

**ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL
Wellington**

Period 1 July 2008 to 30 June 2009

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.

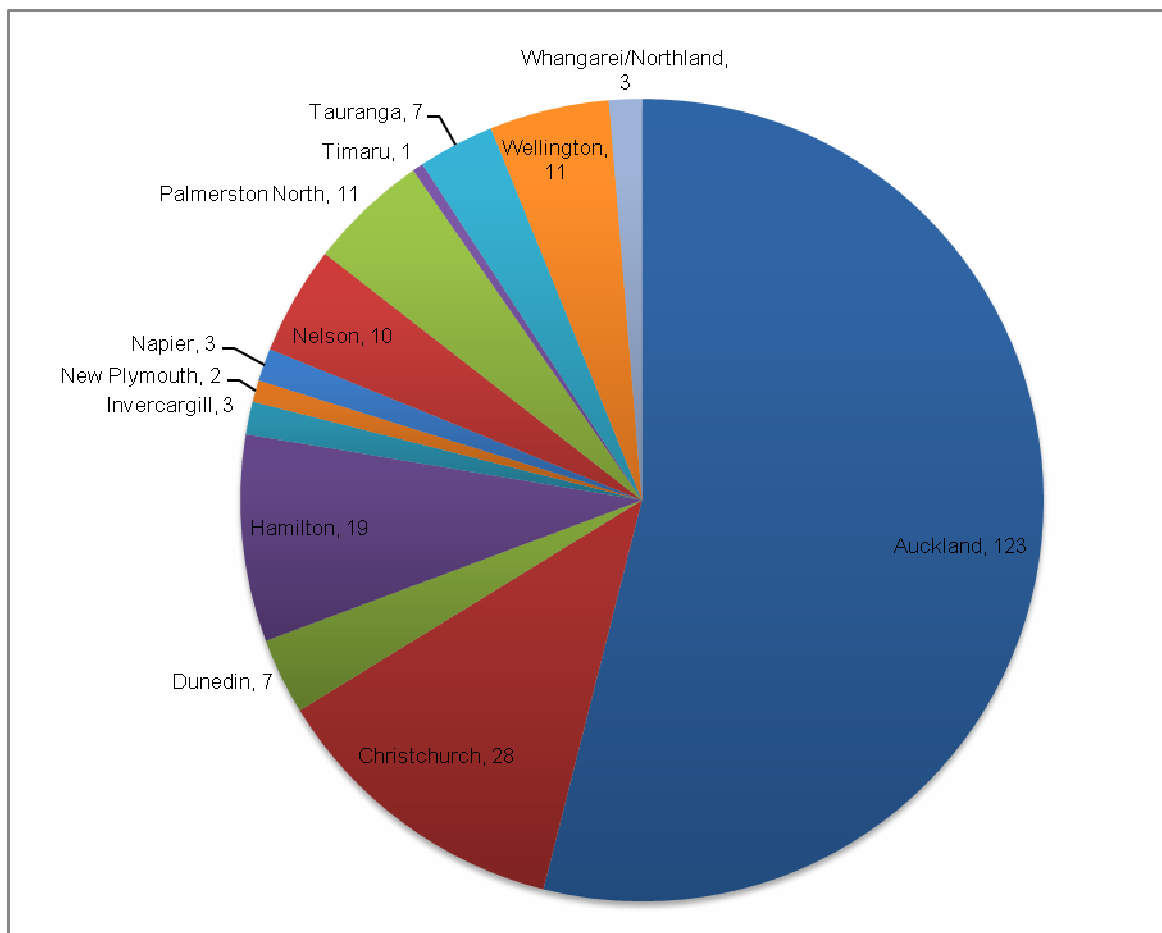
1. Summary of applications dealt with Nationally

		Applications (Y/E 30/06/2009)	Applications (Y/E 30/06/08)
<u>Total number of disputes originating from</u>			
• Auckland area (New Plymouth north)	158		
• Wellington area (Palmerston North south)	<u>70</u>	228	283
<u>Disputes carried over from previous year</u>			
• Auckland Adjudicator	17		
• Wellington Adjudicator	15	**32	39
**(NB – not 30 as reported previously)			
Total		260	322
<u>Disputes settled or withdrawn</u>			
		68	72
<u>Disputes heard</u> (including disputes carried over from previous year)			
• Auckland Adjudicator	132		
• Wellington Adjudicator	<u>39</u>	171	227
<u>Disputes unheard as at 30 June</u>			
• Auckland Adjudicator	15		
• Wellington Adjudicator	*6	21	23
*Includes 2 reserved decisions			
Total		260	322
<u>Total outstanding cases as at 30 June 2009 (unheard + reserved decisions)</u>			
		21	30

2. N J Wills – Adjudicator

	Year ending 30/06/2009		Year ending 30/06/2008	
Number of disputes found for Trader	21		21	
Number of disputes found for Purchaser	17		29	
Adjourned to allow parties to settle	1		1	
Total Heard and Decisions Delivered	<u>39</u>	100%	<u>51</u>	100%

3. Location of Disputes



4. Details of Cases Requiring Special Mention

In a significant number of cases over the last year I have reached the factual conclusion that a warrant of fitness has been issued prior to sale in circumstances where it ought not to have been. Invariably the inspections have been carried out by mechanics who receive a significant amount of work from the particular trader, a circumstance which sets up perverse incentives for the mechanic/authorised warrant of fitness inspector.

5. Recommendation for Amendment to the Act

I recommend that the Tribunal's jurisdiction be extended to include the Contractual Remedies Act. There seems no good reason for the Tribunal to have jurisdiction under the Fair Trading Act but not the Contractual Remedies Act.

This limitation on jurisdiction has potential for significant unfairness for consumers who pursue their remedies via the MVDT. A misleading representation by a trader may provide a consumer with a cause of action in both the Fair Trading Act and the Contractual Remedies Act. If a consumer elects to bring an application before the MVDT, they are effectively giving up a potential Contractual Remedies Act claim.

This has significant consequences in terms of remedy because under the Fair Trading Act, damages may be awarded on the tort measure (to put the claimant in the position they would have been had the misleading statement not been made) whereas under the Contractual Remedies Act, damages may be awarded on an expectation basis – ie to put the consumer in the position they would have been had the misrepresentation been correct. Consumers appearing before the tribunal invariably consider expectation damages to be the fair approach.

I also recommend a review of section 41(3)(a) of the Consumer Guarantees Act 1993 which excludes the operation of that Act in respect of sales by way of auction. I recommend this because of the huge increase in sales by way of auction by traders through web-sites such as Trade Me. There seems to be no good policy reason why consumers purchasing vehicles in this way should not have the same protection afforded to them as consumers who purchase from a trader's lot.

N J Wills
Adjudicator
Wellington Motor Vehicle Disputes Tribunal

21 August 2009