Motor Vehicle Disputes Tribunal

ANNUAL REPORT

1 July 2013 to 30 June 2014

Pursuant to section 87 of the Motor Vehicle Sales Act 2003

C H Cornwell and N Wills
Adjudicators

ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL

Period 1 July 2013 to 30 June 2014

Dear Minister

Pursuant to section 87 of the Motor Vehicle Sales Act 2003 ('the Act") we are pleased to submit the following Annual Report summarising the applications the Motor Vehicle Disputes Tribunal has dealt with during the year, detailing cases which, in our opinion, require special mention, and making recommendations for amendments to the Act.

The Tribunal received 222 applications this year, 6 more than last.

The number of disputes settled by the parties prior to a hearing was 78 (31%) compared with 72 (29%) last year of the total applications filed. This reflects the continuing emphasis by the Tribunal on encouraging the parties to meet and attempt to mediate their dispute before a hearing which is part of the process for resolving disputes set out in the Motor Vehicle Sales Act.

The Tribunal has a case disposal target of hearing and issuing decisions on at least 75% of all applications received within two months of the date of filing and disposing of 95% of applications within three months of the date of receipt. In the past year the Tribunal's case disposal rate was 66.08% within 2 months of the date of filing (72% last year) and 81.50% (88.39% last year) within 3 months of the date the application.

The Auckland based Adjudicator has a disposal rate of 93.50% within 2 months of the date of filing and 95% within 3 months of filing of the applications. The Wellington based Adjudicator has been employed on a part time basis.

1. Summary of Applications received during the year:

	Applications Y/E 30/6/14	Applications Y/E 30/6/13
Total number of disputes filed during the year	222	216
Plus Disputes carried over from previous year	29	33
TOTAL	251	249

2. Summary of Applications disposed of during the year:

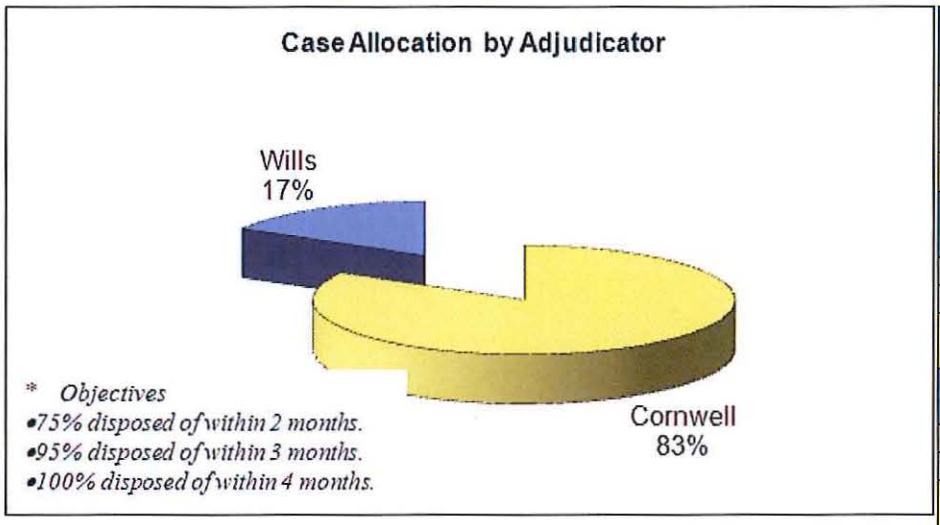
Disputes settled or withdrawn	78 (31%)	72 (29%)
Disputes heard (including disputes carried over from previous year)	149	148
Applications unheard as at 30 June 2014 *Included 1 reserved decision	24	29*
TOTAL	251	249

In previous Annual Reports the Tribunal has made an assessment of the number and percentage of applications heard where it has issued a decision for the purchaser and the number of applications found for the trader. The Tribunal considers this may be misleading because in many cases, although orders are made for the purchaser, the purchaser does not obtain the remedy for which they have applied. In some of those cases, the orders made are the orders that reflect what the trader was offering to do before the hearing. The Tribunal has, in the past recorded this as a decision for the purchaser whereas in fact it might equally be regarded as a decision for the trader.

3. Total Applications Heard and Decisions Delivered	149	100%	148	100%

Of the applications received and heard 132 were decided on the basis of the Consumer Guarantees Act, 16 under the Fair Trading Act and one under the Sale of Goods Act.

July 2013 - June 2014 MVDT STATISTICS



Case Allocation Actual Values	
Cornwell	185
Wills	37
TOTAL	222
Decisions issued by Adjudicator	
Cornwell	126
Wills	23
TOTAL	149
Applications settled per Adjudicator	
Cornwell	63
Wills	15
TOTAL	78
Cases outstanding by Adjudicator	
Cornwell	14
Wills	10
TOTAL	24

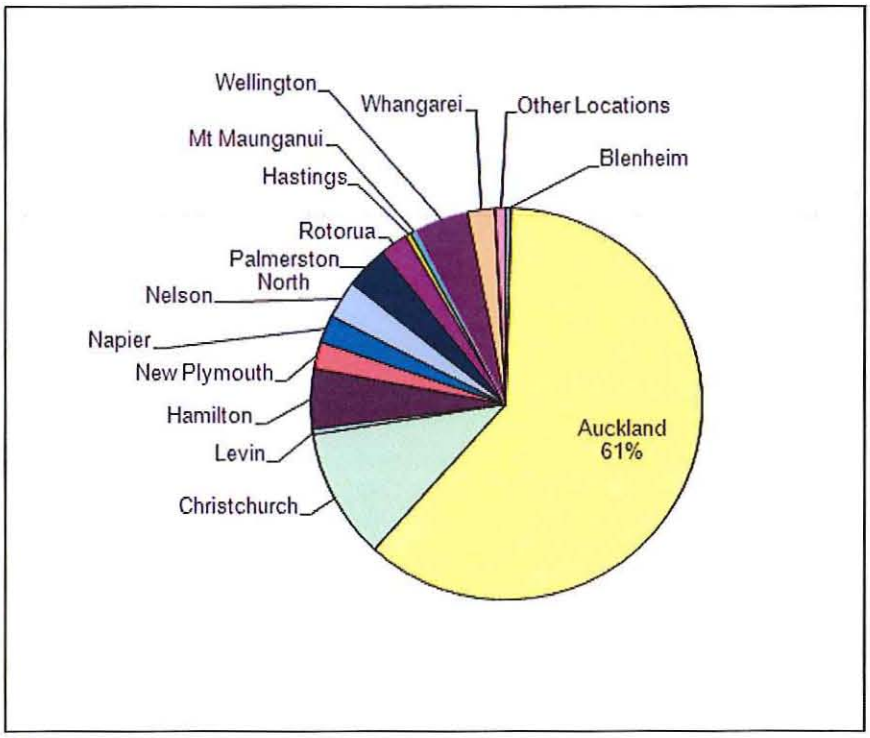
Case Disposal Rate *			
2 Months	3 Months	4 Months	Cases over 4 Months
66.08%	81.50%	94.71%	5.29%

Hearing Location Count	
Location	Count
Blenheim	1
Auckland	136
Christchurch	24
Levin	1
Hamilton	11
New Plymouth	5
Napier	5
Nelson	7
Palmerston North	8
Rotorua	5
Hastings	1
Mt Maunganui	1
Wellington	10
Whangarei	5
Other Locations	2
Total Cases	222

*Cases filed by jurisdiction**	
Wellington and South Island	23%
Upper North Island	76%

** excludes 'Other Locations' above*

Applications by Location



4. Cases that require special mention:

a) Buying vehicles "sight unseen"

In previous Annual Reports the Tribunal has drawn attention to an increasing number of claims where consumers buy vehicles sight unseen, often on TradeMe internet auctions. This trend has continued.

Most of the vehicles that are bought "sight unseen" are sold for less than $3,000. Most often they are badly worn, high mileage poorly maintained rough old diesel trucks that are at the end of their economic life. They are often bought by unsophisticated buyers from outside of the main cities and result in greater grief than pleasure for the buyer.

The Consumer Guarantees Act has not applied to vehicles sold by auction or tender prior to 17 June 2014 and often these vehicles are bought at auction and the purchaser on receiving the vehicle claims that the trader misrepresented its quality or features in its TradeMe advertisement in order to try and get the Tribunal to order the trader to take the vehicle back.

One application heard by the Tribunal this year involved the purchase by a buyer of a 1994 Nissan GTR ex track car from Japan for $19,995 sight unseen. The vehicle was advertised as being an "N1" model and *"in excellent condition with no underbody rust and is very clean well kept by the previous owner".* The advertisement listed a number of the vehicle's features. The purchaser agreed by email sent to the trader to pay the trader's full asking price and sent a deposit without apparently understanding the implications of buying an imported "ex track car" from Japan which had not passed compliance certification and also required a low volume Inspection.

Two months after agreeing to buy the vehicle the purchaser discovered that it was not a rare N1 model but a stock standard Nissan GTR. The trader, although acknowledging that it had misrepresented the vehicle as an N1 model claimed that because the purchaser had applied for a special interest permit it was unable to refund the purchaser with his purchase price.

The purchaser then discovered seven months after he agreed to buy the vehicle that it was extensively rust damaged and required rust repairs to its underbody estimated to cost $8,625.

The Tribunal accepted that the trader's advertisement of the vehicle was misleading in some seven respects relating to the model and its various features and that it was not in excellent condition as advertised by the trader. The Tribunal also found that it did not comply with the guarantee of acceptable quality in the Consumer Guarantees Act. It ordered the trader to refund the purchaser with his deposit of $10,000, vested the collateral finance agreement in the trader and also ordered the trader to pay the purchaser a further $4,122 that the purchaser had spent in trying to get the vehicle certified for road use.

b) Faulty new and near new vehicles

Usually applications involve used vehicle sold for less than $10,000 which have probably done in excess of 80,000 kms and are normally more than seven years old. This year the Tribunal has had applications from two buyers of new or near new fairly expensive vehicles which are worthy of mention.

In **Small v Continental Car Services Ltd** Mr Small, in August 2012 bought a new Jeep Wrangler from the then Auckland franchised dealer for Jeep for $46,500. He rejected the car in October 2013 because of ongoing issues with water ingress which the trader had not succeeded in repairing. The trader defended the claim saying the water leaks occurred because the purchaser had fitted a roof rack to the vehicle (ignoring advice not to do so in the vehicle's operation manual) and that the purchaser was not entitled to reject the vehicle because he had damaged the vehicle after delivery by fitting the roof rack.

The Tribunal found on the evidence of the various service invoices produced by the parties that the roof had probably begun to leak about April or May 2013 after the purchaser had fitted a roof rack to the vehicle, a job he did himself. The purchaser admitted that he had not read the owners handbook to see if a roof rack could be fitted without causing interior water damage. The Tribunal also obtained a report from a panel beater that the roof rack had been fitted to the vehicle properly.

The Tribunal, after considering the panel beater's report, where the water was leaking from into the vehicle as well as the various invoices from Andrew Simms who had attempted to repair the leaks decided that the roof rack was probably not the cause of the water leaks. The Tribunal found that the vehicle was not as durable as a reasonable purchaser of a new $46,500 vehicle would regard as acceptable, and ordered the trader to refund the purchaser with his purchase price and take the vehicle back.

In **Bodde v Quattro Motors Ltd T/A Giltrap Autos** Mr Bodde was supplied with a 2010 Audi S4 with 12,309kms on its odometer at the time of supply by the trader in replacement of a 2009 Audi S4 which he had bought from the trader in December 2011 for $95,000. In May 2012 the trader had accepted the return of the 2009 Audi because it was faulty.

The purchaser noticed that the replacement Audi S4 vehicle consumed oil and he told the Tribunal he had returned it to the trader on about seven occasions from September 2012 until 23 December 2013 to have the oil checked and topped up.

Whilst the purchaser was in Richmond in late December 2013 the vehicle's oil warning light lit up and he rang the trader who asked him to top up the oil and bring the vehicle back to the trader when he returned from his holiday. The vehicle's engine thermostat failed on 28 January 2014 and the purchaser immediately returned the vehicle to the trader.

At the end of January 2014 the trader told the purchaser it had been authorised by the manufacturer to replace the vehicle's engine after a second oil consumption test showed the vehicle was consuming more than the manufacturer's specification of 0.05 l/1000 kms. At the same time the trader offered the purchaser a 2013 Audi S4 demonstrator in exchange for his vehicle on his payment of an additional $30,000. The purchaser refused that offer.

A meeting took place between the purchaser, a friend of the purchaser's and the trader's general manager in early February 2014 at which the purchaser handed the trader a letter rejecting his vehicle. The parties' lawyers were unable to resolve the dispute.

The two issues the Tribunal had to decide were, first whether the replacement 2010 Audi S4 was of acceptable quality and, second, if not whether the replacement of the vehicle's engine at a cost of $34,863 (exclusive of GST) was a failure of substantial character entitling the purchaser to reject the vehicle. The trader attempted to argue that the replacement of the engine was not a failure of substantial character but a minor repair.

The Tribunal decided that the vehicle's engine was not as durable as a reasonable purchaser would regard as acceptable for a vehicle of its age, mileage and price paid. The Tribunal also decided that the replacement of the engine short block to cure the oil consumption fault at a cost of $34,863 without GST or about $40,093 if the purchaser had paid to have the job done- equivalent to 42% of the cost price of the car- was not a minor repair. The Tribunal held it to be a failure of substantial character entitling the purchaser to reject the vehicle and have a full refund of his purchase price of $95,000.

c) Damaged Imported Australian Vehicles

In September 2012 the NZ Transport Agency became aware by being advised by the New South Wales Road Transport Authority that approximately 250 vehicles which were "statutory write offs" in NSW had been sent to New Zealand since 2011. This prompted the NZTA to send letters to the then current owners of each of the vehicles informing them that their vehicle had been a "statutory write off" (so badly damaged it could not be repaired) in NSW. NZTA retrospectively "red flagged" their vehicle so as to alert subsequent purchasers to the vehicle's history.

This produced a small number of applications from purchasers of some of those vehicles brought against the trader who had sold the vehicle.

One such application was **Mathers v Stortford Auto Sales Ltd.** In May 2012 Mrs Mathers bought a 2008 Holden Captiva from the trader for $33,500. Its odometer was then 44,111 kms. In September 2012 she received a letter from NZTA telling her the car was a statutory write off and asked her to contact them to have the vehicle inspected. The Vehicle Certifier who examined the vehicle found the vehicle had not suffered any structural or water damage but NZTA still decided to "flag" the vehicle as a "write off".

The purchaser says that as a result of the flagging the vehicle's value diminished and she sought a full refund of her purchase price.

The trader had checked to ensure the vehicle was not flagged as damaged when it bought the car and it was not shown as damaged at that time.
The purchaser had owned and used the vehicle to drive over 32,000 kms in it over the 13 month period since she had bought it.

The purchaser produced two valuations from car dealers both of which assessed the reduction in value as $10,000. The trader produced valuations which estimated the reduction in value to be between $3000 and $5,000. The Tribunal considered the purchaser's valuers' assessment of 30% reduction to be too great and the trader's 10% reduction in value to be too conservative and guided by the valuers' opinions assessed the purchaser's loss at 13.5% of the purchase price or $4,500, a figure which, on appeal was increased to $8241.

d) The danger of buying a vehicle without a Consumer Information Notice

The Auckland Adjudicator's 2013 Annual Report referred to the frequency with which the Tribunal hears claims where the trader has not displayed with the vehicle or provided the purchaser with a signed copy of the Consumer Information Notice ("CIN") and that how it is an offence against the Fair Trading Act ("FTA") for a trader to display for sale a vehicle or sell a vehicle without also displaying or giving the purchaser a signed copy of the CIN. The Commerce Commission is responsible for enforcing the penal provisions of the FTA.

A case that illustrates the risk a purchaser takes in buying a vehicle where a CIN notice is not displayed or provided to the purchaser is **Skinner v Euro Vehicles Limited.** Mr Skinner agreed in mid-December 2013 to buy a 2011 Mercedes-Benz AMG C63 car from Euro Vehicles Ltd for $72,500. The trader did not display a CIN with the vehicle and did not provide Mr Skinner with a CIN after it sold him the car. The trader's salesman represented the vehicle as being 'immaculate condition" and "brilliant".

Mr Skinner gave evidence that the first time he washed the car he noticed repairs had been made to the rear guard that chrome on the vehicle's bonnet was misaligned and that plastic trim by the doors had "popped out". On 28 December he discovered by searching an Australian car history website that his vehicle had been a statutory write off in New South Wales as a result of a collision recorded on 14 December 2011.

In early January 2014 the purchaser found the rear tyre on the car was flat because there were cracks and bends from heavy impact on the inner rim section on one of the wheels and he had to pay to have the wheel welded. When the purchaser asked the trader's director for a refund of his purchase price his request was ignored. He had his solicitors write to the trader rejecting the vehicle and filed an application with the Tribunal.

The trader did not appear at the hearing. The Tribunal received a report from a Mercedes-Benz repairer who estimated the cost of repairing the vehicle's long list of faults as $30,108. The Tribunal found the vehicle had not complied with the guarantee of acceptable quality and that the vehicle's faults were of substantial character. It ordered the trader to refund the purchaser with his full purchase price and pay the Crown $500 towards the Tribunal's hearing costs for failing to attend the hearing without good cause.

5. Recommendations for amendments to the Act

We would like to recommend the following change to the Motor Vehicle Sales Act 2003.

Extend MVDT jurisdiction to include contract based claims

The Motor Vehicle Disputes Tribunal does not have jurisdiction to hear contract based claims (for example a dispute about the effect of terms of the agreement for sale and purchase of the motor vehicle). From time to time the Tribunal has to transfer part of a claim to the Disputes Tribunal because it is contract based. This is not only inconvenient for applicants but a waste of taxpayers' money in paying for the cost of two hearings when the matters in dispute could easily be resolved by the Tribunal at one hearing.

We recommend that consideration be given to extending the Tribunal's jurisdiction to allowing it to hear and determine contract based motor vehicle claims against traders up to the limit of its jurisdiction.

C H Cornwell and N Wills
1 September 2014