

**2012**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

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

**SUBORDINATE LAW SL2012 -37**

**EXPLANATORY STATEMENT**

Presented by  
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## OVERVIEW

This Regulation is made under the *Road Transport (Public Passenger Services) Act 2001*, particularly section 128 of the Act. The consequential amendments to the *Road Transport (Offences) Regulation 2005* are made under section 233 of the *Road Transport (General) Act 1999*.

The Regulation gives effect to the Government's decision to establish a Wheelchair-Accessible Taxi Centralised Booking Service (WCBS) to improve the current level of service to wheelchair-accessible taxi (WAT) users.

The establishment of a WCBS was a recommendation of the 2010 ACT Taxi Review. A Regulatory Impact Statement (RIS) was undertaken as part of that Review. The RIS concluded a WAT management model approach based on the Adelaide arrangement would be preferable. That model requires all WAT jobs to be handled through a single booking service and provides small incentive payments to drivers. The booking service is required to meet agreed performance targets. It is believed that the adoption of this model will address the accessibility and improved service performance objectives of the Review.

A strong element of management and monitoring of WAT bookings is considered crucial to achieve improved accessibility and service outcomes for people who rely on WATs for their transport needs. To achieve this, the Regulation provides the following as key features for a WCBS:

- All WAT booking requests must be processed by the WCBS operator;
- As a means of achieving a more responsive WAT service, an obligation is placed on the WCBS operator to direct a WAT driver to accept a WAT booking where the driver has not initially accepted an offer of a booking even though that driver was available for the job;
- The WCBS operator will provide customers with an estimated time when their booked WAT will arrive;
- A WAT operator must install communication equipment in the operator's taxi to enable the taxi driver to communicate with the WCBS;
- WAT operators and drivers are required to comply with WCBS procedures and rules, which may include such matters as proper use of communications equipment, peak hour and off-peak rostering arrangements, taxi subsidy scheme voucher processing and procedures for on-time bonus payments.

In order to provide a WAT booking service, the WCBS operator must enter into a service contract with the Territory. The service contract will encompass matters concerning the operation of the WCBS and administration of the contract.

When a WCBS is operating in the Territory, accredited taxi network providers must direct all bookings for a WAT to the WCBS. If there is no WCBS in operation, the accredited taxi network providers will accept and dispatch WAT bookings to drivers of WATs whose operators are affiliated with their network.

The WCBS does not perform the functions of an accredited taxi network provider and is restricted to accepting bookings for WATs for wheelchair dependent people.

The Regulation clarifies that a WCBS does not include an accredited taxi network provider's booking service.

Further points of differentiation between an accredited taxi network provider and the WCBS are that a provider of a standard taxi network booking service cannot operate without first being accredited. By contrast, a WCBS operator is exempt from the requirement to hold accreditation as a taxi network but cannot provide a WAT booking service without first entering into a service contract with the Territory. Furthermore, a accredited taxi network has taxi operators affiliated with it, whereas the WCBS does not have affiliations with taxi operators.

## **Notes on Clauses**

### **Clause 1      Name of Regulation**

This is a formal provision that sets out the name of the Regulation.

### **Clause 2      Commencement**

This is a formal provision that provides that the Regulation commences on the day after its notification day.

A note to the clause clarifies that the naming and commencement provisions automatically commence on the notification by virtue of section 75 (1) of the *Legislation Act*.

### **Clause 3      Legislation amended**

This clause explains that the amendments apply to the *Road Transport (Public Passenger Services) Regulation 2002*. The regulation also amends the *Road Transport (Offences) Regulation 2005*.

### **Clause 4      Offences against regulation - application of the Criminal Code etc. Section 4A, note 1**

This clause amends section 4A to explain the application of the *Criminal Code 2002* to certain new offences created by this amendment regulation.

### **Clause 5      Sections 74 and 75**

Under current arrangements, accredited taxi network providers receive wheelchair-accessible taxi (WAT) bookings and dispatch the jobs to affiliated WATs. A driver must not refuse to accept a booking if the driver is available for hire at that time. Existing sections 74 and 75 place obligations on accredited taxi network providers to direct a taxi driver to accept a taxi booking made by a wheelchair dependent person and to advise the person who makes the booking of the estimated time of arrival of the taxi.

This clause replaces these sections with new sections 74, 74A, 74B and 75 to reflect that, when a WCBS is operating, particular obligations apply to both the WCBS operator and the accredited taxi network provider's taxi booking service in relation to WAT bookings.

New section 74 provides that an accredited taxi network provider's taxi booking service commits an offence if it fails, without delay, to direct a WAT booking request to a WCBS operating in the Territory. The offence is one of strict liability.

Strict liability is applied to the offence in section 74 and other offences relating to the delivery of WAT services. While strict liability offences are seen as a limitation of the right in section 22 (1) of the *Human Rights Act 2004* (the HRA) relating to the presumption of innocence, it is recognised that this right may be subject to reasonable limitations for the purposes of section 28 of that Act. Strict liability has traditionally been an element of offences (whether created before or after the enactment of the HRA) that are part of regulatory or occupational licensing schemes, where the offence concerned involves a failure to comply with a statutory duty or a licensing condition, or a failure to undertake some action that is necessary to achieve a public benefit or protect public safety.

In the context of the strict liability offences relating to the WCBS scheme, the use of strict liability offence is considered to be a reasonable limitation of the right in section 22 (1) of the HRA, for the purpose of section 28 of the HRA, because of the public importance in ensuring that people with a disability who rely on WAT vehicles as their principle transport mode have access to a safe, reliable, efficient taxi service.

There are defences available in relation to strict liability offences, which include (but are not limited to) the defences of mistake of fact and intervening conduct or event.

New section 74A provides that a WCBS operator commits a strict liability offence if it does not direct a WAT driver to accept a booking, where the driver has refused to accept the booking although being available for hire at that time. A note to this section explains that a WAT driver commits an offence if the driver is available for hire and refuses to comply with a direction from a booking service to accept a booking.

New section 74B provides that if there is no WCBS operating in the Territory and a person makes a booking for a WAT with an accredited taxi network provider's taxi booking service, the accredited taxi network provider commits an offence if the accredited taxi network provider's taxi booking service does not, without delay, direct a WAT driver to accept a booking where the driver has refused to accept the booking although being available for hire. Strict liability attaches to this offence.

A note to this section explains that a WAT driver commits an offence if the driver is available for hire and refuses to comply with a direction from a booking service to accept the booking.

New section 75(1) provides that a WCBS operator commits a strict liability offence if the WCBS fails to advise the person, without delay, the estimated arrival time at the place where the taxi is to pick up the person who has booked the WAT. If a WCBS is not operating in the Territory, a person will book a WAT through an accredited taxi network provider's taxi booking service. Section 75(2) provides that in such a circumstance, the accredited taxi network provider commits a strict liability offence if the accredited taxi network provider's taxi booking service fails to advise, without

delay, the estimated arrival time at the place where the taxi is to pick up the person who has booked the WAT.

There is a note in the section directing the reader to section 154I for the definition of a WCBS and another which directs the reader to the dictionary for the meaning of ‘accredited taxi network provider’s taxi booking service’. A further note to the section draws the reader’s attention to the requirements of section 74 of the regulation.

**Clause 6      New Section 101A**

This section provides that, where a WCBS is operating in the Territory, a WAT operator commits a strict liability offence if the operator fails to have taxi hiring arrangements in place with the WCBS operator. It is also an offence if the taxi operator also fails to have equipment in the WAT which enables the driver communicate with the WCBS. Effective communication between drivers and the WCBS is essential for the operation of the scheme.

**Clause 7      Special responsibilities of wheelchair-accessible taxi drivers  
Section 114 (2) and (3)**

This clause omits the word ‘network’ from the phrase ‘network booking service’ in section 114 (2). This amendment is consequential on the amendment to the definition of ‘network booking service’ made by clause 9.

This clause also omits the word ‘network’ from the term ‘network booking service’ in section 114 (3). This amendment is consequential on the amendment to the definition of ‘network booking service’ made by clause 9.

**Clause 8      Section 114 (3) note**

This clause inserts a revised note to section 114 which states that if a WAT driver refuses a booking, the WCBS or the accredited taxi network provider’s taxi booking service must direct the driver to accept the booking.

**Clause 9      Section 114 (4), definition of *network booking service***

This clause replaces the definition of ‘network booking service’ with ‘booking service’ to clarify which entity provides a booking service to WAT drivers in stated circumstances.

**Clause 10      New sections 125A and 125B**

This clause inserts new sections 125A and 125B. New section 125A provides for the road transport authority to approve WCBS procedures for communicating with taxi drivers using their communication equipment, and to approve the WCBS rules for drivers of WAT vehicles who accept a booking from the WCBS. The approval of WCBS procedures and WCBS rules is a notifiable instrument.

New section 125B provides that where a WCBS is operating in the Territory, a strict liability offence is committed by a driver who fails to follow approved WCBS procedures provided to the driver by the WCBS operator in the use of equipment to send and receive messages from the WCBS. It is also a strict liability offence for a WAT driver to fail to comply with approved WCBS rules.

**Clause 11      Requirements about acceptance of taxi hirings**  
**Section 129 (6)**

This clause substitutes an amended meaning of the term *hiring*. The amended meaning of this concept includes a hiring booked through a WCBS.

**Clause 12      New Division 4.3.4B**

This clause inserts new Division 4.3.4B, consisting of new sections 154I to 154N..

New section 154I defines the concept of *wheelchair-accessible taxi centralised booking service* (WCBS). It explains that a WCBS does not include an accredited taxi network provider's taxi booking service. A note to the section directs the reader to the dictionary for the definition of *accredited taxi network provider's taxi booking service*.

New section 154J provides that the road transport authority may approve minimum service standards which relate to the safe, reliable or efficient operation of a WCBS. Examples are provided of matters that could be included in the minimum service standards (noting that the examples are not exhaustive). An approval under this section is a disallowable instrument.

New section 154K provides that the Territory may enter into a contract for the operation of a WCBS, which may include an exclusive right to operate the service.

This section set out the matters which the service contract may require of the WCBS operator in the operation and administration of the contract. Again, the matters listed are not exhaustive.

New section 154L provides that in order to operate a WCBS in the Territory, a person must hold a service contract for the service.

New section 154M provides that it is a strict liability offence for a person to operate a WCBS in the Territory if the person is not entitled to operate such a service.

New section 154N is the provision that allows for the exemption of the WCBS from the requirement to be an accredited taxi network provider, when it undertakes taxi booking services in relation to WATs.

Ordinarily, the provision of taxi booking services is a function that is undertaken by an accredited taxi network provider. The creation of a WCBS introduces an additional entity in the Territory which may provide a taxi booking service, albeit for a particular taxi user group. However, as the WCBS is not intended to undertake any other functions ordinarily associated with accredited taxi network providers, it is not considered appropriate that it operate or be established as an ordinary accredited network provider. Instead, the WCBS is created as a distinct category of entity.

To achieve this outcome, new section 154N provides that the road transport authority may, under section 128 (1) (b) of the Act, exempt a WCBS operator from certain provisions of the *Road Transport (Public Passenger Services) Act 2001* from the requirement to be accredited to operate a taxi network and exempts a WCBS from

committing an offence if operating without such an entitlement. The exemption applies only if the WCBS operator does not breach the service contract and complies with any minimum service standards that may apply. The note to section 154N (2) explains that the exemption may specify other conditions.

New sections (3) and (4) explain how an exemption may be terminated by the road transport authority.

New section 154N (5) makes it clear that a WCBS is not an accredited taxi network provider's booking service. While there are some similarities in the operation of a WCBS and an accredited taxi network, there are significant differences in the requirements which apply to these entities. For example, a prospective taxi network provider must satisfy specific requirements before achieving accreditation under the regulation to operate a taxi network. Once accredited, the person may provide a taxi network booking service and accept applications for affiliation from and maintain affiliation with, accredited taxi service operators. A WCBS may only deal with bookings for WATs for wheelchair dependent people and is not entitled to enter into affiliation arrangements with accredited taxi service operators.

**Clause 13 Dictionary, note 3, new dot point**

This clause inserts a new dot point into note 3 of the dictionary. Note 3 lists terms that have the same meaning in the Regulation as they have in the Act. The amendment includes a reference to the term 'taxi booking service'.

**Clause 14 Dictionary, new definition of *accredited taxi network provider's taxi booking service***

This clause inserts a new definition into the dictionary of *accredited taxi network provider's taxi booking service*.

**Clause 15 Dictionary, definition of *approved minimum service standards***

This clause substitutes an amended definition of *approved minimum service standards* into the dictionary.

**Clause 16 Dictionary, new definitions**

This clause inserts new definitions into the dictionary of the following terms: *service contract*; *WCBS*; *WCBS operator*; *WCBS's approved procedures*; *WCBS's approved rules*; and *wheelchair accessible taxi centralised booking service (WCBS)*.

**Schedule 1 Consequential Amendments**

Schedule 1 to the *Road Transport (Offences) Regulation 2005* is updated with consequential amendments arising from this amending regulation, to update existing offences and include references to new offences inserted by this regulation.