



**MOTOR INDUSTRY OMBUDSMAN  
OF SOUTH AFRICA**

# **ANNUAL REPORT 2009**

The only independent dispute resolution forum for  
the South African motor industry and its customers



The Board members of the Motor Industry Ombudsman of South Africa:  
back, from the left: J.L.Krause and A. A. Bezuidenhout.  
Seated, from the left: J.H.L. Van Vreden, Dr. M. Phosa and T.J. Swart



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## CHAIRPERSON'S COMMENTS

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In the previous annual report I mentioned the volatility of South Africa's economy during 2008.

In 2009 the volatility continued. As South Africa came to grips with the recession and the new trading conditions it was clear that the precautions, which included the National Credit Act, made a significant contribution to limit the fallout in the country. The motor industry was particularly hard hit. However, the depth of experience and leadership in this vital component of South Africa's economy kept the industry going albeit at reduced sales numbers. The used vehicle market, nevertheless, showed some resilience which was welcomed under the circumstances. Measures to manage the conditions were starting to take effect resulting in improved sales as predicted towards the end of 2009. This brought with it an air of renewed confidence much needed for the year ahead.

Times like these normally create opportunities to make hay and the South African motor industry is a clear example. By adapting to adversity in a positive and purposeful way, industry leaders ensured that the South African motor industry would emerge from these dark times stronger than ever. Available data indicates that certain sectors in the motor industry are still going to take longer to recover than others. However, this will also balance out as confidence grows in the new year.

Fuel prices remained high but relatively stable mainly owing to the stability of the Rand and the relative weakness of the dollar.

It is clear that certain challenges remain. We, therefore, cannot relax our vigilance in rebuilding our industry's strength and growth and to, once again, create much needed employment opportunities.

One of these challenges is the manner in which we handle the very important Consumer Protection Act (CPA) that was promulgated during 2009. The Motor Industry Ombudsman of South Africa (MIO) was requested by the Department of Trade and Industry (DTI) to draft a consumer code of practice for the motor industry based on the CPA. This, once again, confirmed the DTI's confidence in the MIO to independently and objectively coordinate industry in compiling this very important document.

Now in its tenth year, the Ombudsman, his colleagues and staff have managed to maintain the high standards they have set in previous years. The experience, consistent hard work of the office of the MIO and the unconditional support from industry, media and consumers has made this possible. I would like to congratulate the MIO on its tenth birthday with the knowledge that the good work of the past will form the basis for the future. May the MIO continue to perform its task as the only independent dispute resolution forum that is recognised by its industry, consumers and all other stakeholders.

As in previous years, the MIO will continue to provide the forum for necessary independent dispute resolution, as well as advising industry and educating consumers on consumer- and automotive related matters. Once again, I would like to thank the executive directors and staff as well as the vice-chairman, Mr Theo Swart and the advisory board for their patience and forbearance in what has been a very difficult year.

Dr Mathews Phosa – chairperson

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## **MIO'S REPORT – 2009**

### **INTRODUCTION**

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The office of the Motor Industry Ombudsman of South Africa (MIO) is ten years old. With this in mind, it is proper that some of the highlights and developments over the last ten years are reviewed. The first consumer complaints started to reach the MIO ten years ago and it soon became obvious that the industry leaders recognised the importance of a motoring ombudsman owing to the following reasons: the MIO must act independently to ensure its credibility; the MIO must be staffed by skilled people and have the full support of manufacturers, importers, retail dealer groups and repairers.

Support from the media, insurance companies, financial institutions, government - and most importantly - consumers soon followed suit. The MIO was established as the only independent dispute resolution forum between consumers and the motor industry. With the MIO's jurisdiction

contractually secured, the office was able to carry out its mandate over the last decade with tremendous success and without interference.

Checks and balances were established early on with the appointment of an advisory board and the MIO's joining of the Ombudsman Association of South Africa. The MIO currently holds the position of treasurer of this organisation that is chaired by Judge Brian Galgut. The first chairperson of the MIO's advisory board was Mr Theo Swart, a veteran of the motor retail industry. Mr Swart has stood at the helm of McCarthy Motor Holdings, the Motor Industry Federation (RMI) and the National Automobile Dealership Association (NADA). He was also Chairman of First National Bank in KwaZulu/Natal. Theo Swart's leadership was crucial in the development of the MIO.

In October 2008 Dr Mathews Phosa, who by then had already served three years on the advisory board of the MIO, took over as chairperson with Theo Swart as vice-chairperson. Sadly, 2008 also saw the passing of Ms Isabel Jones, a well-known consumer activist and MIO advisory board member. Her wise input will be sorely missed.

In 2009 the MIO was confident to serve its stakeholders in what was considered one of the most trying times - economically speaking - by the motor industry for decades. Vehicle sales dropped alarmingly as consumers became cash-strapped. This resulted in the workload of the MIO to increase in such a way that it necessitated additional staff and equipment. Despite this, the MIO managed to limit costs, enabling it to weather the economic downturn during the period under review.

It is, therefore, heartening to know that the MIO has established itself as a reputable institution during these difficult times. Trusted to deliver fair, objective and above all independent rulings, the MIO remains true in achieving its strategy of continuous improvement. The sustained support from its stakeholders has enabled the MIO to stay focused on its mandate. It has never been more important for the motor industry and consumers to have an independent forum to investigate, adjudicate and rule on disputes to ensure fairness. Through efficient utilisation of its resources the MIO has always acted in a socially responsible way – and will continue to do so.

As expected, the MIO's practical education and advice centre has, during the year under review, experienced a marked increase in its activities. However, the expanded call centre has managed to absorb the increase in calls and has maintained the MIO's good turnaround times.

And, while providing its general motoring advice, the MIO also coordinated the drafting of a consumer code of practice for the motor industry based on the Consumer Protection Act (CPA).

## ACTIVITIES

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As predicted in the previous years, good customer care has become one of the most important safeguards against the economic meltdown. The MIO has maintained good communication channels with the motor and related industries during the year under review. The MIO's strategy of continued improvement proved successful to ensure uninterrupted communication between the industry and consumers. The general dire economic conditions resulted in a number of difficult situations. But, the staff of the MIO, with the support of industry, has managed these cases successfully. The MIO was also able to contribute to customer retention.

The CPA is probably the most significant legislation ever to impact on the motor industry and consumers respectively. The purpose of the Act is: "to promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection, provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to provide for the harmonisation of laws relating to the protection of consumers, to promote a consistent framework relating to consumer transactions and agreements, to establish a National Consumer Commission, to repeal..." certain other related acts etc.

From the above, it is clear that the CPA is going to impact on the motor industry in a big way. The Department of Trade and Industries (DTI) has requested the MIO to coordinate the drafting of the consumer code of practice to ensure that the motor industry is geared for the implementation of the CPA in October 2010. The MIO will coordinate the process until the code is in place.

The MIO attended several conferences during the year under review. A visit to India has laid the foundation to develop in closer relations in the near future. This forms part of the MIO's ongoing study of international consumer affairs to ensure that its procedures and systems remain current.

Once again, the MIO must thank the national media for the platforms it has created to keep consumers informed of their rights to own a motor vehicle in South Africa. The MIO has remained in the portfolio of treasurer of the Ombudsman Association of South Africa. Through this organisation, the MIO can keep its finger on the pulse with its stakeholders in other industries locally and internationally.

The MIO wishes to thank the advisory board for its unselfish contributions to this office. It is heart-warming that the board continues to recognise the importance of the office of the MIO and its place in the motor industry. A special word of thanks goes to our chairperson and vice-chairperson for their leadership and wise council the past year.

## MAIN CAUSES OF COMPLAINTS

Description	Percentage of total for 2009	Number of complaints for 2009	Percentage of total for 2008	Number of complaints for 2008
Engine	7,2%	1440	8,0%	1360
Poor service	10,0%	2005	11,1%	1895
Joints	6,0%	1202	6,8%	1153
Electrical	4,8%	1006	5,6%	961
Clutch	9,4%	1848	8,8%	1495
Tyres	10,7%	2104	6,9%	1180
Cooling system	7,2%	1436	7,2%	1225
Gearbox	5,0%	915	5,2%	892
Wheels	7,0%	1402	5,9%	1004
Fuel system	3,1%	602	3,5%	590
Body	2,0%	406	2,0%	335
Brakes	5,0%	920	4,9%	834
Shafts	3,0%	527	3,0%	520
Starting	2,5%	495	2,7%	462



Steering	1,8%	363	2,0%	351
Trim	1,0%	215	1,1%	190
Differential	1,6%	322	1,8%	310
Suspension	3,2%	630	2,8%	485
Instrumentation	3,0%	570	3,3%	554
Legal	2,1%	416	2,4%	400
Transfer case	0,5%	102	0,5%	90
Ignition system	2,7%	532	3,1%	523
Lights	1,2%	242	4,1%	230
<b>Total</b>	<b>100,0%</b>	<b>19 700</b>	<b>100%</b>	<b>17 039</b>

- According to the National Association of Automobile Manufacturers of South Africa (NAAMSA), new vehicle sales declined sharply in every sector in 2009. Industry aggregate sales declined by 138 157 units or 25,9 per cent to 395 230 vehicles compared to the 533 387 units sold during 2008. This represented the lowest industry annual sales level since 2003. It also underlines the negative impact of the three and a half year recession on the domestic market and the effect of the global financial crisis on the South African economy. The extent of the downturn in domestic new vehicle sales is reflected in the drop of 44,7 per cent or 319 085 units for 2009 compared to the record sales in 2006. Although new combined commercial vehicle sales had peaked in 2007, it has fallen by more than 104 000 units or 43,2 per cent since.
- As in the past, the complaints received were dominated by external factors such as congestion, ongoing road works, construction of the Gautrain, the general deterioration of our roads and the continuous pressure of more vehicles on our roads. The roads in Gauteng and the Western Cape were affected the most by roadworks while the deterioration of roads contributed significantly to vehicle breakdowns and wheel- and tyre damage in the rest of the country.
- As in 2008, these factors started the chain reaction of breakdowns and subsequent repairs and services resulting in dissatisfied consumers.

- The recession impacted on consumers as well. Non-compliance with service schedules, warranty terms and conditions, failing to honour monthly instalments and, in some cases, the abuse of vehicles contributed to many disputes between the industry on the one hand and owners on the other.
- Judging by the type of complaints received by the MIO, it is clear that vehicles are manufactured better everyday. External factors were mostly to blame for breakdowns. Component failure owing to these conditions mainly included clutches, suspensions, brakes, wheels, tyres, cooling systems, joints and shafts. Damages to wheels and tyres were prominent and a direct result of the deterioration of public roads in Gauteng and adjacent rural areas.
- Credit conditions remained difficult during 2009 with financial institutions and consumers still coming to grips with the requirements of the NCA. The over-extending of household budgets resulted in many consumers wanting to return their vehicles. In a number of cases this formed the basis for complaints received by the MIO. However, these cases were mostly ascribed to the negative economic situation during the year under review.
- The turnaround time for repairs and services continued to improve despite the severe shortage of skilled technicians in the country. A contributing factor to this improvement was the cutback in the waiting period for spare parts as the year progressed. This, while the motor industry has to support more than 2 000 derivatives. Consumer frustration with poor service still rated high and this annoying factor resulted in the increasing number of complaints.

The number of requests for assistance made to the MIO during the year increased to 19 700. A total of 7 352 were resolved at first contact, while 12 348 resulted in written complaints that were referred to the relevant manufacturers, dealers and importers. Of these, the MIO made 6 028 recommendations and adjudicated in 411 cases. The remaining 5 909 cases were resolved between the parties through facilitation by the MIO.

In the cases where adjudications had to be carried out, the parties were contractually obliged to accept the rulings of the MIO. Contrary to the drop in vehicle sales, calls for assistance rose by 13,5 per cent.

The MIO's educational programmes, with the support of the media, reached a large number of consumers during 2009. The educational programmes focused on the requirements of the NCA as well as the new CPA that will be implemented in October 2010.

## VALUE OF COMPLAINTS DEALT WITH

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The estimated value of complaints for 2009 increased by 16 per cent from R109 042 499 to R126 489 299. The increase can be attributed to the exchange rate which had a direct impact on price increases and the cost of labour and spares. Although vehicle sales had declined, deteriorating infrastructures and the large-scale road construction on Gauteng highways – the busiest in the southern hemisphere – resulted in the rise.

## CASE STUDIES

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The following are some examples of cases dealt with by the MIO. In the interest of vehicle owners and manufacturers involved, specific names and brands are withheld. It is also necessary to recap on some of the cases that remain relevant, despite resolution by the MIO. In addition, new scenarios will be added to this section of the report each year.

- It is often the case that consumers confuse the roles of a financial institution and a motor dealer. In a number of cases, vehicle owners stopped payment to the financial institution upon experiencing problems with their vehicles. The MIO then assists the consumer to understand that financial institutions only provide the financial support in purchasing a vehicle. The consumer, therefore, remains contractually obligated for the loan repayment. This normally results in the consumer making a payment arrangement with the financial institution. The focus of the case is then shifted to the relationship between the consumer and the motor dealer or service provider to reach an acceptable agreement.
- The so-called loan car is another question. Consumers are under the impression that motor dealers are obligated to provide transport when a client's vehicle is undergoing service or repairs. In all fairness to motor dealers, it would be impossible to keep and maintain a fleet of vehicles for this purpose. Complaints received in this regard were dealt with on its own merit and a number of contributing factors, such as the nature of

the repair, the time it is going to take to carry out the repair and the relationship between the parties. In these cases, the MIO purely makes a recommendation to guide the parties.

- Consumers are often compelled to return a vehicle time and again for the same repair that leads to great inconvenience. In these cases, the MIO informs both parties on their rights regarding the terms and conditions of the warranty or service plan and will advise on the correct action to take. From October 2010, the CPA will impact greatly on conflicting parties' rights and the MIO will render the necessary support.
- A consumer claimed that he was never informed that the warranty on his motorcycle only covered parts and not the cost of labour. The MIO explained the consumer's obligations and rights to him. After discussions with the service provider, it was agreed that the costs would be shared as a gesture of goodwill between the parties.
- A consumer reported that, upon purchasing a vehicle from a dealer, the service and repair programme as well as the warranty would be transferred to the new owner. The vehicle suffered engine damage and the manufacturer refused to repair the vehicle under the service and repair programme, stating that the engine was equipped with non-approved performance parts. The MIO investigation found that the vehicle had been inspected by the franchised dealer and given the go-ahead, including the transfer of the service and repair programme and warranty. After the MIO's recommendation was made the balance of the warranty and the service and repair programme was reinstated, although the performance parts was fitted before the engine had failed. The MIO further recommended that both parties contribute a third towards the repair costs. The recommendation was accepted and the case was resolved.
- A consumer complained about severe paint defects on his vehicle that were not visible when it was purchased. It was also discovered that the vehicle's model year was incorrect. After confirming the facts, the MIO ruled that the vehicle should be substituted for another suitable vehicle. The dealer complied and the case was resolved.
- The consumer purchased a vehicle and reported scratches to the instrument panel that was only visible in a certain light. This, in turn, resulted in obscure instrument readings. The manufacturer and dealer both confirmed the scratch existed but that it could have been caused by the consumer. Subsequent investigation showed that the consumer had noticed the scratch immediately after taking ownership of the vehicle. The manufacturer then replaced the instrument cluster in terms of the warranty. The importance for consumers to insist on copies

of job cards and to put everything in writing is once again highlighted, as it was the deciding factor in resolving the case.

## **THE MIO'S INITIATIVE FOR PRE-OWNED BUYERS**

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The MIO's Transaction Protected Project (TPP) continues to progress. The advantages of the project, as motor-related businesses and consumers become more aware, has proven itself beyond a doubt. The impact of the project, to say the least, has been remarkable. Disputes are mainly resolved through the implementation of the project as it emphasises the importance of communication as an essential tool to avoid conflict.

Except for technical inspections, all services provided to consumers by the MIO are free of charge.

It only makes sense for consumers to purchase vehicles from a participating motor dealer of the MIO's TPP. It is also worth mentioning that feedback received from consumers and motor dealers alike; show a growing confidence for imminent mutual respect and customer retention.

An outstanding feature of the TPP is that its participants are those motor-related businesses that place a high priority on customer service. It is clear that the value and advantages of industry participation in the project is recognised.

Contact the MIO directly for more information or visit [www.miosa.co.za](http://www.miosa.co.za)

## **THE WAY FORWARD**

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To be able to conduct its work independently remains the MIO's first priority. All organisations that contribute to improved vehicle ownership will be supported and assisted by the MIO. The MIO will continue to foster the good relationship it has built over the years with consumer forums, the motor industry, government departments and motor-related associations. The MIO will also continue with its educational programmes and will utilise all means available to ensure that these programmes are implemented.

## ACKNOWLEDGEMENTS

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Now entering its tenth year, the MIO continues to enjoy the support and cooperation of most role players in the South African motor industry. The following organisations, whose contribution and cooperation continue to ensure the success of the MIO in providing an independent forum for dispute resolution in the motor industry, needs to be mentioned:

- The South African motoring public who have ensured the ongoing growth of the MIO;
- Vehicle manufacturers, importers and the Retail Motor Industry;
- Government through the provincial consumer protection agencies, the tribunal, consumer protector, the consumer courts, the Department of Trade and Industry and the Departments of Justice and Transport;
- The media for its positive and ongoing support;
- The chairpersons and executive directors of the National Association of Automobile Manufacturers of South Africa, the Retail Motor Industry Organisation, Independent Dealers Association and the Automobile Association;
- The South African Consumer Union and the South African Fraternity of Attorneys;
- The Ombudsman for Banking Services;
- The Ombudsman for Short-term Insurance;
- The FAIS Ombudsman;
- The Credit Information Ombudsman.

The MIO wishes also to extend its sincere thanks to the dealer groups and individual motor-related businesses for realising the importance of consumer care and retention as the basis for success. Their support and continued acknowledgement have resulted in the MIO growing from strength to strength. We trust that our services will continue to benefit all parties in 2010.

# LETTERS RECEIVED BY THE MIO

*"Many thanks. The matter has been resolved and the outstanding amount for repairs to my vehicle was paid."*

– M Thesner

*"Dankie dat julle bereid was om my te help om hierdie moeilike situasie te bowe te kom."*

– J van der Merwe

*"A heartfelt thank you to you as without your assistance and perseverance on our behalf, I don't think that we would have had much luck in resolving our problem."*

– L Dhlamini

*"Thanks for all your help. I was informed by my dealer principal that the matter has been resolved and that the client is happy."*

– Mark

*"Thank you for your help. Without it, we would not have been able to resolve the matter."*

– Mr and Mrs Ramdin

*"I have received excellent service from the MIO. I would like to thank you and congratulate you for work well done. Your technical assessment of the vehicle was of the highest standard."*

– M Bismath



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Non-Executive Director: A.A. Bezuidenhout  
Advisory Board: Dr. P. Molefe, M. Moeletsi, R. Nethercott, T. J. Swart, N. Vermeulen