



Motor Vehicle Disputes Tribunal

ANNUAL REPORT

1 July 2014 to 30 June 2015

Pursuant to section 87 of the Motor Vehicle Sales
Act 2003

C H Cornwell
Adjudicator

ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL

Period 1 July 2014 to 30 June 2015

Dear Minister

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

The Tribunal received 258 applications this year, 36 more than last and delivered 154 decisions; six more decision than last year.

The number of disputes settled by the parties prior to a hearing was 83 (29%) compared with 78(31%) last year of the total applications filed.

The Tribunal has a case disposal target of hearing and issuing decisions on at least 75% of all applications received within two months of the date of filing and disposing of 95% of applications within three months of the date of receipt. In the past year the Tribunal's case disposal rate was 60.15% within 2 months of the date of filing (66% last year) and 77.82% (81.50% last year) within 3 months of the date the application. The reduction in the case disposal rates reflects the fact that for most all of this year the Tribunal has only had one Adjudicator sitting throughout New Zealand and this has resulted in applications not being heard as quickly as in the past. The Tribunal was still able to hear and dispose of 94.74% of all applications it received within four months of the filing date. Another part time Adjudicator has been appointed from 1 September 2015 and I expect that the case disposal rate will be significantly improved as a result.

1. Summary of Applications received during the year:

	Applications Y/E 30/6/15	Applications Y/E 30/6/14
Total number of disputes filed during the year	258	222
Plus Disputes carried over from previous year	24	29
TOTAL	282	251

2. Summary of Applications disposed of during the year:

Disputes settled or withdrawn	83 (29%)	78 (31%)
<u>Disputes heard</u> (including disputes carried over from previous year)	154	149
<u>Applications unheard</u> as at 30 June 2015	43 45	24
TOTAL	282	251

In previous Annual Reports the Tribunal has made an assessment of the number and percentage of applications heard where it has issued a decision for the purchaser and the number of applications found for the trader. The Tribunal considers this may be misleading because in many cases, although orders are made for the purchaser, the purchaser does not obtain the remedy for which they have applied. In some of those cases, the orders made are the orders that reflect what the trader was offering to do before the hearing. The Tribunal has, in the past recorded this as a decision for the purchaser whereas in fact it might equally be regarded as a decision for the trader.

3. Total Applications Heard and

Decisions Delivered	<u>154</u>	100%	<u>149</u>	100%
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Of the applications received and heard 130 were decided on the basis of the Consumer Guarantees Act, 20 under the Fair Trading Act and four applications resulted in orders transferring the application to the Disputes Tribunal.

4. Cases that require special mention:

a) Fuel economy and fuel economy labels

Recently the Disputes Tribunal heard a case involving a claim by a Ford Kuga owner against a Whanganui dealership regarding the fuel economy figures claimed versus real life driving. The Kuga owner was apparently told the vehicle's fuel economy would be 7.7l/100km but the best he could achieve was 9.4l/100km. The Disputes Tribunal Referee awarded the owner \$6,000 compensation.

The MVDT heard a similar claim in February this year **JT Lang Ltd v Landseer Motor Investments Auckland Ltd T/A Andrew Simms Newmarket and Mitsubishi Motors NZ Ltd.**

The purchaser in the MVDT's case bought a new 2014 Mitsubishi ASX-4WD 2.2 diesel car which the trader advertised, as it is required to do, the fuel economy rating of 5.8l/100km. The purchaser claimed he was unable to achieve anything more economical than 6.1 to 6.8l/100kms although the purchaser accepted that the vehicle's computer regularly showed fuel consumption of 5.6 to 5.8l/100km.

The Tribunal received evidence from a witness for the purchaser that he had driven the vehicle 353km over three days in a mixture of city and open road use and that he had used 24,88 litres of fuel equivalent to 7.05l/100km. The Tribunal also heard from the trader's After Sales Manager that after servicing the vehicle and diagnostically scanning it to check to see if the vehicle was operating properly and in accordance with the manufacturer's specification, he drove the vehicle for three days from his work in Newmarket to his home in Warkworth a distance of 65kms each trip. The best fuel economy the manager achieved was 5.1l/100km and the worst was 5.8l/100km. The figures were taken off the vehicle's computer. The driving conditions varied with two trips being made in wet weather and heavy traffic and two being done in dry conditions; one with moderate and one with heavy traffic.

Mitsubishi Motors Technical manager gave evidence that the fuel economy figures were calculated in a testing laboratory in Germany on a rolling road to determine the urban "extra urban" and combined fuel consumption figures for each vehicle. The witness produced documentation to prove that the urban fuel consumption of the vehicle under laboratory conditions was 7.1l/100km and that for "extra urban" was 5.1l/100km with the combined fuel consumption being 5.8l/100km.

The Tribunal found first, that the calculation of the fuel economy figures was not done by the trader or the manufacturer but by an independent laboratory overseas which provides the figures it obtains to Australian and New Zealand authorities who accept them. The New Zealand Authority is the Energy Efficiency and Conservation Authority ("EECA") who mandate that the fuel economy figures for each car displayed for sale in New Zealand manufactured after 2000 must bear certain information as to that model's fuel economy that the EECA has obtained.

Second, the Tribunal was uncertain from the evidence given by the purchaser's director, Mr Lang whether he was aware of the vehicle's fuel efficiency rating at the time he agreed to buy the vehicle because he was unable to be sure when he had seen the vehicle's fuel economy figure of 5.8l/100km and he could not have been misled about the figure if he had not seen it until after he bought the vehicle.

Third, the Tribunal decided not to place any probative value on the test done by the purchaser's neighbor because the method of measuring the fuel had not been carefully documented.

The conclusion the Tribunal reached in this application was that it was not persuaded that the purchaser was misled by the trader about the fuel economy measures and the

Tribunal accepted that the figure of 5.8l/100km was provided for comparative purposes. A motorist's actual cost per year and fuel consumption will vary from the figure shown on the energy efficiency label by factors such as vehicle condition, particularly the type and condition of the tyres, engine modifications, driving style and traffic conditions.

b) European car gets reborn in Japan before export to NZ

In March 2015 the Tribunal heard an application **Mathy v C&R Motors Limited T/A JP Autos**. This was an application in which the purchaser in 2014 had bought a BMW Z4 car for \$49,300 which the trader had represented as a 2013 model with an odometer of 14,539kms. Four months later the purchaser discovered that the vehicle had been manufactured in Germany and first registered in the United Kingdom in December 2009. It was shipped to Japan and re-registered there in April 2013 and almost immediately shipped to New Zealand where it was landed in July 2013. The local BMW agents also found that the vehicle's true recorded mileage was 32,278kms, more than double that represented by the trader. The Tribunal found the purchaser had been misled and awarded him \$12,000 damages.

The concerning aspect of this application is that it appears that there is a serious systemic failure in our motor vehicle importation system by which a car first registered in the UK can be shipped to Japan, re-registered in Japan, and then imported into New Zealand with the New Zealand compliance authority, New Zealand Transport Agency, allowing the vehicle to be registered with a registration date based on the date of registration in Japan, and apparently without any investigation as to the vehicle's previous history.

Prospective buyers of used European cars sourced from Japan are advised, before agreeing to buy the vehicle, to have its history checked by a franchised dealer for the European brand agent to verify the vehicle's build date, date and place of first registration, and its recorded repair history.

c) Buying vehicles "sight unseen"

In previous Annual Reports the Tribunal has drawn attention to an increasing number of claims where consumers buy vehicles sight unseen and uninspected. The trend continues and appears to be increasing with more than 12% of the claims heard by the Tribunal in the last year arising from internet purchases made "sight unseen" and uninspected before purchase. The highest recorded price for a vehicle bought sight unseen this year was \$33,150. There were eight other claims heard by the Tribunal for vehicles bought sight unseen for more than \$15,000 but the bulk of the purchasers who bought sight unseen did so in respect of old high mileage vehicles costing less than \$10,000.

5. Recommendations for amendments to the Act

Last year the Tribunal recommended to the previous Minister the following change to the Motor Vehicle Sales Act 2003.

Extend MVDT jurisdiction to include contract based claims

The Motor Vehicle Disputes Tribunal does not have jurisdiction to hear contract based claims (for example a dispute about the effect of terms of the agreement for sale and purchase of the motor vehicle). From time to time the Tribunal has to transfer part of a claim to the Disputes Tribunal because it is contract based. 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.

C H Cornwell
15 September 2015