



ANNUAL REPORT

MOTOR VEHICLE DISPUTES TRIBUNAL RŌPŪ TAKE TAUTOHENGA Ā-WAKA

For the 12 months ended 30 June 2023

Presented to the Minister of Commerce and Consumer Affairs

ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL

1 July 2022 to 30 June 2023

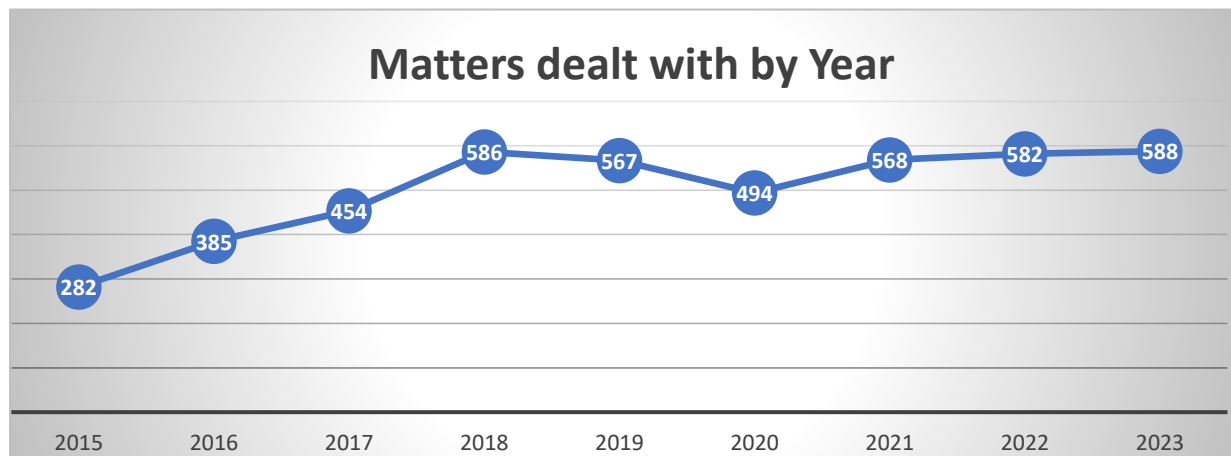
Dear Minister

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

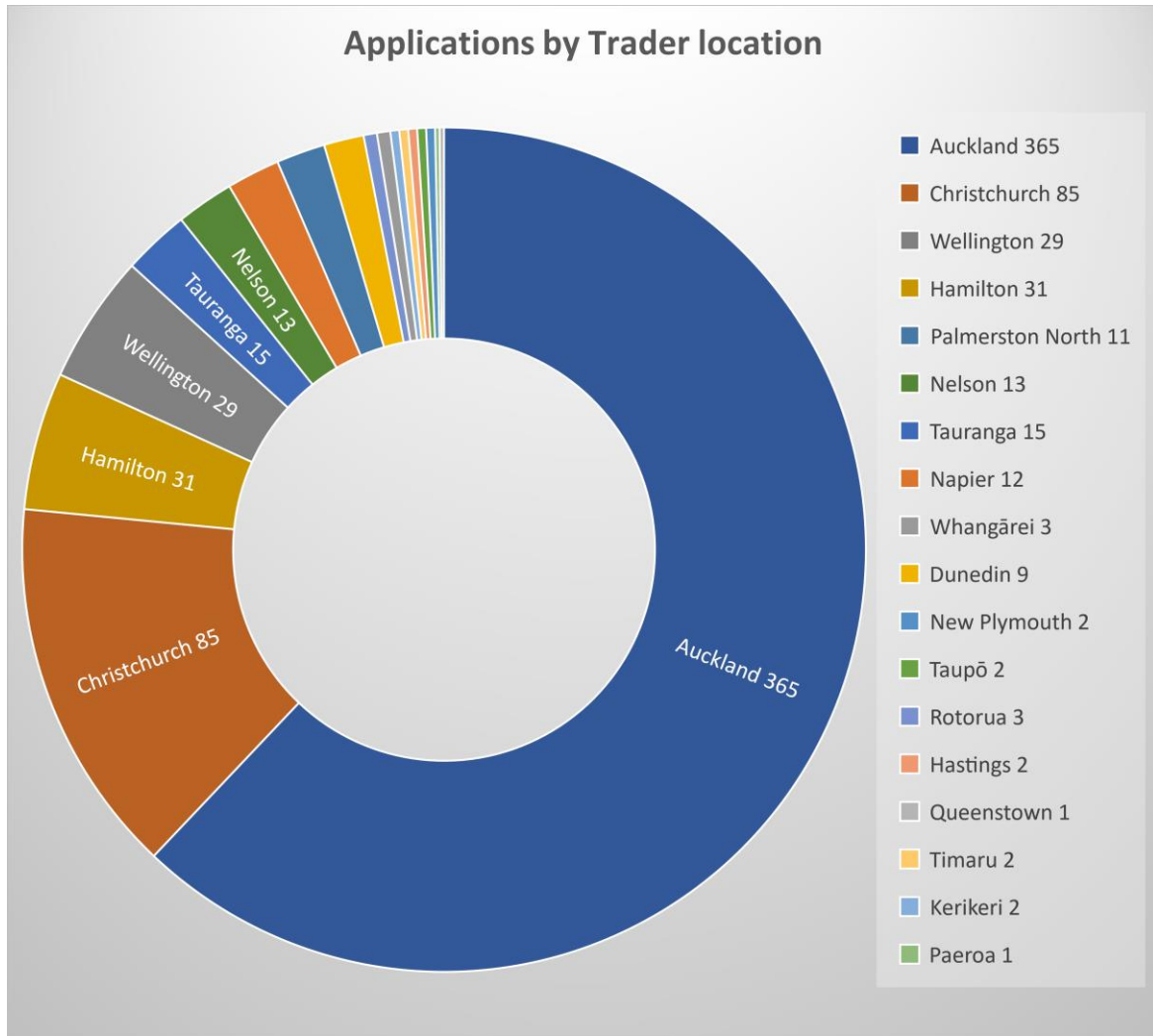
1. Summarise the applications the Motor Vehicle Disputes Tribunal has dealt with during the year.
2. Explain how those applications were resolved.
3. Highlight changes in Tribunal membership.
4. Detail cases which, in our opinion, require special mention.
5. Outline the Tribunal's digital strategy.
6. Make recommendations for legislative amendments.

1. Summary of applications dealt with

The Tribunal handled a total of 588 matters this year – 475 new applications and 113 matters which were carried over from the 2021/2022 reporting year. The number of matters handled by the Tribunal has remained relatively steady in the last six years, but is more than double what it was in 2015, as shown in the table below.



The applications handled came from throughout the country. As shown in the chart below, the majority involved motor vehicle traders based in Auckland (365) Christchurch (85), Wellington (29) and Hamilton (32). The remainder of the applications (77) involved traders based in 14 other locations.



2. Resolution of applications during the year

The Tribunal closed 494 matters in 2022-2023, 162 of which were resolved by settlement or withdrawal without the Tribunal being required to determine the claim. This reflects the Tribunal's role to encourage the parties to resolve their disputes in a timely and cost-effective way. This includes requiring the motor vehicle trader to discuss the application with the purchaser and make a written report to the Tribunal on the outcome of these discussions.

The Tribunal determined 332 applications, with many of those requiring more than one hearing to resolve all issues. 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 2022-2023, 68% of all matters were resolved within three months of the date of filing, with 97% of all matters resolved within six months. A total of 94 claims remained outstanding at the end of the year.

3. Changes in Tribunal membership

In April 2023, Scott Cousins was appointed as a Tribunal assessor. Mr Cousins is based in Christchurch and his appointment brings the total number of assessors back up to four. There have been no changes to the composition of the Tribunal's adjudicators. The Tribunal has four adjudicators; one full-time and three part-time. Two of the adjudicators are based in Auckland, one in Wellington and one in Christchurch. However, there is flexibility in the composition of hearing panels, to allow matters to proceed in a timely manner if a Tribunal member is unavailable.

4. Cases that require special mention

Odometer tampering in vehicles imported from Singapore

The Tribunal heard claims this year involving vehicles imported from Singapore in which the Tribunal has concluded that the vehicle's odometer was tampered with before the vehicle was imported into New Zealand.

Burke v 465 Motors Ltd involved the sale of a 2012 Volkswagen Beetle. The vehicle was imported into New Zealand from Singapore in about January 2022, when its odometer reading was recorded as 45,399 km. The Consumer Information Notice supplied by 465 Motors and the Vehicle Offer and Sale Agreement signed by the parties both stated that the vehicle's odometer reading was 45,600 km at the time of sale.

The vehicle had numerous defects that were inconsistent with that represented mileage. Ms Burke was concerned about the accuracy of the vehicle's odometer reading, so she contacted Volkswagen Singapore and obtained the service and repair history for the vehicle while it was in Singapore. That information showed that various repairs were performed to the vehicle in Singapore, most recently on 22 June 2021, when the vehicle's odometer reading was recorded at 129,905 km, over 84,000 km more than the represented mileage when the vehicle was sold to Ms Burke.

The Tribunal found that the odometer had been tampered with when the vehicle was in Singapore, and although 465 Motors may not have known of that odometer tampering, Ms Burke was entitled to recover the \$12,300 purchase price and other expenses incurred because she had been misled about the vehicle's true odometer reading.

In **Azad v Destiny Auto Group**, Ms Azad paid \$27,490 for a 2012 BMW 535 in March 2021. The vehicle had been recently imported from Singapore. At the time of sale, Destiny Auto Group represented that its odometer reading was 21,025 km. About one year after purchase, the vehicle's steering rack ends and rear tyres required replacement, and the workshop that performed those repairs advised Ms Azad that the general condition of the vehicle was inconsistent with its odometer reading. Ms Azad then contacted Auckland City BMW, which provided a report containing records of servicing and repairs performed on the vehicle while it was in Singapore. The most recent entry is from 15 July 2020, when the vehicle had been serviced in Singapore. The vehicle's odometer reading at that time was 103,070 km – about 82,000 km more than the odometer reading at the time of sale.

The Tribunal found that the odometer had been tampered with. Destiny Auto Group denied knowledge of any odometer tampering and the Tribunal accepted that the tampering had occurred before the vehicle was imported into New Zealand. Nonetheless, the Tribunal found that Destiny Auto

Group had liability under the Fair Trading Act 1986 and declared the agreement to purchase the vehicle void and ordered that all of Ms Azad's obligations under the collateral credit agreement she entered into to purchase the vehicle should be assigned to Destiny Auto Group. The Tribunal also ordered Destiny Auto Group to pay compensation of \$7,941.04.

In **Vaatiuola v Brother Motors Ltd**, Mr Vaatiuola purchased a 2011 BMW 535i for \$25,990 from Brother Motors Ltd. He was told that the odometer reading at the time of sale was 79,650 km. The vehicle developed faults, including a faulty fuel rail sensor, and worn front prop joint. Mr Vaatiuola had the vehicle assessed by Christchurch BMW & MINI Garage, which provided Mr Vaatiuola with a record of servicing and repairs performed on the vehicle while it was in Singapore. The most recent entry was from 3 October 2017, when the vehicle was serviced by Performance Motors Ltd in Singapore. The vehicle's odometer reading at that time was 102,573 km – nearly 22,000 km more than the odometer reading when the vehicle was sold to Mr Vaatiuola.

Brother Motors Ltd said that it had no knowledge of any odometer tampering, and the Tribunal found that the odometer had been tampered with while the vehicle was in Singapore. However, as with the other cases mentioned above, the Tribunal was satisfied that Brother Motors Ltd had engaged in misleading conduct by misrepresenting the vehicle's true odometer reading. The Tribunal declared the agreement to purchase the vehicle void and ordered that all of Mr Vaatiuola's obligations under the collateral credit agreement he entered into to purchase the vehicle should be assigned to Brother Motors Ltd. Brother Motors Ltd was also required to refund the \$1,000 deposit paid by Mr Vaatiuola and compensate Mr Vaatiuola for diagnostic and repair costs.

Other cases of interest

In **Hornby v JMTR Holding Ltd**, the Tribunal considered Mr Hornby's purchase of a Subaru via "Carpow", the trading name of Embeth Ltd. The Tribunal found that Carpow, through which Mr Hornby obtained finance, acted as the agent of JMTR Holding Ltd with which it was joint supplier of the vehicle. Mr Hornby had specified to Carpow that he needed a four-wheel/all-wheel drive vehicle so that he could drive safely to work in icy conditions, but this instruction was not passed on to JMTR Holding, which supplied him with a two-wheel drive vehicle.

The Tribunal concluded that the vehicle failed to comply with the guarantee that it be fit for a particular purpose that Mr Hornby made known to Carpow. Further, it was a failure of a substantial character as the vehicle could not be easily or within a reasonable time be turned into a four-wheel/all-wheel drive vehicle, as specified. JMTR Holding, as joint supplier, was required to refund the purchase price, take over Mr Hornby's loan obligations and take the vehicle back.

In **Jane v Vehicle Imports Direct Ltd**, the Tribunal upheld Mr Jane's rejection of his Toyota Hilux after it was found by Waka Kotahi to have been pieced together from multiple vehicles, a process known as "rebirthing". Waka Kotahi issued ban flags for all the component vehicles, identifying a serious safety risk posed by the unknown origin of the vehicle's component parts including its safety systems. The vehicle had its warrant of fitness revoked so that Mr Jane could no longer use it on the road.

In **Cooksley v Chelate Holdings Ltd**, the Tribunal upheld Ms Cooksley's rejection of her Mazda CX-5 and her loan obligations were vested in the trader. The vehicle's camshaft failed within five months after the date of purchase and the vehicle was diagnosed as needing a replacement engine. Autosure

declined Ms Cooksley's claim under her mechanical breakdown insurance policy due to well-documented design issues with the model in question, resulting in oil dilution, reduced oil supply and premature wear to engine components. The Tribunal concluded that the vehicle's lack of durability meant it failed to comply with the guarantee of acceptable quality and the failure was of a substantial character.

In **Cubitt v Central Auto Services 98 Ltd**, the trader listed a vehicle for sale on Trade Me with a \$1 reserve. It included a clause in the vehicle offer and sale agreement that the vehicle was "sold as end of its life".

When the vehicle suffered a catastrophic failure, the trader told the purchaser: "as you were aware that vehicle was on a \$1 reserve, End of life auction. So we cannot give you any remedy for it."

The trader's evidence at the hearing was that it uses the phrase "end-of-life" because it is aware that the Commerce Commission does not like traders using the phrase "as is where is." It therefore uses the phrase "end-of-life" to reflect its intention that the sale not be covered by the Consumer Guarantees Act 1993.

The Tribunal concluded that the vehicle's fault was a failure of a substantial character and upheld Mr Cubitt's rejection of the vehicle.

5. Digital strategy

The Tribunal is participating in the Digital Strategy for Courts and Tribunals, which was presented by the Chief Justice in March 2023. This strategy recognises that using technology wisely is essential to enable all people to participate in proceedings, respecting and responding equitably to ethnicity, culture, disability, lack of means or educational status. The Tribunal recognises that its processes must be capable of delivering just outcomes for all members of our society in a simple, accessible and timely manner.

Preparations are well underway for the Tribunal's move to the Tribunals Case Management system, towards the end of 2023. This system, which is already in use by several other tribunals, is designed to enable the Tribunal to manage its case information more securely, provide a number of tools for managing cases, and make it easier for case managers to enter information and manage communications.

As reported in last year's annual report, the Tribunal has made increasing use of digital technology in recent years. That trend has continued, with 92% of the hearings conducted by the Tribunal this year using audio-visual technology to allow a party, witness and/or a Tribunal member to attend the hearing remotely. The Digital Strategy recognises that alternative channels must remain available for people who are not well placed to use digital technologies. Accordingly, the Tribunal has no intention to move completely online for its hearings and will continue to offer parties in-person hearings. Unless it orders otherwise, the Tribunal is required by the MVS Act to conduct its hearings in public. In many cases, an in-person hearing will better suit one or more of the parties, and provide a venue that is free of distractions, allowing the parties to fully focus on progressing the resolution of their dispute in a neutral environment.



6. Recommendation for legislative amendments

Here is a list of recommendations that we have made in recent years to improve the MVS Act:

- amending section 88 to enable Tribunal assessors to continue to hear matters until they are reappointed, replaced or advised that they are not to be appointed (as is the case for adjudicators);
- amending section 142(1)(b) to make it easier for notices and other documents to be served by email;
- amending section 54 to require the motor vehicle trader's email address to be included in the publicly available contents of the Motor Vehicle Traders Register;
- creating an obligation on motor vehicle traders to satisfy the Registrar of Motor Vehicle Traders that they are aware of applicable legal obligations, including the Consumer Guarantees and Fair Trading Acts (such as by demonstrating attendance at an approved training course);
- amending the MVS Act, the Motor Vehicle Sales Regulations 2003 and the Consumer Information Standards (Used Motor Vehicles) Regulations 2008 to clarify that the contract for sale and consumer information notice for a vehicle must include the full legal name of the person or entity that sold the vehicle.

In addition, we consider that it would be useful to:

- review relevant provisions in the MVS Act (such as the definition of "sale" in section 6 and the provisions concerning the "meaning of motor vehicle trader" in sections 7 to 9), to ensure they adequately capture all modern methods of marketing and selling motor vehicles; and
- add an exclusion to the definition of "motor vehicle" in section 6 of the MVS Act, such as "a vehicle with a gross vehicle mass, as determined by the manufacturer, of more than 3,500 kilograms" so as to be consistent with the Motor Vehicle Dealers (Exclusion of Heavy Vehicles) Order 1988 (which could then be revoked) and the Heavy Motor Vehicle Regulations 1974.

B R Carter
Adjudicators

J S McHerron



D Watson



D M Jackson

29 September 2023