# Position Description: Part-time Adjudicator for the Motor Vehicle Disputes Tribunal

*Closing date for applications: 07 May 2021*

On behalf of the Minister of Commerce and Consumer Affairs and the Minister of Justice, the Ministry of Business, Innovation and Employment is searching for a part-time adjudicator for the Motor Vehicle Disputes Tribunal (Tribunal, or MVDT).

A suitable candidate must have at least five years of experience as a barrister or solicitor of the High Court of New Zealand (judicial, tribunal or dispute resolution experience is an advantage)and have, or be able to obtain, a current practising certificate.

An ideal candidate should also have:

* *experience in hearing management and people management*
* *knowledge or understanding of consumer, fair trading, and credit laws*
* *a high standard of written communication*
* *experience in working with a range of people from different backgrounds and with different perspectives*

Key Information about the Role

# Brief Background on the Motor Vehicle Disputes Tribunal

1. The role of the Motor Vehicle Disputes Tribunal is to enquire into and resolve disputes filed by consumers in respect of alleged breaches of the responsibilities of registered and unregistered motor vehicle traders.
2. The Tribunal can hear claims up to a value of $100,000 (or over this amount if the parties to the application consent in writing to the determination) concerning the sale of motor vehicles by registered and unregistered motor vehicle traders under the Consumer Guarantees Act 1993, the Fair Trading Act 1986, and certain provisions of the Contract and Commercial Law Act 2017.
3. Under section 82(3) of the Motor Vehicle Sales Act 2003, each Tribunal must consist of:

* an adjudicator who must be a barrister or solicitor of the High Court of not less than five years’ practice; and
* an assessor appointed by the adjudicator for the purposes of each hearing from a panel of assessors maintained by the Minister of Commerce and Consumer Affairs.

1. The adjudicator is appointed to the Tribunal by the Governor-General on the joint recommendation of the Minister of Commerce and Consumer Affairs and the Minister of Justice. The Ministry of Justice provides administrative support for the Tribunal.

**Ideal Candidate Profile**

1. The specific skills and experience required for an adjudicator are as follows:

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| **Required Specifications** | * have at least five years of experience as a barrister or solicitor of the High Court of New Zealand and hold a current practising certificate (or be able to obtain one) |
| **Ideal Specifications** | * experienced in hearing management and people management (from actual hearing to the writing of decisions) * have knowledge and understanding of credit and consumer laws including the Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Contract and Commercial Law Act 2017, and the Credit Contracts and Consumer Finance Act 2003 * have proven ability to make balanced, reasonable and defensible decisions * be experienced in alternative forms of disputes resolution * have excellent oral and written communications skills * have the ability to assimilate and analyse complex and often competing information about an application and quickly identify facts, opinions and key issues * have a sound appreciation of the duties and responsibilities associated with a statutory appointment * have excellent relationship management skills * able to maintain a high standard of behaviour in his or her professional and personal dealings, and promote sensitivity to the differing social perspectives and beliefs of parties who come before the Tribunal |

**Estimated Time Commitment**

1. The part-time adjudicator will hear and determine cases primarily in the upper North lsland, although there may be a need to travel more widely on occasion. He/she will ideally be based in Auckland and is expected to hear cases in a range of locations for approximately 1 day per month and typically spend approximately 2 days preparing or writing decisions for each day of hearings. That workload may vary depending on the volume of claims before the Tribunal.
2. There is a full-time adjudicator who has primary responsibility for hearing cases in the upper North Island. The part-time adjudicator will also provide cover for the full-time adjudicator during absences and periods of increased workload.

**Remuneration**

1. The remuneration is determined by the Remuneration Authority. A new determination will be issued by the Remuneration Authority after the appointment process is completed.

**Supplementary information:**

1. Legal Status of the MVDT
2. Relationship with the Minister
3. Role and Responsibilities of the Adjudicator
4. Remuneration
5. Term of Appointment
6. Vacation of Office
7. Immunity
8. Public Service
9. Conflicts of Interest
10. Information held by the Ministry under the Privacy Act 2020 and the Official Information Act 1982
11. Legal Status of the MVDT
12. The Motor Vehicle Disputes Tribunal (Tribunal) was established under section 82 of the Motor Vehicle Sales Act 2003. The role of the Tribunal is to resolve disputes between consumers and motor vehicle traders.
13. The Tribunal has the jurisdiction to consider claims relating to a breach of one or more of the following Acts:

* Fair Trading Act 1986
* Consumer Guarantees Act 1993
* Contract and Commercial Law Act 2017.

1. Tribunal decisions may be appealed, on limited grounds, to a District Court Judge.
2. Relationship with the Minister
3. The adjudicator is responsible to the Minister of Commerce and Consumer Affairs and must submit an annual report to that Minister within three months after 30 June each year.
4. The Minister must make the annual report available online, and can make the report available in any other way considered appropriate (such as to the media).
5. Role and Responsibilities of the Adjudicator
6. The role and responsibilities of the adjudicator include:

* referring applications to the respondent(s), requiring that the respondent(s) discuss the application with the applicant, and providing a written report on the outcome of discussions
* appointing the time and place the Tribunal will sit
* determining the Tribunal procedure in accordance with the rules of natural justice
* conducting Tribunal hearings and travelling to regional centres for this purpose
* appointing assessors from a pre-approved panel for each hearing
* working with assessors in determining applications brought before the Tribunal
* writing decisions concerning applications brought before the Tribunal
* publishing decisions on the internet as soon as practicable after the last date on which any appeal against the decision can be lodged
* assisting the part-time adjudicator with his/her duties during absences and periods of increased workload
* submitting an annual report to the Minister of Commerce and Consumer Affairs that:
* summarises claims brought before the Tribunal during that year
* details any cases that in the adjudicator’s opinion require special mention
* makes any recommendations for amendments to the Motor Vehicle Sales Act 2003.

1. The Ministry of Justice provides administrative support to assist the adjudicator in performing these roles and responsibilities.
2. Remuneration
3. The Remuneration Authority sets and annually reviews the adjudicator’s remuneration.
4. The remuneration will be determined by the Remuneration Authority following the completion of the appointment process.
5. In determining remuneration, the Remuneration Authority is guided by the Remuneration Authority Act 1977, which includes giving regard to:

* the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere
* the need to be fair to both the person or group of persons whose remuneration is being determined and to the taxpayer
* the requirements of the position
* the conditions of service to be enjoyed by the appointee in comparison to those enjoyed by persons whose remuneration and conditions of employment are, in the opinion of the Remuneration Authority, comparable to those of the appointee.

1. Travelling allowances and expenses are paid to the adjudicator in accordance with the Fees and Travelling Allowances Act 1951. Travel allowances and expenses are managed by the Ministry of Justice.
2. Term of Appointment
3. The adjudicator is appointed for a term not exceeding five years; and may be reappointed.
4. The adjudicator whose term of office has expired must continue to hold office until:

* he or she is reappointed, or
* a successor is appointed, or
* he or she is informed in writing by the Minister that he or she is not to be reappointed.

1. Vacation of Office
2. The adjudicator is to be taken to have vacated office if he or she dies, or is adjudged bankrupt under the Insolvency Act 2006.
3. The adjudicator may, at any time, be removed from office by the Minister for inability to perform the duties of office, neglect of duty, or misconduct proved to the satisfaction of that Minister.
4. The adjudicator may, at any time, resign his or her office by giving written notice to that effect to the Minister.
5. Immunity
6. The adjudicator is immune from criminal or civil liability in respect of any words spoken at, or for the purposes of, any hearing under the Motor Vehicle Sales Act 2003; or any act done or omitted in exercising or intending to exercise of any of his/her functions, duties or powers under that Act.
7. The adjudicator is not immune from criminal or civil liability if she/he has acted in bad faith and this is proven to the satisfaction of the court in which proceedings are taken.
8. Public Service
9. The Government expects that part of the reward for serving on a body like the Motor Vehicle Disputes Tribunal is the performance of public service that advances the interest of New Zealand. Appointment to the Tribunal is predicated on the values and ethos of public service.
10. The adjudicator must also be sure that she/he has the interest and enthusiasm needed to contribute effectively to the performance of the Tribunal throughout the term of her/his appointment.
11. Conflicts of Interest
12. The adjudicator must be aware of the importance of personal integrity and the need to declare conflicts of interest, either potential or actual. A conflict of interest arises where the adjudicator has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the Tribunal itself.
13. A conflict of interest will not necessarily bar an appointment, although a serious conflict may mean a candidate is not suitable for appointment, or should resign if the conflict arises during the course of appointment.
14. Before a person is appointed as adjudicator, the person must:

* consent in writing to being appointed as an adjudicator; and
* disclose to the Ministers the nature and extent of all interests that the person has at that time, or is likely to have, in matters relating to the Tribunal.

1. As part of the appointment process, the Ministry of Business, Innovation and Employment will require short-listed candidates to complete a disclosure form. The information disclosed by the candidate enables the Ministers to know the relevant interests and any conflicts that a person may have in relation to a statutory appointment. The information is used to assess whether a candidate would be able to contribute effectively to the affairs of the statutory body, and where conflicts are identified, to ensure that these can be managed appropriately.
2. Information held by the Ministry under the Privacy Act 2020 and the Official Information Act 1982
3. Under the Privacy Act 2020, the Ministry of Business, Innovation and Employment:

* will protect the personal information that it holds against any loss, unauthorised access, or misuse
* will not keep personal information any longer than is required for the purposes for which the information may lawfully be used (for instance, the possibility of judicial review)
* will not use any personal information obtained in connection with one purpose for any other purpose, unless it has reasonable grounds to do so
* will limit the disclosure of personal information to other persons or agencies.

1. Individuals are entitled to access information held about them by a government department under the Official Information Act 1982.
2. Official Information Act requests may be made for information on nominations, appointees, remuneration, etc. In responding to such requests, the Ministry of Business, Innovation and Employment will carefully balance the public interest, the privacy of the individuals concerned, and the need to maintain the credibility of statutory appointment processes.
3. For any enquiries contact in confidence boardappointments@mbie.govt.nz.