



# **ANNUAL REPORT 2013**

THE MOTOR INDUSTRY OMBUDSMAN OF SOUTH AFRICA

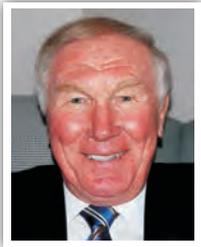


**The only independent dispute resolution forum for the  
South African motor industry and its customers**



**Dr M Phosa**  
Chairperson

## ADVISORY BOARD MEMBERS



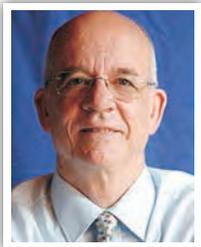
**T Swart**  
Deputy Chairperson



**J van Vreden**  
Ombudsman



**J Krause**  
Deputy Ombudsman



**A Bezuidenhout**



**M Moeletsi**



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**DR MATTHEWS PHOSA**  
**CHAIRPERSON**

## CHAIRPERSON'S COMMENTS

2013 was a year of contrasts and although the world economy is limping along from one economic malady to another especially in Europe, South Africa has forged ahead as only South Africans can. Lower growth was expected but the motor industry once again showed its metal by keeping the losses to a minimum despite the pressure exerted on our vehicle exports. The motor industry in South Africa contributes in excess of 6,8 percent of the Gross Domestic Product (GDP) and it is interesting to note that South Africa is considered one of the most sophisticated markets globally. Naturally the motor industry plays a major role in keeping South Africa at the forefront and ahead of its competitors.

Although our exports chiefly remain commodity based, the export progress of manufactured goods is improving exponentially and the 12 percent contribution to this end made by the motor industry resulted in a better than expected performance. Industrial action like in any democratic country remains a challenge in South Africa. However, the motor industry has in most areas joined hands with trade unions to ensure that the industry remains a stable and reliable source of good quality motor vehicles to our exporting destinations in China, Germany, Japan, UK and Saudi Arabia.

For the office of the Motor Industry Ombudsman of South Africa (MIOSA) the year under review was just as challenging with the most important achievements being the excellent relationships established with the National Consumer Commission (NCC), Department of Trade and Industries (DTI) and the National Consumer Tribunal (NCT).

This will no doubt result in the accreditation of the Automotive Industry Code of Conduct (Code) that has been driven by the MIOSA, hopefully during 2014.

It gives me great pleasure to thank the Ombudsman, Johan van Vreden and his staff as well as my fellow Advisory Board members for the achievements during 2013. To have achieved so much with limited resources is always to be congratulated especially during these difficult times. I would also like to take this opportunity to thank Mr. Theo Swart for his contributions over the years as Deputy Chairperson and wish him well in his retirement. Not only is he a wonderful mentor for his colleagues, but also a great friend and I am sure that he will turn even retirement into a project with set goals to reach.

Dr Matthews Phosa  
Chairperson



**JOHAN VAN VREDEN**  
**MOTOR INDUSTRY OMBUDSMAN**

## THE OMBUDSMAN'S REPORT

At the time of writing, the Code for the motor industry that will form the basis for how the motor industry and the Ombudsman's office will have to deal with consumer complaints in future has still not been accredited. However, we are positive that the accreditation process will be finalised during 2014. Currently the MIOSA utilises the Consumer Protection Act (CPA) and the draft Code in order to not only assist consumers but also to test the Code. The draft Code remains on the MIOSA's website for public information.

The good relationship between the MIOSA and the NCC has been strengthened and continues to serve consumers as well as the motor industry well. This has resulted in speedier resolutions on cases being reached. With the continuing upgrading of our processes and particularly the advisory function, it is noteworthy that the number of complaints have remained stable and under control with turnaround times greatly reduced. It is our opinion that after the Code has been accredited, turnaround times will be even more enhanced.

For thirteen years the MIOSA has successfully served South African consumers and the motor industry and we are very proud of the fact that our low staff turnover has been a testimony to the dedication and loyalty of the staff of the MIOSA. I would like to take this opportunity to thank the managers and staff of the MIOSA for the hard work during the past year.

Johan van Vreden  
Motor Industry Ombudsman

# CONSTITUTION, MISSION, VISION

## Constitution

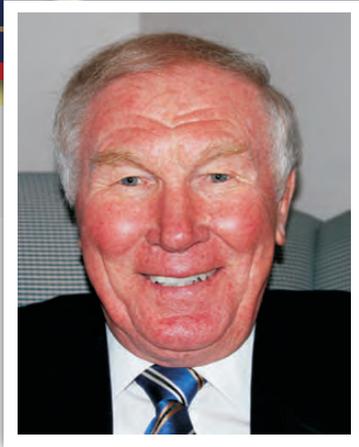
The Office of the Motor Industry Ombudsman is an institution which regulates the interaction and provides for alternative dispute resolution between persons conducting business within the automotive industry in South Africa and consumers, and also among participants in the motor and related industries.

## Vision

As its vision, the Motor Industry Ombudsman is striving to contribute to the continuous improvement of customer care, as well as relationships among participants in the motor industry to the benefit of all parties.

## Mission

Its mission is to primarily defend the independence of the Motor Industry Ombudsman's office while tirelessly striving to educate consumers and motor related service providers alike, in achieving higher levels of customer care and cordial relationships within the motor industry.



## TRIBUTE TO THEO SWART

**CHAIRPERSON OF THE MIOSA FROM 2004 – 2010 AND  
DEPUTY CHAIRPERSON FROM 2011 - 2013**

Our retired Chairperson Theo Swart is a man of exceptional qualities. In the number of years that he was involved with the office of the MIOSA he was not only my mentor but that of the board right through to the most junior member of staff. The legacy that he left us with has given the MIOSA direction, confidence and fortitude for the future. Every time that I am concerned about the future of our industry, the country's economy, or even the outcome of difficult projects I refer back to a philosophy that Theo left me with. Although I knew that it was based on the writings of C.J.F. Human, Theo had his own twist to it that left a lasting impression on me.

The first of these was Faith. Personally, it is my most powerful driving force that gives direction, momentum and a sense of responsibility to my existence. But above all, it is the basis of an optimistic world and life view. When Theo described his idea of wisdom it struck me that it was no wonder he achieved the heights he did in his career. He maintained that in order to exercise wisdom you must have the appropriate knowledge for specific circumstances at a given point in time with the right frame of mind, coupled with intelligence and a spiritual attitude.

Over the years the MIOSA faced many challenges and situations that cried out for solutions. Theo's advice to me was that to find answers I was to study and prepare, making time to think. Not only will this help to interpret the future but it will help to prepare for opportunities that were bound to come our way. It will not only help to develop insight but also to dream dreams.

During the severe downturn of 2008 it at times became very tempting to run away and throw everything overboard. Once again the pragmatic view triumphed and we planned our future by achieving optimum utilisation of our small staff complement and natural assets. Through Theo's mentorship we realised that it was imperative to put all our cards on the table and to be ruthlessly critical in the assessment of our situation at the time. By doing this we were able to judge soundly and were able to achieve our goals despite the situation brought about by the economic downturn.

Most of all I think Theo taught me leadership and to never allow negative thoughts to overcome me and to always believe in a better future for our organisation, our industry, economy, our people and our country. Although many people have contributed to form, develop and mature my own philosophy in this life, no one more than Theo Swart's contribution stayed with me and for that I thank him.

Johan van Vreden  
Motor Industry Ombudsman

# ACTIVITIES

The office of the MIOSA has this year celebrated its thirteenth birthday. Looking back over the years it has been quite an experience and when one considers the challenges that had to be dealt with it is a feather in the cap of the motor industry that contributed to the growth and development of the MIOSA. In the same breath one would be amiss if consumers, Government and other stakeholders are left out. Everybody mentioned had a role to play in the success of the MIOSA.

Protecting its independence and impartiality has always been the main priority of the MIOSA and with good reason. If ever the above were suspect the MIOSA would not have lasted to celebrate its thirteenth birthday. To achieve this was by no means easy and it resulted in thousands of individual agreements being formalised between the MIOSA and service providers to ensure that the jurisdiction of the MIOSA is honoured during any dispute resolution process.

In order to carry out its function the MIOSA had to not only develop its staff over the years but had to make great budgetary sacrifices to ensure that its infrastructure remained current. It also became clear over the years that the methodology of the MIOSA would have to be refined and developed to suit the times. With the thousands of cases that had to be dealt with a way had to be found to streamline the process. This was achieved by concentrating on providing an advisory service to consumers and industry alike to enable them to resolve their problems with as little interference from the MIOSA as possible.

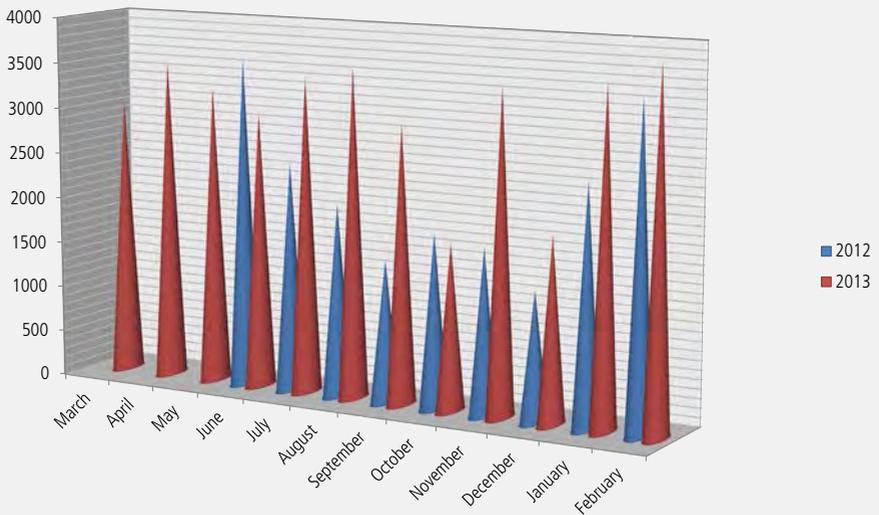
Approximately five years ago the MIOSA was approached by the department of Trade and Industries (DTI) to convene the main stakeholders in the motor industry with the view of producing a code of practice which will result in becoming a regulation as part of the Consumer Protection Act that was promulgated in 2008. The MIOSA went on to co-ordinate and drive the writing of the Code. The Code was subjected to intense scrutiny by all parties that included industry, Government and public stakeholders. Currently the Code is with the Honourable Minister of Trade and Industries waiting to be accredited. The above can be seen as one of the great achievements of the MIOSA.

The MIOSA remains the treasurer of the Ombudsman Association of South Africa. Networking with the other ombudsman in other industries and sectors of society has once again ensured that the MIOSA remains in step with national and international trends.

# REVIEW OF THE SYSTEMS FOR 2013

When comparing 2012 and 2013 incoming telephone calls a noticeable increase occurred during 2013, (taking note that our new telephone system was introduced in June 2012). A total of 37 596 incoming calls were recorded in 2013, which is an average of 142 calls per working day.

**Comparison between 2012 and 2013 of the Total Number of Incoming Calls**



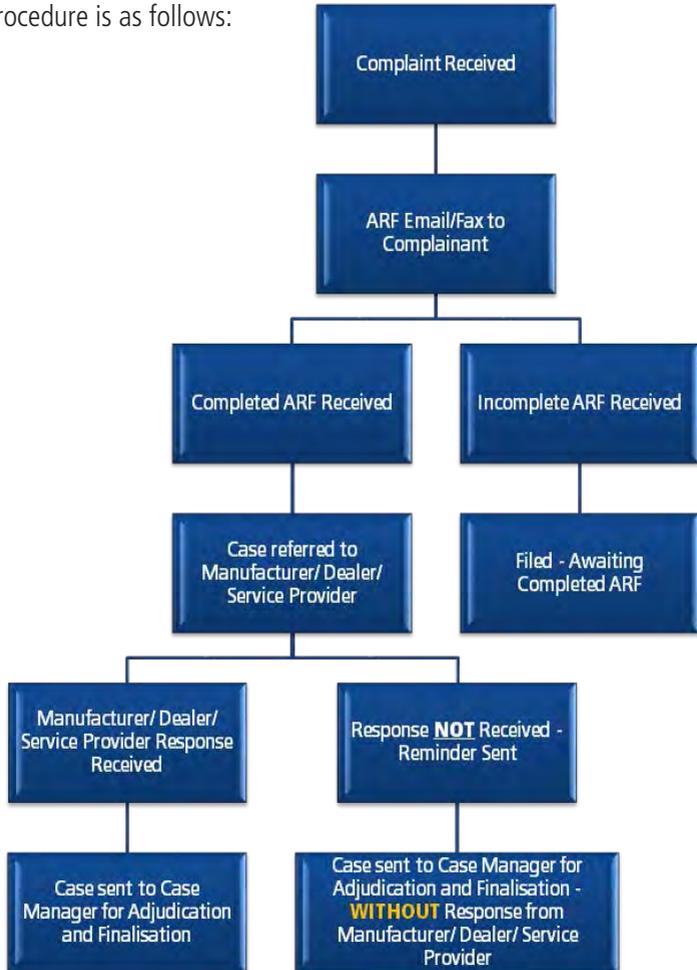
The majority of the calls are:

1. follow up on current cases;
2. advice on how to lodge a new complaint; and
3. CPA advice.

# ADMINISTRATION DEPARTMENT

A new referral system was implemented to ease the vast increasing work load and to assist in accurate reporting.

The complaint procedure is as follows:



\* ARF = Assistance Request Form

The MIOSA, however, still continue to struggle with delays, due to incomplete complaint forms and incorrect contact information for dealers supplied by consumers, which is outside of our control. Dealers and consumers enquiring and following up with the wrong department after referral seems to be a big hold up as well.

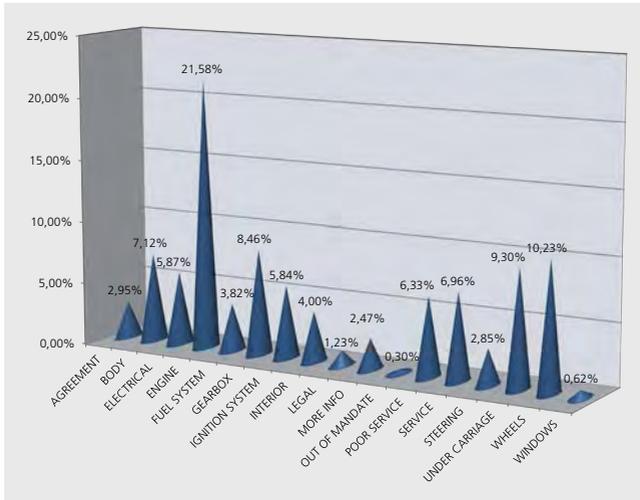
Two more staff members were added to the administration department to alleviate some of the pressure.

Complaint statistics as follow:

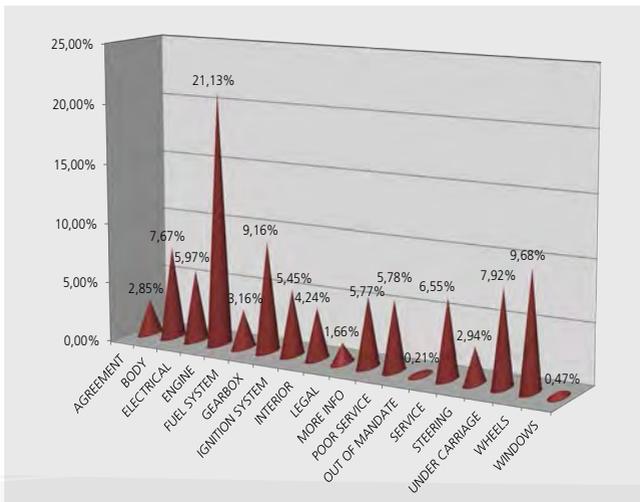


# MAIN CAUSES OF COMPLAINTS

## MAIN CAUSES OF COMPLAINTS - 2012



## MAIN CAUSES OF COMPLAINTS - 2013



# MARKETING DEPARTMENT

## **TRANSACTION PROTECTED PROJECT OF THE MIOSA SHOWS 20% GROWTH IN SUBSCRIBERS IN 2013.**

At the end of November 2013 the Transaction Protected Project (TPP) of the MIOSA welcomed its 1270th subscriber – a growth of 20% compared with 2012. The agreement reached with the Independent Dealer Association (IDA) the previous year paved the way for their members to subscribe to the TPP. In 2013 this resulted in a large number of IDA members subscribing and making a contribution to the strong growth. A higher number than usual of independent dealers and smaller dealer groups also subscribed pushing the number of subscribers to 1270.

The TPP of the MIOSA protects both the dealer/service provider and the consumer from unscrupulous behavior. This is done by means of a MIOSA sanctioned contract between the parties or by adding a binding clause to the dealers Offer to Purchase document, job card or invoice. Should a dispute arise between the two parties, the matter is adjudicated at no cost by the MIOSA.

The TPP establishes an independent forum for speedy, effective dispute resolution between the dealer/service provider and the consumer. Referring the matter to the MIOSA avoids dealers/service providers entering into lengthy meetings and correspondence and avoids further conflict between the parties.

The objective is not to minimize the important role played by subscribing dealer's/service provider's customer care as the MIOSA only takes action if the parties cannot resolve their differences within 14 days after the dispute arose. The office of the MIOSA will also give advice during this period if so requested.

Subscribing to the TPP has no effect on the dealer's/service provider's existing warranties and maintenance programs. The dealer/service provider can still offer these products to the consumer if he wishes.

The TPP does not impact on the mediation role of associations as the MIOSA only adjudicates in matters where all else has failed. The TPP also does not exclude a party's rights to approach the NCC or to bring an urgent application in a court of law with jurisdiction to confirm its rights and to obtain an appropriate order.

A subscribing dealer/service provider will be able to inform the consumer that he/she is a part of the project by displaying the logo of the Ombudsman at his premises, on advertisements and stationary. The names of subscribing dealers/service providers appear on the Ombudsman's web site [www.miosa.co.za](http://www.miosa.co.za).

# CASE STUDIES

## **Complaint:**

The complainant purchased a vehicle on the basis that it had not been in an accident. The dealer confirmed that the vehicle had not been in an accident and the contract was concluded. The complainant was informed at a service later that the vehicle had been in a major accident.

## **Conclusion:**

The MIOSA ruled that the dealer should refund the consumer the price he had paid for the vehicle as per Sections 55 & 56 of the CPA taking Section 20 into consideration.

## **Complaint:**

A new vehicle developed an oil leak within the first 2000km. The consumer would not give the dealer and the manufacturer the opportunity to repair it and demanded a new vehicle.

## **Conclusion:**

The MIOSA explained to the complainant that according to the CPA, subsection 4(a) and (b), "the implied warranty imposed by subsection 1 and the right to return the goods set out in subsection 2 are each in addition to any other implied warranty or condition imposed by the common law, this ACT or any public regulation and any express warranty or condition stipulated by the producer or importer or distributor, as the case may be."

This simply means that the dealer or the manufacturer can reserve the right to repair. The MIOSA was satisfied that the manufacturer and the selling dealership had met their obligations in terms of the factory warranty and therefore could not support the complainant's expectations.

## **Complaint:**

The complainant purchased a vehicle and experienced major problems with the vehicle. The service provider had attempted to repair but was unsuccessful. The complainant expected to be refunded the purchase price of the vehicle.

**Conclusion:**

The MIOSA ruled that the vehicle should be uplifted and that the complainant be placed in the position he was in prior to purchasing the goods. This decision was supported by the Financial Institution.

**Complaint:**

The complaint was that the consumer was only told after the clutch failed that the clutch was only warranted for a shorter period than the rest of the vehicle. The consumer wanted compensation for the failed clutch because it occurred within a few kilometres on the odometer.

**Conclusion:**

Motor vehicles are subject to methods of use outside of the manufacturer's control. Wear and tear items, the longevity of which is dependent on how the product is used, can only be investigated when failure occurs.

As the warranty on the part as well as the maintenance plan on the vehicle had expired, the ruling was in favour of the manufacturer.

**Complaint:**

Paint repairs done to vehicle by the dealer prior to delivery was not done to the satisfaction of the customer.

**Conclusion:**

The dealer had to have the vehicle repaired at the dealers cost at another approved service provider closer to the customers abode.

**Complaint:**

The complainant's vehicle experienced engine problems shortly after purchase.

**Conclusion:**

Section 55 of the CPA and Section 56 (1) and (2) was taken into consideration and therefore the dealer was required to repair the vehicle at no cost to the customer.

# MIOSA THANK YOU

The MIOSA can confidently state that it enjoys the full support of the formal automotive and related industries in South Africa. The MIOSA wishes to thank the following organisations and institutions for their generous support:

- Members of the South African motoring public, who have ensured the ongoing growth of the MIOSA;
- Vehicle manufacturers, importers and the retail motor industry;
- Government through the provincial consumer protection agencies, the National Consumer Tribunal, provincial consumer protectors, the consumer courts, the Department of Trade and Industry and the Departments of Justice and Transport;
- The media through its positive and ongoing support;
- The chairpersons and executive directors of NAAMSA, the Retail Motor Industry organisation, Independent Dealer Association and the Automobile Association of South Africa;
- 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 Consumer Goods and Services Ombudsman.

The MIOSA also wish to extend its sincere thanks to the dealer groups and the greater number of 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 MIOSA growing from strength to strength. We trust that our services will continue to benefit all parties in 2014.

# LETTERS RECEIVED BY THE MIOSA

Thank you for all your help in this matter.

E. Moore (Dealer Principal)

I wish to thank you for your professionalism in dealing with this matter.

N. Mtimde

Hereby my sincere appreciation for your intervention on my behalf in this dispute. This interaction has established my confidence in your organisation. I believe that without your intervention I would not have achieved anything.

Yet again my greatest appreciation.

T. Barrett

I wanted to thank you so much for helping me to meet with the dealer regarding my car. I really appreciated your effort in this matter.

M. Petersen

You know what? You brought back my confidence in this system. This country needs people like yourself who are dedicated and have passion for their job. From moment you introduced yourself to me, you made me aware that you are passionate about your duties, and made me feel lucky to have met you, and for sure you made me understand this process better and clearer. Sometimes people send you from pillar to post and end up not understanding the system and its purpose, right now I even understand my rights too.

Thank you so much...

W. Zwane



**Motor Industry Ombudsman of South Africa (MIOSA)  
(Pty) Ltd 2002/013126/07  
Founder member of the Ombudsman Association Of South Africa**

Tel: 086 11 MIOSA / 086 11 646 72 / 010 590 8378

Fax: 086 630 6141

Email: [info@miosa.co.za](mailto:info@miosa.co.za)

[www.miosa.co.za](http://www.miosa.co.za)

Suite 156  
Private Bag X025  
Lynnwood Ridge 0040