



Buying a used car from a motor dealer

Your legal rights



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Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at July 2021 and does not accept responsibility for any errors or omissions.

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How can this guide help me?

This guide provides general information about car contracts, finance contracts and insurance policies when you are buying a used car. It tells you:

- your rights and responsibilities when entering into these contracts and policies
- what to do if there are problems with the car after you buy it
- how to get out of a car contract legally (if you can) and cancel the finance and insurance.

It also provides you with:

- sample letters you can follow when you need to put something in writing
- information about legal words and phrases that might be used in the purchasing process
- the names and contact details of organisations that can help.

When should I use this guide?

Use this guide if you:

- have negotiated to buy, or have already bought, a registered used car from a motor dealer in Queensland
- are not sure whether you are under a contract
- want to know if you must buy the car or if you can get out of the contract
- want to cancel the contract and try to get your deposit back
- think the conditions to buy the car, or the finance offered, are unacceptable
- now realise you can't afford to buy the car
- want to complain about something the motor dealer or finance company did.

Do not use this guide if you:

- bought the car privately (not from a motor dealer)
- bought the car outside Queensland
- are buying a new car
- are buying a car for business purposes
- want to get a motor dealer to repair your car outside of the warranty period (Legal Aid Queensland's *Consumer and trader disputes* guide may help you with this—visit www.legalaid.qld.gov.au for more information)
- want to claim on an insurance policy.

You should get legal advice

You should use this guide along with legal advice. Never make any legal decisions without speaking to a lawyer first.

You can get legal advice from:

- Legal Aid Queensland—call 1300 65 11 88 for free advice (for the cost of a local call from a landline in Australia)
- a community legal centre—visit www.communitylegalqld.org.au or call 1300 65 11 88 to find services in your area
- a private lawyer—call the Queensland Law Society on (07) 3842 5842 for names of lawyers who can help.

Getting the most out of your legal advice

You will get the most out of your legal advice if you do some preparation beforehand. Have all the relevant paperwork together so you can give the lawyer accurate and detailed information. Before you meet with a lawyer try to:

- write a list of all the things you and other people, such as the motor dealer and finance person, said and did when you were buying the car (see the ‘Sample information for lawyer’ on page 5 for an example of what to write in your list)
- write your list in the order things happened including the date and time, where you were, who you spoke to, what was said and any documents given to you
- list or collect all the documents you were shown or given, any that were filled in for you, or any that you signed. If you do not have copies or originals of the loan documents, contact your finance company and ask for this information to be sent to you. If you are having problems getting them to send you the information, you will need to mention your right to access this information under the National Credit Code (see sample letter 1 on page 31)
- work out what you want to achieve, for example, a better deal or to get out of the contract and get your money back.

Sample information for lawyer

Date and time: Saturday, 4 November 2014, 2pm
Where: Motor dealer (eg Better Deals Car Dealer)
Who: Salesman (eg Mr Smith)

What was said:

I walked into the car yard and saw a blue Mazda that I liked. Mr Smith came over and asked if I'd like to sit inside and have a look. He got the keys and asked me if I wanted to take it for a drive. I wasn't sure so I said I'd think about it. He said he had someone else interested in it and that he'd probably sell it today, so I'd better be quick. I said I'd think about it and I left.

Documents: None
Date and time: Sunday, 5 November 2014, 10am
Where: Motor dealer (eg Better Deals Car Dealer)
Who: Salesman (eg Mr Smith)

What was said:

I returned to the car yard to see if the car was still there. Mr Smith recognised me and told me the other buyer took a test drive yesterday and was coming back this afternoon to possibly sign a contract. He convinced me to take it for a test drive, which I did. I liked the car and told Mr Smith this. He said he'd give me his best price if I did a deal on the spot. I agreed and signed a contract for \$8999. I have since seen a similar car in a nearby dealership for \$7500 and wonder if I've been ripped off and if I can get out of the contract.

About contracts

What is a contract?

A contract is an agreement between two or more people. When you buy a car you may be asked to sign a contract, which is a record of the agreement (or part of the agreement) you make with the motor dealer.

It is important the information in the contract is clear. If a contract is clear, it will be 'binding'. This means it is legally enforceable and you must do what it says.

Sometimes a contract will not be binding if the information isn't clear or accurate, or if the buyer was forced or pressured into signing the contract.

If you are not sure if you have entered into a contract, if it's legally binding or if you can get out of it, you should ask a lawyer to look at it.

Is a contract always called a contract?

No. Some contracts may be called an 'order form'. Don't be fooled—once you sign it, you might not be able to get out of it. The title on the first page may not accurately reflect what the document actually is. You need to read the document and understand its terms to work out if it is a contract.

Does a car contract have to be in writing?

If you bought a car privately (rather than from a motor dealer) then the contract may not have to be in writing and does not have the same protections as if it was bought from a registered motor dealer under the *Motor Dealers and Chattel Auctioneers Act 2014* (this will now be called 'the Act' throughout this guide).

There are also different requirements in the Act that apply to buying unregistered or repairable write-offs.

Otherwise, yes, the contract must be in writing. If the contract is not in writing, you do not have to buy the car. It must also include specific information, such as your right to a cooling-off period if it is a used car. The Act states what information must be in a contract. If a motor dealer sells you a car, they must give you a copy of the contract straight after you sign it. See page 9 of this guide for more information about what documents the motor dealer should give you when you buy a used car.

Do I have to buy the car after I've expressed interest in it?

No. If you told the motor dealer you were going to buy the car but then change your mind, you do not have to buy it.

The only time you have to buy the car is when you have a signed contract.

If you did not sign anything, you do not have to buy the car.

What if I signed a contract but it is conditional?

A conditional contract is when certain things must happen before the contract becomes binding (ie legal). The wording on the contract is usually “subject to...”.

Common conditions are:

- finance must be approved
- the car must pass an inspection to your satisfaction
- the motor dealer has to buy the car from a previous owner in order to sell it to you.

If your loan is not approved or you are not happy with the inspection, you do not have to go through with buying the car.

The contract will give a timeframe or date you need to notify the motor dealer in writing by about the outcome of the conditions, and whether you are going to go ahead and buy the car.

Sometimes it is possible to get out of a contract if the contract details are not clear (eg if it doesn't state the finance amount, the date to get finance approved by or the type of finance). Leaving these important details out could make the contract uncertain and means the contract may not be enforceable.

If you are unsure about your contract, you should get legal advice.

What if I paid a deposit?

If you paid a deposit when signing a contract, then you have agreed to buy the car. If you go ahead with the sale, the motor dealer takes away this amount from the vehicle's sale price. If you end the contract, the dealer may keep some or all of your deposit. This depends on the contract's terms.

Sometimes a motor dealer will ask you to pay a deposit to hold the car for an agreed amount of time while you make your decision about whether to buy it. This is called a 'holding deposit'. They should give you a receipt for this holding deposit. You can get this deposit back if you decide not to buy the car. Before agreeing to a holding deposit, read what you are signing carefully to make sure you are not paying a deposit to purchase the car.

If you never meant to agree to a contract and believed you were paying a holding deposit only, get legal advice about what to do next.

What documents should the motor dealer give me when I buy a used car?

Before you sign the contract, the motor dealer must give you a notice that includes:

- the motor vehicle details (eg make, model, year of manufacture)
- the cooling-off period details
- the non-refundable deposit amount
- a notice about the statutory warranty.

Once you have signed the sale contract, the motor dealer must give you a copy of the contract.

The sale contract must be in writing and must include:

- a notice about the cooling-off period
- a statement confirming you have clear title to the vehicle
- a safety certificate for the vehicle (previously called a roadworthy certificate).

If the car is registered then the seller must provide (at their expense) a current safety certificate. This certificate is prepared at an Authorised Inspection Station and certifies the car meets the requirements for it to be on the road. It is not proof the car is mechanically sound. If the certificate is defective then you should get legal advice about whether you can take legal action against the seller and/or the motor mechanic. You can also make a complaint to the Department of Transport and Main Roads (phone 132 380 or visit www.tmr.qld.gov.au).

You should also be told if the car is a ‘repairable write-off’. This means it has been written-off due to damage and has then been repaired and re-registered (see page 25 of this guide for information about buying flood affected cars and page 26 for information about hail damaged cars).

What happens if these documents are not given to me?

If you have not been given the proper documents or notice about your rights, including the cooling-off period, you should get legal advice as you may be able to get out of your signed contract. Time limits may apply so you should get legal advice quickly.

If a licensed motor dealer does not provide these documents to you they have committed an offence. You should make a complaint to the Office of Fair Trading (OFT) (phone 13 74 68 or visit www.qld.gov.au/law/fair-trading/).

What is the cooling-off period?

A cooling-off period is a timeframe when you can cancel a contract without a reason. If you choose to do this, you may lose some of your deposit if the deposit was 'non-refundable'.

The cooling-off period usually starts when the contract is signed. The cooling-off period for buying a used vehicle from a motor dealer is one full business day. The cooling-off period will usually expire at the close of business on the following business day. If the motor dealer is not open for a full business day on the following day, then the cooling-off period expires on the close of business on the day after. A business day cannot be a Sunday or a public holiday.

There is no cooling-off period if you:

- bought the car privately (not from a motor dealer)
- bought a new car
- bought the car on consignment
- bought the car at auction
- took possession of the car immediately after signing the contract.

Taking a car for a test drive or getting a mechanical inspection done on the car is not counted as ‘taking possession’ of the car.

The motor dealer must let you know about your right to cancel the contract during the cooling-off period. They should give you a form called a *PAMDA Form 37a* that you both sign stating when the cooling-off period starts and ends. If they did not give you this form, you have seven days to cancel the contract.

Sometimes certain steps need to be taken before the motor dealer can sell the car to you, eg the motor dealer may need to buy the car from the previous owner before selling it to you, which is known as ‘on consignment’. In this case the cooling-off period starts later.

Can I cancel the contract?

You can cancel the contract if:

- you are within the cooling-off period of one business day
- a condition in the contract was not met (eg the car failed the mechanical inspection or your finance wasn’t approved)
- the car was not mechanically safe or was not fit for the purpose it was bought
- the seller told you something about the car that wasn’t true and you signed the contract based on that fact (eg you were told the car was manufactured in a certain year and you wouldn’t have bought it if you had known this wasn’t true)
- the person who signed the contract had a legal disability or incapacity to sign it (see page 40 for more information)
- the motor dealer did not do what was required under the Act, for example:
 - the motor dealer did not provide the documents required as outlined on page 9
 - the motor dealer gave false or misleading information on an application to a finance company on your behalf.

How do I cancel the contract?

Within the cooling-off period:

If you are within the cooling-off period of one business day, you do not have to give a reason for cancelling the contract.

If you want to cancel the contract, you must give a written letter to the motor dealer by close of business the next working day asking them to cancel the contract (see sample letter 2 on page 32). However if the motor dealer closes earlier than 5pm, then you have until the next day they are open to deliver the letter.

Outside the cooling-off period:

If you want to cancel the contract and you are outside the cooling-off period, you will need to be able to prove a condition of the contract has not been met, and you will need to act quickly.

If you believe you are within your rights to cancel the contract, you should:

- get a lawyer to look carefully at your contract and any extra information you have; they will be able to confirm if you are legally able to get out of the contract, and when you need to do it by
- give a letter to the motor dealer asking them to cancel the contract due to a condition not being met (see sample letter 3 on page 33).

If all the contract conditions have been met but you still want to get out of your used car contract after the cooling-off period has ended, the motor dealer is entitled to claim damages from you for breaching the contract. Used car contracts often include standard terms that allow the motor dealer to claim a percentage of the purchase price if you do not go ahead with the contract after it is signed. Get legal advice to understand your options.

About finance

Finance options for buying a car

There are many ways to get finance to buy a car, and your rights and obligations may change depending on the option you choose.

You can:

- borrow money unsecured (the car is not used as security for the loan)
- apply for a loan that includes security over the car (if you miss payments the lender can take steps to repossess the car)
- apply for a hire-purchase contract where you make payments to the lender; when all the money is repaid the car will be owned by you, free from the security
- sign a consumer lease where you rent the car and return it at the end of the lease period
- sign up for a continuing credit contract, which gives the option of further lending (this operates as a credit card facility).

For more information, visit www.moneysmart.gov.au

If you are not sure about your rights and obligations for the finance you have chosen, you should get legal advice.

Do I have to use the finance company the motor dealer recommends?

No, you can get finance from any bank or finance company. A car is a big investment, and you should shop around and get the best deal possible.

Look at the car contract to see if it says ‘bank’ or ‘finance’ and double check if the motor dealer has automatically included finance through their own finance company.

You may be able to get a better deal with your own bank or somewhere else.

What if I can’t get finance?

If your contract is ‘subject to finance’, it will most likely include a due date (or number of days) you have to get finance approved by.

If your application for finance is rejected, you need to let the motor dealer know in writing before the finance due date (see sample letter 4 on page 34). If you don’t let the motor dealer know, the contract may become legally binding. A lawyer can look at your contract and give you advice about this.

If the contract does not have a finance due date, you should give your letter to the motor dealer as soon as you can. You should also attach a copy of the rejection letter from the finance company.

If there are delays in getting finance approved and you still want to buy the car, you should write to the motor dealer asking for more time.

What if I change my mind and don't bother to apply for finance?

After signing a contract, you must make a proper effort to get finance by applying to more than one finance company. You should apply to up to three companies.

If you make no effort to apply for finance, you may lose your deposit or the motor dealer may sue you and force you to complete the purchase or pay damages.

Is one finance refusal enough to get me out of the contract?

Some motor dealers may accept a finance refusal from one company as being sufficient grounds to cancel the contract, or they may expect you to approach extra companies if the first one refuses your finance application.

If your contract lists the bank or finance company you are going to get a loan from (ie the motor dealer's finance company), you only have to apply to that one.

What if I've applied for finance pre-approval but then realise I can't afford it?

If you receive a finance offer, but think you might not be able to afford it, you can decline the offer.

You may not be able to afford the finance because:

- the fees, charges or interest rates are too high
- your regular income or expenses change
- you didn't receive as much money as you expected on a vehicle trade-in.

If you can't afford the finance you have been offered, you should:

- get legal advice before writing to the finance company or motor dealer
- write to the finance company asking them not to give you finance (see sample letter 5 on pages 35–36)
- write to the motor dealer explaining your situation, particularly if they have your trade-in vehicle or they think you already have finance approved (see sample letter 6 on page 37).

What if I get finance approved, but then realise I can't afford it?

If you get finance approved, but then realise you can't afford the loan, you can still ask the finance company to reconsider their decision.

You should write a letter to the finance company including information about your income and expenses and why you can't afford the loan (see sample letter 5 on pages 35–36).

What documents should the bank or finance company give me?

When your finance is approved, your bank or finance company should give you the following documents:

- credit guide
- credit quote
- preliminary assessment on whether the loan is suitable (you can ask for a copy of this document)

-
- credit proposal disclosure statement (this details the fees on the loan)
 - pre-contractual statement
 - information statement
 - a copy of the signed contract (within 14 days of signing the original document).

If you do not receive all of these documents, you may be able to get out of your finance contract. You should get legal advice about this.

What if the finance offered by the motor dealer isn't what I've ended up with?

The finance contract must match what the motor dealer offered you. If it is different to what you were expecting (or different to what you were told), you may be able to get out of the contract. You should get legal advice if this happens.

How do I cancel my finance?

If you cancel your car contract, you need to cancel all of the other contracts, including your finance contract.

If the motor dealer arranged your car finance or referred you to the finance company, then the finance contract will automatically be cancelled when the sales contract is cancelled (this only applies for cars bought for personal use).

If you arranged your own finance, you should call the bank or finance company and tell them you want to cancel the contract because the sales contract has been cancelled.

About insurance

What insurance do I need?

Car insurance can be confusing. Start by checking your car contract and your finance contract to see if insurance is already included. Remember, motor dealers and finance providers have an interest in selling you insurance because they usually get paid a commission. If they sell you insurance that is not needed, you may be able to cancel the policy and get a refund.

All cars have compulsory third party (CTP) insurance included in their registration, which covers the cost of injuries caused to another person in an accident where you are at fault. Most people also go to an insurance company to get fully comprehensive insurance, so if their own car is damaged in an accident, the cost of the repairs is covered.

Your finance company may insist you get extra insurances and suggest an insurance company. However, you can decide which extra insurances to get and which company to use. If you already have house and contents insurance, you might find it's cheaper to use the same company for your car insurance. But sometimes, if you shop around you might find another company offering cheaper and better insurance.

What are the different types of insurance?

Compulsory third party insurance

Your car registration includes CTP insurance. This insurance covers the cost of injuries to the other person (called the third party) involved in a car accident where you were at fault. It does not cover you for any injury. It does not cover

damage to any car or personal items stored in the car. It is illegal to drive on public roads without this insurance. When you pay or renew your registration you can choose which company you want to provide this type of insurance.

Third party property damage insurance

This covers you for damage your car might cause to someone else's vehicle or property, which could be very costly if you have an accident that is found to be your fault. It does not cover the cost of repairing damage to your own vehicle. There may be limited cover if the other person is at fault and uninsured.

Comprehensive insurance

This covers you for damage to your vehicle (regardless of who caused it). This means if you are in an accident, you only have to deal with your insurance company to get your car repaired regardless of who caused the accident.

Gap insurance

Gap insurance covers the difference between what you owe on your car and what your insurance company says it's worth. If your vehicle has been written-off in an accident, your insurance company usually pays the cash value of your car, which may be less than the amount you still owe on your loan.

The difference between your insurance payout and your current loan amount is the 'gap' you can be left owing. If the comprehensive motor vehicle property insurance is enough to pay the loan, then the gap insurance won't pay anything.

Life insurance

If the car owner dies, life insurance can be used to pay the amount left owing on the car loan.

Sickness or accident insurance

If you have a disability or can't work, this insurance may cover all or part of your car loan. There are certain requirements and exceptions about when you can claim it.

Unemployment insurance

If you lose your job, your unemployment insurance may pay your car loan for a short period (usually three months).

What if I'm forced to take out insurance I don't need?

If you were told you had to take out an additional insurance (other than CTP insurance), or were told you had to use a certain insurance company, you should get legal advice about your options.

You have a 14 day cooling-off period to cancel an insurance contract, so if you believe you were forced to take out the insurance you need to act quickly to cancel it.

How do I cancel insurance?

If you choose to cancel your car contract, then you need to cancel your insurance policy too.

If the motor dealer arranged your insurance, then the policy will automatically be cancelled when you cancel your car contract.

If you arranged your insurance, you will need to call the insurance company and tell them you want to cancel the policy.

About the car

What if the car breaks down after I've picked it up from the motor dealer?

If your car breaks down not long after you bought it, and it is covered by a statutory warranty, you may be entitled to have it repaired. A statutory warranty is a guarantee certain defects with your car will be fixed by the motor dealer—free of charge, within a certain time.

A warranty is applied by law to any vehicle sold by a licensed motor dealer that:

- has travelled less than 160,000kms, and
- is less than 10 years old.

The warranty will not apply to:

- a vehicle you bought privately
- an unregistered vehicle that is incapable of being registered in Queensland because of its design
- a written-off vehicle
- a commercial vehicle
- a caravan
- a motorcycle.

Vehicles which are not covered by a warranty must be displayed or advertised for sale as unwarranted.

What is the warranty period?

The warranty period starts when you take possession of the vehicle and ends when the vehicle travels 5000km or three months after you take possession—whichever happens first.

The warranty will not cover a defect in:

- airbags
- lights (except for a warning light or a turn indicator light used as a hazard light)
- installed radio, tape recorder or CD player
- a tyre
- a battery
- a radiator hose
- a radio aerial or other aerial
- spark plugs
- distributor points
- wiper rubbers
- oil or an oil filter
- a fuel filter or air filter
- a hose for a heater unit
- paint work or upholstery that should have been apparent at the time of sale
- any additions made after the buyer takes possession.

A statutory warranty does not replace a mechanical inspection prior to purchase. You should still get the mechanical inspection. For example, a car may have a fault that is not going to appear during the warranty period, or is not covered by a safety certificate, but that may cause major problems later.

The warranty will not cover any damage to the car that occurs after you take possession of the car. The warranty also won't cover defects that occur as a result of the buyer's misuse or negligence.

If you believe the car has a defect, you must:

- write a letter to the motor dealer before the end of the warranty period, telling them about the defect (see sample letter 7 on page 38)
- deliver the vehicle to the motor dealer or to the motor dealer's qualified repairer.

Once the motor dealer has received your letter they have five business days to let you know if the defect is covered by the statutory warranty. If the motor dealer does not respond to your letter, then by default the motor dealer has accepted the defect is covered by the statutory warranty.

A vehicle must be repaired within 14 days after the motor dealer accepts the defect is covered by the statutory warranty, unless the motor dealer has a reasonable excuse. The warranty period is extended by one day for each day or part of a day the motor dealer or repairer has the vehicle.

Once the defect has been repaired, the motor dealer has fulfilled their responsibility to repair the vehicle. If you don't get the result you want, you should get legal advice. You may need to make a claim through the Queensland Civil and Administrative Tribunal (QCAT). For more information, see Legal Aid Queensland's *Consumer and trader disputes* guide at www.legalaid.qld.gov.au

How can I resolve a dispute with a motor dealer about repairing the vehicle?

You should first approach the motor dealer and try to resolve the issue. Each motor dealer is required to provide a complaints handling procedure under the Code of Conduct. If this does not solve the problem, you can make a complaint to the Office of Fair Trading by calling 13 74 68 or visiting www.qld.gov.au/law/fair-trading/ and typing 'make a consumer complaint' in the search box.

If the motor dealer has:

- refused to accept the defect is covered by the warranty
- failed to repair the defect within the repair period
- failed to repair the defect

then you can apply to the QCAT to resolve the dispute. You should get legal advice. For more information, see Legal Aid Queensland's *Consumer and trader disputes* guide at www.legalaid.qld.gov.au

What if the car had a problem when I bought it that is not covered by the statutory warranty?

When you buy a car it must be fit for the purpose it was sold. It must also be of 'acceptable quality' that is judged based on how much you paid for it.

What is 'acceptable quality'?

'Acceptable quality' means the quality and description of the car is appropriate for the car's purchase price. For example, a higher standard is expected for a car that costs \$15,000 than one that costs \$5000. Any representations about the car made by the supplier or manufacturer about the car are also relevant.

If the car had a defect when you bought it that makes it unfit for driving, and the defect is unreasonable considering the price you paid, you may have a claim against the motor dealer. You need to be able to prove this and you must act quickly. Ask an independent mechanic to inspect the car and whether they can honestly state the problem was there when you bought it. Then write to the motor dealer explaining the problem.

If you can show the defect was there on the day the car became legally yours and it is a serious defect, then you may be able to end the contract and return the car. If it is a less serious defect, then you may be entitled to claim some compensation for the defect. If the motor dealer doesn't agree with you, you may need to take the matter to court:

- If you are claiming less than \$25,000, you can take the matter to the QCAT.
- If it is more than \$25,000, then you will need to apply to the Magistrates Court closest to where you bought the car.

You should get legal advice if you need to take the matter to the QCAT or the Magistrates Court. For more information, see Legal Aid Queensland's *Consumer and trader disputes* guide at www.legalaid.qld.gov.au

Should I buy a flood affected car?

Cars that have been under water during a storm, cyclone or flood are prone to mechanical problems in the future and have a high risk of rust damage.

Severely flood affected cars are 'written-off' meaning they are never allowed to be registered, driven or sold.

Less severely damaged cars are considered 'repairable write-offs' meaning they can be repaired, undergo an inspection, then be sold again.

The best way to find out if the car you are about to purchase has been in a flood is by organising RACQ or an independent mechanic to inspect the car for signs of flood damage.

Visit the RACQ website www.racq.com.au for information on flood damaged cars and signs to look out for.

If you discover after you purchase a car that it has been in a flood you should quickly get legal advice about your options.

Storm and hail damaged cars

You should also be very careful when considering buying a hail damaged car. Important issues to consider include:

1. While the car may only appear dimpled on the outside, the water may have affected the car's electronics and caused damage to the inner workings of the car.
2. If water has affected the car's electronics, is the damage covered by a statutory or other warranty the car may have?
3. What type of insurance you can get for the car—some insurers only offer third party insurance for hail damaged cars. You may need to wait until the car is completely repaired before you can get comprehensive insurance.
4. Any other damage to the car (eg to the windscreens, windows or trimmings) may affect your ability to get car insurance.

What if the car is not what the motor dealer promised?

If the motor dealer has:

- told you things about the car's history or ability that are not true, but you bought the car believing these things were true (eg the dealer told you the car only had one owner, but you found out later it had three previous owners)
- failed to guarantee title (ie someone else also has a claim to the car)
- not complied with the cooling-off period

then you should make a complaint to the motor dealer.

In some circumstances you may be able to end the contract and seek damages. You should get legal advice.

If the motor dealer does not satisfactorily address the problem, then make a complaint to the Office of Fair Trading (OFT). You can make a complaint to the OFT by calling 13 74 68 or visiting the website www.qld.gov.au/law/fair-trading/ and typing 'make a consumer complaint' in the search box. Their officers will investigate your complaint which may lead to:

- disciplinary proceedings for the motor dealer in the QCAT, or
- the motor dealer being prosecuted for breaching the Act, or
- compensation for you.

Getting compensation

If you have lost money because of a motor dealer's actions, you can make a written claim for compensation from the OFT's Claim Fund. Claims should focus on untrue information the motor dealer told you about a vehicle or other breaches of the Act.

You should lodge your claim for compensation within one year of becoming aware of the loss, or within three years of the event that caused the loss, whichever happens sooner.

The OFT decides simple or straightforward claims—it may refer more complex claims to QCAT. The OFT's decisions can be appealed in the QCAT. You have 28 days to file a review of the OFT's decision. Decisions by the QCAT can also be appealed.

The QCAT will consider the 'bargaining positions' of you and the motor dealer (ie who had more power during negotiations about the car) by looking at whether:

- you had to comply with unreasonable conditions that benefited the motor dealer
- you understood the documents
- the motor dealer used undue influence, pressure or unfair tactics.

The tribunal will also look at the cost of identical or equivalent goods from another motor dealer and then decide if your motor dealer did not act properly.

For more information, see Legal Aid Queensland's *Consumer and trader disputes* guide at www.legalaid.qld.gov.au

Claims of more than \$25,000 must be dealt with in the civil courts (ie Magistrates, District or Supreme Courts). You should get legal advice if your compensation claim is more than \$25,000.

What if the motor dealer offers to swap the car for another car?

If there is a problem with your car and your motor dealer offers to swap it for another car, you do not have to take the other car offered.

If you do accept another car, the motor dealer must write up a new contract or change the original contract. If the original contract is changed, you and the motor dealer need to sign the changes.

Sample letters

- Sample 1** Letter to the finance company asking for your loan information
- Sample 2** Letter to the motor dealer cancelling your contract within the cooling-off period
- Sample 3** Letter to the motor dealer cancelling the contract because a condition has not been met
- Sample 4** Letter to the motor dealer saying your finance is not approved
- Sample 5** Letter to the finance company asking them not to give you finance
- Sample 6** Letter to the motor dealer saying not to sell your trade-in car as finance wasn't approved
- Sample 7** Letter to the motor dealer to fix a defect under the statutory warranty

Talk to a lawyer to help you write your letter/s to your finance company and/or motor dealer.

Sample 1: Letter to the finance company asking for your loan information

(Date)

(Manager's name)
(Finance company's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

Request for my loan contract details

Could you please send me the following information about my loan contract (insert reference number if any) entered into on or about (insert date you signed up the loan):

- copies of all documents relating to the above account in line with the *Privacy Act 1988* (Cth) and/or sections 36 and 185 of the National Credit Code (the Code) including:
 - the loan contract or guarantee
 - any credit-related insurance contract in your possession
 - any notices previously given to me
 - the loan application form(s)
 - a copy (if any) of the preliminary assessment
- a copy (if any) of the financial assessment in line with section 129 of the *National Consumer Credit Protection Act 2009* (Cth)
- a statement of the amount owing and other matters covering the period between the contract date and the date of this letter in line with section 36 of the Code
- a statement of the payout figure at the date of this letter with details of items which make up that amount in line with section 83 of the Code
- the amount of the original limit granted and the date and amount of any subsequent limit increases (if applicable)
- your Credit License Number (if any) and the name of the external dispute resolution scheme to which you belong.

Under section 36 of the National Credit Code you must provide this information. If you do not provide the information within 14 days I will consider taking legal action to obtain it.

Please send this information to my address above as soon as possible.

Yours sincerely

(Your signature)
(Your name)

Sample 2: Letter to the motor dealer cancelling your contract within the cooling-off period

(Date)

(Manager's name)
(Motor dealer's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

Cancelling the contract within the cooling-off period

I am writing to cancel the contract I signed on (date) to purchase a used car (registration number) from your dealership.

Please refund the money I have paid within seven days of today's date.

Yours sincerely

(Your signature)
(Your name)

Sample 3: Letter to the motor dealer cancelling the contract because a condition has not been met

(Date)

(Manager's name)
(Motor dealer's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

Cancelling car contract due to (condition, eg mechanical inspection)

I am writing to cancel the contract on used car (registration number) because a condition of the contract has not been met.

(Provide some condition information and your reason/s for cancelling the contract.)

For this reason, I will not be following through with the car purchase.

Please refund my full deposit within seven days of today's date.

Yours sincerely

(Your signature)
(Your name)

Sample 4: Letter to the motor dealer saying your finance is not approved

(Date)

(Manager's name)
(Motor dealer's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

Cancelling car contract due to finance not being approved

I am writing to ask you to cancel my car contract (contract number) as my application for finance has not been approved.

On (date), I signed a contract to buy a car (registration number).

The contract was subject to me obtaining finance on or before (date). I want to cancel the contract because my application for finance was not approved. I have enclosed a copy of the finance company's refusal letter.

Please refund my full deposit within seven days of today's date.

Yours sincerely

(Your signature)
(Your name)

Sample 5: Letter to the finance company asking them not to give you finance

(Date)

(Manager's name)
(Finance company's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

Requesting my loan application not be approved

I am writing to ask you not to approve my application for a car loan (insert loan reference number if available). The application was made on my behalf through (name of the motor dealer and/or finance broker).

I do not want finance to be approved because I don't have the money to make the payments. I have detailed my situation so you can see why I can't afford the loan. The loan is not suitable for my purposes and it would not comply with your responsible lending obligations to grant this loan as this time.

Income and expenses

(Provide some information about your finances and personal circumstances, for example:)

I am a sole supporting parent with three children aged seven, six and four. I owe money to Centrelink for an emergency payment and I have a debt for a bond loan and an old phone bill. My only income is Centrelink payments of \$459 a week.

Sample 5: Letter to the finance company asking them not to give you finance

My weekly expenses are:

Rent \$150

Electricity \$13

Phone (incl. debt) \$45

Bond loan \$5

Centrelink debt \$25

Car reg/ins \$12

Clothing \$25

Petrol \$30

Childcare \$20

School \$15

Food \$110

Entertainment \$10

Total expenses: \$460

I would like your response within three working days of today's date.
I would appreciate you telling the motor dealer that my finance was rejected.

I can be contacted on (your phone number) if you have any questions.

Yours sincerely

(Your signature)

(Your name)

Sample 6: Letter to the motor dealer saying not to sell your trade-in car as finance wasn't approved

(Date)

(Manager's name)
(Motor dealer's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

No sale of trade-in vehicle—finance not approved

On (date), I signed a contract to buy the car (registration number) and trade in my vehicle (registration number).

My contract was subject to finance approval, and I am writing to let you know my finance has not been approved.

As a result, I am writing to direct you to not sell my trade-in vehicle.

Yours sincerely

(Your signature)
(Your name)

Sample 7: Letter to the motor dealer to fix a defect under the statutory warranty

(Date)

(Manager's name)
(Motor dealer's name)
(Address)

(Your name)
(Address)

Dear (Manager's name)

Notice to fix a defect under the statutory warranty

I need you to repair a defect to my car (registration number) under the statutory warranty, within the time limit required, in line with the *Motor Dealers and Chattel Auctioneers Act 2014*. I purchased the car from your dealership on (date).

The defect is (describe the problem). I understand I need to deliver the car to a repairer not more than 20km from your car dealership. Please let me know the name and address of the repairer so I can take my car there for repairs.

If I do not hear from you within five working days I will deliver my car to your car dealership.

Yours sincerely

(Your signature)
(Your name)

Legal words and phrases explained

Applicant — the person who asks the court to do something by filing an application.

Auction — An auction is open to the public and the person willing to pay the most buys the car. This sale is unconditional, which means you need to have your money ready to pay for the car. Many of the things that protect you in other forms of sale (ie sale after inspection at a motor dealer) are not available. There is no cooling-off period.

Binding — If a contract is binding it means it is enforceable. Legally, you must go through with buying the car or you may lose your deposit and the motor dealer may make a claim against you to complete the purchase or pay damages.

Contract — A contract to buy a car is a written agreement between two parties to sell a car. A contract may sometimes be called an order form.

Cooling-off period — A cooling-off period allows you to cancel your used car contract without a reason, within one business day from when the contract is legal. You could lose some of your deposit if you cancel within the cooling-off period.

Damages — Damages is the amount of money a motor dealer may lose if you don't buy the car, such as the difference between the price you paid and a lower price someone else might pay for the car.

Implied — If something is implied in a contract it means it's included even if it is not written in the contract. Some conditions or terms of a contract are implied by government regulation even if the contract does not state the terms.

Legal disability or incapacity — A legal disability (which can also be called ‘legal incapacity’) may stop you from entering into a contract or be the reason a contract is not binding. You can be classified as having a legal disability if you:

- are under 18
- do not have the intellectual capacity to understand a contract
- cannot enter into an agreement without another person’s consent (eg this may apply if you are bankrupt).

Legislation — When buying a car there are certain laws (called legislation) that protect you and the motor dealer. In this guide we refer to some of this legislation. You do not need to know what all the relevant laws mean but a lawyer advising you might refer to them.

The laws are:

- *Competition and Consumer Act 2010* (Cth)
- *Fair Trading Act 1989*
- *Sale of Goods Act 1896*
- *National Consumer Protection Act 2009* (Cth)
- National Credit Code
- *Motor Dealers and Chattel Auctioneers Act 2014*
- *Insurance Contracts Act 1984* (Cth).

State Acts of Parliament can be viewed at www.legislation.qld.gov.au

Motor dealer — A motor dealer is a person who sells vehicles. They can also be called a motor vehicle dealer, car dealer, or dealer. A one-off sale of a car is called a private sale and does not mean the seller is a motor dealer.

Conditional contract — A conditional contract is where something else must happen before it is binding. For example, the motor dealer may be waiting for the car to be sold to them before they can sell it to you. This means the contract cannot be completed until the first sale happens. Sometimes you have to do something (such as get finance approval) before the contract is binding. Ask a lawyer if you have to make the effort to meet the condition or if you can say there is no contract yet.

Statutory warranty — A statutory warranty, sometimes called a warranty, is a guarantee certain defects (problems) with your car will be fixed by the motor dealer within a certain time. Some things that go wrong with your car may not be covered by the warranty. The Motor Dealers and Chattel Auctioneers Act lists the things that are and are not covered under a warranty.

Where to go for help

Legal Aid Queensland

Legal help

Legal Aid Queensland gives legal help to financially disadvantaged Queenslanders.

Call Legal Aid Queensland on 1300 65 11 88 (for the cost of a local call from a land line in Australia) to get free legal help for your legal problem.

Online legal information

The Legal Aid Queensland website has useful information and free factsheets and guides about a range of legal issues. Visit www.legalaid.qld.gov.au

Other legal services

Aboriginal and Torres Strait Islander Legal Service

Visit www.atsils.org.au or call 1800 012 255 or (07) 3025 3888.

Community legal centres

Visit www.legalaid.qld.gov.au or www.communitylegalqld.org.au or call 1300 65 11 88 to find services in your area.

Private lawyers

Visit www.qls.com.au or call the Queensland Law Society on (07) 3842 5842 for names of lawyers who specialise or who are accredited in civil law.

Other services

Office of Fair Trading

The Office of Fair Trading (OFT) provides information about buying used and new cars, resolving disputes with motor vehicle repairers and handles complaints about motor dealers breaching their Code of Conduct.

Visit www.qld.gov.au/law/fair-trading/ or call 13 74 68.

Personal Property Securities Register

This register has information about registered security interests over personal property, including cars.

Visit www.ppsr.gov.au or call 1300 007 777.

Queensland Civil and Administrative Tribunal

You can make a compensation claim (between \$10,001 and \$25,000) in the Queensland Civil and Administrative Tribunal if you have suffered a financial loss because of the actions of motor dealers, auctioneers or their employees.

Visit www.qcat.qld.gov.au or call 1300 753 228.

Queensland Ombudsman

The Queensland Ombudsman investigates complaints about decisions and actions of Queensland's public sector agencies, including motor vehicle registration, licences and road maintenance.

Visit www.ombudsman.qld.gov.au or call 1800 068 908.

RACQ

RACQ provides a range of motoring services and independent advice. This includes information on car prices, road safety and motoring advice, new and used car reviews, repairs and maintenance advice, driver education and towing.

Visit www.racq.com.au or call 13 1905.

Australian Financial Complaints Authority

The Australian Financial Complaints Authority offers dispute resolution over complaints about financial services, including general insurance.

Visit www.afca.org.au or call 1800 931 678.

Your local Legal Aid Queensland office

Brisbane

44 Herschel Street
BRISBANE Q 4000

Bundaberg

3rd Floor
WIN Tower
Cnr Quay & Barolin Streets
BUNDABERG Q 4670

Caboolture

Ground Floor
Kingsgate
42 King Street
CABOOLTURE Q 4510

Cairns

Level 2
Cairns Square Complex
42-52 Abbott Street
CAIRNS Q 4870

Inala

Level 1
Inala Commonwealth Offices
20 Wirraway Parade
INALA Q 4077

Ipswich

Level 7, 117 Brisbane Street
IPSWICH Q 4305

Mackay

Ground Floor
17 Brisbane Street
MACKAY Q 4740

Maroochydore

Ground Floor
M1 Building
1 Duport Avenue
MAROOCHYDORE Q 4558

Mount Isa

6 Miles Street
MOUNT ISA Q 4825

Rockhampton

Ground Floor
35 Fitzroy Street
ROCKHAMPTON Q 4700

Southport

Level 2
7 Bay Street
SOUTHPORT Q 4215

Toowoomba

1st Floor
154 Hume Street
TOOWOOMBA Q 4350

Townsville

Level 4
Northern Securities Building
22 Walker Street
TOWNSVILLE Q 4810

Woodridge

1st Floor, Woodridge Place
Cnr Ewing Road and
Carmody Street
WOODRIDGE Q 4114



For more information about our services visit legalaid.qld.gov.au
or phone 1300 65 11 88 or 1300 650 143 (Indigenous Hotline)

