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## Response and/or counter-application – Motor Vehicle Dispute

### RESPONSE AND/OR COUNTER-APPLICATION

(You can use this form to make a response, counter-application or both a response and counter-application. Please indicate below which you would like to file.)

Are you making a counter-application, response or both?

Response only

Counter-application only

Response and counter-application

#### Part A

### APPLICANT'S DETAILS AND RESPONDENT'S DETAILS

(details from original application)

Case number

Applicant (party who completed and lodged the original application)

Respondent (party completing and lodging this form)

Party against whom counter-application is made (name) (only complete if this is not the applicant)

#### Part B

### ADDRESS OF THE PARTY AGAINST WHOM THE COUNTER-APPLICATION IS MADE

(only complete if this is not the applicant in the original application)

Name

ACN / ABN (if applicable)

Address

  


Suburb

Postcode

Contacts

Preferred phone number

Alternative number

Email **MUST** be provided

**Part C**

**DETAILS OF RESPONSE**

*If there is insufficient space please attach additional pages.*

*Outline below in numbered paragraphs your response to the application.*  
Which facts of the application do you agree with?


Which facts do you dispute? Please set out why you dispute those facts.


## Part D LEGISLATION FOR COUNTER-APPLICATION

Please indicate the legislation that applies to your counter-application:

- Fair Trading Act 1984 – s50A (Australian Consumer Law Queensland)
- Motor Dealers and Chattel Auctioneers Act 2014 - Sch 1, s14

## Part E CORE DOCUMENTS ATTACHED *(if yes please tick box)*

- 1. ASIC search of respondent company / business (if applicable)
- 2. Written contract relating to the motor vehicle (if applicable)
- 3. Warranty notice (if applicable)
- 4. Defect notice (if applicable)
- 5. Expert report (if available)
- 6. Directly relevant correspondence, photos or other documents (if any)

## Part F DETAILS OF RELIEF SOUGHT IN COUNTER-APPLICATION

*If there is insufficient space, please attach additional pages.*

1. Value of amount of counter-application \$

I would like the tribunal to make the following order/s:


## Part G CHECKLIST AND SIGNATURE

- I have completed all questions on the response and/or counter-application according to the instructions.
- I have provided the correct number of copies of the response and/or counter-application and attachments (for the number of copies required, please see the instructions).
- I have attached the core documents - contract, warranty (if applicable), ASIC search, expert report and any other relevant documents.
- I have paid the prescribed fee.
- I am ready to proceed with this response and/or counter-application.

## INTERPRETER

Do you require an interpreter? ..... Yes  ..... No

*The assistance of an interpreter is subject to tribunal approval.*

If YES, please specify the required language:

## WARNING

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* makes it an offence for a person to knowingly give the registry documents containing false or misleading information.

Maximum penalty for such an offence – 100 penalty units.

## SIGN AND DATE HERE

The information in this response and/or counter-application is true to the best of my knowledge.

*Respondent/s sign here*

*Date*

If more than one respondent is named, all must sign the response.

## IMPORTANT NOTICE TO RESPONDENT OF COUNTER-APPLICATION

Within **28 days** after you are given a copy of this counter-application, you **must** respond to this counter-application by completing and filing a Form 60 *Response and/or counter-application – Motor Vehicle Dispute*.

The Form 60 is available at [qcat.qld.gov.au](http://qcat.qld.gov.au).

## INSTRUCTIONS TO COMPLETING

# Response and/or counter-application – Motor Vehicle Dispute

For information visit [qcat.qld.gov.au](http://qcat.qld.gov.au)

### What is a response?

If you wish to contest the motor vehicle dispute which has been commenced against you, you must provide a response.

A response sets out:

- a) Those facts in the application that you admit are true.
- b) Facts you say are not true and why they are not true.
- c) Any extra facts you say are relevant to the dispute.

The response does not need to set out the proof of those facts - you will do that in your evidence (for example, affidavits or statements).

The response should give a direct explanation for answers you make to allegations made in the application. For example, if an applicant says “the respondent refused to accept that the defect to the motor was a defect which occurred within the warranty period” and you disagree, the response would say “I deny that the defect to the motor occurred within the warranty period because the relevant statutory warranty had already expired on 1 September 2019.”

### What is a counter-application?

A counter-application is your application against the applicant or another party. For example, a respondent to an application for motor vehicle matter may have a claim against a manufacturer of a vehicle or a specific part of the vehicle.

Because the response and counter-application both arise out of the same transaction, it is usually appropriate to resolve them at the same hearing. This is why you should include the facts upon which your counter-application is based.

*Please note that it is not necessary to make a counter-application. This part of the form is optional.*

### Service of Response and/or counter-application

Generally, you must give a copy of the response and/or counter-application and any attachments to all parties to the proceeding **as soon as possible, and no later than 28 days after the response and/or counter-application is lodged with QCAT.**

This response and/or counter-application may be lodged in person or by post.

**By post:** QCAT, GPO Box 1639, Brisbane Qld 4001

*If you are posting your original application and copies to QCAT, you need to include a stamped self-addressed A4 envelope with your application.*

**In person:** QCAT, Level 11, 259 Queen Street, Brisbane Qld 4000, or at any Magistrates Court outside of the Brisbane CBD.

To find your nearest Magistrates Court, visit [courts.qld.gov.au](http://courts.qld.gov.au). For more information visit [qcat.qld.gov.au](http://qcat.qld.gov.au) or call 1300 753 228.

## **Counter - applications must be accompanied by the correct fee.**

There is a prescribed fee for lodging a counter-application. **The correct fee must be paid when you lodge this form so we can process your counter-application.**

There is no fee for filing a response.

For more information on fees, visit [qcat.qld.gov.au](http://qcat.qld.gov.au) or call 1300 753 228.

Payment can be made by:

- Cash (only when the application is being lodged in person).
- Cheque or money order (payable to Department of Justice and Attorney-General).
- Credit card using the *Credit card payment authorisation form*. (The form is available at [qcat.qld.gov.au](http://qcat.qld.gov.au) or by calling 1300 753 228. This form must not be sent by email or fax).

## **HOW TO COMPLETE THE FORM**

### **PART A — Applicant's and Respondent's details**

Use this section to record details from the original application.

### **PART B — Address of the party against whom the counter-application is being made**

Complete this section if the counter claim is not being made against the applicant.

If there is insufficient space on the form for the required details for each respondent to the counter-application, please attach additional pages with the required details.

Where the respondent is a business then the correct name of the entity must be used e.g. a company name, a business name (whether it is registered or not) or the name of a State agency or department. You must also state the correct ABN/ACN for the company or business name.

If any respondent is an individual person or persons, you must provide:

- The respondent's full name.
- The respondent's full address and contact phone numbers.
- The respondent's email address.
- The respondent's ABN if the person trades in his/her own name as a business.

If any respondent is a company, you must provide:

- The company's full and correct name.
- The company's ACN or ABN.
- The company's trading address.
- The name of the relevant contact person at the company and their phone number(s).
- An email address for the company.
- An ASIC search showing the company name and registered address in respect of the respondent company **(see PART E below)**.

For more information please refer to the tribunal's **fact sheet - How to identify and name the parties in QCAT** available at [qcat.qld.gov.au](http://qcat.qld.gov.au).

## **PART C — Details of response**

- Provide the reasons you are disputing the allegations the applicant made.
- Use numbered paragraphs which are cross-referenced to the paragraphs in the applicant's application.
- Include a clear outline of the history and nature of the dispute.
- Set out the facts you rely on to support the counter-application.
- Annex (index and number) copies of all documents to support your counter-application, i.e. set out attached documentation like appendices or clearly continue page numbering from your form.
- Provide the reasons you rely on to make the counter-application.

## **PART D — Legislation**

You must indicate the legislation that you are making your counter-application under namely:

- *Fair Trading Act 1984 – s 50A (Australian Consumer Law Queensland)*; or
- *Motor Dealers and Chattel Auctioneers Act 2014 – Sch 1, s14.*

## **PART E — Core documents**

Copies of the following core documents must be attached to the counter application:

- If any respondent to the counter-application is a company or business, an ASIC search in relation to the entity.
- The full **written contract** for the purchase of the motor vehicle (if such a contract exists).
- Any **written warranty** notice relating to the motor vehicle.
- Any **defect notice** which has been given on the motor vehicle.
- Any **correspondence between the parties or other documents** such as invoices which are directly relevant to the dispute.
- Any **photos** on which the applicant relies.
- Any **report** by an expert relating to a vehicle.

**NOTE: IF YOU HAVE AN EXPERT'S REPORT AT THE TIME YOU FILE THE RESPONSE AND DO NOT DISCLOSE IT BY ATTACHING A COPY TO THE RESPONSE, YOU MAY BE PRECLUDED FROM RELYING ON THAT REPORT AT ANY HEARING OF YOUR COUNTER-APPLICATION.**

## **PART F — Details of counter-application**

Value of amount of counter-application – the amount you are seeking including the value of any repairs.

State what orders you are seeking from the tribunal and why you consider the orders sought should be made for example:

- That a party pay an amount of money.
- To declare a defect is or is not covered by a warranty.
- To extend a warranty or declare a vehicle is covered by a warranty to a certain date.
- To declare an amount of money is not owing by a party to another party.
- To direct that work be performed to rectify a defect.
- To direct that a party return a vehicle to a party or stated person.

## **PART G — Checklist and signature**

Go through the checklist on the application form to ensure you have complied with all of the requirements and have attached all relevant documents.