

Casimir, Amanda

Ref No: 1

**From:** Casimir, Amanda  
**Sent:** Wednesday, 23 January 2013 11:05 AM  
**To:** Kettle, Derek  
**Subject:** FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation  
**Attachments:** Wheelchair accessible taxi booking service regulation.tr5

Hi Derek

I understand from Karen that you and she discussed this one; is GSO able to assist with a paragraph on the "acquisition of property" rights issue for inclusion in my response to [REDACTED]. The officer who dealt with this matter previously is away all month and the files are in archives. I have practically no background in this matter and no access to the emails etc that have passed between those concerned, which limits my ability to develop a coherent response. I did a little work on the drafting of the regs but have no background on the rest of it including the acquisition of property arguments etc. Grateful for any assistance you can provide.

Regards

Amanda

-----Original Message-----

**From:** TRIM Administrator [REDACTED]  
**Sent:** Tuesday, 22 January 2013 3:58 PM  
**To:** Casimir, Amanda  
**Subject:** TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

MIN:2012/003466 - Wheelchair accessible taxi booking service regulation  
Action: Allocate to action officer  
Responsible Location: ACT GOVERNMENT SOLICITOR Due Date: 3/01/2013 at 11:31 AM This Action has been recently reassigned to you and is due to be started on 2/01/2013 at 11:31 AM. Could you please ensure that it is completed by 3/01/2013 at 11:31 AM.

Action Notes:

--  
This E-mail Message has been automatically generated by TRIM Context (JACS Production).

Ref No: 2

**Casimir, Amanda**

---

**From:** Casimir, Amanda  
**Sent:** Wednesday, 23 January 2013 2:33 PM  
**To:** Greenland, Karen  
**Subject:** Ministerial from [REDACTED] - update on progress.

Hi Karen

As discussed yesterday, I have asked GSO for a paragraph or two for inclusion in the letter, Beth McCann has been allocated the matter by Derek Kettle and is working on it. I have a rough shell of a letter based on our discussions and have asked Kerry to dig out earlier papers for me from her files.

Luke is arranging for a short extension of time.

Amanda Casimir  
Senior Manager  
Regulatory and Licensing Policy  
Justice and Community Safety Directorate  
[REDACTED]

**Casimir, Amanda**

Ref No: 3

**From:** Casimir, Amanda  
**Sent:** Wednesday, 23 January 2013 5:46 PM  
**To:** Greenland, Karen  
**Subject:** Re: Ministerial from [REDACTED] - update on progress.

I was hoping to get it done sooner than that! But one is dependent on GSO here :)

On 23/01/2013, at 5:41 PM, "Greenland, Karen" [REDACTED] wrote:

Thanks – suggest you aim to have proposed approach with MO for AG's return by week after next, given [REDACTED] threats to seek support for disallowance of regs etc.

Karen

*Karen Greenland*

Deputy Executive Director  
Legislation and Policy Branch  
Phone [REDACTED]

---

**From:** Casimir, Amanda  
**Sent:** Wednesday, 23 January 2013 2:33 PM  
**To:** Greenland, Karen  
**Subject:** Ministerial from [REDACTED] update on progress.

Hi Karen

As discussed yesterday, I have asked GSO for a paragraph or two for inclusion in the letter, Beth McCann has been allocated the matter by Derek Kettle and is working on it. I have a rough shell of a letter based on our discussions and have asked Kerry to dig out earlier papers for me from her files.

Luke is arranging for a short extension of time.

Amanda Casimir  
Senior Manager  
Regulatory and Licensing Policy  
Justice and Community Safety Directorate  
[REDACTED]

**Casimir, Amanda**

---

**From:** Casimir, Amanda  
**Sent:** Friday, 1 February 2013 2:47 PM  
**To:** Evers, Tom  
**Subject:** FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Here it is.

-----Original Message-----

**From:** Kettle, Derek  
**Sent:** Wednesday, 23 January 2013 12:02 PM  
**To:** Casimir, Amanda  
**Cc:** McCann, Beth  
**Subject:** RE: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

ACT GOVERNMENT SOLICITOR  
(see confidentiality notice below)

Dear Amanda

Thank you for your instructions.

Please note that our colleague Ms Beth McCann will assist you with acquisition of property issues.

Beth will contact you.

Regards

Derek Kettle | Manager - Government Law and Litigation | ACT Government Solicitor  
DX 5602 Canberra | D PO Box 260 Civic Square ACT 2608  
[www.actgs.act.gov.au](http://www.actgs.act.gov.au)

Ref: 621866

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

-----Original Message-----

**From:** Casimir, Amanda  
**Sent:** Wednesday, 23 January 2013 11:05 AM  
**To:** Kettle, Derek  
**Subject:** FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Hi Derek

I understand from Karen that you and she discussed this one; is GSO able to assist with a paragraph on the "acquisition of property" rights issue for inclusion in my response to [redacted]. The officer who dealt with this matter previously is away all month and the files are in archives. I have practically no background in this matter and no access to

the emails etc that have passed between those concerned, which limits my ability to develop a coherent response. I did a little work on the drafting of the regs but have no background on the rest of it including the acquisition of property arguments etc. Grateful for any assistance you can provide.

Regards

Amanda

-----Original Message-----

From: TRIM Administrator [<mailto:TrimContext@act.gov.au>]

Sent: Tuesday, 22 January 2013 3:58 PM

To: Casimir, Amanda

Subject: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Action: Allocate to action officer

Responsible Location: ACT GOVERNMENT SOLICITOR Due Date: 3/01/2013 at 11:31 AM This Action has been recently reassigned to you and is due to be started on 2/01/2013 at 11:31 AM. Could you please ensure that it is completed by 3/01/2013 at 11:31 AM.

Action Notes:

--

This E-mail Message has been automatically generated by TRIM Context (JACS Production).

Ref No: 5

**Daly, Wayne**

---

**From:** Casimir, Amanda  
**Sent:** Monday, 4 February 2013 10:34 AM  
**To:** Daly, Wayne  
**Subject:** FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

This email chain contains the request for legal advice and GSO confirmation of receipt

-----Original Message-----

**From:** Casimir, Amanda  
**Sent:** Friday, 1 February 2013 2:47 PM  
**To:** Evers, Tom  
**Subject:** FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Here it is.

-----Original Message-----

**From:** Kettle, Derek  
**Sent:** Wednesday, 23 January 2013 12:02 PM  
**To:** Casimir, Amanda  
**Cc:** McCann, Beth  
**Subject:** RE: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

ACT GOVERNMENT SOLICITOR  
(see confidentiality notice below)

Dear Amanda

Thank you for your instructions.

Please note that our colleague Ms Beth McCann will assist you with acquisition of property issues.

Beth will contact you.

Regards

Derek Kettle | Manager - Government Law and Litigation | ACT Government Solicitor  
[REDACTED] | DX 5602 Canberra | D PO Box 260 Civic Square ACT  
2008 [www.actgs.act.gov.au](http://www.actgs.act.gov.au)

Ref: 621866

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

-----Original Message-----

**From:** Casimir, Amanda  
**Sent:** Wednesday, 23 January 2013 11:05 AM

To: Kettle, Derek  
Subject: FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Hi Derek

I understand from Karen that you and she discussed this one; is GSO able to assist with a paragraph on the "acquisition of property" rights issue for inclusion in my response to [REDACTED]. The officer who dealt with this matter previously is away all month and the files are in archives. I have practically no background in this matter and no access to the emails etc that have passed between those concerned, which limits my ability to develop a coherent response. I did a little work on the drafting of the regs but have no background on the rest of it including the acquisition of property arguments etc. Grateful for any assistance you can provide.

Regards

Amanda

-----Original Message-----

From: TRIM Administrator [<mailto:TrimContext@act.gov.au>]

Sent: Tuesday, 22 January 2013 3:58 PM

To: Casimir, Amanda

Subject: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Action: Allocate to action officer

Responsible Location: ACT GOVERNMENT SOLICITOR Due Date: 3/01/2013 at 11:31 AM This Action has been recently reassigned to you and is due to be started on 2/01/2013 at 11:31 AM. Could you please ensure that it is completed by 3/01/2013 at 11:31 AM.

Action Notes:

--  
This E-mail Message has been automatically generated by TRIM Context (JACS Production).

Ref No: 6

**Daly, Wayne**

**From:** McCann, Beth  
**Sent:** Tuesday, 5 February 2013 3:09 PM  
**To:** Casimir, Amanda  
**Cc:** Daly, Wayne  
**Subject:** RE: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Dear Amanda

As per your request, the paragraph below is what we would suggest for inclusion in your response to [REDACTED]

In regards to acquisition of property issues, I do not agree with your assertion that any proprietary right of [REDACTED] has been acquired. I note the recent decision of the High Court in *JT International SA v Commonwealth of Australia; British American Tobacco Australasia Limited v The Commonwealth* [2012] HCA 43 which, in addition to confirming that the control or restriction of a right will not necessarily constitute an 'acquisition', emphasised that any interest which accrues to an entity must be proprietary in character. French CJ noted that where a right has no existence apart from statute and is of a type susceptible to modification, legislation which effects a modification of that right is not necessarily legislation with respect to an acquisition of property. Given that any 'rights' which [REDACTED] may be considered to hold as an accredited taxi network are rights of the type described by French CJ, I consider it unlikely that a Court would find these to be proprietary rights, or, in the alternative, that there has been an 'acquisition' of proprietary rights.

Regards,

Beth McCann | A/g Principal Solicitor | ACT Government Solicitor  
[REDACTED] DX 5602 Canberra | ☒ PO Box 260 Civic Square ACT 2608  
[www.act.gov.au](http://www.act.gov.au)

*This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.*

-----Original Message-----

**From:** Kettle, Derek  
**Sent:** Wednesday, 23 January 2013 12:02 PM  
**To:** Casimir, Amanda  
**Cc:** McCann, Beth  
**Subject:** RE: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

ACT GOVERNMENT SOLICITOR  
(see confidentiality notice below)

Dear Amanda

Thank you for your instructions.

Please note that our colleague Ms Beth McCann will assist you with acquisition of property issues.

Beth will contact you.

Regards

Derek Kettle | Manager - Government Law and Litigation | ACT Government Solicitor  
[REDACTED] DX 5602 Canberra | D PO Box 260 Civic Square ACT  
2608 www.actgs.act.gov.au

Ref: 621866

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

-----Original Message-----

From: Casimir, Amanda

Sent: Wednesday, 23 January 2013 11:05 AM

To: Kettle, Derek

Subject: FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Hi Derek

I understand from Karen that you and she discussed this one; is GSO able to assist with a paragraph on the "acquisition of property" rights issue for inclusion in my response to [REDACTED]. The officer who dealt with this matter previously is away all month and the files are in archives. I have practically no background in this matter and no access to the emails etc that have passed between those concerned, which limits my ability to develop a coherent response. I did a little work on the drafting of the regs but have no background on the rest of it including the acquisition of property arguments etc. Grateful for any assistance you can provide.

Regards

Amanda

-----Original Message-----

From: TRIM Administrator [mailto:TrimContext@act.gov.au]

Sent: Tuesday, 22 January 2013 3:58 PM

To: Casimir, Amanda

Subject: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Action: Allocate to action officer

Responsible Location: ACT GOVERNMENT SOLICITOR Due Date: 3/01/2013 at 11:31 AM This Action has been recently reassigned to you and is due to be started on 2/01/2013 at 11:31 AM. Could you please ensure that it is completed by 3/01/2013 at 11:31 AM.

Action Notes:

--  
This E-mail Message has been automatically generated by TRIM Context (JACS Production).

Casimir, Amanda

Ref No: 7

**From:** Casimir, Amanda  
**Sent:** Tuesday, 5 February 2013 8:30 PM  
**To:** McCann, Beth  
**Subject:** Re: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Many thanks Beth!

On 05/02/2013, at 3:09 PM, "McCann, Beth" [REDACTED] wrote:

Dear Amanda

As per your request, the paragraph below is what we would suggest for inclusion in your response to [REDACTED]

In regards to acquisition of property issues, I do not agree with your assertion that any proprietary right of [REDACTED] has been acquired. I note the recent decision of the High Court in *JT International SA v Commonwealth of Australia; British American Tobacco Australasia Limited v The Commonwealth* [2012] HCA 43 which, in addition to confirming that the control or restriction of a right will not necessarily constitute an 'acquisition', emphasised that any interest which accrues to an entity must be proprietary in character. French CJ noted that where a right has no existence apart from statute and is of a type susceptible to modification, legislation which effects a modification of that right is not necessarily legislation with respect to an acquisition of property. Given that any 'rights' which [REDACTED] may be considered to hold as an accredited taxi network are rights of the type described by French CJ, I consider it unlikely that a Court would find these to be proprietary rights, or, in the alternative, that there has been an 'acquisition' of proprietary rights.

Regards,

**Beth McCann** | A/q Principal Solicitor | ACT Government Solicitor  
[REDACTED] DX 5602 Canberra | PO Box 260 Civic Square ACT 2608  
[www.actgs.act.gov.au](http://www.actgs.act.gov.au)

*This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.*

-----Original Message-----

**From:** Kettle, Derek  
**Sent:** Wednesday, 23 January 2013 12:02 PM  
**To:** Casimir, Amanda  
**Cc:** McCann, Beth  
**Subject:** RE: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

ACT GOVERNMENT SOLICITOR  
(see confidentiality notice below)

Dear Amanda

Thank you for your instructions.

Please note that our colleague Ms Beth McCann will assist you with acquisition of property issues.

Beth will contact you.

Regards

Derek Kettle | Manager - Government Law and Litigation | ACT Government  
Solicitor [REDACTED] DX 5602 Canberra | D PO Box 260  
Civic Square ACT 2608 [www.actgs.act.gov.au](http://www.actgs.act.gov.au)

Ref: 621866

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

-----Original Message-----

From: Casimir, Amanda

Sent: Wednesday, 23 January 2013 11:05 AM

To: Kettle, Derek

Subject: FW: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Hi Derek

I understand from Karen that you and she discussed this one; is GSO able to assist with a paragraph on the "acquisition of property" rights issue for inclusion in my response to [REDACTED]. The officer who dealt with this matter previously is away all month and the files are in archives. I have practically no background in this matter and no access to the emails etc that have passed between those concerned, which limits my ability to develop a coherent response. I did a little work on the drafting of the regs but have no background on the rest of it including the acquisition of property arguments etc. Grateful for any assistance you can provide.

Regards

Amanda

-----Original Message-----

From: TRIM Administrator [mailto:TrimContext@act.gov.au]

Sent: Tuesday, 22 January 2013 3:58 PM

To: Casimir, Amanda

Subject: TRIM Context Notification - Action Reassigned. Allocate to action officer - MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

MIN:2012/003466 - Wheelchair accessible taxi booking service regulation

Action: Allocate to action officer

Responsible Location: ACT GOVERNMENT SOLICITOR Due Date: 3/01/2013 at 11:31 AM

This Action has been recently reassigned to you and is due to be started on

2/01/2013 at 11:31 AM. Could you please ensure that it is completed by  
3/01/2013 at 11:31 AM.

Action Notes:

--

This E-mail Message has been automatically generated by TRIM Context (JACS  
Production).



UNCLASSIFIED

TRIM No.: 2013/3466
Date Rec'd Minister's Office .../.../...

To: Attorney-General

From: Executive Director, Legislation and Policy Branch

Subject: Wheelchair Accessible Taxi Centralised Booking Service (WCBS) Regulation

Critical Date: 13 /02/2013

Aerial's legal advisor has requested withdrawal of the WCBS regulation from the Legislative Assembly before the disallowance period expires on 14/2/2013

- DG (JACS) .../.../...
- DDG .../.../...

**Recommendation**

- That you:
  - note advice from the ACT Government Solicitor (ACTGS) which refutes the basis of the claim by [redacted] legal representative that the regulation currently tabled in the Legislative Assembly, which provides the legal framework for a Wheelchair Accessible Taxi (WAT) Centralised Booking Service (WCBS), is invalid and should be withdrawn;
  - agree that, based on the advice from ACTGS, there is no basis to move a motion in the Legislative Assembly to disallow the regulation; and
  - sign the letter declining the request to withdraw the regulation at Attachment C.

**Background**

- [redacted] acting on behalf of [redacted] has written to you and Ministers Burch and Rattenbury (Attachment A) requesting that the *Road Transport (Public Passenger Services) Amendment Regulation 2012*, (the regulation) which was tabled in the Legislative Assembly on 6 November 2012, be withdrawn on the basis that the regulation compulsorily transfers part of Aerial's statutory rights to the WCBS operator without due compensation.

**Issues**

- ACTGS has considered the argument put forward by [redacted] and does not agree with the assertion that proprietary rights of [redacted] have been acquired. The advice, which is set out in Attachment B, also suggests that it is unlikely that a court would find that there has been an acquisition of proprietary rights.
- On the basis of the ACTGS advice, the request by [redacted] for the withdrawal of the regulation from the Legislative Assembly should be disregarded.

**Financial Implications**

- There are no financial implications associated with this issue.

**Internal Consultation**

- Legal advice has been provided by the ACT Government Solicitor on this matter.

**External Consultation**

- Not appropriate in relation to this matter.

**Consultation with CMTD**

Choose an item.

8. Not relevant for this matter.

**Benefits/Sensitivities**

9. The WCBS has been in operation since 10 December 2012. Feedback from WAT users has been very positive, particularly in relation to the reliability and punctuality of the service.

**Media Implications**

10. At this time, [redacted] has not gone to the media about this issue. Should [redacted] go to the media, talking points can be provided.

Julie Field

6 February 2013



Action Officer Wayne Daly

Phone: [redacted]

AGREED/NOT AGREED/NOTED/DISCUSS

Simon Corbell MLA ...../...../.....

---

**Performance Assessment**

- Satisfactory
  - Unsatisfactory
-



Our Ref: CMC:BT:12560

20 December 2012

Mr Simon Corbell, MLA  
Attorney General  
ACT Legislative Assembly  
By email: [corbell@act.gov.au](mailto:corbell@act.gov.au)

AND


Ms Joy Burch, MLA  
Minister for Disability  
ACT Legislative Assembly  
By email: [burch@act.gov.au](mailto:burch@act.gov.au)

AND

Mr Shane Rattenbury, MLA  
Minister for Territory and Municipal Services  
ACT Legislative Assembly  
By email: [rattenbury@act.gov.au](mailto:rattenbury@act.gov.au)


Dear Ms Burch and Mr Corbell and Mr Rattenbury

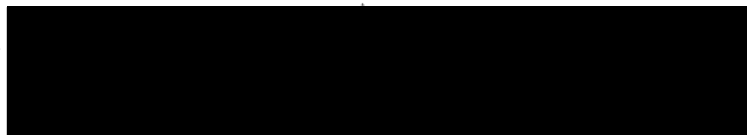
**ROAD TRANSPORT (PUBLIC PASSENGER SERVICES) AMENDMENT  
REGULATION 2012 (No 2) (ACT)**

We act on behalf of 

On 23 November 2012 we wrote to Mr Corbell expressing our client's concerns that the *Road Transport (Public Passenger Services) Amendment Regulation 2012 (No 2)* ("the Amendment Regulations") were impractical and inappropriate. A copy of that letter is **attached** for your ease of reference.

However, we must now write to you, as the relevant Ministers of the ACT Government, and indicate that the Amendment Regulations are invalid. Specifically, the Amendment Regulations contravene section 23 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

You will be aware that prior to the Amendment Regulations coming into effect on 11 September 2012, the right to operate a taxi booking service was a right exclusively conferred on accredited taxi networks. That right was a valuable one held by both  and Cabxpress. That right, like certain other statutory rights, would be recognised as property under section 23 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).



The Amendment Regulations now seek to greatly interfere with an accredited taxi network's rights by:

- (a) preventing accredited taxi networks from exercising part of the rights previously granted to them, namely the right to operate a taxi booking service with respect to customers requiring wheelchair-accessible taxis;
- (b) giving a new entrant, the WCBS operator, that right on an exclusive basis; and
- (c) requiring accredited taxi networks to assist the WCBS operator in managing its newly acquired exclusive right by, for example, compelling taxi networks to direct wheelchair-accessible taxi bookings to the WCBS operator.

The result is analogous to the compulsory transfer of part of [REDACTED] statutory rights to the new WCBS operator. The compulsory transfer of statutory rights is an example of an interference which would amount to an acquisition of property: *Commonwealth v WMC Resources* (1998) 194 CLR 1, [79]. That acquisition, occurring without compensation, is clearly made on other than just terms.

For these reasons, the Amendment Regulations are in contravention of the limits on the powers of the Territory to make laws as set out in section 23 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth). As a consequence, the Amendment Regulations are invalid.

The Amendment Regulations are presently tabled before the Legislative Assembly. We request that the ACT Government repeal the Amendment Regulations and open a dialogue with the taxi networks, namely [REDACTED] and the [REDACTED] to identify and implement a lawful, practical and just solution for the management of wheelchair-accessible taxi services in the Territory.

We kindly request that the ACT Government confirm its willingness to withdraw the Amendment Regulations, and participate in the dialogues described above, by **close of business on 18 January 2013**.

We await your confirmation.

Yours faithfully

[REDACTED]

## ATTACHMENT B

### ACTGS advice on issues raised by [REDACTED]

In regards to acquisition of property issues, I do not agree with your assertion that any proprietary right of [REDACTED] has been acquired. I note the recent decision of the High Court in *JT International SA v Commonwealth of Australia; British American Tobacco Australasia Limited v The Commonwealth* [2012] HCA 43 which, in addition to confirming that the control or restriction of a right will not necessarily constitute an 'acquisition', emphasised that any interest which accrues to an entity must be proprietary in character. French CJ noted that where a right has no existence apart from statute and is of a type susceptible to modification, legislation which effects a modification of that right is not necessarily legislation with respect to an acquisition of property. Given that any 'rights' which [REDACTED] may be considered to hold as an accredited taxi network are rights of the type described by French CJ, I consider it unlikely that a Court would find these to be proprietary rights, or, in the alternative, that there has been an 'acquisition' of proprietary rights.



## Simon Corbell mla

ATTORNEY-GENERAL  
MINISTER FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT  
MINISTER FOR POLICE AND EMERGENCY SERVICES  
MINISTER FOR WORKPLACE SAFETY AND INDUSTRIAL RELATIONS

Member for Molonglo

[REDACTED]  
GPO Box 1789  
CANBERRA ACT 2601

Dear [REDACTED]

Thank you for your letter of 20 December 2012 regarding your client's concerns about the validity of the *Road Transport (Public Passenger Services) Amendment Regulation 2012 (No 2)* (the regulation). I apologise for the delay in responding to you.

Your letter sought the disallowance of the regulation on the basis that its effect, in establishing a centralised wheelchair accessible taxi booking service, amounted to an acquisition of property belonging to your clients, without compensation on just terms.

With respect to the issue of whether there has been an acquisition of property rights, I am advised that there is no basis to support an assertion that any proprietary right of [REDACTED] has been acquired as a result of the scheme established by the regulation. I am advised that the recent decision of the High Court in *JT International SA v Commonwealth of Australia; British American Tobacco Australasia Limited v The Commonwealth* [2012] HCA 43 which, in addition to confirming that the control or restriction of a right will not necessarily constitute an 'acquisition', emphasised that any interest which accrues to an entity must be proprietary in character. I am further advised that in that case, French CJ noted that where a right has no existence apart from statute and is of a type susceptible to modification, legislation which effects a modification of that right is not necessarily legislation with respect to an acquisition of property.

For that reason, given that any 'rights' which [REDACTED] may be considered to hold as an accredited taxi network are rights of the type described by French CJ, I am advised that it is unlikely that a Court would find these to be proprietary rights, or, in the alternative, that there has been an 'acquisition' of proprietary rights.

Given this assessment, there would appear to be no basis to accede to your request that I move to disallow the regulation

ACT Legislative Assembly

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0000 Fax (02) 6205 0535

Email [corbell@act.gov.au](mailto:corbell@act.gov.au) Twitter @SimonCorbell Facebook [www.facebook.com/simon.corbell](http://www.facebook.com/simon.corbell)

**100**  
CANBERRA

Thank you for bringing this matter to my attention. I hope that this information is of assistance.

Yours sincerely

Simon Corbell MLA  
Attorney-General



Ref No: 9

## Simon Corbell MLA

ATTORNEY-GENERAL  
MINISTER FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT  
MINISTER FOR POLICE AND EMERGENCY SERVICES  
MINISTER FOR WORKPLACE SAFETY AND INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

[REDACTED]  
GPO Box 1789  
CANBERRA ACT 2601

Dear [REDACTED]

Thank you for your letter of 20 December 2012 regarding your client's concerns about the validity of the *Road Transport (Public Passenger Services) Amendment Regulation 2012 (No 2)* (the regulation). I apologise for the delay in responding to you.

Your letter sought the disallowance of the regulation on the basis that its effect, in establishing a centralised wheelchair accessible taxi booking service, amounted to an acquisition of property belonging to your clients, without compensation on just terms.

With respect to the issue of whether there has been an acquisition of property rights, I am advised that there is no basis to support an assertion that any proprietary right of [REDACTED] has been acquired as a result of the scheme established by the regulation. I am advised that the recent decision of the High Court in *JT International SA v Commonwealth of Australia; British American Tobacco Australasia Limited v The Commonwealth* [2012] HCA 43 which, in addition to confirming that the control or restriction of a right will not necessarily constitute an 'acquisition', emphasised that any interest which accrues to an entity must be proprietary in character. I am further advised that in that case, French CJ noted that where a right has no existence apart from statute and is of a type susceptible to modification, legislation which effects a modification of that right is not necessarily legislation with respect to an acquisition of property.

For that reason, given that any 'rights' which [REDACTED] may be considered to hold as an accredited taxi network are rights of the type described by French CJ, I am advised that it is unlikely that a Court would find these to be proprietary rights, or, in the alternative, that there has been an 'acquisition' of proprietary rights.

Given this assessment, there would appear to be no basis to accede to your request that I move to disallow the regulation.

### ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

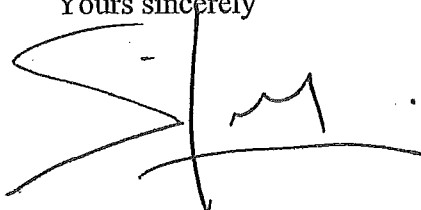
Phone (02) 6205 0000 Fax (02) 6205 0535

Email [corbell@act.gov.au](mailto:corbell@act.gov.au) Twitter @SimonCorbell Facebook [www.facebook.com/simon.corbell](http://www.facebook.com/simon.corbell)

**100**  
CANBERRA

Thank you for bringing this matter to my attention. I hope that this information is of assistance.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a vertical line and a smaller, more complex scribble.

Simon Corbell MLA  
Attorney-General

18.2.13