



Motor Vehicle Disputes Tribunal

ANNUAL REPORT

1 July 2017 to 30 June 2018

Pursuant to section 87 of the Motor Vehicle Sales Act 2003

B R Carter and J S McHerron
Adjudicators

ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL

Period 1 July 2017 to 30 June 2018

Dear Minister

Pursuant to section 87 of the Motor Vehicle Sales Act 2003 (the Act) we are pleased to submit the following Annual Report. In this Annual Report we:

- (a) summarise the applications the Motor Vehicle Disputes Tribunal has dealt with during the 2017-2018 financial year;
- (b) explain how those applications were resolved;
- (c) detail cases which, in our opinion, require special mention;
- (d) comment on the increasing use of audio-visual link technology in Tribunal hearings;
- (e) mention continuing co-operation with interested parties; and
- (f) make recommendations regarding amendments to the Act.

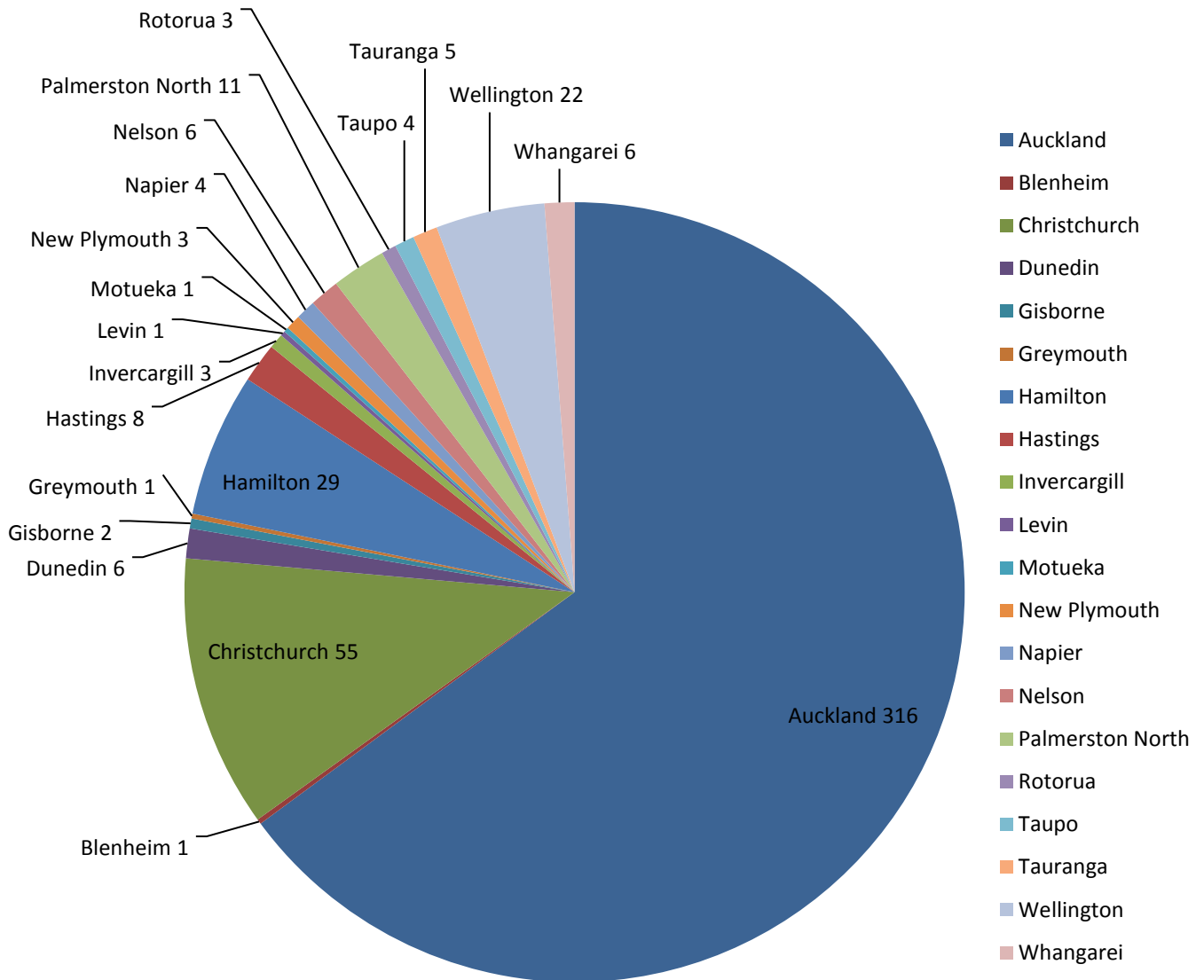
1. Summary of applications dealt with

The Tribunal received 487 applications in the 2017-2018 financial year, 88 more than last year and 145 more than in 2015-2016. This equates to a 42.39 % increase in applications to the Tribunal in the last two years. The Tribunal also handled 99 disputes that had been carried over from the previous year.

	Y/E 30/6/16	Y/E 30/6/17	Y/E 30/6/18
Total number of disputes filed during the year	342	399	487
Disputes carried over from previous year	43	60	99
TOTAL	385	459	586

Those applications came from throughout the country, with the majority involving traders based in Auckland. Ordinarily the Tribunal hears applications in the District Court closest to the Trader's place of business, although we are increasingly using video-conferencing facilities to improve the accessibility of the Tribunal to parties who are distant from the hearing venue and to ensure that matters are heard in a timely and cost-effective way.

Applications by location of Trader



2. Resolution of applications during the year

Of the 586 matters before the Tribunal in 2017-2018, 187 (or 32%) were settled or withdrawn prior to a hearing. This reflects the Tribunal's aim to encourage the parties to resolve their disputes in a timely and cost-effective way, including by requiring the motor vehicle trader to discuss the application with the purchaser and make a written report to the Tribunal on the outcome of the settlement discussions.

A total of 354 applications proceeded to a hearing. Where a hearing is required, the Tribunal aims to have the matter heard and a decision issued within three months of the application being filed. In 2017-2018, 88% of all matters were resolved within three months of the date of filing the application, with 98% of all matters resolved within six months. The three month resolution rate is up from 84% in 2016-2017.

	Y/E 30/6/16	Y/E 30/6/17	Y/E 30/6/18
Disputes settled or withdrawn	116	123	187
<u>Disputes heard</u>			
(Including disputes carried over from previous year)	209	237	302
<u>Applications unheard</u> as at 30 June 2018	60	99	97
TOTAL	385	459	586

3. Cases that require special mention

(a) Non-compliance with warrant of fitness requirements

This year the Tribunal has heard a number of cases involving vehicles that did not meet warrant of fitness requirements.

(i) *Vehicles being sold with a warrant of fitness older than one month*

The Land Transport Rule: Vehicle Standards Compliance 2002 requires that a person who sells a vehicle must ensure that it has a current warrant of fitness issued no more than one month before the delivery of the vehicle to the purchaser, unless they receive written confirmation from the purchaser that:

- if the warrant of fitness is current, they accept that the warrant of fitness was issued 1 month or more previous, or
- if the warrant of fitness is not current, they will not operate the vehicle except for the purpose of obtaining a warrant of fitness.

The Tribunal has seen numerous cases this year where motor vehicle traders have failed to comply with this basic requirement. In many of those cases, it was apparent that the trader had, or at least claimed to have, no knowledge of the requirement that vehicles must be sold with a recent warrant of fitness.

In **Chandler v Fortis Cars Ltd**, the purchaser bought a Nissan Safari for \$15,995. The vehicle did not have a warrant of fitness issued within the previous month. Shortly after purchase, the left front wheel fell off. Mr Chandler managed to replace the wheel, but noticed that the vehicle's brakes were not functioning as they should. Mr Chandler had the vehicle assessed by a warrant of fitness inspector, who found several faults including significant chassis corrosion and a faulty brake booster, both of which meant the vehicle was not of warrantable standard and was unsafe. The Tribunal allowed Mr Chandler to reject the vehicle and ordered that Fortis Cars refund the purchase price.

In **Leece v Brent Smith**, the purchaser bought an Audi A4 for \$6,995. The vehicle did not have a warrant of fitness issued within the previous month. The vehicle had pre-existing faults with its rear number plate light, wiper blades and brake vacuum pump that all would have caused the vehicle to fail a warrant of fitness inspection if one had been performed before the vehicle was sold to Mr Leece. The Tribunal ordered that Brent Smith refund the purchase price to Mr Leece.

In **Mather v Coraw Eskerie trading as Cheap Reliable Cars**, Mr Mather purchased a Subaru Impreza for \$2,800. The vehicle did not have a recent warrant of fitness and had several pre-existing faults that would have failed a warrant of fitness inspection, including a leaking power steering pump, worn brake pads, missing bonnet hinges and a broken taillight. The Tribunal ordered that Coraw Eskerie should compensate Mr Mather for the cost of rectifying the vehicle's faults.

(ii) *Vehicles being sold with a recent warrant of fitness but with pre-existing faults that should have caused the vehicle to fail the inspection*

The Tribunal has also seen many cases this year where, despite having a warrant of fitness issued within the previous month, the vehicle nonetheless had several pre-existing faults that should have caused it to fail the pre-purchase warrant of fitness inspection.

In **Cabaret v Robert Allen Wholesale Ltd**, Ms Cabaret acquired a vehicle that had several pre-existing defects, including a badly worn front tyre, worn sway bar links and suspension components and a damaged hanger bearing. These faults made the vehicle unsafe and should each have caused the vehicle to fail the pre-purchase warrant of fitness inspection. Ms Cabaret rectified the faults herself, and the Tribunal ordered Robert Allen Wholesale to compensate her for those costs.

In **Ruakere v Free to Sell Northland Ltd**, the Ruakere family bought a camper van for use on family camping trips. Despite having recently passed a warrant of fitness inspection, the vehicle's rear seats (which were intended to be used by the Ruakeres' children) and seatbelt mounts were not properly attached to the vehicle and did not comply with warrant of fitness requirements. Under cl 7 of the In-service Certification (WoF and CoF) Vehicle Inspection Requirements Manual, all seatbelts must be securely fixed to the vehicle's structure and all seats and seat anchorages must be safe, strong, in sound condition and compatible in strength with each other and with the vehicle structure. Seats and seat anchorages must also be securely attached to the vehicle structure. The rear seats and seatbelts did not comply with these requirements and were unsafe. The Ruakeres rectified the faults themselves, and the Tribunal ordered that Free to Sell Northland must compensate the Ruakeres for the cost they incurred.

These cases give the Tribunal increasing concern that some traders may not understand their obligation to ensure that the vehicles they sell have a warrant of fitness issued within the last month, and that some warrant of fitness issuers are failing to exercise sufficient rigour to ensure the vehicles they inspect meet warrant of fitness requirements. In addition to raising our concerns in this Report, we will continue to share our concerns with the New Zealand Transport Agency, Ministry of Transport and other interested parties.

(b) Contracting out of the Consumer Guarantees Act

The Tribunal has, in previous Annual Reports, commented on cases where traders have improperly attempted to contract out of the Consumer Guarantees Act 1993. This remains an ongoing issue.

The Tribunal continues to regularly see instances where traders have purported to contract out of their obligations under the Consumer Guarantees Act 1993, but have not done so according to the narrow criteria in section 43 of that Act. For example, in **Betts v 3G Autos Ltd**, a vehicle was sold with pre-existing faults that led to significant engine damage. The trader alleged that it sold the vehicle on the basis that “no warranty will be given or implied.” The Tribunal concluded that the trader had not validly contracted out of the Act, and that its conduct was likely to breach s 13(i) of the Fair Trading Act 1986, which prohibits misleading representations about a consumer’s rights.

The Tribunal also continues to see many cases where traders sell expensive extended warranty agreements to consumers as optional extras. Then, if problems arise with the vehicle, purchasers are told they must seek assistance from the warranty company rather than from the trader under its Consumer Guarantees Act obligations.

The Tribunal has suggested to previous Ministers that consideration ought to be given to further public education campaigns on consumers' rights and traders' obligations under the Consumer Guarantees Act. We repeat that recommendation, and consider that consumers and traders would benefit greatly from more information about the Act and how it applies to the motor vehicle industry.

In that regard, we note the continuing efforts being made by the Consumer Protection team at the Ministry of Business, Innovation and Employment to provide information to consumers and traders, and that the Commerce Commission has made the motor vehicle industry a focus area for its enforcement and education efforts in 2018/2019. We express hope that these agencies' actions will assist motor vehicle traders and consumers in better understanding the application and scope of the Consumer Guarantees Act and other consumer protection laws such as the Fair Trading Act and Credit Contracts and Consumer Finance Act 2003.

4. Use of audio-visual link facilities

Many consumers purchase vehicles from dealers based in a different part of the country (most commonly Auckland). The Tribunal’s hearings are ordinarily held in the town or city nearest the dealer’s premises and, historically, any consumer wanting to bring a claim against the dealer was required to travel to that town or city for the hearing. This requirement often resulted in the affected consumer incurring significant travel and accommodation costs, as well as taking time off work to attend the hearing (in many cases unpaid), and created a barrier to consumers accessing justice.

In light of this, the Tribunal has made a conscious effort to adopt the use of audio-visual link (AVL) technology, which allows parties to appear by video link. This means that remote parties, if they choose, can appear at the hearing without having to incur the additional costs of travelling to a different town or city. To date, consumers and traders have been very receptive to the use of this technology, with 86 (24 %) of the Tribunal’s hearings this year conducted with at least one of the parties attending by AVL. We are also finding that, when given the choice, with most parties choose to attend by AVL from their local courthouse rather than travel to attend the hearing.

Our experience is that the parties suffer no detriment because of the use of AVL, with the technology being adequate to ensure that the parties can properly participate in the hearing, and that the Tribunal is able to gather the evidence it needs to make the right decision. Accordingly, we intend to continue to support the use of AVL technology.

One shortcoming of the Ministry of Justice's AVL system is that, in some courthouses, the AVL system has been designed for use in the criminal justice system only, meaning that the facilities are located in parts of the courthouse that cannot be accessed by members of the public.

For example, in the Queenstown courthouse, we have been advised that the location of the AVL instruction suite is not suitable for use by parties who are not represented by lawyers. Consistent with its function as a low-cost, relatively informal Tribunal, the Act prohibits parties from being represented by lawyers in Tribunal hearings. Therefore, as things stand, parties in Central Otago are currently denied the ability to attend Tribunal hearings via AVL from the Queenstown courthouse. This means they need to travel to Invercargill to use AVL (187 km away) or travel to the hearing itself, which may be as far away as Auckland.

We hope this example highlights a practical difficulty that still exists in respect of AVL and that further consideration can be given to improving the facilities in Queenstown (and other similarly designed facilities) to better promote access to the Tribunal.

We will continue to engage with the Ministry of Justice to encourage it to develop more fit for general purpose AVL facilities to provide more participants in the justice system with timely and cost-effective access to justice.

5. Co-operation with other agencies

As mentioned in last year's annual report, we participate in quarterly meetings with MBIE, the Commerce Commission, the Ministry of Transport and the New Zealand Transport Agency, where issues relevant to the motor vehicle industry are considered and discussed. This forum remains useful for discussing the laws relevant to the motor vehicle industry, including how those laws work in practice and how they can be improved, and we intend to continue to actively participate in it.

6. Recommendation for amendments to the Motor Vehicle Sales Act

As noted in last year's Annual Report, several amendments to the Act are already proposed in the Tribunal Powers and Procedures Legislation Bill, which is making its way through the House. We anticipate that, when enacted, those amendments will assist the Tribunal to perform its functions in an orderly and efficient manner and in a way that achieves the purposes of the Act.

Finally, we recommend consideration be given to amending the Act to require motor vehicle traders to satisfy the Registrar of Motor Vehicle Traders that they are aware of applicable legal obligations, including consumer protection laws such as the Consumer Guarantees and Fair Trading Acts. This requirement, which could take effect as a condition of registration as a trader under the Act, could be satisfied by proving attendance at an approved training course, with perhaps a requirement for an annual "refresher" on renewal of a trader's registration. While many of the larger traders appear to train their staff on their basic legal obligations, we regularly encounter registered traders in Tribunal proceedings who appear to have very little knowledge of the law applicable to motor vehicle sales.



B R Carter
28 September 2018



J S McHerron