

## ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL WELLINGTON

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Period 1 July 2011 to 30 June 2012

Dear Minister

Pursuant to section 87 of the Motor Vehicle Sales Act 2003 ("the Act") I am pleased to submit the following Annual Report summarising the applications I have dealt with during the year, detailing cases which, in my opinion, require special mention, and making recommendations for amendments to the Act.

### 1. National Summary of Applications dealt with during the year:

	Applications Y/E 30/6/12	Applications Y/E 30/6/11
<u>Total number of disputes originating from</u>		
❖ Auckland area (New Plymouth north)	170	203
❖ Wellington area (Palmerston North south)	50	72
	<b>220</b>	<b>275</b>
<u>Plus Disputes carried over from previous year</u>		
❖ Auckland Adjudicator	17	26
❖ Wellington Adjudicator	9	7
<b>TOTAL</b>	<b>246</b>	<b>308</b>

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### National Summary of Applications disposed of during the year:

<u>Disputes settled or withdrawn (both areas)</u>	68 (31%)	95(31%)
<u>Disputes transferred</u> to Disputes Tribunal unheard (both areas)	6	2
<u>Disputes heard</u> (including disputes carried over from Previous year)		
❖ Auckland Adjudicator	110	145
❖ Wellington Adjudicator	28	40

Disputes unheard as at 30 June

❖ Auckland Adjudicator	23	19
❖ Wellington Adjudicator	10	7
*Includes 1 reserved decision		
<b>TOTAL</b>	<b>245</b>	<b>308</b>

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**2. Total applications outstanding as at 30 June 2012**

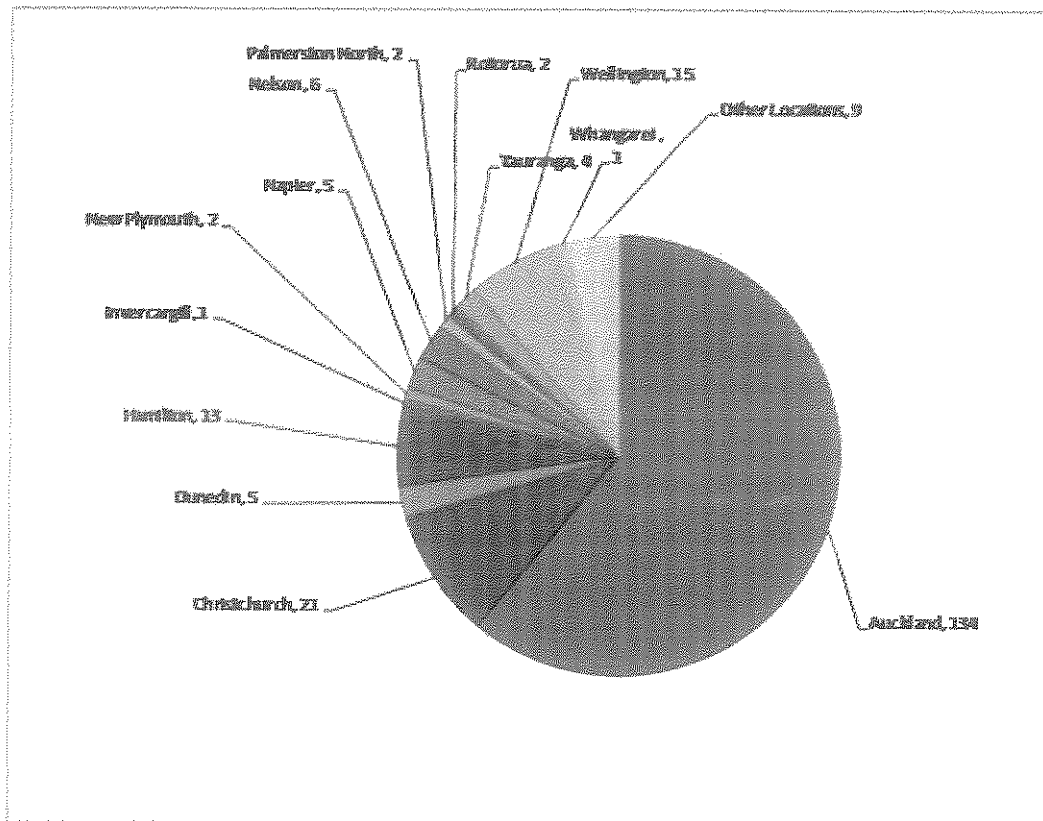
Unheard and reserved decisions (both tribunals)	33	26
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Wellington Tribunal Summary Adjudicator N Wills

	Year ending 30/06/12		Year ending 30/06/11	
Number of disputes found for Trader	5	17.8%	6	15%
Number of disputes found for Purchaser	23	82.5%	33	82.5%
Cases dismissed/ transferred for want of jurisdiction			1	2.5%
<b>Total Heard and Decisions Delivered</b>	<b><u>28</u></b>	<b>100%</b>	<b><u>40</u></b>	<b>100%</b>

Of the applications received and heard 72.41% were decided on the basis of the Consumer Guarantees Act, 24.13% under the Fair Trading Act and 3.45% under the Sale of Goods Act 1908.

## Location of Disputes



### 3. Cases that in the Adjudicator's opinion require special mention:

There are no specific cases requiring particular mention. I do however wish to note an increasing trend in the use of standard form contracts by traders that in my view include unfair terms. In common use is a small print clause acknowledging that the vehicle purchased is being purchased for business purposes and that the parties are contracting out of the Consumer Guarantees Act. In almost all cases of this kind that come before me, the purchasers have not discussed contracting out of the Act with the trader and are not aware that they have signed any rights away until there is a problem with the vehicle. Many of the small business owners I see are commercially and legally naïve.

### 4. Recommendation for amendments to the Act

I would like to see unfair contract terms provisions included in the Consumer Law Reform package and for those provisions to be extended to include small business owners. Alternatively, section 43 of the Consumer Guarantees Act 1993 could be amended along the lines of the proposed amendment to the Fair Trading Act dealing with contracting out for parties in trade. Clause 7 of the Consumer Law Reform Bill (in particular proposed section 5D of the Fair Trading Act) provides for contracting out in certain circumstances including

that "it is fair and reasonable that the parties are bound by the provision in the agreement". The respective bargaining power of the parties is one of the factors to be taken into account in assessing what is "fair and reasonable". An amendment to the Consumer Guarantees Act along these lines would enable the Tribunal to assess on a case by case basis whether it was "fair and reasonable" for the parties to be bound by a provision to contract out of the Consumer Guarantees Act.

The Tribunal's jurisdiction under the Contractual Remedies Act 1979 is limited to cases where the contract has been cancelled by the purchaser. The Tribunal's jurisdiction should be extended to include jurisdiction to award damages for mis-representation (section 6). My understanding is that this is what was originally intended but this was unintentionally left out of the amendment in 2010).

Clause 14 of Schedule 1 of the Motor Vehicle Sales Act sets out limited circumstances in which the Tribunal may award costs. On occasion the situation arises where a party attends a hearing with evidence that the other party has not had an opportunity to consider prior to the hearing. In those circumstances natural justice may necessitate an adjournment so that evidence in reply may be obtained. The Tribunal's standard practice is to require evidence in advance of the hearing so that this situation may be avoided. It would be helpful if the Tribunal had jurisdiction to award costs orders in circumstances where the Tribunal's direction is ignored and the result is an adjournment of the hearing. Often parties travel considerable distance to attend hearings and currently there is no incentive to avoid the provision of "surprise" evidence.



Nicola Wills