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# ANNUAL REPORT

## **MOTOR VEHICLE DISPUTES TRIBUNAL RŌPŪ TAKE TAUTOHENGA Ā-WAKA**

For the 12 months ended 30 June 2024

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*Presented to the Minister of Commerce and Consumer Affairs*

# ANNUAL REPORT OF THE MOTOR VEHICLE DISPUTES TRIBUNAL

1 July 2023 to 30 June 2024

Dear Minister

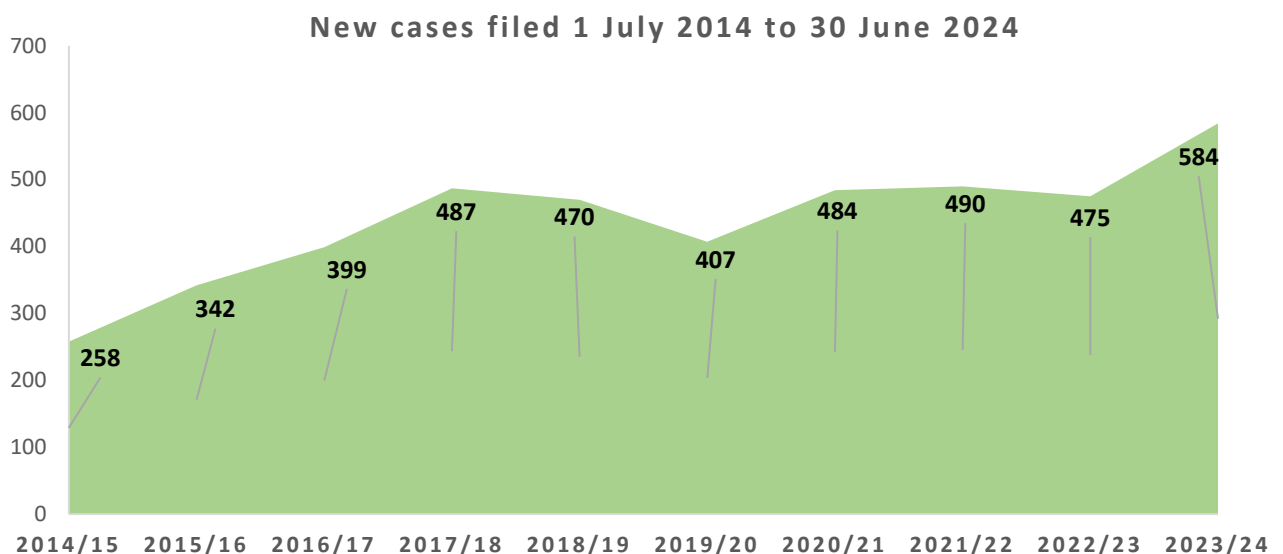
Pursuant to section 87 of the Motor Vehicle Sales Act 2003 (the MVS Act) we are pleased to submit the following Annual Report. In this Annual Report we:

1. Summarise the applications managed by the Motor Vehicle Disputes Tribunal for this period
2. Explain how those applications were resolved
3. Advise changes in Tribunal membership
4. Detail cases which merit special mention
5. Outline the Tribunal's digital strategy
6. Make recommendations for legislative amendments.

## 1. Summary of new applications

At the start of the reporting period the Tribunal had **94** cases on hand. During the period the Tribunal received **584** new applications (including one claim that was reopened following an appeal that was allowed). This is a significant increase compared to the previous reporting year, in which **475** applications were received and is more than double the number of applications received in 2015, as shown in the table below. At the end of the reporting period **174** cases were on hand.

The Chart below shows a comparison of new applications filed from 1 July 2014 to 30 June 2024.



The new applications received came from throughout the country. As shown in the chart below, the majority involved motor vehicle traders based in Auckland (306), Christchurch (111), Hamilton (44) and Wellington (30). The 93 remaining involved traders based in 18 other locations.

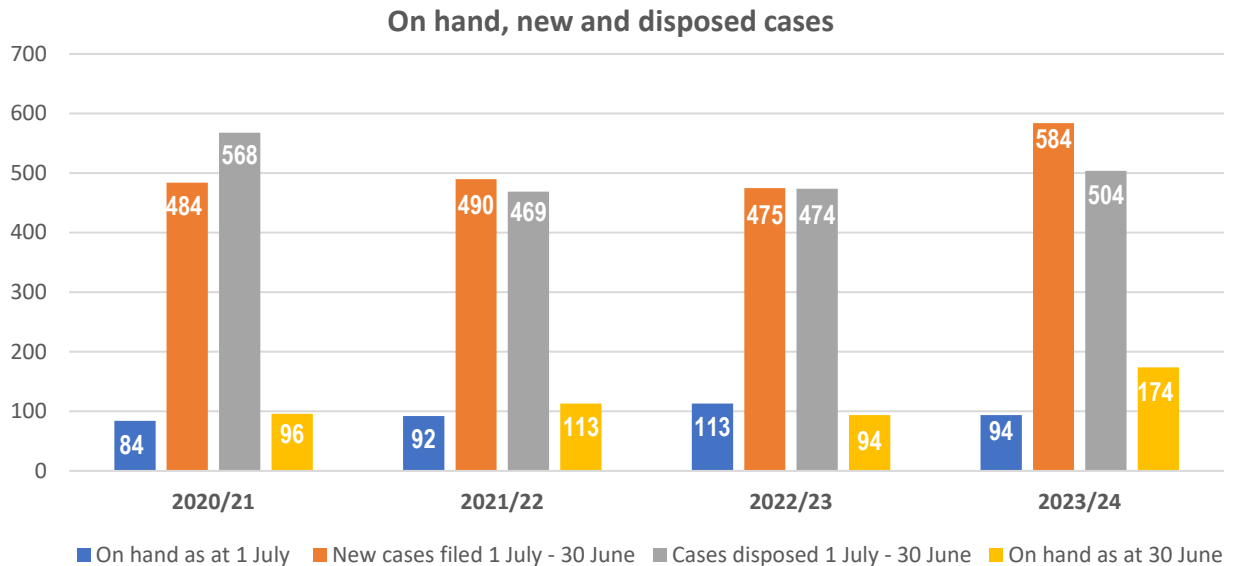


## 2. Summary of applications disposed in this reporting period

The Tribunal closed **504** matters in this reporting period, **210** of which were resolved by settlement or withdrawal without the Tribunal being required to determine the claim. This reflects the Tribunal's role to encourage the parties to resolve their disputes in a timely and cost-effective way, which includes the motor vehicle trader having to discuss the application with the purchaser and make a written report to the Tribunal of the outcome.

The Tribunal determined **294** applications, with a number of those requiring more than one hearing to resolve all issues. 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 2023-2024, **57.7%** of all matters were resolved within three months of the date of filing, with **96.2%** of all matters resolved within six months and the remaining **3.7%** completed in over 6 months. A total of **174** claims remained outstanding at the end of the reporting year.

The chart below shows a comparison of the on hand, new and disposed cases for the reporting periods from 1 July 2020 to 30 June 2024.



### 3. Changes in Tribunal membership

This year, there have been significant changes to the membership of the Tribunal's adjudicators.

As at 1 July 2023, the Tribunal had four adjudicators; one full-time (Brett Carter) and three part-time adjudicators (Jason McHerron, Deirdre Watson and David Jackson). Brett Carter and Deirdre Watson based in Auckland, Jason McHerron in Wellington, and David Jackson in Christchurch.

Late last year, Brett Carter the full-time member resigned. From January 2024, he undertook no further hearings. This was followed a few months later by the resignation of Wellington Adjudicator Jason McHerron, following his appointment as a Justice in the High Court.

In March 2024, two temporary part-time adjudicators with experience in the Disputes Tribunal were appointed, Shaurya Malaviya and Michelle Taylor. These adjudicators have six-month warrants, due to expire on 7 October 2024. They have been successfully conducting hearings to enable the Tribunal to address the backlog caused by the resignations of Brett Carter and Jason McHerron.

## 4. Cases that require special mention

### Private sale or sale by motor vehicle trader.

The Tribunal continues to hear claims where there is uncertainty as to the identity of the seller. The following two cases are examples.

**Roberts v Affordable Kiwi Cars Ltd and Taranpreet Singh**<sup>1</sup> involved the purchase of a vehicle which was concluded following the vehicle being advertised for sale on Facebook Marketplace. Ms Roberts then viewed the vehicle at a private address, but noticed there were other vehicles for sale at that address as well. Initially, a Mr Singh described himself as the seller. It was not until later when there was a problem with the vehicle and Ms Roberts had agreed to contribute to the cost of the repairs that she was given the bank account for “Affordable Kiwi Cars”. At this point she realised she was dealing with a Motor Vehicle Trader. At the hearing, Mr Singh accepted the seller was Affordable Kiwi Cars Ltd, but the Tribunal considers consumers may have viewed this as a private sale and been unaware of their rights under the Consumer Guarantees Act 1993.

**Healy v Te Rapa Wholesale Cars 2009 Ltd and Brett Nowell**<sup>2</sup> raised a similar issue. Mr Healy purchased a low value vehicle with high mileage, having seen it advertised on Facebook marketplace. The vehicle developed a fault which meant it required a new engine. The failure was of a substantial character. Te Rapa Wholesale Cars 2009 Ltd and Mr Nowell argued that the vehicle was in fact sold to Mr Healy by Mr Nowell and was therefore a private sale. However, the registered owner of the vehicle immediately prior to it being transferred to Mr Healy was Te Rapa Wholesale Cars 2009 Ltd and the sale itself was concluded on the premises of Te Rapa Wholesale Cars 2009 Ltd. The Tribunal found Te Rapa Wholesale Cars 2009 Ltd to be the supplier and upheld the claim for rejection.

### Other cases of interest

In **Selwyn v Cooper No 1 Ltd, Cooper No 2 Ltd and Inchcape Automotive Retail (NZ) Ltd**,<sup>3</sup> Mr Selwyn purchased a 2017 low mileage LDV G10 vehicle from Cooper No 1 Ltd in 2018. By early 2023, it had developed substantial rust throughout its chassis, unrelated to Mr Selwyn’s use of the vehicle. Cooper No 1 Ltd sold its business to Inchcape Automotive Retail (NZ) Ltd in 2023. Cooper No 1 Ltd argued it was therefore no longer liable to repair the vehicle. It claimed that Inchcape Automotive Retail NZ Ltd had taken an assignment of all open warranty claims.

The Tribunal found that regardless of the content of any agreement between Cooper No 1 Ltd and Inchcape Automotive Retail (NZ) Ltd as to who was liable to repair, Cooper No 1 Ltd remained liable as the supplier of the vehicle under the Consumer Guarantees Act 1993. Its sale of the business did not invalidate that primary liability.

In **Fukuda v Japanese Car Centre Limited**,<sup>4</sup> Ms Fukuda purchased a 2008 Toyota Prius for \$9,430 from Japanese Car Centre Limited in August 2022. Ms Fukuda complained that the vehicle’s engine light turned on intermittently and this could not be resolved despite several checks. After a year, Ms Fukuda

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<sup>1</sup> MVD 029 – 2024 [2024] NZMVDT 064

<sup>2</sup> MVD 028 – 2024 [2024] NZMVDT 090

<sup>3</sup> MVD 381-2023 [20223] NZMVDT 079

<sup>4</sup> MVD 142-2024 [2024] NZMVDT 130

discovered that the vehicle's catalytic converter had been removed which was causing the issue. The Tribunal asked the trader, Mr Ranjha, to provide a copy of the exhaust emission test certificate issued at entry into New Zealand. This certificate proved on the balance of probabilities that the vehicle was imported into New Zealand with a catalytic converter.

While the Tribunal could not determine who was responsible for removing the catalytic converter, it found that this was a failure of substantial character as the vehicle was non-compliant and unwarrantable. Ms Fukuda's application to reject the vehicle was successful.

In **Richards v Budget Auto NZ Limited**,<sup>5</sup> the trader argued that since its dealer registration had expired, it was no longer a motor vehicle trader and therefore, not subject to the Tribunal's jurisdiction.

The Vehicle Offer and Sale Agreement and the Consumer Information Notice both stated that the seller was a motor vehicle trader and that the sale was subject to the provisions of the Consumer Guarantees Act 1993. The Tribunal found that the trader held himself out as a person carrying on the business of motor vehicle trading and was treated as a motor vehicle trader pursuant to section 8 of the Motor Vehicle Sales Act 2003.

**Courtney v Northern Bays Limited**<sup>6</sup> was one of a number of cases where the purchaser complained about corrosion discovered on the underside of a new vehicle. The purchaser resided in a seaside suburb in Auckland and was unaware of the importance of regularly washing the underside of the vehicle after travelling over corrosive elements such as sand and salt on the road. The corrosion was discovered at its first warrant of fitness (WoF) check, three years after the high value car was purchased. While the car passed the WoF, the purchaser was understandably concerned about the level of corrosion. The existence of the corrosion was not disputed. Instead, the trader's position was that it was due to environmental factors. The Tribunal agreed with the trader and dismissed the claim. The purchaser not only lived in a seaside location but had also driven on the main road alongside the beachfront where there had been salt and sand residue from storms and had failed to wash the underneath of the vehicle.

The Tribunal has also determined a number of cases regarding hybrid battery failures in second hand vehicles. Whether or not this is a failure of an acceptable quality depends upon the circumstances including the age and mileage of the vehicle and the price paid.

In **Ushaw v 2 Cheap Cars Limited**,<sup>7</sup> the battery failure was determined to be a failure of acceptable quality and the trader was ordered to remedy the failure with a new or refurbished battery.

## 5. Digital strategy

The Tribunal is participating in the Digital Strategy for Courts and Tribunals, which was presented by the Chief Justice in March 2023. This strategy recognises that using technology wisely is essential to enable all people to participate in proceedings, respecting and responding equitably to ethnicity, culture, disability, lack of means or educational status. The Tribunal recognises that its processes must

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<sup>5</sup> MVD 120-2024 [2024] NZMVD 132

<sup>6</sup> MVD 53/2024 [2024] MVD 1

<sup>7</sup> MVD 107/2024 [2024] NZMVD 107

be capable of delivering just outcomes for all members of our society in a simple, accessible and timely manner.

Pursuant to the strategy, the Tribunal has now moved to the Tribunals Case Management system. This system, already in use by several other Tribunals, is designed to enable the Tribunal to manage its case information more securely, provide a number of tools for managing cases and make it easier for case managers to enter information and manage communications.

As reported in previous annual reports, the Tribunal has made increasing use of digital technology in recent years. That trend has continued, **84% (297)** of the hearings conducted by the Tribunal this year used audio-visual technology to allow a party, witness and/or a Tribunal member to attend the hearing remotely. The Digital Strategy recognises that alternative channels must remain available for people who are not well placed to use digital technologies. Accordingly, the Tribunal offers parties in-person hearings in appropriate cases, however the primary mode of hearing is online. The Tribunal also provides assistance to parties unfamiliar with the online format, so that they are comfortable with its use.

## 6. Recommendation for legislative amendments

Here is a list of recommendations that have been made in recent years to improve the MVS Act:

- amending section 88 to enable Tribunal assessors to continue to hear matters until they are reappointed, replaced or advised that they are not to be appointed (as is the case for adjudicators);
- amending section 142(1)(b) to make it easier for notices and other documents to be served by email;
- amending section 54 to require the motor vehicle trader's email address to be included in the publicly available contents of the Motor Vehicle Traders Register;

In addition, we consider that it would be useful to:

- Review relevant provisions in the MVS Act (such as the definition of "sale" in section 6 and the provisions concerning the "meaning of motor vehicle trader" in sections 7 to 9), to ensure they adequately capture all modern methods of marketing and selling motor vehicles.
- Review the definition of "motor vehicle" in section 6 of the MVS Act and consider adding a specific exclusion at (b) such as "a vehicle with a gross vehicle mass, as determined by the manufacturer, of more than 3,500 kgs".
  - Currently, the Motor Vehicle Dealers (Exclusion of Heavy Vehicles) Order 1988 defines heavy motor vehicles as having a gross vehicle mass of 3,500kgs or more. The effect of the Order is that the Tribunal can only decide matters involving vehicles with a gross vehicle mass of *less than* 3,500kg.

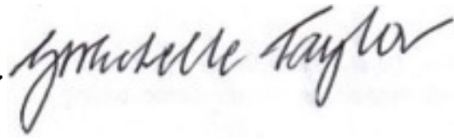

- The definition in the Order is inconsistent with the Heavy Motor Vehicle Regulations 1974 which defines “heavy motor vehicles” as vehicles with a gross vehicle mass of *more than* 3,500 kgs.
  - The result is that the Tribunal cannot determine claims in relation to vehicles weighing exactly 3,500kgs in circumstances where those vehicles themselves are not considered to be “heavy motor vehicles” under the Regulations.
  - We suggest the Order is revoked and the definition of “motor vehicle” is amended as set out above.
- Amend cl 5(2) of Sch 1 of the MVS Act to include a requirement for the respondent to include a summary of their response to the application and to provide any documentation supporting that response. Early receipt of this information will promote more productive settlement discussions and enable the Tribunal to more efficiently determine the application.



D Watson



D M Jackson



S Malaviya

G M Taylor

**Adjudicators**

**Dated 27 September 2024**