

ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL WELLINGTON

Period 1 July 2010 to 30 June 2011

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 application 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 30/6/11	Applications Y/E 30/6/10
<u>Total number of disputes originating from</u>		
❖ Wellington area (Palmerston North south)	72	61
❖ Auckland area (New Plymouth north)	203	184
	275	245
<u>Plus Disputes carried over from previous year</u>		
❖ Wellington Adjudicator	7	6
❖ Auckland Adjudicator	26	15
TOTAL	308	266

2. National Summary of Applications disposed of during the year:

<u>Disputes settled or withdrawn (both areas)</u>	95	54
<u>Disputes transferred</u> to Disputes Tribunal unheard (both areas)	2	1
<u>Disputes heard</u> (including disputes carried over from Previous year)		
❖ Wellington Adjudicator	40	26
❖ Auckland Adjudicator	145	153

Disputes unheard as at 30 June 2011

❖ Wellington Adjudicator *Includes 1 Reserved decision	7	6
❖ Auckland Adjudicator	19	26
TOTAL	308	266

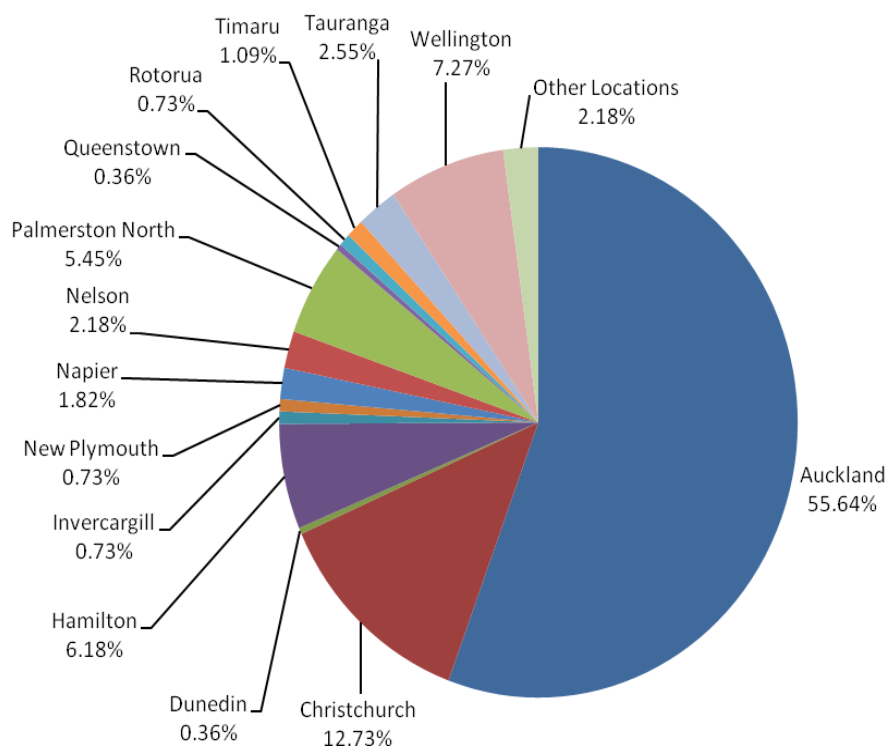
3. Total applications outstanding as at 30 June 2011

Unheard and reserved decisions (both tribunals)	26	32
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1. Nicola Wills – Adjudicator

	Year ending 30/06/11		Year ending 30/06/10	
Number of Disputes found for Trader	6	15%	7	27%
Number of Disputes found for Purchaser	33	82.5%	19	73%
Transferred	1	2.5%		
Total Heard and Decisions Delivered	40	100%	26	100%

2. Location of Disputes



3. Cases requiring special mention

Van Leeuwen Thompson & Thompson v Lynfield Wholesale Ltd trading as Planet Motor Company WN 5/2010 MVD 51/2010

In this case the trader argued that the purchasers were bound by a clause in a standard form contract that contracted out of the Consumer Guarantees Act 1993 because the vehicle was being purchased for business purposes. The mechanism for incorporating this particular clause into the contract was for the parties to initial a box containing an acknowledgement that the vehicle was being purchased for business purposes and that the Consumer Guarantees Act 1993 would not apply to the sale.

Although I found that the clause did not apply in this particular case, the fact remains that these purchasers (who were buying the vehicle for business purposes) had initialled the box without understanding what it was they were initialling or seeking any legal advice about the effect of the contract. In my experience, this is not uncommon. Small business are often not particularly business savvy and would not contemplate seeking legal advice when purchasing a vehicle. In that sense they fall into quite a different category to the business entities contemplated by policy makers as entities that are capable of protecting their own interests. In my view, purchasers in this category need just as much protection as domestic consumers.

Bonar v Premium Cars Ltd WN 32/2010 MVD 221/10

This case was an application to recover a deposit paid by the purchaser of a motor vehicle to the trader. Having reviewed the papers filed with the application it became apparent that notwithstanding that there may have been issues for determination that fell within the tribunal's jurisdiction (under the Consumer Guarantees Act 1993 and/or Fair Trading Act 1986), the key issue to be resolved involved issues of interpretation and enforcement of the terms of the contract between the purchaser and the trader. The tribunal does not have jurisdiction to enforce the terms of a contract so the application had to be transferred to the ordinary Disputes Tribunal.

4. Recommendation for Amendments to the Act

I recommend that the Act be amended so that the tribunal has a general jurisdiction to deal with disputes that arise from the terms of any contract for sale and purchase of a motor vehicle between a consumer and a trader. It makes no sense that a case involving this type of issue must be dealt with in the ordinary disputes tribunal when the MVDT has been set up to specifically deal with issues that arise between purchasers and traders of motor vehicles.

N Wills
Wellington Motor Vehicle Disputes Adjudicator
10 August 2011