



Motor Vehicle Disputes Tribunal Rōpū Take Tautohenga ā-Waka

ANNUAL REPORT

1 July 2019 to 30 June 2020

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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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:

1. Summarise the applications the Motor Vehicle Disputes Tribunal has dealt with during the year.
2. Explain how those applications were resolved.
3. Detail cases which, in our opinion, require special mention.
4. Highlight the Tribunal's increasing use of audiovisual technology.
5. Make recommendations regarding amendments to the Act.

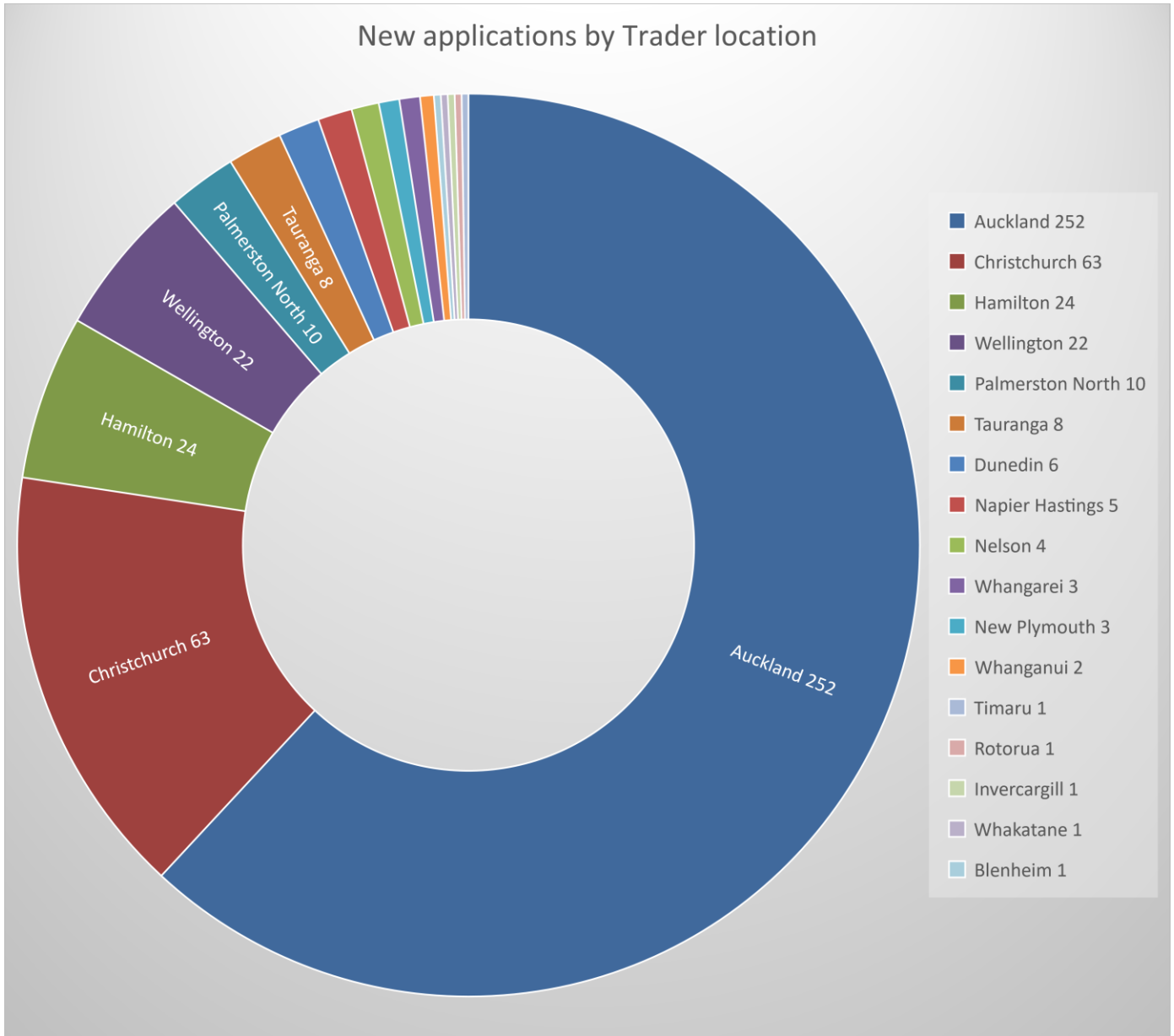
1. Summary of applications dealt with

The Tribunal dealt with a total of 494 matters this year, consisting of 407 new applications, 1 matter remitted back from the District Court and 86 matters carried over from 2018-2019. The number of new applications is lower than in recent years due, at least in part, to lower motor vehicle sales during Covid-19 lockdown periods.

	Y/E 30/6/18	Y/E 30/6/19	Y/E 30/6/2020
Total number of applications filed during the year	487	470	407
Applications carried over from previous year	99	97	86
Matters remitted back from the District Court			1
TOTAL	586	567	494

The new applications came from throughout the country. As shown in the chart below, the majority involved traders based in Auckland (252) Christchurch (63), Wellington (22) and Hamilton (24). The remainder of the matters heard by the Tribunal were spread evenly throughout the country.

New applications by Trader location



2. Resolution of applications during the year

Of the 494 matters dealt with by the Tribunal in 2019-2020, 156 or 31.6% were resolved (by settlement, withdrawal or consent orders recording an agreement reached by the parties) without the Tribunal being required to determine the claim. 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 254 applications proceeded to a hearing and were determined by the Tribunal (with many of those requiring more than one hearing to resolve all the issues – meaning a total of 322 hearings were scheduled). 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 2019-2020, 71.8% of all matters were resolved within three months of the date of filing the application, with 97.7% of all matters resolved within six months.

	Y/E 30/6/18	Y/E 30/6/19	Y/E 30/6/2020
Applications settled or withdrawn	187	160	156
Applications heard	302	321	254
Applications unheard	97	86	84
TOTAL	586	567	494

3. Cases that require special mention

Difficulties identifying the seller of the vehicle

The Tribunal has seen many cases in recent years where it has been difficult for the applicant (and the Tribunal) to determine the legal entity that sold the vehicle. The identity of the legal entity that sold the vehicle is important in determining who the correct respondent in any claim should be and in then enforcing any Tribunal decision.

Most commonly, the Tribunal sees motor vehicle traders who only disclose their trading name to the purchaser and do not disclose the underlying legal identity that has sold the vehicle. In most instances, the legal entity can be found relatively easily because there is no deliberate attempt by the seller to hide its identity and the legal entity can be found by an internet search or by searching the Motor Vehicle Trader Register.

But there are other cases where the seller deliberately attempts to disguise the identity of the legal entity selling the vehicle. The most obvious example is the many cases that the Tribunal has heard involving motor vehicles sold from premises at 282 and 282A Church St, in Onehunga, Auckland.

Since July 2016, the Tribunal has heard at least 26 cases involving cars purchased from those premises. Documents provided to the purchasers described the vehicles as being sold by one or more of the following - Brent Smith (also known as Antony Solen Basturkmen), Motor Me, Angad Jit Singh Bhatia, Matthew Anthony Robert Meikle, Autoland Cars and/or 282 Cars. Common to each of those claims has been a difficulty in identifying the underlying seller of the vehicle and then enforcing any subsequent Tribunal decision.

Those difficulties were most evident in the case of **Bakker v No Reserve Cars Ltd and Angad Jit Singh Bhatia and Antony Solen Basturkmen and Matthew Anthony Robert Meikle**.

In a decision issued in December 2018, adjudicator Brett Carter found that Angad Jit Singh Bhatia had sold a defective vehicle to Nicholas Bakker using the trading name 282 Cars. Although the documents provided to Mr Bakker named 282 Cars as the seller of the vehicle, the Tribunal was satisfied that it was Mr Bhatia (whose registered trading name at the time was 282 Cars), who sold the vehicle to Mr Bakker. The Tribunal ordered that Mr Bhatia refund the purchase price and pay other costs.

Mr Bhatia, who failed to attend the Tribunal hearing, then appealed to the District Court claiming that he did not sell the vehicle. That appeal was upheld, with the District Court directing that the

“proper name for the defendant should be No Reserve Cars Ltd”, which Mr Bhatia had claimed was his employer. The matter was then remitted back to the Tribunal in December 2019, and adjudicator Jason McHerron reheard the matter.

After considering the information provided to the Tribunal and the District Court, Mr McHerron determined that, in addition to Mr Bhatia and No Reserve Cars Ltd, two other parties had sufficient connection to the matter to be joined to the proceeding. They were Antony Solen Basturkmen (also known as Brent Smith), a director of No Reserve Cars Ltd and a banned motor vehicle trader who had previously sold vehicles from 282 Church St, and Matthew Anthony Robert Meikle, another registered motor vehicle trader with a connection to 282 Church St, Onehunga.

Following the rehearing of this claim, the Tribunal determined that this vehicle was sold jointly by Mr Bhatia and No Reserve Cars Ltd, who had formed a conspiracy to sell motor vehicles from 282 Church St Onehunga, while disguising the identity of the seller of the vehicle. Neither Mr Basturkmen or Mr Meikle attended the hearing (despite being summonsed to do so) but Mr Basturkmen had signed a document admitting that No Reserve Cars Ltd sold the vehicle.

This case emphasises the challenges that consumers can face in identifying the legal entity that sold the motor vehicle and then enforcing their rights against that entity. In this case, because of a conspiracy to hide the identity of the seller of the vehicle, Mr Bakker’s right to a remedy has been delayed by nearly two years.

As discussed in part 5 below, we suggest amending the Act and the Consumer Information Standards (Used Motor Vehicles) Regulations 2008 to clarify that the contract for sale and Consumer Information Notice must include the full legal name of the person or entity that sold the vehicle.

Failure to adequately disclose accident damage

Vehicles that have been damaged and written off for insurance purposes can be repaired, reregistered and resold if those repairs have been certified in accordance with NZ Transport Agency safety requirements.

The Tribunal has, in many separate cases, found that motor vehicle traders have an obligation to tell prospective purchasers if a vehicle has previously been damaged and written off for insurance purposes. However, the Tribunal continues to see cases where that damage history is not being adequately disclosed to prospective purchasers.

In **Cooper v ANZ Autoparts NZ Ltd**, Mr Cooper purchased a 2015 Suzuki Swift for \$14,500 from ANZ Autoparts Ltd in May 2019. Shortly after purchase, Mr Cooper discovered that the vehicle had previously suffered significant structural accident damage, causing it to be deregistered and then reregistered once the damage was repaired. The Tribunal concluded that the vehicle had most likely been written off for insurance purposes because of that damage and that ANZ Autoparts Ltd had failed in its obligations to disclose that history to Mr Cooper. Indeed, the Tribunal concluded that ANZ Autoparts NZ Ltd actively misled Mr Cooper by claiming that the vehicle had only been reregistered because one of its number plates had been lost.

The Tribunal found that ANZ Autoparts Ltd had engaged in misleading conduct in breach of section 9 of the Fair Trading Act 1986, and ordered ANZ Autoparts Ltd to refund the purchase price of \$14,500 and pay other costs.

4. Increased use of audiovisual technology

In recent years, the Tribunal has routinely heard matters where at least one of the parties has participated by video link from a different location, which has made the Tribunal much more accessible for the parties. That approach is permitted under clause 8 of schedule 1 to the Motor Vehicle Sales Act 2003, which allows the Tribunal to conduct hearings by telephone, audiovisual link or other remote access facility if the adjudicator considers it appropriate and the necessary facilities are available. In the 2018/2019 year we heard 164 matters using audiovisual technology, which has increased to 215 in 2019/2020. We have also been able to retain the services of one of the Tribunal's experienced Assessors, who moved from Auckland to the South Island but has been able to continue to attend hearings via audiovisual link.

In March and April 2020, it became apparent that the Tribunal needed to increase its use of audiovisual technology to allow it to continue to operate and hear claims while Covid-19 restrictions were in place. In response, the Ministry of Justice staff who support the Tribunal all committed to keeping the Tribunal operational and the Ministry of Justice equipped those staff with devices that enable them to work from home. Although those changes could not be fully implemented during the restrictions that applied in March and April, the Tribunal was able to operate entirely remotely during the recent return to Level 3 restrictions in Auckland, when the Tribunal held hearings using Microsoft Teams, with all parties, witnesses and Tribunal members participating in the hearings from their homes, workplaces or other remote venues.

This approach has been supported by the participants. All parties were given the choice to have the matter heard remotely or to wait for Covid-19 restrictions to ease. All parties chose to have their matters heard by audiovisual link, and aside from one hearing which was adjourned because of a poor internet connection, the remaining hearings were conducted smoothly.

These changes to the Tribunal's systems, the support it has received from the Ministry of Justice and the willingness of the Tribunal's support staff means that the Tribunal is now well placed to operate at full capacity in the event of further Covid-19 restrictions and to make even greater use of audiovisual technology in its day to day business to improve access to justice for all participants.

5. Recommendation for amendments to the Motor Vehicle Sales Act

We recommend that the Act, the Motor Vehicle Sales Regulations 2003 (the 2003 Regulations) and the Consumer Information Standards (Used Motor Vehicles) Regulations 2008 (the 2008 Regulations) be amended to clarify that the contract for sale and consumer information notice must include the full legal name of the person or entity that sold the vehicle.

Currently, the Act requires the contract for sale to "include the prescribed information". The 2003 Regulations prescribe the "names of all parties to the contract" must be included. And the 2008 Regulations prescribe the information that must be written upon a consumer information notice, including the motor vehicle trader's name and motor vehicle trader registration number. These requirements should be amended to clarify that it is the full legal name of the trader that is required.

We believe that this requirement, combined with enforcement of any breach by the appropriate agencies, will assist in ensuring that the correct legal entity is identified and named as respondent in any application to the Tribunal.

We also recommend amendments to the Act to facilitate service by email of notices or documents that are required to be served under the Act. Currently, notices can be emailed to traders under s 142(1)(a)(ii) of the Act, but only to the email address stated in the trader's application for registration under s 32. It would be helpful if this email address could also be included in the publicly available contents of the Register under s 54 of the Act, as currently the Tribunal has no access to traders' email addresses supplied to the Registrar under s 32. In addition, it would be helpful if s 142(1)(b)

of the Act could be amended to allow service to a person at an email address nominated by or on behalf of that person in response to a request by or on behalf of the sender of the notice or document. These amendments would help ensure information relating to Tribunal matters can be forwarded to parties as quickly and efficiently as possible, which is especially important given the widespread disruption to places of work during the pandemic.

Finally, we recommend an amendment to cl 16 of Schedule 1 of the Act to provide that an appeal must be brought in accordance with Part 18 of the District Court Rules 2014, using a form approved by the chief executive after consultation with all adjudicators. This would allow a form to be developed for appeals from the Tribunal using the same process that applies for approving a form to commence a Tribunal proceeding (cl 4 of Schedule 1).



B R Carter
28 September 2020



J S McHerron