

The Fair Trading Act

Used motor vehicles



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

The Consumer Information Standards (Used Motor Vehicles) Regulations 2008 (**Regulations**) set out who must comply with the requirements, what types of vehicles are covered and the information that must be disclosed.

We use the term 'consumer information standard' in this fact sheet to refer to the requirements of the Regulations.

It is a breach of the Fair Trading Act for a motor vehicle trader to supply, offer to supply or advertise to supply used motor vehicles that do not comply with the consumer information standard.

Who must comply with the consumer information standard?

Motor vehicle traders must comply with the consumer information standard whenever they are offering or displaying for sale a used motor vehicle and this includes situations when the trader is acting as an agent for another person or selling through a car market operator.

A motor vehicle trader is any person carrying on the business of selling used motor vehicles to consumers. This includes:

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

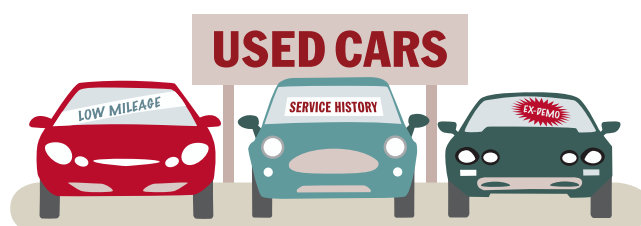
The consumer information standard does not apply to sales of used motor vehicles from one motor vehicle trader to another, or from a motor vehicle trader to a licensed car wrecker.

Private sellers of used motor vehicles are not required to comply with the consumer information standard.

What types of motor vehicles are covered by the consumer information standard?

Only used motor vehicles are covered by the consumer information standard. A used motor vehicle is a motor vehicle that has, at any time before being offered or displayed for sale, been registered or used for a purpose not connected with its manufacture or sale. A vehicle that has been used as a demonstration model is also considered a used motor vehicle.

The definition of motor vehicle is set out in the Motor Vehicle Sales Act. The definition covers any road vehicle of the kind ordinarily acquired by consumers for personal, domestic or household use.



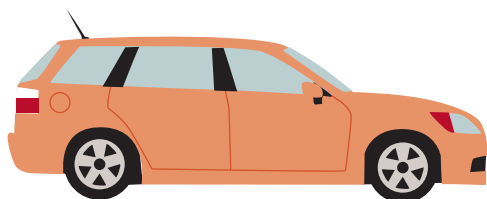
What information must be provided when selling a used motor vehicle?

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

- information about the supplier
- information about the vehicle.

Information about the supplier

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



Information about the vehicle

The information required to be provided about the vehicle includes its cash price (if not sold by auction/tender), make and model, vehicle year, engine capacity, odometer reading and vehicle identification number.

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

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

Most of the information required for this section has to be obtained from the Motor Vehicle Register. You can access the register, which is operated by NZ Transport Agency, at www.nzta.govt.nz

The full list of the information required to be provided is set out in Schedule 2 of the Regulations.

How should the information be displayed?

The Regulations include a template to display the information called a Consumer Information Notice (CIN).

For vehicles that can be purchased online, the CIN (or a link to the CIN) must be clearly displayed on the same webpage as the vehicle offered for sale and on the same page as the contract that may be entered into for the sale of the vehicle. The CIN can be displayed in a photo on the webpage as long as it is clearly visible and readable in the photo. For vehicles sold at car yards, CINs must be firmly attached to the motor vehicle in a prominent place. It must be clearly visible from the outside of the vehicle.

The CIN must be in the form set out in Schedule 1 of the Regulations. It must:

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

The CIN must also be updated when information about the vehicle changes.

You may use a name, logo, mark or design associated with your business, or any trade association you belong to, on the top margin of the CIN as long as it does not detract from the contents of the CIN.

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

The motor vehicle trader is responsible for ensuring an accurately completed CIN is attached to the vehicle or displayed online.

If a motor vehicle trader sells used cars at a car market, section 14(2) of the Motor Vehicle Sales Act requires that the car market operator to take reasonable steps to ensure the supplier of the vehicles completes and attaches a CIN. This may include providing the CIN form to be completed and instructions on how it is to be completed and displayed. Failure of the operator to do this is a breach of the Motor Vehicle Sales Act.

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

Yes, you must give the buyer a copy of the CIN for the vehicle they have purchased. You must obtain a written acknowledgement from the buyer that they have received their copy immediately before completing the sale, or in the case of a vehicle sold by auction, as soon as practical after the sale. You should also sign the CIN to record you have supplied a copy.

You must keep a copy of the CIN and the buyer's acknowledgement for every vehicle you sell for at least 6 years after the sale. You must also make the copies available for inspection by the motor vehicle trader's registrar, or a person acting on their behalf, at all reasonable times.

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

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



What may happen if I offer a vehicle for sale without a CIN or with a CIN containing incorrect information?

It is an offence under section 28 of the Fair Trading Act for a motor vehicle trader to supply, offer to supply or advertise for supply a used motor vehicle that does not comply with the consumer information standard.

The Commerce Commission, which enforces the Fair Trading Act, may issue you with an infringement notice requiring you to pay a fine of **\$1,000** for each breach. An infringement notice can be issued by the Commission if it has reasonable grounds to believe you have not complied with the consumer information standard.

If your non-compliance is considered more serious, the Commission may choose to prosecute you. Companies are liable to a fine of up to **\$30,000** for each breach of the Act. Individuals can be fined up to **\$10,000**.

It is also an offence under the Fair Trading Act to make a false representation or mislead your customers. For example, you will breach the Fair Trading Act if you record on a CIN an odometer figure that is lower than it should be. The Commerce Commission may take a prosecution against you for making misleading or false representations in CINs. Companies can be fined up to **\$600,000** for each breach of the Act. Individuals can be fined up to **\$200,000**.

If a company repeatedly breaches the Fair Trading Act, directors and those involved in the management of the company can be banned from involvement in the management of any company for a period of up to 10 years.

Do car market operators need to provide CINs?

Car market operators will breach the Motor Vehicle Sales Act if they fail to take reasonable steps to ensure any person selling through their car market has attached a CIN to the vehicle.

The Motor Vehicle Sales Act is enforced by the Ministry of Business, Innovation and Employment. For more information see www.mbie.govt.nz

Where can I get more information?

You can access the Regulations (which contain a sample CIN), the Fair Trading Act and the Motor Vehicle Sales Act online at the government's legislation website www.legislation.govt.nz. The information on this website is free.

Blank CINs may be available from trade associations, or you can have a form designed for your own use but it must comply with the template notice set out in Schedule 1 of the Regulations.

For further information on the Fair Trading Act you can visit the Commission's website at www.comcom.govt.nz

EXAMPLE

A motor vehicle trader was fined \$75,000 over misrepresenting consumers' rights when selling used vehicles online, and for failing to display essential vehicle information.

Five of the charges arose from representations made in Trade Me listings, that the used vehicles were offered for sale on an "as is where is basis" and/or that "no guarantee or warranty" applied. These representations were found to be misleading because they were an attempt to contract out of the Consumer Guarantees Act.

The other three charges were for failing to display or provide access to CINs.

Do traders of used motor vehicles have to comply with any other regulations or Acts?

Yes. Motor vehicle traders must also comply with:

1. the Motor Vehicle Sales Act
2. the Fair Trading Act
3. the Consumer Guarantees Act
4. the safety and licencing requirements of the New Zealand Transport Agency.



This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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Contact us with information about possible breaches of the laws we enforce:

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