



Motor Vehicle Disputes Tribunal AUCKLAND

ANNUAL REPORT

1 July 2012 to 30 June 2013

Pursuant to section 87 of the Motor Vehicle Sales
Act 2003

C H Cornwell
Adjudicator

ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL AUCKLAND

Period 1 July 2012 to 30 June 2013

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.

As you will see from the following summary, the Auckland Tribunal received four fewer applications but issued ten more decisions this year than last. This was because I heard a greater proportion (85% compared with 80% last year) of the total number of applications filed nationally.

The number of disputes settled by the parties prior to a hearing was 29% (compared with 28% last year) of the total applications filed. This reflects the continuing emphasis by the Tribunal on encouraging the parties to try and mediate their dispute before a hearing.

In the past year the Auckland Tribunal has slightly improved its case disposal rate by hearing and issuing its decision within 2 months of the date of filing in 96% of all applications (94% last year) and 98% of all applications were heard and a written decision given within 3 months of the date the application was filed (96% last year).

1. Summary of Applications received (nationally) during the year:

	Applications Y/E 30/6/13	Applications Y/E 30/6/12
Total number of disputes filed during the year	216	220
Plus Disputes carried over from previous year		
❖ Auckland Adjudicator	25	17
❖ Wellington Adjudicator	8	9
TOTAL	249	246

2. Summary of Applications disposed of (nationally) during the year:

Disputes settled or withdrawn (both areas)	72 (29%)	69 (28%)
Disputes transferred to Disputes Tribunal unheard	0	6

Disputes heard (including disputes carried over from previous year)

❖ Auckland Adjudicator	126	110
❖ Wellington Adjudicator	22	28

Disputes unheard as at 30 June 2013

❖ Auckland Adjudicator	17*	23
❖ *Includes 1 reserved decision		
❖ Wellington Adjudicator	12	10

TOTAL	249	246
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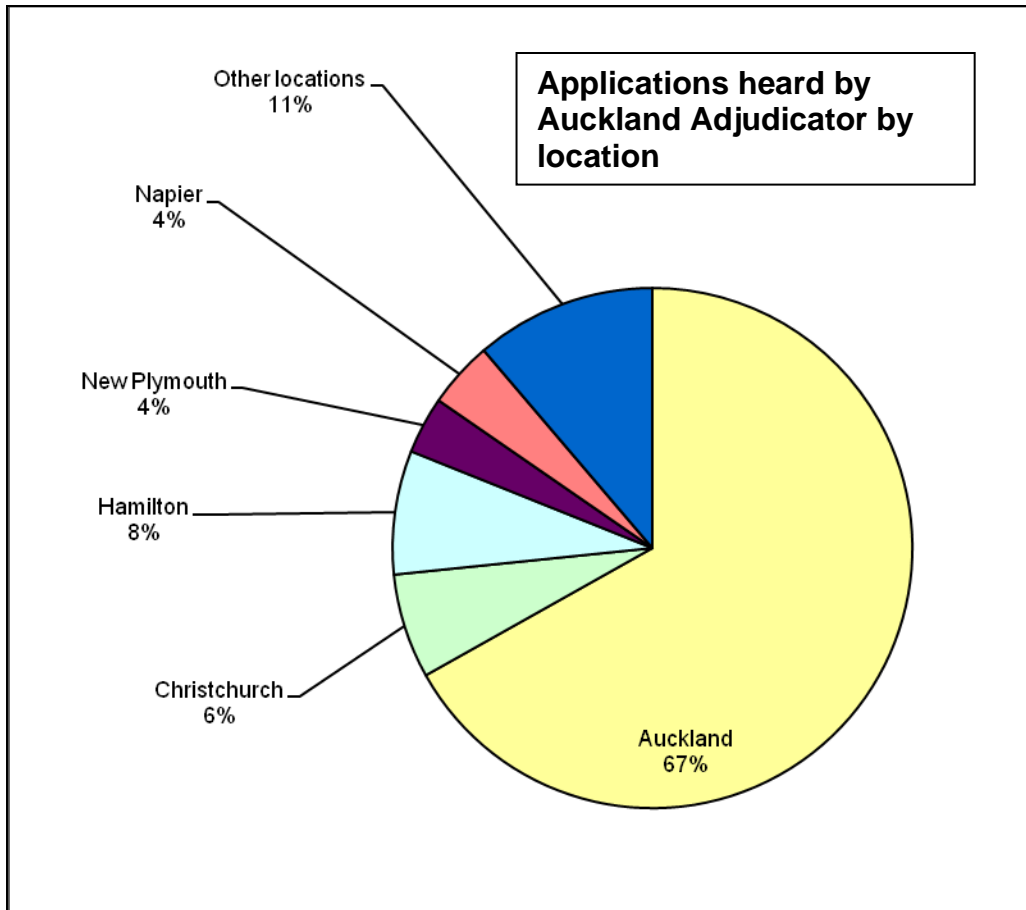
Total applications outstanding as at 30 June 2013

Unheard and reserved decisions (both tribunals)	29	33
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3. Auckland Tribunal Summary: Adjudicator C H Cornwell

	Year ending 30/06/13		Year ending 30/06/12	
Number of disputes found for Trader	47	37.3%	39	33.6%
Number of disputes found for Purchaser	78	61.9%	71	61.2%
Cases dismissed/ transferred for want of jurisdiction	1	0.8%	6	5.2%
Total Heard and Decisions Delivered	<u>126</u>	100%	<u>116</u>	100%

Of the applications received and heard 111 were decided on the basis of the Consumer Guarantees Act, 14 under the Fair Trading Act and one under the Sale of Goods Act 1908.



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

(a) Cases where consumers buy "sight unseen" at Trade Me auctions

The Tribunal is receiving and hearing an increasing number of claims where consumers buy vehicles sight unseen on Trade Me. In most of these cases the consumer compounds the folly of buying sight unseen by failing to get an independent pre-purchase inspection of the vehicle carried out, desirably by a franchised dealer, the AA, an MTA garage, or a mechanic appointed by the purchaser- not someone arranged by the trader.

Purchasers who buy vehicles trusting the accuracy of descriptions and photographs put on Trade Me by the seller often come to the Tribunal claiming the vehicle's condition was misrepresented to them by the seller. When these purchasers buy, as is often the case, by auction, they have no recourse against the trader for mechanical or other defects under the Consumer Guarantees Act.

A recent example of where this occurred and resulted in the purchaser suffering considerable loss is **Erin and Thomas Tuanui v Warwick Keith Taylor trading as Nationwide Cars and Bankrupt Vehicle Sales & Finance Ltd.** Mr & Mrs Tuanui live in the Chatham Islands. In February 2013 they bought, sight unseen from Mr Taylor, a registered motor vehicle trader trading as Nationwide Cars, a 2008 Ford Ranger Utility vehicle for \$19,150 at a Trade Me internet auction. They did not have the vehicle assessed or mechanically inspected before they bought it.

They relied on the trader's description of the vehicle as being "*in good condition*" and "*economical and drives great*". After buying the vehicle it was shipped from Napier to the Chatham Islands. On arrival in the Chathams it could not be driven in anything other than first gear because its transmission was faulty. It also had a cracked windscreen and the speedo and brake lights did not work.

Mr and Mrs Tuanui had no claim against the seller under the Consumer Guarantees Act because, under the current law, purchases made at auction are excluded from the protection of the Consumer Guarantees Act. The Tuanuis claimed the seller had misrepresented the vehicle to them.

The Tuanuis had transferred the purchase price into a numbered bank account nominated to them by the seller of the vehicle without first obtaining a signed vehicle offer and sale agreement with the seller or even finding out the name of the bank account holder.

A complicating factor was that the seller of the vehicle or someone on his behalf had transferred the ownership of the vehicle to a company named Bankrupt Vehicle Sales & Finance Ltd before it was transferred to the Tuanuis. That company denied that it had sold the vehicle to the Tuanuis or knew anything about the matter.

Mr Taylor, who the Tuanuis named as the seller, did not appear at the Tribunal's hearing on 13 May 2013. The Tuanuis were able to produce information to the Tribunal which led it to making a finding that Mr Taylor had sold them the vehicle and misrepresented it to them.

The Tribunal ordered Mr Taylor to pay the Tuanuis the purchase price of the vehicle and their costs of getting it to the Chatham Islands as well as the costs of their attending the hearing; a total of \$24,961.64. Mr Taylor has appealed against the Tribunal's decision claiming he did not sell the vehicle to the Tuanuis.

(b) A case where an old high mileage car was supplied to purchaser on a long term unmaintained lease

The case of **Shontelle Crosby v Rent 2 Buy Cars Ltd** illustrates the attempts that are being made by some motor vehicle traders to avoid their statutory responsibilities under the Consumer Guarantees Act 1993 when supplying old, high mileage vehicles to consumers.

Ms Crosby agreed to lease from Rent 2 Buy Cars Limited a 1993 Honda Accord for 130 weeks at a weekly rental of \$93.50. The lease recorded the vehicle's odometer at the commencement of the lease term as 245,343kms. Under the terms of the lease Ms Crosby was responsible for all repairs and maintenance and the insurance of the vehicle which remained in the ownership of Rent 2 Buy until the end of the lease term. Ms Crosby was also required to sign a document headed "Customer Confirmation of Understanding" in which the following clause appeared:

"I understand that it is a Non Maintained lease and all expenses and running costs of the vehicle are at my cost including breakdowns and towing."

Ms Crosby claimed the vehicle was in a poor condition at the commencement of the lease and did not comply with the guarantee of acceptable quality in the Consumer Guarantees Act 1993. She sought to recover all rental payments she had paid to Rent 2 Buy which she calculated as \$1,794.85 and \$406 she had spent in repairing the car.

Rent 2 Buy repossessed the car on 28 February 2013 because it claimed Ms Crosby was in arrears with her rental payments.

The Tribunal found that Rent 2 Buy's lease agreement breached s43(4) of the Consumer Guarantees Act which makes it unlawful for a supplier to contract out of the Consumer Guarantees Act except for business transactions where the consumer agrees in writing that they are acquiring the goods for the purpose of a business. Ms Crosby had not leased the vehicle for business purposes.

The Tribunal also found that Rent 2 Buy had breached s 13(i) of the Fair Trading Act which makes it an offence for a trader to contract out of the Consumer Guarantees Act other than for business transactions. A copy of the Tribunal's decision was sent to the Commerce Commission for follow up action.

The Tribunal also found on the basis of a report produced by Ms Crosby which listed 13 faults with the vehicle that it did not comply with the guarantee of acceptable quality in the Consumer Guarantees Act.

Unfortunately the Tribunal found that Ms Crosby had not asked Rent 2 Buy to repair the car's alternator before she had it repaired so she could not recover her repair costs.

However the Tribunal did declare the whole of the lease agreement void with effect from 28 February 2013 and it ordered Rent 2 Buy to credit Ms Crosby with towing and repair charges which it had charged her.

(c) Traders who repeatedly fail to display or supply Consumer Information Notices to buyers and attempt to sell vehicles "as is where is"

The Tribunal frequently hears applications from purchasers of motor vehicles who claim that the trader did not display or give them a signed copy of the Consumer Information Notice ("CIN") at the time of sale. It is an offence against the Fair Trading Act for a trader to display for sale or sell a vehicle without also displaying or giving the purchaser a signed copy of the CIN.

Whenever the evidence shows that the trader did not supply a CIN to a purchaser the Tribunal sends a copy of its decision to the Commerce Commission because it is the Commission's responsibility to enforce the penal provisions of the Fair Trading Act.

One company, Tru Wholesale Limited trading as Railside Motors which operates out of Henderson has come before the Tribunal twice this year. On both occasions the Tribunal has found that Tru Wholesale did not display a CIN with the vehicle sold to the applicant and purported to sell both vehicles on an "as is where is" basis in breach of the Fair Trading Act and the Consumer Guarantees Act.

In its decision **Murray Craig Cameron v Tru Wholesale Limited trading as Railside Motors** [2012] NZMVDT112 the Tribunal found that Tru Wholesale had attempted to exclude its liability by selling a 2002 Honda Fit for \$5,000 on an "as is where is" basis. Section 43(4) of the Consumer Guarantees Act makes it an offence against section 13(i) of the Fair Trading Act for a supplier (here Tru Wholesale) to "purport to contract out of any provision in the Consumer Guarantees Act other than in accordance with s 43(2) or 43A".

Seven months later Tru Wholesale came before the Tribunal in **Mark Allan Way v Tru Wholesale Ltd t/a Railside Motors** for selling a 2000 Subaru Legacy for \$6,000 on an "as is where is" basis without a CIN. The conclusion the Tribunal reached in that application was the same. Tru Wholesale did not lawfully exclude the Act by purporting to sell the vehicle on an "as is where is basis."

Tru Wholesale's practice of selling cars on an "as is where is basis" constitutes a breach of s 13(i) of the Fair Trading Act 1986 for which a maximum fine for a company under s 40(1)(b) of that Act is \$200,000. Both of the Tribunal's decisions were sent to the Commerce Commission for action.

5. Recommendations for amendments to the Act.

I would like to recommend the following changes to the Motor Vehicle Sales Act 2003.

a) Extend MVDT jurisdiction to include contract based claims

The Motor Vehicle Disputes Tribunal does not have jurisdiction to hear contract based claims. Within the last month I have had to transfer part of a claim to the Disputes Tribunal because it was contract based. In the 2011-2012 year I transferred six claims to the Disputes Tribunal for the same reason. 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.

I again 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.

b) Recognition within Consumer Guarantees Act for depreciation of a motor vehicle through use

When a consumer rejects faulty goods, there is no provision in the Consumer Guarantees Act for depreciation to be taken into account to reflect the extent of the consumer's use of the goods before he or she rejected them. This is not an issue where the goods are an appliance sold to a consumer for less than a hundred dollars but where the goods are an expensive motor vehicle and the purchaser has had many months of use of the vehicle before rejecting it, the situation can be very unfair to the supplier. In such cases the trader may be ordered to refund a purchaser with the full purchase price and take a vehicle back which has many thousands of kilometres more on its odometer than at the time of sale.

I recommend that an amendment be made to the Consumer Guarantees Act to allow the Tribunal to reduce the purchase price refunded to an applicant for depreciation of the vehicle commensurate with the purchaser's use of it prior to rejection.

C H Cornwell
26 July 2013