviewed so that the reports can play a more useful role in informing the Minister of emerging issues.

Recommendation:

290. *It is recommended that section 87 be amended to provide a timeframe within which the Adjudicators annual reports are to be submitted and to deal appropriately with the receipt of multiple reports.*

Objective: All relevant consumer rights specific to motor vehicles and general law are taken into account in dispute assessment

291. The MVDT examines disputes filed regarding alleged breaches in the responsibilities of registered and unregistered motor vehicle traders. It does not concern itself with private sales.
292. The jurisdiction of the MVDT is set out in sections 89-93 of the MVSA. The jurisdiction was widened under the MVSA to allow hearings of claims under the Sale of Goods Act 1908, the Fair Trading Act 1986 (FTA) and the Consumer Guarantees Act 1993 (CGA). These Acts offer good general protections to consumers.
293. 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 CGA provides that the vehicle must be of acceptable quality, must be fit for any particular purpose, must match its description, must comply with the sample, the trader must give the consumer good title to the vehicle and the vehicle must be of a reasonable price. Where the trader has breached a provision of the CGA, the consumer has the right to a repair, replacement or refund (depending on the nature of the problem).
294. The FTA provides that persons selling motor vehicles “in trade” must not engage in any conduct that misleads or deceives consumers. Vendors are required to disclose all information they know about a vehicle, especially when that information will be influential in the purchaser’s decision making.
295. In summary, claims taken to the MVDT may relate to:
- quality issues and faults with the vehicle;
 - misleading and deceptive conduct or false representations; and
 - an undisclosed security interest.
296. Statistics provided by the MVDT clearly show that the majority of claims heard at the MVDT are founded upon consumer protections set up in the CGA. The four “warranty” categories under the previous regime were replaced by the general provisions of the CGA and some concern has been expressed that there is no set standard for what constitutes “acceptable quality”. It is acknowledged that there is some uncertainty here. It needs to be noted, however, that an important aspect of the CGA protections is that they are specific to the particular aspects of an individual transaction and any generalised determination of “acceptable quality” would detract from this. It is precisely for this reason that the four warranty categories were removed. It may be useful, however, if the MVDT, as apart of its annual report, highlights issues of major legal import.

Extension of jurisdiction to finance arrangements

297. Various groups have suggested there is a need for the jurisdiction of the MVDT to be extended in section 89 of the MVSA to include the Credit Contract and Consumer Finance Act (CCCFA). This is because motor vehicle sales and finance arrangements are often intertwined and in many instances a motor vehicle trader assists or acts as an agent to another in providing finance for the motor vehicle purchase. Moreover, in many instances the likelihood of a sale is dependent on the availability of finance and there is a strong incentive for the motor vehicle trader to facilitate arranging that finance.
298. Currently the only thing the MVSA has to say about finance arrangements is in section 89(2) under which the adjudicator may pass back to the motor vehicle dealer any repayment commitments that a consumer may have to a creditor where the consumer's right to reject the car under the CGA has been upheld or the consumer is deemed to have suffered loss due to conduct of the trader under the FTA.
299. The CCCFA provides among other things, that consumers must be fully informed in writing, of the conditions of the contract between the lender and the borrower including a "disclosure statement" of key terms and conditions. As a purchaser, the consumer may not have to pay all the charges of the credit sale or loan contract if they do not receive all the contract information within the required time. They may also cancel the financial arrangement within three working days from the date disclosure is deemed to have been made.
300. There have been instances reported where certain costs have not been disclosed by the motor vehicle trader when facilitating the finance arrangements, such as brokerage fees, and there may be some benefit to consumers if these issues could also be considered by the MVDT. At present such a claim would need to be submitted to the ordinary Disputes Tribunal, and if the size of the claim exceeded \$7500 the consumer would have to seek remedy from the District Court. (It is considered unlikely that in such cases that the consumer would successfully obtain the other parties consent to an extended claim limit.) It is possible that if the claimant also has CGA issues with the vehicle they could be pursuing claims in the two tribunals, with the same parties at the same time.
301. A vehicle purchase is generally the second largest purchase a consumer makes and the purchase is often made with borrowed funds. Consideration should therefore be given to the inclusion of the CCCFA within the jurisdiction of the MVDT. Such consideration would need to look carefully at the extent to which the CCCFA should be applied: whether it included only the actions of a motor vehicle trader when acting in a role of assisting the financial arrangements or whether the parties to a claim before the MVDT should be widened to include creditors who have made finance available for a motor vehicle transaction. The CCCFA is a recent piece of legislation and the Ministry of Consumer

Affairs will be conducting a review of its effectiveness in achieving its objectives. That review could be used to inform the future consideration of including the CCCFA within the MVDT jurisdiction.

Recommendation:

302. *It is recommended that section 89 be extended to allow the MVDT to also consider claims under the Consumer Credit and Consumer Finance Act 2003.*

Objective: The consequences of non-compliance with an order from the MVDT are understood by traders and act as a deterrent to unethical behaviour.

303. Effective enforcement underpins the whole consumer protection regime of the MVSA. At the moment, it is perceived by both consumers and industry groups that some traders are being allowed to operate with an element of impunity. Part of this perception may arise from the fact that the MVDT has been able to focus solely on MVSA claims for only a short period. It may also relate to the general lack of awareness commented on earlier.

304. However, the MVSA gives the MVDT significant power to make decisions and provides provisions for enforcement of MVDT decisions. There are also important tools that can be used to signal that avoidance type behaviour will not be tolerated. Now that the MVSA has been in operation for two years, the MVDT should consider placing more emphasis on sending clear signals that non-compliance with the MVSA will have detrimental consequences for traders.

305. For example, as noted earlier, concern has been expressed that traders are delaying the process of a claim through the MVDT. While it is understood that the adjudicators wish to give both parties a fair hearing, it is a common perception that some traders are taking advantage of the adjudicators and that they are either failing to turn up to court or complaining they never received notice of the claim and the MVDT is accepting these excuses. Section 142 is quite clear on the conditions under which a notice is sufficiently served and it would be quite appropriate for the MVDT to take a stronger approach towards such traders.

306. Section 15 of Schedule 1 of the MVSA provides for enforcement of MVDT decisions by filing of the decision in the office of the District Court. This offers a further means of consumer protection against traders who ignore MVDT decisions. Many consumers are unaware that this is the way in which they can get an MVDT decision enforced if the trader fails to comply with the decision in the first instance. The package that consumers receive about making a claim does include this information and it is also included in the letter sent out with the final decision.

307. The problems of increasing awareness are well known. The establishment of one central contact point for information about motor vehicle issues may be beneficial.
308. Finally, under section 68(b)(i) of the MVSA, a person who more than once, within a period of 10 consecutive years, fails to comply with an order of the MVDT is banned from participating in the business of motor vehicle trading. While the MVSA places no legal requirement on the MVDT to follow through compliance orders under the Act, it is recommended that, where possible, the Registrar be advised of those traders that contravene an order of the MVDT so that documentary evidence exists in the event that it is considered desirable to make application under section 69 to the District Court for a banning order or to invoke the banning provisions under section 68(b)(i).

Specific Issues

309. Additional issues identified concerning disputes resolution including those raised in submissions and discussions, not addressed above, are now discussed.

Other jurisdiction issues

Overlap with the ordinary Disputes Tribunal

310. Consumers may take a claim involving a motor vehicle sales dispute before the ordinary Disputes Tribunal or the MVDT. There may be compelling reasons for choosing either one venue or the other and these are perhaps not sufficiently outlined in the MVDT information pack.
311. The ordinary Disputes Tribunal can hear claims against registered and unregistered motor vehicle traders, and private sellers. It is currently practice for a Disputes Tribunal claim to be heard in the Tribunal nearest to where the claim is made. The claim may be made under a wide range of legislation, including the Credit Contract and Consumer Finance Act (CCCFA). The limit of a claim before the ordinary Disputes Tribunal is, however, limited to \$7500, unless there is mutual consent to a higher claim.
312. The MVDT comparison deals only with motor vehicle disputes involving a motor vehicle trader (whether registered or not – though there may be some difficulty in establishing these facts where the trader is operating illegally). The claim must relate to contraventions of the Consumer Guarantees Act, the Fair Trading Act or the Sales of Goods Act. Currently an MVDT claim is heard at the Tribunal nearest to where the car was sold, which may be some distance from where the consumer lives. However, the MVDT is assisted by a technical expert and the limit for claims is \$50,000.
313. The claimant, therefore, has a range of factors (location, jurisdiction, timeliness, value of claim) which may influence where they will seek

redress. Depending on the specific nature of the claim the claimant may have a choice (balancing location against specialist expertise), or may be constrained to a particular venue (depending on legislative jurisdiction and the size of the claim).

314. It is important that the information provided about these tribunals clearly outlines their respective responsibilities and jurisdiction. When claimants do have a choice of applying to either the ordinary Disputes Tribunal or the MVDT and there are no compelling reasons for claims to be heard by the ordinary Disputes Tribunal, it is recommended that the transferral of proceedings provisions be utilised. The MVSA has set up the MVDT as a specialist tribunal that can better deal with claims regarding motor vehicle sales because an assessor who has qualifications and knowledge to aid the adjudicator is present at MVDT hearings.

Jurisdiction over unregistered traders

315. Submissions to the MVSA review revealed that many in the industry have the misconception that the MVDT does not have jurisdiction over unregistered traders. In fact, the MVSA has jurisdiction over all traders. This means even if a trader has contravened the law by failing to register they can still be brought before the MVDT. This major misconception provides further support for the need for an awareness campaign to both the industry and consumers about the MVDT.

Jurisdiction over private sellers

316. From comments made in submissions, it is noted that some in the motor vehicle industry cannot understand the distinction drawn between private sellers and traders. They advocate that the MVSA should also cover private sellers.
317. The exclusion of private sales is primarily historic. The MVDT took over the responsibilities of the Motor Vehicle Dealers Institute, which was an industry controlled body that levied its members to support the disputes resolution process. In addition the scope of the MVDT covers legislation that applies only to goods or services that are supplied "in trade".
318. Consumers who buy privately have very limited rights - the situation is one of buyer beware and the price, and any other terms of the sale, are negotiated informally between the buyer and the seller. Consumers generally accept the greater risk attached to a private sale, in part because they expect to obtain a lower price.
319. In making the transition to a regime that is enforced by government, rather than an industry controlled scheme it has probably been appropriate that the specialist disputes tribunal was limited to sales made only in trade. As all participants become more comfortable with the requirements of the regulatory regime governing the sales of motor vehicles, however, it will be appropriate to give further consideration to the scope and jurisdiction of the MVDT. There are compelling

arguments for establishing in the future a single tribunal that would have responsibility for all claims relating to motor vehicles.

Publication of decisions

320. Under section 94 of the MVSA, the MVDT must, for the purposes of protecting the public, arrange for the publication in the *Gazette* of a notice of any MVDT decision that has been determined against the trader. The MVDT may also provide a copy of such a decision to the news media. One adjudicator has advised that, in some instances, there would also be public benefit in publishing decisions which have not been found against the trader and that, as currently written, section 94 precludes this.

Recommendation

321. *It is recommended that consideration be given to amending section 94 to allow the Motor Vehicle Disputes Tribunal to direct the publication of a notice of a decision made against the applicant, where there is a public benefit in so doing.*

Consumer redress post the Motor Vehicle Dealers Fidelity Guarantee Fund

322. This report on the operation of the MVSA was specifically directed to consider the impact, if any, on the removal of the Motor Vehicle Dealers Fidelity Guarantee Fund (the fund).

323. Under the earlier Motor Vehicle Dealers Act, the fund existed to protect consumers when a dealer was unable to pay a compensation order or failed to account for money it held as an agent or failed to meet any other claim arising out of any activity or business of a licensed dealer in its capacity as a dealer. The main reason for such failure was because the company had become insolvent. Financiers were also able to claim against the fund when a motor vehicle they held security over was sold to a third party who was a consumer. The fund tended to be used more by these financiers than consumers – the group intended to be the primary beneficiary of the fund.

324. Since the MVSA has been implemented, cancellation of registration has been commenced against 52 companies. In nine instances, on the trader's application, registration has been restored. The cancellation process is commenced if the Registrar is satisfied that the motor vehicle trader has made been registered by reason of any false or fraudulent representation or declaration, if the application fee for registration has been subsequently dishonoured, if the trader is disqualified for registration under the Act, or if the trader has ceased to carry on the business of motor vehicle trading.

325. In 10 of the above cases, the company's cancellation was for reason of insolvency. None of these companies appear on the record of claims

received by the MVDT and the removal of the fund would not therefore have had any impact in these instances.

326. However, there is concern that some companies facing, or having been issued with, a decision against them by the MVDT may have voluntarily ceased trading. In this instance the District Court will not pursue an order and the consumer has no access to remedy. While this situation is no different than that faced by any consumer with a claim against a company that has ceased trading, the relative cost for many, in a motor vehicle transaction is significant.
327. Since the introduction of the MVSA in 2003 the market has been relatively buoyant. If there is some downturn in the future and a contraction in the number and type of operators in the market, it will be important to monitor the impact of insolvencies on consumers.

Phoenix companies

328. Discussions with stakeholders in the context of this review have highlighted concerns about an emerging trend in the creation of what are known as phoenix companies. This largely involves a trader liquidating one business and then setting up another, primarily to escape any legal obligations or claims against the original business. If a trader goes out of business, any outstanding cases are discarded.
329. Under the MVSA this means that where there may have been a successful prosecution or MVDT claim against the trader, had not the cases been discarded, this will not be entered into the record and would not appear in any future registration screening process. It would however be relevant information as to whether a person was “fit and proper” for the purposes of section 69 of the MVSA.
330. Clearly this type of activity needs to be monitored to establish whether this is a real issue in the motor vehicle industry. One industry group has suggested that outstanding cases be placed in abeyance, for re-issuance if the trader subsequently re-enters the business under the same or a different identity. Other measures could include regular networking by the relevant agencies so that important information and intelligence can be shared.
331. The Insolvency Law Reform Bill will soon be introduced to Parliament. This Bill contains provisions to prevent abuse of phoenix company arrangements. It is understood this will place restrictions on directors of “failed” companies such as forbidding the reuse of company names as well as obligations for the liabilities of the phoenix company.

Concluding comments on disputes resolution under the MVSA

332. The MVSA, through the MVDT, has created a sound dispute resolution process.
333. The MVDT is intended to be an efficient means of redress for consumers and largely, this is the case. There are concerns relating to the frequency and geographic location of hearings, delays in hearings, and lack of both consumer and industry awareness and understanding of the full provisions of the MVDT. This is not unexpected given the short period of operation and the need to fully complete previous claims.
334. Consideration needs to be given to providing wider information on the role of the MVDT and to regularly promoting its existence. The information campaign needs to take into account the ethnic diversity of New Zealand and target all sectors of society as well as emphasising the benefits of the specialist expertise of the MVDT where otherwise there are no compelling reasons to use the ordinary Disputes Tribunal. Similarly the transferral of proceedings powers should be used where otherwise no compelling reasons exist to have the matter heard in the ordinary Disputes Tribunal.
335. The MVDT should have a focus on dealing more firmly with non-compliant traders who flout the processes of the Tribunal so that consumers gain more confidence in the MVDT and thus the wider industry. It will also be important that information is shared across agencies in relation to claims that are made but cannot be pursued because the trader has ceased trading. This will enable better utilisation of the banning powers under sections 68(b) or 69 of the MVSA and will also help to inform any future consideration of whether further protections are needed for consumers, such as the fidelity fund, bonds etc.
336. The MVDT adjudicators are required to submit an annual report to the Minister of Consumer Affairs. These reports should be prepared and forwarded as they are an important source of information on the operation of the MVDT and would assist in the early identification of any deficiencies in the legislation.
337. Consideration should be given to extending the jurisdiction of the MVDT to cover financial arrangements under the Credit Contracts and Consumer Finance Act.

Recommended amendments to the MVSA in relation to disputes resolution

Ability to award costs to any party for non attendance at Motor Vehicle Disputes Tribunal hearings

It is recommended that section 14 of Schedule 1, be amended to allow costs to be awarded against any party to a claim, for non attendance at a hearing for no good cause (see discussion pages 51 and 52).

Administrative procedures of the Tribunal

It is recommended that Schedule 1 of the MVSA be reviewed and administrative procedures amended to reflect those of the ordinary Disputes Tribunal, where appropriate (see discussion page 52).

Submission of Adjudicators' annual reports

It is recommended that section 87 be amended to provide a timeframe within which the Adjudicators' annual reports are to be submitted and to deal appropriately with the receipt of multiple reports (see discussion page 54).

Extension of the jurisdiction of the Motor Vehicle Dispute Tribunal

It is recommended that section 89 be extended to allow the Motor Vehicle Disputes Tribunal to also consider claims under the Consumer Credit and Consumer Finance Act 2003 (see discussion pages 56 and 57).

Publication of decisions of the Motor Vehicle Disputes Tribunal

It is recommended that consideration be given to amending section 94 to allow the Motor Vehicle Disputes Tribunal to direct the publication of a notice of a decision made against the applicant, where there is a public benefit in so doing (see discussion page 60).

OVERALL SUMMARY OF MVSA REVIEW FINDINGS

Registration

338. The administrative systems for registration are in place and the Motor Vehicle Traders Register (MVTR) is working well.
339. Activity by the Motor Vehicle Traders Registrar with regard to both registration and the information disclosure requirements over the first two years has been primarily directed towards education and voluntary compliance. However, in the last six months a more enforcement oriented approach has been signalled.
340. Registration numbers have exceeded 2003 estimates which indicates a relatively high level of compliance, although there continues to be some concern from both industry and consumers that there are traders who are continuing to operate outside the system.
341. There is general concern that levels of compliance continue to be poor with regard to internet trading and through car fair operations and it will be critical to the effectiveness of the overall regime in the longer term that enforcement effort is directed towards those less visible in the retail market and, in particular, towards transactions conducted through car fair operators, and over the internet.
342. Between the Registrar, National Enforcement Unit, Commerce Commission and the Motor Vehicle Disputes Tribunal a considerable amount of information is collected about trading activity and behaviour and increased communication between these agencies could assist in identifying priority enforcement targets. Regular networking and information sharing between the agencies could also help to build an evidence base for applications to the District Court to ban a person from motor vehicle trading.

Information disclosure

343. An early and comprehensive review of the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 and the Supplier Information Notice (SIN) is recommended and is underway. While the concept of the SIN is sound, there are concerns that the SIN attempts too much, and in doing so, negates its effectiveness as an information resource. Proposals to address the concerns raised need to be more fully developed and consulted widely with both industry and consumer interests.
344. Consideration needs to be given to amending section 14 of the MVSA to clarify the responsibilities placed on car market operators with regard to providing the SIN, in particular in relation to internet sales. Further

consideration should be given to removing the requirement only to take reasonable steps to ensure that a consumer selling a vehicle through a car market operator provides a SIN, thereby strengthening car market operators responsibility in the area.

Disputes resolution

345. As noted above, there needs to be more information disseminated about the role of the MVDT and how it works.
346. The MVDT could take a more proactive approach in dealing with traders who attempt to flout the hearing process.
347. A record needs to be kept of those traders that contravene an order of the MVDT so that the powers of section 68(b) of the MVSA, banning such traders from holding a licence, can be invoked.
348. Allowing the MVDT to consider financial arrangements under the Credit Contracts and Consumer Finance Act 2003 (CCCFA) would improve outcomes for consumers.
349. The removal of the Motor Vehicle Dealers Fidelity Guarantee Fund has denied some consumers a full remedy. For others, the wider application of the MVDT to enable access to redress under the Consumer Guarantees Act has brought better remedies. It will be important to continue to monitor trader behaviour in this area and for government agencies to develop robust information sharing arrangements.

General

350. The level of consumer awareness of their rights needs to be strengthened across all aspects of the motor vehicle sales regulatory regime.
351. The number of agencies involved in administering and enforcing various aspects of the regime is confusing for consumers and may provide a barrier to consumers seeking remedies that are available to them, or from passing on information about unethical traders.
352. One possible approach to improve consumer awareness could be the creation of a central consumer enquiry centre.

Recommended amendments to the MVSA

353. A specific requirement of this review is to make recommendations on whether any amendments to the MVSA are necessary or desirable.

Recommendation 1

Renewal of registration of motor vehicle traders

It is recommended that section 39(2) be amended to remove the requirement for motor vehicle traders to make an annual statutory declaration of their trading details where these have not changed. This would be replaced by the requirement to confirm with each annual renewal that details have not changed (see discussion pages 20 and 21).

Recommendation 2

Provision of IRD number as part of the details required on registration application

It is recommended that consideration be given to amending section 32 to include the requirement that applicants for registration as a motor vehicle trader provide details also of their IRD number (see discussion page 21).

Recommendation 3

Technical amendment to the CC rating of motor cycles

It is recommended that section 6 (b)(iii), the definition of motor vehicle, be amended to exclude motor cycles up to 50cc (not 60cc as currently worded) to reflect ratings used on other relevant legislation (see discussion page 23).

Recommendation 4

Amendment to banning provisions

It is recommended that section 68(1)(c) be amended to ensure that persons convicted of breaches of the MVSA that would invoke the banning provisions while registered, are similarly banned regardless of their registration status at the time of conviction (see discussion pages 24 and 25).

Recommendation 5

Clarification and tightening of requirements on car market operators to provide SIN

It is recommended that section 14 be clarified as to the responsibilities placed on car market operators with regard to providing the SIN, in particular in relation to internet sales and that consideration be given to removing the section 14 (2) provision that requires car market operators only to take reasonable steps to ensure that a consumer provides a SIN, thereby strengthening car market operators responsibility in the area (see discussion pages 37 to 39).

Recommendation 6

Extension of inspection powers to Commerce Commission

It is recommended that consideration be given to amending the inspection powers of sections 124 to 129 to also include the Commerce Commission to allow appropriate enforcement of the information provisions of the MVSA (and this should be explored in conjunction with work already in progress regarding similar powers under the Fair Trading Act 1986) (see discussion page 41).

Recommendation 7

Exemption from requirements to provide a SIN when transactions are exclusively between registered traders.

It is recommended that section 14 and section 16 be amended to exempt from the SIN requirements, transactions that are exclusively between registered motor vehicle traders, and between registered motor vehicle traders and car wreckers as defined in the MVSA (see discussion pages 41 and 42).

Recommendation 8

Ability to award costs to any party for non attendance at Motor Vehicle Disputes Tribunal hearings

It is recommended that section 14 of Schedule 1 be amended to allow costs to be awarded against any party to a claim, for non attendance at a hearing for no good cause (see discussion page 51).

Recommendation 9

Administrative procedures of the Tribunal

It is recommended that Schedule 1 be reviewed and administrative procedures amended to reflect those of the ordinary Disputes Tribunal, where appropriate (see discussion page 52).

Recommendation 10

Submission of Adjudicators' annual reports

It is recommended that section 87 be amended to provide a timeframe within which the Adjudicators' annual reports are to be submitted and to deal appropriately with the receipt of multiple reports (see discussion page 54).

Recommendation 11

Extension of the jurisdiction of the Motor Vehicle Disputes Tribunal

It is recommended that section 89 be extended to allow the Motor Vehicle Disputes Tribunal to also consider claims under the Consumer Credit and Consumer Finance Act 2003 (see discussion pages 56 and 57).

Recommendation 12

Publication of decisions of the Motor Vehicle Disputes Tribunal

It is recommended that consideration be given to amending section 94 to allow the Motor Vehicle Disputes Tribunal to direct the publication of a notice of a decision made against the applicant, where there is a public benefit in so doing (see discussion page 60).

Recommended Amendments to the Consumer Information Standards (Used Motor Vehicles) Regulations 2003

Recommendation 13 Review of the Supplier Information Notice

It is recommended that a comprehensive review of the information requirements and the form in which the information be provided as set out in Schedules I and II of the Regulations be undertaken. This review is underway (see discussion pages 31 to 33).

Recommendation 14 Exemption from requirements to provide a SIN when transactions are exclusively between registered traders and car wreckers

It is recommended that the exemption in section 4 of the Consumer Information Standards (Used Motor Vehicles) Regulations 2003 be extended to include transactions between registered motor vehicle dealers and car wreckers as defined in the MVSA (see discussion pages 41 and 42).

Appendix One:

Submissions on the Review of Motor Vehicles Sales Act were received from:

Automobile Association (AA)

Auto Auctioneers

The Colonial Motor Company Limited

Commerce Commission

Community Law Canterbury

Consumers Institute

Financial Services Federation

Independent Motor Vehicle Dealers Association

Kiwi Auto Auctions

Land Transport NZ

Motor Industry Association

Motor Trade Association

New Zealand Law Society

On Tap Information

Trade Me

Turners Auctions

Appendix Two:

Motor Vehicle Sales Act 2003
Monitoring Report
(For Period 16 Dec 2003 to 30 June 2005)

Research, Evaluation and Monitoring

Research, Information and Capability Group

Ministry of Consumer Affairs

Level 5, 33 Bowen St., PO Box 1473

Wellington

July 2005

Table of Contents

Contents	Pages
Executive Summary	73-74
1. Introduction	75-78
Table 1.1 Mechanisms and expected outcomes	
2. Motor Vehicle Disputes Tribunal	78-80
List of tables	
Table 2.1 Resolved MV Disputes by Tribunal Decision	
Table 2.2 Average Duration of MV Dispute	
Table 2.3 MV Disputes by Tribunal Location	
3. Registered motor vehicle traders	80-85
Motor Vehicle Traders Register	
Enforcement and Compliance	
List of tables	
Table 3.1 Status of Registration Application	
Table 3.2 RMVT by Principal Business	
Table 3.3 RMVT by Address for Service	
4. Supplier Information Notice (SIN)	85
Compliance	
5. Odometer Tampering	86

6. Other motor vehicle-related statistics	86-90
Consumer expenditures on motor vehicle	
Motor vehicle retail and wholesale industry	
Car registrations by LTNZ	
Importation of motor vehicles by NZ Customs	
Car licensing by LTNZ	
Public enquiries related to MVSA 2003 received by	
Citizens Advice Bureaux	
Ministry of Consumer Affairs (Issues and Ministry's responses)	
List of Tables	
Table 4.1 First Time Car Registrations Statistics by LTSA	
Table 4.2 Total Cars Imported to New Zealand, NZ Customs	
7. Issues	91-92
8. Appendices	
Glossary	93-95

EXECUTIVE SUMMARY

This report summarises the key findings of the monitoring report on the Motor Vehicle Sales Act 2003 for the period 15 December 2003 to 30 June 2005. The monitoring report is based on administrative data from the Ministry of Justice's Motor Vehicle Disputes Tribunal, Companies Office's Motor Vehicle Registry and other secondary data sources (i.e. New Zealand Customs, Land Transport New Zealand, Citizen's Advice Bureaux and Consumer Affairs' Heat database) and identifies key trends on the operation of the Act.

The intent of the monitoring report is to provide background information on the report to the Minister regarding the operation of the Act, which is due on 15 December 2005. The report is intended to draw attention to issues and questions that may warrant further research or evaluation, rather than providing an in-depth analysis of the impact of the Act to motor vehicle consumers and traders.

Motor Vehicle Disputes Tribunal (MVDT)

A total of 390 motor vehicle disputes were filed at the MVDT during the first 18 months since its regulation on 15th December 2003. Of these, 234 were filed in 2004 and 156 in the first half of 2005. Of the 234 cases in 2004, 232 are now resolved with only 2 remaining to be heard by an adjudicator. Of the 156 disputes in January-June 2005, 25 are yet to be decided by the MVDT.

Motor vehicle disputes filed at the Motor Vehicle Disputes Tribunal (MVDT) registered a 58 percent increase during the first half of 2005 compared to same period in 2004. That is, in January to June 2005, 156 disputes filed compared to 99 for same period in 2004.

The number of disputes settled before the hearing date is a little less than a third (32 percent of 363 resolved or 116) of all resolved disputes in January 2004 to June 2005. That is, of every 10 motor vehicle disputes filed, 3 were withdrawn by the purchaser prior to the hearing date due to an out-of-court settlement with the motor vehicle trader. In January to June 2005, 42 of the 156 disputes were already withdrawn prior to hearing.

Registered Motor Vehicle Traders

As at 30 June 2005, registered motor vehicle traders total 3,182 including 101 undergoing the renewal process and 37 that are pending expiry and cancellation.

Pursuant to the data matching obligations of the Act, the Companies Office cross-matched motor vehicle importers and RMVT data and found that 154 importers had not registered. As of December 2004, 39 were referred to the National Enforcement Unit (NEU) with 1 being considered for prosecution. On 1 April 2005, an additional 41 importers were unregistered with 26 failing to respond to warning letters from the Companies Office.

As at 30 June 2005, the NEU received 159 complaints regarding breaches of the Act.

Supplier Information Notice (SIN)

The Commerce Commission is monitoring enforcement of the SIN. As a result of inspections of 89 premises in the Auckland, Wellington and Christchurch areas in July 2004, the Commission reported significant non-compliance with the requirements under the Fair Trading Act. Although the Commission has undertaken further inspections since that time, the data is not available for the purposes of this report.

Odometer tampering

The National Enforcement Unit of the MED obtained one conviction relating to odometer tampering. Mark Gregory was convicted in the Hamilton District Court under section 99 of the Motor Vehicle Sales Act 2003 – the section prohibiting Odometer tampering. He was ordered to pay a fine of \$2000 plus \$130 court costs as well as the \$2000 the MVT estimated it had lost as a result of the tampering. Mark Gregory is on the Banned Persons list and cannot register as a motor vehicle trader for 5 years from his conviction date. Further allegations of odometer tampering are currently under investigation.

Conclusions

Operational data analysis on the Motor Vehicle Disputes Tribunal, Motor Vehicle Traders Registry and prohibition of odometer tampering appear to show that the mechanisms are working. Robust evidence monitoring SIN compliance by the Commerce Commission is not available.

INTRODUCTION

Section 163(1)(2) of the Motor Vehicle Sales Act 2003 (the Act) provides:

- (1) The Ministry must, no later than 2 years from the date of commencement of this Act,-
 - (a) review the operation of this Act since its commencement; and
 - (b) prepare for the Minister a report, of the review that includes recommendations on whether any amendments to this Act are necessary or desirable.
- (2) In preparing the report, the Ministry must consult with interested parties, including representatives of consumer interests in relation to motor vehicle sales.

Section 163(1)(2) of the Act thus instructs the Ministry of Consumer Affairs to:

- review the operation of the Act;
- engage in a formal consultation with interested parties, including consumer organisations; and
- prepare a report to the Minister of Consumer Affairs that includes recommendations on whether amendments to the Act are necessary or desirable.

The first requires Ministry of Consumer Affairs to determine whether the main instruments of the Act are in place and are 'operating' in the way the Act intended. This entails a monitoring exercise of the main instruments. The second aspect, the formal consultation with stakeholders, will elicit views regarding the operation of the Act and address questions as to whether the Act meets the requirements of the motor vehicle traders and consumers. Both aspects will inform the evaluation report to the Minister.

The legislative principles and mechanisms to achieve outcomes are in Table 1.1 below:

Table 1.1 Mechanisms and Expected Outcomes

Legislative Principles	Mechanisms	Expected Outcomes
Accurate information on which consumers can base decisions	Section 15 Supplier Information Notice (SIN)	All RMVTs use Supplier Information Notices (SIN) that complies with Section 15 of the Act
	The disclosure of information regarding security interests is a requirement under Section 15 as above.	SIN provides information on security interests.
	Consumers purchasing from RMVTs are provided with a copy of the SIN	All RMVTs keep a copy of the SIN and written acknowledgement from the buyer that a copy was provided to them, for a period of 6 years.
Credible and accessible redress	Expanded jurisdiction of the Motor Vehicle Disputes Tribunal including claims under the Fair Trading Act, the Consumer Guarantees Act, the Contractual Remedies Act, and the Sale of Goods Act.	MVDT covers wider jurisdiction which consumers can access directly.
	A Tribunal consisting of an adjudicator, a barrister or solicitor of the High Court of not less than 5 years' practice, assisted by an assessor.	The Tribunal complies with the requirements of Schedule 1 of the Act.
Coverage of the full range of sales in trade, without distinction between different types of sale outlet	Following s 7, sales of motor vehicles made in trade and sales of more than 6 vehicles within a 12-month period by a person require registration under the Act.	All motor vehicle traders are registered.
	Section 61 required the Registrar of Motor Vehicle traders to establish and maintain a register of motor vehicle traders.	Following Sections 56-58 of the Act, a person is able to search the Register to find information about a RMVT.

An ability to bar unsuitable people from taking part in the trade	As collected from MVTR	Pursuant to s 73, the Registrar of Motor Vehicle Traders keeps a list of banned persons and that list enables consumers to determine whether or not a person is a banned person (s 74)
Provided other conditions are met, limited restrictions on the manner in which vehicles are sold	Section 13, odometer tampering is prohibited	Coordinate with Companies Office and National Enforcement Unit on status of odometer tampering cases

Scope of the review of the operation of the Act

The review of the operation of the Act focuses on three core mechanisms or instruments put in place by the Act. They are:

- Supplier Information Notice (SIN), which must meet the disclosure requirements found in Ss 14 – 15 of the Act;
- Motor Vehicle Trade Register (MVTR), operating in accordance with Part 3 of the Act and also monitoring whether or not the enforcement provisions found in Part 4 of the Act are operating, and the
- Motor Vehicle Disputes Tribunal (MVDT) in accordance with the provisions in Part 4 of the Act.

In respect of these three core (operational) elements of the Act, the review principally involves monitoring exercises. Monitoring predominantly involves the collection of data, which aim to answer a range of questions relating to the operation of the Act in terms of the SIN, MVTR and MVDT. The collection of administrative data will thus provide a picture of the extent to which the above mechanisms of the Act are effectively in place.

Primary data pertaining to the three mechanisms / instruments were collected from agencies charged with each respective task. The agencies are:

- Commerce Commission – ensure that the particulars prescribed by regulations made under s27 of the Fair Trading Act are disclosed;
- The Registrar, MVTR – ensure that applications for registrants meet the requirements of Part 3, and that enforcement of the Act is carried out in accordance with Part 4 of the Act;

- MVDT, Ministry of Justice – ensure that the Motor Vehicle Disputes Tribunal is operating in accordance with Part 4 and with the procedures set out in Schedule 1 of the Act; and
- New Zealand Customs – ensure that the information sharing provisions of Ss120 – 121 are met.

Secondary data were collected from Citizens Advice Bureaux and from the Ministry's own database of queries received from consumers and community agencies. This secondary data provide an important additional consumer perspective on the operation of the Act.

2 MOTOR VEHICLE DISPUTES TRIBUNAL (MVDT)

Tables 2.1-5 present the status of motor vehicle disputes lodged at the Motor Vehicle Disputes Tribunals (MVDT) during the last 18 months beginning in 2004 to the second quarter of 2005.

Of the 390 motor vehicle disputes filed in 2004 and first half of 2005, 363 were resolved and 27 were unresolved as at end of June 2005.

Table 2.1 RESOLVED MV DISPUTES BY TRIBUNAL DECISION (SOURCE: MINISTRY OF JUSTICE)										
MVDT Decision	2004						2005			
	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	TOTAL	% share	Jan-Mar	Apr-Jun	TOTAL	% share
Compensated	8	16	5	11	40	17%	18	8	26	20%
Dismissed	3	10	17	24	54	23%	24	18	42	32%
No jurisdiction	1				1	0.4%				
Partly compensated	2		2	4	8	3%				
Rescinded	4	15	8	1	28	12%				
Rescinded and compensated			5	10	15	7%	8	13	21	16%
Settled	2		6		8	3%				
Withdrawn or settled before hearing date	12	23	21	18	74	32%	23	19	42	32%
Others	1	2		1	4	2%				
TOTAL DISPUTES RESOLVED	33	66	64	69	232	100%	73	58	131	100%
TOTAL YET TO BE RESOLVED	0	0	0	2	2		2	23	25	
TOTAL CLAIMS FILED	33	66	64	71	234		75	81	156	

Of the 363 resolved disputes, 116 (or 32%) were withdrawn as a result of a settlement being reached between the parties. The balance of 247 claims went to hearing. Of these, 96 were dismissed by the Tribunal and 64

contracts were rescinded, with 36 claimants receiving compensation as well as rescission of their contract.

The Tribunal has jurisdiction to hear claims involving amounts up to \$50,000. To date, the Tribunal has made orders refunding \$42,000 to one consumer and rescinding the purchase of a vehicle priced at \$43,990 for another. In the latter case the consumer was ordered to compensate the dealer \$7,000 for lack of care³.

As at 30th June 2005, 27 disputes awaiting resolution at the MVDT, 2 were filed in 2004 and 25 in 2005.

TABLE 2.2 AVERAGE DURATION OF MV DISPUTE FROM LODGED TO MVDT DECISION (SOURCE: MINISTRY OF JUSTICE)				
MONTHS	2004		2005	
	TOTAL MV DISPUTES RESOLVED BY ADJUDICATOR	AVERAGE MONTHS AND DAYS	TOTAL MV DISPUTES RESOLVED BY ADJUDICATOR	AVERAGE MONTHS AND DAYS
Jan-Mar	21	5 mos. 16 days	50	4 mos. 14 days
Apr-Jun	43	5 mos. 5 days	39	3 mos. 12 days
Jul-Sep	43	5 mos. 5 days		
Oct-Dec	51	5 mos. 12 days		
TOTAL	158	5 mos. 9 days	89	4 mos. 1 day
Notes: Average duration means from the date a claim was lodged to the date that judgment was issued. For instance, on the average, a claim lodged in January 2004 was heard after 5 months and 16 days or typically, late June 2004; These averages, exclude those MV disputes lodged then withdrawn or settled prior to a hearing date. Comparatively, the average duration during the MVDA 1975 regime is 4 months and 5 days in 2003 and 2002.				

The 247 resolved disputes took an average of 4 months and 17 days from the date a claim was filed until judgment was issued. The transition to the MVSA has meant that the Motor Vehicle Disputes Tribunal convened under the previous legislation continued to hear claims until December 2004. By 31 March 2005 all claims under the previous legislation have been resolved.⁴ The data reported here relates only to the Motor Vehicle Sales Act.

Previously, the Motor Vehicle Dealers Act 1975 (MVDA) required claims to be first lodged with the Motor Vehicle Dealers Institute. Only after attempts to resolve the complaint through that agency had failed, was the claim forwarded to the Tribunal. The time it took to forward a claim to the Tribunal under that regime is not known.

³ Refer to Appendix 2 for details of all Orders made by the Tribunal

⁴ The Motor Vehicle Dealers Act 1975 was repealed from 15 December 2003, the date that the Motor Vehicle Sales Act came into force.

The Tribunal appears to be working well, the range of Orders made (see Appendix 2) reflects the enhanced jurisdiction of the Tribunal to hear claims brought under the Consumer Guarantees Act and Fair Trading Act. An increase in claims was expected as consumers can now access the MVDT directly and the Act now covers traders such as wholesalers, auctioneers and car fair operators. Early figures (156 in Jan-Jun 2005 vs 99 in Jan-Jun 2004 or an increase of 58%) for 2005 indicate that the Tribunal is being accessed by more consumers.

TABLE 2.3 MV DISPUTES BY TRIBUNAL LOCATION (SOURCE: MINISTRY OF JUSTICE)						
QUARTER	2004			2005		
	Total disputes FILED	Auckland Tribunal	Other Tribunals	Total disputes FILED	Auckland Tribunal	Other Tribunals
Jan-Mar	33	23	10	75	49	26
Apr-Jun	66	45	21	81	44	37
Jul-Sep	64	46	18			
Oct-Dec	71	46	25			
TOTAL	234	160	74	156	93	63
% Share	100%	68%	32%	100%	60%	40%

Note: Other Tribunals in 2004 include Christchurch, Hamilton and Wellington.

More than half of the 390 disputes heard were filed at the Auckland MVDT.

Of the 390 disputes, 336 or 86% of claims raised quality issues, 8% (33) were disputes concerning both quality and misrepresentation; 4% (16) misrepresentation; and 1% (5) other issues.

Of the 336 claims regarding vehicle quality, 274 claimed mechanical fault, 62 others ranges from structural fault, mechanical and structural, alleged incorrect odometer reading, rust, wrongly issued Warrant of Fitness, wrong registration details and undisclosed security interest.

3 REGISTERED MOTOR VEHICLE TRADERS (RMVT)

Motor Vehicle Traders' Registry

Prior to the Motor Vehicle Sales Act 2003 taking effect, it was estimated that around 3,000 motor vehicle traders operated in New Zealand. About 2,250 registered under the Motor Vehicle Dealers Act (MVDA). Other traders (i.e. car market operators, importers, car auctioneers and car consultants) were not required to register under the previous legislation (MVDA 1975).

All motor vehicle traders were given a transition period to register until 15 March 2004. At that date, of the total 3,372 applications 1,652 had completed the registration process. Motor vehicle traders have the option of registering online through www.motortraders.med.govt.nz. As of June 2005, 70% of registrants had taken advantage of this option.

Dealers that completed registration reached 3,166 in October 2004. On 31 March 2005, this figure dropped to 2,523, in addition 555 were in the process of renewing their registration. This translates to 54% of 5,745 applications received by the end of March. As of end of June 2005, there are 3,044 (48% of total registrations) completed their registration, 101 are in the process of renewal, and 37 are pending expiry or cancellation.

Eighty-one percent of motor vehicle traders registered as a company and 19% registered as individuals. Approximately 79% of applications received in the first half of 2005 are motor vehicle dealers or retailers. The first half of 2005 shows an increase of 211 completed registrations over the same period in 2004. (Succeeding tables provide more detailed information obtained from the Registrar of Motor Vehicle Traders.)

Table 3.1: Status of registration application (Source: Registrar of Motor vehicle traders)						
APPLICATION STATUS	2004 (end of quarter)				2005 (end of quarter)	
	MAR	JUN	SEP	DEC	MAR	JUN
Completed registration	2234	2833	3113	2701	2523	3044
Renewal			1	451	555	101
Expired			77	144	503	747
Pending application	440	72	56	92	127	94
Waiting for statutory declaration	176	14	11	17	29	12
In process / incomplete	136	100	7	7	6	15
Deleted	522	1051	1272	1424	1585	1787
Abandoned	154	196	220	236	256	296
Refused	52	67	71	75	79	83
Cancelled / surrendered			34	52	82	95
TOTAL	3714	4333	4862	5279	5745	6274

Notes:
 'Completed' are motor vehicle traders currently registered, not in renewal or pending process.
 'Deleted' refers to applicants deleting their application. Such cases occur where applicants make the wrong type of application (e.g. applying as an individual instead of a company) or where applicants decide not to pursue their registration under the transitional provisions and simply started a new application for a full year's registration. It also includes those applications that the Registrar has deleted after they remained in an incomplete state for a set period.
 'Refused' applications are those that were disqualified from registration under sections 24 and 25 of the Motor Vehicle Sales Act 2003.
 An application can be approved on the same day as the application was lodged if all the documents required have been completed. The length of time to process the application is dependent on the submission of statutory declarations by the management of the motor vehicle trader applicant.
 Figures are stock take at end of quarters.

Table 3.2 details the principal business type of registered motor vehicle traders.

Table 3.2: Registered motor vehicle traders by principal business (Source: Companies Office, MED)				
Principal Business	% proportion of registered motor vehicle traders			
	Jul-Sep 2004	Oct-Dec 2004	Jan-mar 2005	APR-JUN 2005
Motor vehicle dealer	86.4	80.3	78.5	78.9
Importer	17.9	12.0	12.0	12.4
Wholesaler	10.6	5.1	4.9	5.0
Motorcycle / scooter dealer and repair service	5.6	0.3	5.7	5.4
Auto repair and service	4.2	2.1	2.1	2.1
Car rental/ car hire	1.4	1.2	1.2	1.3
Broker, finance company	1.0	1.1	0.7	0.8
Auctioneer / tender	0.8	0.6	0.7	0.8
Car market operator / fair	0.7	0.8	0.6	0.5
Internet marketing / sales	0.1	0.1	0.1	0.1
Trailer, caravan, mobile home dealer, repair and service, importer, wholesaler	0.3	0.4	0.5	0.7
Others	2.6	1.6	3.8	3.6
Base: Registered motor vehicle traders from external viewpoint	3,128	3,274	3,130	3,182
Notes: Sum of proportions of principal businesses are not equal to 100% due multiple responses. Others, e.g. panel beaters, dismantlers, service stations, bike museum, car painting, earthmover, machineries dealer, boat dealer and repair motor home rental, tyre dealer and service, and wheel alignment. See attached 'Definition of Terms' of motor vehicle traders as described in Subpart 2 (Interpretation) Section 6 of the MVSA 2003. RMVT from external viewpoint include completed registration, renewal, pending expiry and pending cancellation.				

Table 3.3 shows the geographical spread of registered traders

Table 3.3: Registered motor vehicle traders by address FOR SERVICE (Source: Companies Office, MED)									
New Zealand Region	% PROPORTION OF RMVT				New Zealand Region	% PROPORTION OF RMVT			
	JUL-SEP 04	OCT-DEC 04	JAN-MAR 05	APR-JUN 05		JUL-SEP 04	OCT-DEC 04	JAN-MAR 05	APR-JUN 05
Auckland	35.6	34.9	35.3	35.1	Southland	2.2	2.5	2.5	2.3
Canterbury	17.3	16.7	16.1	16.1	Nelson	2.0	2.0	2.1	2.0
Waikato	7.6	8.8	8.4	8.3	Marlborough	1.0	0.9	1.0	1.0
Bay of Plenty	7.4	6.4	7.1	6.6	Gisborne	0.9	0.9	0.9	0.9
Wellington	7.2	7.1	7.0	7.2	Northland	0.9	2.5	2.6	2.5
Manawatu-Wanganui	5.7	5.8	5.7	5.7	West Coast	0.6	0.6	0.9	0.6
Otago	4.6	4.4	4.6	4.6	Tasman	0.1	0.2	0.2	0.2
Taranaki	2.4	2.2	1.4	2.6					

Enforcement and Compliance

Registration

Compliance is a key component of the successful implementation of the Act. Compliance with the Act is monitored by the National Compliance Unit of the Ministry of Economic Development. Carrying on the business of motor vehicle trading without being registered carries a penalty of up to \$50,000 for an individual and up to \$200,000 for a company, per offence.

The process used by the Registrar is as follows:

- Contact is made with the identified party inviting registration as a trader and reminding them of their obligation to register.
- If no response is received by a prescribed date, a follow-up letter is sent.
- The matter is referred to the National Enforcement Unit (NEU) for further action should non-registration continue.

Pursuant to section 120 of the Act, the Registrar may seek disclosure of information from Customs to identify persons importing more than 3 motor vehicles within a specified period. Using this power the Registrar identified 154 motor vehicle traders unregistered at December 2004, follow up action by the Registrar resulted in:

- 16 registered after receiving a warning letter;
- 33 were registered under different names;
- 41 advised that they do not meet the definition of a motor vehicle trader and are therefore not required to register;
- 25 did not respond; and
- 39 were referred to the National Enforcement Unit for further action. Of these, 20 registered, 4 are in the process of registering, 14 have ceased trading and 1⁵ was prosecuted.

In April 2005, a further 41 unregistered importers were sent warning letters. Their status at June 2005 is as follows:

⁵ The National Enforcement Unit has obtained their first conviction under section 95 of the Motor Vehicle Sales Act, which makes it an offence to trade motor vehicles without being registered. Nigel John Hicks was fined \$900 plus \$130 for Court costs and \$300 for legal fees in the Invercargill District Court on 10 June 2005. Mr Hicks is now legally registered.

- 1 had completed registration;
- 1 was registered under a different name;
- 7 are in the process of registering;
- 6 advised that they did not meet the definition of a motor vehicle trader and were therefore not required to register. Investigation has resulted in 2 importers being notified that they were traders within the meaning of the Act; and
- 26 have not responded.

Investigators from NEU also visited 67 car yards throughout the country in response to referrals from the Compliance Section of the Companies Office and during the course of conducting general enquiries. Car yards and car fairs⁶ were visited and illegal traders were identified and are now either registered or in the process of registering.

Complaint Investigation Received from the Public

The Registrar received complaints from registered traders and the public regarding breaches of the Act. Since 15 December 2003 until March 2005, MED received 82 complaints. The result has been:

- 29 traders were required to register;
- 15 complaints were referred to the Ministry's Legal Unit ;
- 16 complaints were referred to National Enforcement Unit; and
- 22 cases are awaiting investigation.

As at 30 June 2005, MED has received 159⁷ complaints.

4. SUPPLIER INFORMATION NOTICE (SIN)

Compliance

The Commerce Commission is responsible for ensuring that Motor Vehicle Traders comply with the consumer information standard prescribed by regulation under the Fair Trading Act. The Regulation sets out the information that must be contained in a Supplier Information Notice.

⁶ In a joint operation with the Commerce Commission, investigators from the NEU visited the Ellerslie Car Fair in Auckland during December 2004. Two illegal traders were identified and registered the next day.

⁷ Status and nature of complaints still pending.

As a result of inspections of 89 premises in the Auckland, Wellington and Christchurch areas, in July 2004, the Commission reported significant non-compliance with the requirements under the Fair Trading Act⁸. Although the Commission has undertaken further inspections since that time, the data is not available for the purposes of this report.

5. ODOMETER TAMPERING⁹

The National Enforcement Unit (NEU) is responsible for ensuring that the requirement of section 13 (Tampering of odometers prohibited -) is met. Since 15 December 2003, NEU has received 2 complaints alleging odometer tampering.

The cases involve second-hand imported motor vehicles and therefore require coordination of any investigation with overseas agencies used to establish whether an offence was committed in New Zealand or overseas. The investigations are continuing.

As of June 2005¹⁰, MED's National Enforcement Unit obtained the first conviction for odometer tampering under the new Act. The provisions enforced by the National Enforcement Unit are sections 95-119, which relate in part to unregistered traders and odometer tampering. Mark Gregory was convicted in the Hamilton District Court under section 99¹¹ of the Motor Vehicle Sales Act 2003 – the section prohibiting Odometer tampering. He was ordered to pay a fine of \$2000 plus \$130 court costs as well as the \$2000 the MVT estimated it had lost due to tampering. As a result of the conviction, Mark Gregory is recorded on the Banned Persons list and is unable to register as a motor vehicle trader for 5 years from his conviction date.

Further files are currently under investigation with allegations on Odometer Tampering.

6 OTHER MOTOR VEHICLE - RELATED STATISTICS

The statistics reported in this section provide further contextual information relevant to the motor vehicle trade in New Zealand. This section also reports on consumer information received from the New Zealand Association of Citizens Advice Bureaux, and an analysis of MVSA related calls to Ministry of Consumer Affairs's call centre captured by the Ministry's 'iHEAT' database.

⁸ See <http://www.comcom.govt.nz/MediaCentre/MediaReleases/2004/itsasin64ofvehicle1.aspx>

⁹ www.enforcement.govt.nz and www.motortraders.med.govt.nz

¹⁰ MED Monthly Business Update, 20 June 2005

¹¹ Section 99. Offence to tamper with odometers – (1) A person commits an offence if, without reasonable excuse, the person tampers with a motor vehicle's odometer. (2) The penalty on conviction for an offence against this section is set out in Section 118.

Consumer expenditures¹² on motor vehicles

Statistics New Zealand reported that the average household weekly expenditure on motor vehicles increased to \$49.20 in 2003/04 compared to \$37.40 in 2000/01. The \$49.20 includes \$44.40 for the purchase of motor vehicles and \$4.80 on credit costs, which relate to the purchase of the motor vehicle.

Motor vehicle retail and wholesale industry

Seasonally adjusted motor vehicle retail sales generated an estimated \$8,276 million in 2004. In January to March 2005, motor vehicle retail sales posted \$2,111 million. This is a slight 0.5% increase compared to \$1,911 million for the same period in 2004.

Motor vehicle wholesale trade posted a 4.5% increase in 2004 (\$6,849 million) compared to 2003 (\$6,551 million). During the first quarter of 2005 there was a slight increase in trade of 1.9% over the same quarter in 2004.

Car Registrations

Table 4.1 is a monthly comparative count of first-time car registration data from Land Transport New Zealand from 2004 to June 2005. In 2004, first-time car registrations totalled 228,797.

Table 4.1 First Time Car Registrations (Source: Land transport safety authority)					
Quarter	2004		2005		% change, 2004 vs 2005
	Total registrations	% change from previous quarter	Total registrations	% change from previous quarter	
Jan-Mar	57,183		55,116	-1.6%	-3.6%
Apr-Jun	57,928	1.3%	59,792	8.5%	3.2%
Jul-Sep	57,658	-0.5%			
Oct-Dec	56,028	-2.8%			
TOTAL	228,797				

Note: First time car registration is defined by LTNZ as, "The process of adding a vehicle to the LTNZ Motor Vehicle Register: a vehicle, whether new or used, must first be registered before it can be licensed to be used on the road. Registration has been traditionally confused with licensing: registration is normally carried out only once in the lifetime of a vehicle, whereas licensing¹³ is renewed every six or 12 months."
Total car registrations in 2003 = 229,428 registrations.

¹² New Zealand Statistics, 'Household Economic Survey: Standard Tables 2003/04 and 2000/01'.

¹³ New Zealand has one of the highest rates of car ownership in the world. By year-end June 2003, there were 2,036,804 licensed cars in New Zealand with a mean age of 11.69 years. In year-end June 2002, there were 1.97M licensed cars with a mean age of 11.63 years. In year-end June 2001, there were 1.92M licensed cars with a mean age of 11.55 years. Car ownership is highest in Auckland at 33% of total licensed cars in the country. Second highest is Christchurch at 12.6% and Wellington third at 9%.

LTNZ car registrations for the first half of 2005 (114,908) registered a negligible - 0.2% drop to 114,908 compared to same period in 2004.

TABLE 4.2 NUMBER OF CARS IMPORTED (NEW AND USED) TO NEW ZEALAND (SOURCE: NEW ZEALAND CUSTOMS)										
Countries	2004						2005			
	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Total	% share	Jan-Mar	Apr-Jun	Total	% Share
Japan	48,444	55,436	41,781	37,532	183,193	77.5	55,541	54,026	109,567	81.5
Australia	4,025	5,002	5,377	6,837	21,241	8.9	4,393	4,386	8,779	6.5
Germany	1,112	1,221	1,177	1,737	5,247	2.2	1,197	2,144	3,341	2.4
Belgium	1,525	544	1,045	711	3,825	1.6	425	454	879	0.6
Great Britain	973	823	1,065	1,127	3,988	1.6	737	674	1,411	0.1
South Korea	840	901	970	1,346	4,057	1.7	1,432	2,029	3,461	2.5
Thailand	425	395	109	0	929	0.3	35	233	268	0.1
USA	455	654	679	688	2,476	1.0	524	594	1,118	0.8
Poland	0	0	304	207	511	0.2	263	425	688	0.5
Singapore	1,126	1,163	964	1,187	4,440	1.8	1,138	1,149	2,287	1.7
Others	971	1,069	1,888	2,261	6,189	2.6	851	1,674	2,525	1.8
TOTAL	59,896	67,208	55,359	53,633	236,096	100.0	66,536	67,788	134,324	100.0

Notes:

1. Cars are those motor vehicles defined under TH 87.03 by NZ Customs. It excludes buses, coaches, trucks, vans, private cars and commercial vehicles.
2. Used car is a previously registered car in another country before arrival in New Zealand. It also refers to ex-overseas or used import cars.
3. The 51% increase in Apr-Jun 2005 compared to Jan-Mar 2005 is due to the number of new motor vehicles imported to New Zealand from Korea, European countries and Thailand.

Importation of motor vehicles

Motor vehicles remain the top commodity imported to New Zealand.¹⁴

In 2004¹⁵, New Zealand Customs reported 236,096 imported motor vehicles to New Zealand, where 67% are used cars and 33% are new. The 2004 import posted a 10.6% increase compared to 213,465 imported cars in 2003. Eight of every ten cars imported were from Japan.

Total number of motor vehicles imported to New Zealand increased by 31.5% during the first half of 2005 (167,116) compared to the same period in 2004 (127,104).

Car Licensing¹⁶

In June 2004, there were 2,118,240 cars licensed in New Zealand. An increase of 4% compared to 2,036,804 in 2003 and 7.5 % increase compared to June 2002

¹⁴ Vehicles, parts and accessories generate a estimated total of \$5,524 million during Apr 2004 to Apr 2005. This is 15.6% of total (\$35,519 million) merchandise imported to New Zealand for same period.

¹⁵ Statistics New Zealand, New Zealand Customs

¹⁶ Car license is renewed every 6 or 12 months. This is different from car registration.

(1,970,403 licensed cars). That is, an estimate of 6 for every 10 New Zealander aged 15 years and older has a car in 2004¹⁷

In 2004, 815,252 cars were sold, wherein 28.35% were purchased from the motor vehicle trader (or 7 of every 100 New Zealand estimated population aged 15 years and older purchased their car from a motor vehicle trader).

Citizens' Advice Bureaux

Nature of MVSA 2003 enquiries lodged at the Citizen's Advice Bureaux

The National Association of Citizen's Advice Bureaux and the Ministry of Consumer Affairs initiated a limited monitoring exercise of enquiries related to the Motor Vehicle Sales Act 2003 in September 2004 to March 2005. During the monitoring period, CAB received a total of 150 enquiries. Of these;

- 43% (64) of enquiries were made through the North Region CAB;¹⁸
- 75% (113) were phoned by callers;
- 89% (133) vehicles were purchased from motor vehicle retailers or dealers and 6% (9) from car fairs or through auctions;
- 64% (109) of enquiries were related to mechanical problems or faulty vehicles that were purchased;
- 65% (97) of clients called on CAB to seek advice on problems encountered;

With respect to the Supplier Information Notice, the following are the results:

- 59% (89) said that SIN were displayed in cars, 21% (31) had no SIN at time of purchase and the remaining 20% (30) were not aware whether there was a SIN displayed or not;
- Of 89 cars believed to be purchased with SIN, 66% (59) were considered compliant and 13% (12) were non-compliant;
- 13% (12) of the non-compliant said that the misleading information include; odometer reading (2), country last registered (1), WOF details (2), re-registration details (1), cash price (1) and others (6).
- 52% (78) said that they received a copy of the SIN when they purchased the vehicle, 23% (35) did not receive a copy and 25% (37) were not aware whether a copy was given or not.

¹⁷ Estimated New Zealand Census population of 15 years and older is 3,176,000.

¹⁸ North Region CAB includes Avondale, Glenfield, Helensville, Henderson, Pakuranga-Eastern Manukau, Panmure-Ellerslie, Papakura, Takapuna and Whangarei

- Of the 35 (23%) who did not receive a copy of the SIN, 18 addressed the issue with the motor vehicle trader, 15 did not and 2 were ambivalent;
- Also, of the 35 (23%) who did not receive a copy of the SIN, 4 brought the non-compliance issue with the Commerce Commission and 22 did not.

Motor Vehicle Disputes Tribunal

- 82% (123) of the 150 motor vehicle-related enquiries were able to be referred to the Motor Vehicle Disputes Tribunal.
- Of the 123 enquiries that could have been referred to MVDT, 15 were referred and the remaining 105 were not.
- Of the 105 enquiries that were not referred to MVDT, 73 were referred back to the motor vehicle trader.

Information and options provided by CAB to clients with motor vehicle enquiries:

- 48% (72) advised to go back to the motor vehicle trader and settle case with them;
- 43% (64) advised to file case with the Motor Vehicle Disputes Tribunal;
- 35% (52) given pamphlets and brochures related to the Consumer Guarantees Act and/or Motor Vehicle Sales Act;
- 3% (4) advised to seek further advice from MTA, AA or an independent mechanic; and
- 3% (5) advised to seek advice of a lawyer.

Ministry of Consumer Affairs' Call Centre

The Ministry's Call Centre received a total of 587 MVSA 2003-related calls (or 2 calls a day) from April 2004 to June 2005. Quarterly log as follows:

TABLE 4.3 TOTAL MVSA-RELATED CALLS (SOURCE: Ministry of Consumer Affairs's HEAT DATABASE)			
QUARTER	2004	2005	% change
Jan-Mar	-	79	-
Apr-Jun	90	51	- 43%
Jul-Sep	232		
Oct-Dec	135		
TOTAL	457		

Note: Ministry of Consumer Affairs's iHEAT database consumer data call capture started in April 2004

7 ISSUES

During the course of the monitoring exercise, a number of issues were raised about the operation of the Act. Documenting them here has the purpose of ensuring that they are not overlooked during the consultation process and enables Ministry of Consumer Affairs to detail the response of relevant agencies to date.

Issue No.1: Registration

In November 2004, an industry member queried why statutory declarations are required as part of the annual renewal of motor vehicle trader registration. To illustrate how onerous such a requirement is, an example is used of 12 companies operated by the same parent company. In such a case there are multiple directors, each of whom is required to provide a statutory declaration. If some are non-resident, it is argued that obtaining the declaration is made significantly more difficult and costly.

Ministry's response

The Ministry of Consumer Affairs has responded by stating that the statutory declaration requirement is an important element in ensuring the accuracy and truthfulness of registration applications. The Ministry goes on to confirm that one of the purposes of the planned review is to identify areas where unnecessary costs can be eliminated.

Case 1:

A registered motor vehicle trader, Tim Whittle, was recently convicted and sentenced to imprisonment after admitting to false pretences and obtaining by deception charges. MED and Ministry of Consumer Affairs were required to respond to criticism in the media and from industry as to why Mr Whittle was able to register as a Motor Vehicle Trader despite a previous conviction. Industry also noted that Mr Whittle was declined a licence when he applied for one under the previous legislation (Motor Vehicle Dealers Act 1975).

There has been much discussion about this case in the media over the past year. In summary, MED has responded by stating that the registration process is not able to guarantee that a trader is ethical or honest. That Mr Whittle now has convictions, which effectively ban him from motor vehicle trading, is proof that the Act and its enforcement provisions do work. Ministry of Consumer Affairs has noted that despite Mr Whittle being refused a licence under the previous law he had continued unlicensed trading without impediment.

Case 2:

A motor vehicle trader has raised a concern that as they sell motorcycles, they are required to register under the MVSA and under the Second Hand Dealers and Pawnbrokers Act 2004.

Issue No.2: Road-side selling

An Industry body has raised this issue with MED and the Minister of Consumer Affairs. The issue appears to be that local RMVT believe that an uneven playing field is being created by other RMVT selling vehicles from a community area without having to face the same costs as local traders, and without displaying SIN as required by the Act. There were also concerns that other individuals were in effect, operating as unlicensed dealers from the same community area.

The final area of concern was that the local Council, as owner of the community area, should be required to register as a MVT.

Ministry's response

MED undertook an investigation of the illegal trading concern, as a result one person was identified and the Ministry accepted that they were not operating illegally. Currently, the MVSA does not prevent registered traders from selling vehicles at any site.

The issue of non-compliance with the Fair Trading Act requirements regarding the SIN have been passed onto the Commerce Commission for investigation.

Crown legal advice is that the Council concerned is not a "motor vehicle trader" as currently defined by the MVSA. The issue of whether Council or community property can be used for road-side vehicle sales is outside the ambit of the MVSA.

8 APPENDICES

Glossary

Address for service	Means the address of a place in New Zealand at which notices or documents that are required to be served under this Act may be served on the person giving the address
Adjudicator	Means an adjudicator of a Disputes Tribunal appointed under section 83
Banned person	Means a person banned from participating in the business of motor vehicle trading under section 68 or section 69
Car auctioneer	Means a person who conducts sales by auction of motor vehicles
Car consultant	Means a person who, for rent, fee, commission, or other valuable consideration, is engaged by any other person (except by a motor vehicle trader) to act as an agent for that other person on any matter that – a) relates to the sale or purchase of any motor vehicle by that other person; and b) does not relate solely to the structural, material, or mechanical condition of the motor vehicle
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); and 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.
Company	Has the meaning given to it by section 2 (1) of the Companies Act 1993
Disputes Tribunal	Means a Motor Vehicle Disputes Tribunal established under section 82 (1)
Finance company	Includes any person who carries on a business (except the business of motor vehicle trading) and who, in the course of that person's ordinary business, - a) buys, exchanges, or takes by way of assignment any motor vehicle for any of the following purposes: i) letting or hiring it to any other person under a hire purchase agreement; ii) taking or enforcing a security over it; iii) leasing it to any other person without conferring on that person the right to buy the motor vehicle; or b) sells any motor vehicle bought, exchanged, or taken by way of assignment for any of the purposes specified in paragraph (a); or c) sells any motor vehicle under a right of sale conferred by a security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999)
Former Act	Means the Motor Vehicle Dealers Act 1975
Importer	Means a person who carries on the business of importing motor vehicles into New Zealand
Motor vehicle	a) means 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 Governor - General, by Order in Council, to be a motor vehicle for the purposes of this Act; but b) does not include any of the following: i) an invalid carriage; ii) a moped; iii) a motor cycle, the total cylinder capacity of which does not exceed 60 cubic centimetres; iv) a tractor of farm machinery; v) a trailer; vi) a vehicle of any other class or description declared by the Governor - General, by Order in Council, not to be a motor vehicle for the purposes of this Act

Motor vehicle trader	<p>In this Act, “motor vehicle trader” (section 7)–</p> <p>a) means any person who carries on the business of motor vehicle trading (whether or not that person carries on any other business); and</p> <p>b) includes –</p> <p>i) a car market operator;</p> <p>ii) an importer;</p> <p>iii) a wholesaler;</p> <p>iv) a car auctioneer;</p> <p>v) a car consultant.</p> <p>Who is treated as motor vehicle trader (section 8)–</p> <p>1) A person is treated as carrying on the business of motor vehicle trading for the purposes of this Act if –</p> <p>a) the person holds out that the person is carrying on the business of motor vehicle trading; or</p> <p>b) in any specified period, the person sells more than 6 motor vehicles, unless that person proves that those motor vehicles were not sold for the primary purpose of gain; or</p> <p>c) in any specified period, the person imports more than 3 motor vehicles, unless that person proves that those motor vehicles were not imported to be sold for the primary purpose of gain,</p> <p>2) for the purposes of subsection (1)(a), a person holds out that the person is carrying on the business of motor vehicle trading if that person –</p> <p>a) advertises or notifies or states that the person carries on the business of motor vehicle trading; or</p> <p>b) in any way represents that the person is ready to carry, or is carrying, on the business of motor vehicle trading.</p> <p>3) Subsection (1)(b) does not apply to any trustee corporation (within the meaning of subsection 2(1) of the Trustee Act 1956) acting in the capacity of executor, administrator, trustee, guardian, committee, manager, agent, attorney, or liquidator, or in any fiduciary capacity, unless the trustee corporation is acting on behalf of the same person or estate.</p> <p>Who is not treated as motor vehicle trader (section 9) –</p> <p>1) A person is not treated as carrying on the business of motor vehicle trading for the purposes of this Act only because that person is –</p> <p>a) an employee or an agent of a motor vehicle trader; or</p> <p>b) under a contract for services with a motor vehicle trader; or</p> <p>c) a solicitor who acts in that capacity as an agent for selling any motor vehicle unless that person is remunerated by commission in addition to, or instead of, that person’s professional charges; or</p> <p>d) a liquidator of a company that is a motor vehicle trader registered under this Act; or</p> <p>e) a manufacturer who sells any motor vehicle to –</p> <p>i) the Crown; or</p> <p>ii) a motor vehicle trader registered under this Act; or</p> <p>iii) any person who is or has been employed by the manufacturer; or</p> <p>f) the holder of a second hand dealer’s licence granted under the Second Hand Dealers Act 1963 who buys, in the course of that person’s business as a second hand dealer, any motor vehicle for wrecking, dismantling by that person; or</p> <p>g) a finance company selling any motor vehicle under a transaction in which a motor vehicle trader acts as an intermediary between the finance company and any the buyer (whether or not the motor vehicle trader acts as an agent of the finance company); or</p> <p>h) a finance company, an insurance company, a rental car company, a storage provider (within the meaning of section 2 (1) of the Land Transport Act 1998), or any other person, that sells any motor vehicle as an incidental part of the person’s ordinary business; or</p> <p>i) carrying on any other business besides carrying on the business of motor vehicle trading and who, in the course of that other business, -</p> <p>i) buys any motor vehicle for use in connection with that business,</p>
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	<p>with or without the intention of reselling it after such use; or</p> <p>ii) resells the vehicle after using it in connection with that business.</p> <p>2) Subsection (1)(d), (h), and (i) applies only if the person sells motor vehicles through a motor vehicle trader registered under this Act who is not a car market operator.</p>
Motor vehicle trading	Means the sale of motor vehicles by a person (whether or not the person is a principal or agent)
New motor vehicle	Means a motor vehicle that is not a used motor vehicle
Register	Means the register of motor vehicle traders established and maintained under section 52
Registrar	Means the officer appointed under section 60 who is responsible for the register
Sale	<p>In relation to any motor vehicle, -</p> <p>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</p> <p>b) includes the display for sale or offer for sale or offer for lease or offer for exchange of that motor vehicle; but</p> <p>c) does not include a lease or offer for lease of a motor vehicle for a term not exceeding 4 months</p>
Sales by auction	Has the meaning given to it by section 2 of the Auctioneers Act 1928
Statutory declaration	Means a declaration made before a person authorised under the Oaths and Declarations Act 1957 to take declarations
Used motor vehicle	<p>a) Means a motor vehicle that has, at any time before being offered or displayed for sale, -</p> <p>i) been registered under –</p> <p>A) the Transport Act 1962; or</p> <p>B) the Transport (Vehicle and Driver Registration and Licensing) Act 1986; or</p> <p>C) any corresponding enactment of another country;</p> <p>ii) been used for a purpose not connected with its manufacture or sale; and</p> <p>b) includes a motor vehicle that has been used for the purpose of demonstration in connection with the sale of another motor vehicle</p>
Vehicle registration information	<p>a) means information about any person whom the Secretary for Transport believes has sold more than 6 motor vehicles during a specified period; and</p> <p>b) may include, -</p> <p>i) in the case of an individual, the person's full name, residential address, date of birth, and occupation;</p> <p>ii) in the case of a company, the company's name and the address of the company's registered office;</p> <p>iii) any other particulars that the Secretary of Transport considers relevant to the purpose set out in section 122</p>
Wholesaler	<p>Means a person who carries on the business of –</p> <p>a) selling new motor vehicles to motor vehicle traders, or to other persons who carry on that business; or</p> <p>b) selling used motor vehicles to motor vehicle traders</p>

Appendix Three:

Front:

SUPPLIER INFORMATION NOTICE

(YOU MUST FILL IN ALL RELEVANT PARTS OF THIS CARD)

Supplier's or auctioneer's name, address, and contact information:	Registered motor vehicle trader: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Motor vehicle trader registration number: _____

SALE INFORMATION

Cash price: (incl. GST)	Security interest*:
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WARNING: A security interest means that this vehicle could be a security for a loan and could be repossessed. You should check the back of this card for information about the Personal Property Securities Register.

Make and model:	Vehicle year*:
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Engine capacity:	Operating fuel type:	Vehicle identification number or chassis number:
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Actual distance the vehicle has travelled*:

Registered vehicle: <input type="checkbox"/> Yes <input type="checkbox"/> No	Registration plate number:
Vehicle licence (registration) expiry date:	Re-registered vehicle*: <input type="checkbox"/> Yes <input type="checkbox"/> No

Warrant or Certificate of Fitness: <input type="checkbox"/> Yes <input type="checkbox"/> No	Year first registered in New Zealand:
Expiry date:	

Road user charges apply*: <input type="checkbox"/> Yes <input type="checkbox"/> No	Outstanding road user charges*: <input type="checkbox"/> Yes <input type="checkbox"/> No
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INFORMATION ABOUT USED IMPORTED VEHICLES (Not required for 'New Zealand new' used vehicles)

Year first registered overseas:	Country where last registered:	Imported as damaged vehicle*: <input type="checkbox"/> Yes <input type="checkbox"/> No
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IF YOU BUY THIS MOTOR VEHICLE, THE SUPPLIER MUST GIVE YOU A COPY OF THIS CARD TO KEEP

I _____ [Name of buyer] have received a copy of this card, including a copy of the information on the back of this card.

Signature:	Date:
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FOR INFORMATION MARKED * THERE IS FURTHER INFORMATION ON THE BACK OF THIS CARD

Example 'Supplier Information Notice' developed by the Ministry of Consumer Affairs, November 2003.

Reverse:

SUPPLIER INFORMATION NOTICE - IMPORTANT INFORMATION

YOUR RIGHTS

The law offers protection if you buy a motor vehicle from a motor vehicle trader. However, your rights depend on the type of motor vehicle trader from whom you buy. You can get further information about your consumer rights from a Citizens Advice Bureau, a Community Law Centre or from www.consumeraffairs.govt.nz.

Motor Vehicle Sales Act 2003

This law controls who can trade in motor vehicles. Motor vehicle traders include:

- car auctioneers
- car importers
- car wholesalers
- car dealers
- car market operators.

Under the Motor Vehicle Sales Act:

- a motor vehicle trader must be registered
- a motor vehicle trader must attach this card to a vehicle they display for sale
- a supplier at a car market must attach this card to a vehicle offered or displayed for sale by the supplier
- the motor vehicle trader must provide you with a copy of this card if you buy this vehicle.

You can search the Motor Vehicle Traders Register to find out who is responsible for running a particular motor vehicle trading business and how to contact a motor vehicle trader. You can also search for traders who have been banned.

Visit www.motortraders.med.govt.nz, or email info@motortraders.med.govt.nz or freephone 0508 668 678.

*Security interest

If a finance company or other 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). A security interest means that the lender has rights over the vehicle.

If a security interest is recorded on the PPSR, the supplier must state on the front of this card "There is a security interest registered over this motor vehicle". If you buy a vehicle from a registered motor vehicle trader and you were not told on the front of this card that a security interest is registered, then you receive the vehicle free of the security interest.

This protection does not apply to private sales at car markets. You should check the PPSR to ensure that the motor vehicle you intend to buy is free of a registered security interest. Visit www.ppsr.govt.nz, or email info@ppsr.govt.nz or freephone 0508 777 746.

WARNING: If you buy a motor vehicle that has a security interest registered on the PPSR and the motor vehicle trader discloses the security interest on the front of this card, the vehicle could be repossessed!

Consumer Guarantees Act 1993

This law sets out guarantees that apply to new and used motor vehicles of the kind ordinarily bought for personal, domestic or household use from motor vehicle traders (other than vehicles bought at auctions). Under the Consumer Guarantees Act, the 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.

Fair Trading Act 1986

This law makes it unlawful for motor vehicle traders to engage in misleading or deceptive conduct, or make false or misleading representations about vehicles that they are offering for sale.

Under the Fair Trading Act, representations made by a motor vehicle trader about the vehicle you are buying must be true and the information on the front of this card must be correct.

Fair trading complaints can be taken to the Motor Vehicle Disputes Tribunal (see details below) or made to the Commerce Commission. To contact the Commerce Commission, email contact@comcom.govt.nz or freephone 0800 943 600.

Motor Vehicle Disputes Tribunal

The Motor Vehicle Disputes Tribunal can hear and determine applications or claims made against a motor vehicle trader under the Sale of Goods Act 1908, the Fair Trading Act 1986 and the Consumer Guarantees Act 1993. The Tribunal can hear claims of up to \$50,000. Visit www.justice.govt.nz or freephone 0800 FOR MVDT (0800 367 6838).

Checking vehicle details

You can make an application to an authorised agent of the Land Transport Safety Authority to check if a motor vehicle has been reported stolen and to check vehicle registration details. To obtain this information you will have to complete an application, show identification and pay a fee. Visit www.motochek.co.nz or freephone 0800 108 809.

*Vehicle year

The "vehicle year" can be either the calendar year in which the motor vehicle was manufactured or the model year as designated by the manufacturer.

*Actual distance the 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 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 card suppliers 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 Fair Trading Act 1986.

*Re-registered vehicle

Re-registration is necessary if a motor vehicle's registration has been cancelled. Common reasons for cancelling registration include vehicles being "written off" by insurance companies, destroyed or rendered useless, or having been unlicensed for more than one year.

*Outstanding Road User Charges

All diesel powered motor vehicles and vehicles over 3,500 kg are subject to road user charges. To pay the charges you must buy a Road User Charge licence. To find out more from the Land Transport Safety Authority, visit www.ltsa.govt.nz. To find out where to buy a licence, contact the Road User Charge helpdesk on freephone 0800 655 644.

*Imported as a damaged vehicle

The Land Transport Safety Authority records whether or not imported used vehicles had obvious structural damage or deterioration identified at the time of import. However, the extent of the damage is not recorded. Neither is any damage that may have occurred in New Zealand. You may wish to have a vehicle checked by a person with mechanical knowledge before you buy.

YOUR RESPONSIBILITIES

Within seven days of purchasing or obtaining 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 an authorised agent of the Land Transport Safety Authority. To find out more, visit www.ltsa.govt.nz or freephone 0800 108 809.