



# **Motor Vehicle Disputes Tribunal**

## **ANNUAL REPORT**

**1 July 2016 to 30 June 2017**

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

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Period 1 July 2016 to 30 June 2017

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 year.
- (b) Explain how those applications were resolved.
- (c) Detail cases which, in our opinion, require special mention.
- (d) Note that we have no recommendations regarding amendments to the Act.
- (e) Highlight the ongoing co-operation between the Tribunal and other agencies that have responsibilities in the motor vehicle and consumer protection areas.

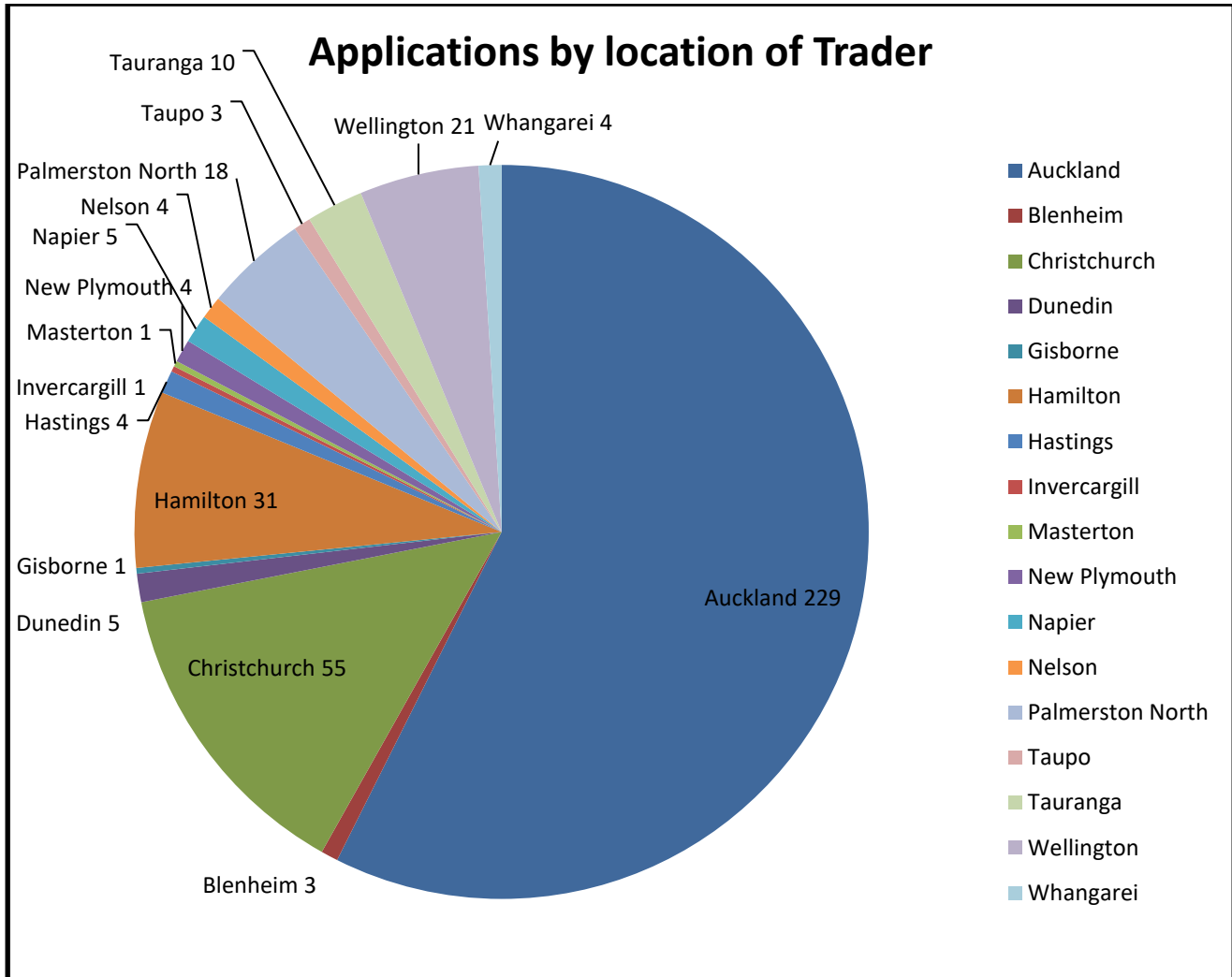
## 1. Summary of applications dealt with

The Tribunal received 399 applications this year, 57 more than last year and 141 more than in 2014-2015. This equates to a 55% increase in applications to the Tribunal in the last two years. The Tribunal also handled 60 disputes that had been carried over from the previous year.

	Y/E 30/6/15	Y/E 30/6/16	<b>Y/E 30/6/17</b>
Total number of disputes filed during the year	258	342	<b>399</b>
Disputes carried over from previous year	24	43	<b>60</b>
<b>TOTAL</b>	<b>282</b>	<b>385</b>	<b>459</b>

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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 ensure that matters are heard in a timely and cost-effective way.



## 2. Resolution of applications during the year

Of the 459 matters before the Tribunal in 2016-2017, 123 (or 27%) of all those were settled or withdrawn prior to a hearing.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 237 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 2016-2017, 84% of all matters were resolved within three months of the date of filing the application, with 99.35% of all matters resolved within six months. The three month resolution rate is down from 92% in 2015-2016 due to a number of factors, including the increasing volume of work in the Tribunal and changes in key personnel (including case managers and Tribunal members).

	Y/E 30/6/15	Y/E 30/6/16	Y/E 30/6/17
Disputes settled or withdrawn	83	116	<b>123</b>
<u>Disputes heard</u>			
(Including disputes carried over from previous year)	154	209	<b>237</b>
<u>Applications unheard</u> as at 30 June 2017	43	60	<b>99</b>
<b>TOTAL</b>	<b>282</b>	<b>385</b>	<b>459</b>

### 3. Cases that require special mention

#### (a) Australian statutory write-offs

In last year's annual report, we identified four applications involving the purchase by New Zealand consumers of vehicles which had previously been designated as statutory write-offs by Australian authorities and subsequently imported into New Zealand. The Tribunal heard at least eleven cases this year involving the sale of Australian statutory write-offs. Two of those cases, both involving the same trader, highlight difficulties faced by unsuspecting buyers in New Zealand.

In the first case, **Loach v McBride Street Cars Limited**, decided on 14 December 2016, the purchasers discovered some three months after purchasing their late model Volkswagen that it had been assessed by Queensland authorities as a statutory write-off due to water damage.

The trader had disclosed on the consumer information notice (CIN) that the vehicle was imported as damaged. However, the purchasers denied they saw the CIN prior to purchase. In any event, the trader did not specifically disclose to them that the vehicle was a statutory write-off in Australia due to storm, flood or other damage. The Tribunal concluded that a reasonable person in Mr and Mrs Loach's position would have been misled or deceived by the trader's conduct in omitting to provide them with this information. Furthermore, they were *actually* misled by the trader's omission.

The Tribunal found the trader breached section 9 of the Fair Trading Act 1986. There was evidence that the vehicle was unsaleable except for parts. The purchasers also established that they would not have purchased the vehicle if its written-off status had been disclosed. The Tribunal declared the vehicle offer and sale agreement void and ordered a full refund of the purchase price: \$40,000. On appeal, the Tribunal's decision was upheld by the District Court.

The second case, **Slimm v McBride Street Cars Limited**, decided on 26 April 2017, involved similar facts – the trader disclosed in the CIN that the vehicle was imported as damaged, but did not disclose that it was a statutory write-off. Again, the Tribunal concluded that Mr Slimm was misled by the trader's deliberate omission to disclose that the vehicle was a statutory write-off in Queensland, in breach of section 9 of the Fair Trading Act. In this case, the Tribunal ordered the trader to pay Mr Slimm \$4,000, based on evidence of its resale price with disclosure of its write-off

status. The amount awarded also reflected the fact that Mr Slimm had driven the vehicle for 19,000 km and that there was no evidence anything was outwardly wrong with the vehicle.

These decisions establish that, in respect of vehicles that are statutory write-offs, traders must go further than simply ticking the box on a CIN that the vehicle has been imported as damaged. They must specifically disclose the vehicle's written-off status, or risk breaching the Fair Trading Act.

The Tribunal has found in a number of cases that traders are either failing to disclose the vehicle's written-off status or failing to adequately disclose the true nature of the damage that caused the vehicle to be written-off. To improve consumers' ability to make fully-informed decisions on vehicle purchases from traders, we recommend consideration be given to amending the form prescribed for the CIN (Schedule 1 of the Consumer Information Standards (Used Motor Vehicles) Regulations 2008) to include a requirement for traders to confirm whether the vehicle has been written-off in another country.

#### **(b) Contracting out of the Consumer Guarantees Act**

The Tribunal regularly sees 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. One example this year was **Zimmer v Adams Motors**, decided on 15 March 2017. In this case, the trader advertised the vehicle as having "no warranty" and the vehicle offer and sale agreement stated the vehicle was sold "as is".

The Tribunal concluded that the trader had not validly contracted out of the Consumer Guarantees Act. The decision was referred to the Commerce Commission for it to consider prosecuting the trader under section 13(i) of the Fair Trading Act.

A more subtle approach frequently taken by traders is to sell purchasers expensive warranty agreements 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.

We think consideration ought to be given to further public education campaigns on consumers' rights under the Consumer Guarantees Act. In particular, we think it would be timely for such a campaign to emphasise that traders cannot unilaterally contract out of their obligations under the Act, and that they cannot avoid their obligations by requiring purchasers to purchase or make claims under contractual warranties instead.

#### **4. No recommendations for amendments to the Motor Vehicle Sales Act**

Although the Tribunal may, in its Annual Report, make recommendations for amendments to the Act, we make no recommendations for amendments to the Act in this year's Report.

Several amendments to the Act are already proposed in the Tribunal Powers and Procedures Legislation Bill, which was introduced on 1 August 2017. We anticipate that, if enacted, these 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.

## 5. Co-operation with other agencies

The Tribunal does not operate in a vacuum and regularly engages with other agencies that have responsibilities in the motor vehicle and consumer protection areas.

The Tribunal participates 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. It is also a useful forum for discussing the laws relevant to the motor vehicle industry, including how those laws work in practice and how they can be improved.

This discussion group is proving productive and is an initiative that the Tribunal will continue to participate in.

As an example of the co-operation that occurs within the working group, the Tribunal regularly shares decisions of interest with the Commerce Commission who are able to investigate conduct by traders that breaches the Fair Trading Act and take civil or criminal proceedings where it considers such action to be appropriate. We have also recently shared information about potential odometer tampering with the New Zealand Transport Agency and concerns about non-compliance with orders of the Tribunal with the Registrar of Motor Vehicle Traders.

On this last point, the Tribunal is aware of instances where traders have failed to comply with Tribunal orders. Under section 68(1)(b)(i) of the Act, a trader who, more than once within a period of 10 consecutive years, fails to comply with a Tribunal order is banned from participating in the business of motor vehicle trading.

The Tribunal has recently received information to suggest that one trader has failed on at least four occasions to provide the ordered remedy to affected consumers. Those consumers have then had to take enforcement action to recover the amounts awarded to them. The Tribunal has begun referring instances of non-compliance to the Registrar of Motor Vehicle Traders for consideration of possible deregistration.

B R Carter  
27 September 2017

J S McHerron