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AUSTRALIAN CAPITAL TERRITORY DISCRIMINATION TRIBUNAL

CITATION: **CROWLEY AND CANBERRA CABS LIMITED, 1ST RESPONDENT, AERIAL TAXI CABS CO-OPERATIVE LTD now incorporated as AERIAL CONSOLIDATED TRANSPORT LIMITED, 2ND RESPODENT [2006] ACTDT 4 (2 NOVEMBER 2006)**

DT05/550

Catchwords: Discrimination in the provision of services – taxi call centre – allegation lacking in substance – joinder of party

Discrimination Act 1991, ss 7, 8, 20, 87
Road Transport (Public Passenger Services) Regulation 2002, 74, 82A

Allan (Royce) Harrison –v- ACT Housing [2002] ACTDT 3 (28 May 2002)
Judith Edgley –v –Federal Capital Press of Australia Pty Limited [1999] ACTSC 95 (1 October 1999)

Tribunal: Mr G C Lalor, Deputy President

Date: 1 November 2006

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AUSTRALIAN CAPITAL TERRITORY)
DISCRIMINATION TRIBUNAL) NO: DT05/550

RE: **KEITH CROWLEY on behalf of JONATHAN CROWLEY**
Complainant

AND: **CANBERRA CABS LIMITED**
1ST Respondent

AND: **AERIAL TAXI CABS CO-OPERATIVE LTD now incorporated as AERIAL CONSOLIDATED TRANSPORT LIMITED**
2nd Respondent

ORDER

Tribunal : Mr G Lalor, Deputy President

Date : 2 November 2006

Order :

The Tribunal is not satisfied, after completing a hearing, that the complainant's complaints have been substantiated.

THE TRIBUNAL ORDERS, pursuant to section 102(2)(a)(ii) of the Discrimination Act 1991, that the complaint be dismissed.

.....
Deputy President

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AUSTRALIAN CAPITAL TERRITORY)
DISCRIMINATION TRIBUNAL) NO: DT05/550

RE: **KEITH CROWLEY**
on behalf of
JONATHAN CROWLEY
Complainant

AND: **CANBERRA CABS LIMITED**
First Respondent

AND: **AERIAL TAXI CABS CO-OPERATIVE LIMITED now incorporated as AERIAL CONSOLIDATED TRANSPORT LIMITED**
Second Respondent

REASONS

2 November 2006 Mr G C Lalor, Deputy President

1. At the request of the complainant dated 3 October 2005 the ACT Human Rights and Discrimination Commissioner referred his complaint against the first respondent to the Discrimination Tribunal. This referral was pursuant to Section 87 of the *Discrimination Act 1991* (the Act) which provides:

   "If a complainant notified in accordance with section 81(3) or section 86(1) or (2) requires the commissioner to refer a complaint to the tribunal, the commissioner must refer the complaint and shall notify the other parties of the referral."

2. The documents forwarded to the Tribunal by the Commissioner ("the T documents") were put in evidence by consent at the hearing of this matter.

The complaint

3. The complainant in this matter is the father of his quadriplegic son and he brings this complaint on behalf of his son. The initial complaint to the Commissioner was a complaint on the grounds of his son's *"disability, relationship status, religious conviction, sex and sexuality in the area of 'provision of goods, services or facilities' with Canberra Cabs"* (Letter of Commissioner to the complainant of 24 September 2004). The complaints on the ground of relationship status, religious conviction, sex and sexuality were declined under the Act as lacking in substance.

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4. The Commissioner wrote to the complainant on 24 September 2004 and stated:

> *"In your complaint you tell me 'Canberra Cabs have not been able to fulfil their responsibilities towards Jonathan (your son) as a wheelchair bound quadriplegic.' You further tell me* 'Jonathan as a 36 year old male has one night out per week and once a month.' *You assert,* '(You) know that the Canberra Cabs have more than sufficient wheelchair cabs but make no effort to ensure that these cabs provide the transport for which they are designed and registered. (You) believe that their (Canberra Cabs) nonchalant attitude toward him (your son) constitutes discrimination against him as they are fully aware that he is a quadriplegic totally dependent on Canberra Cabs for transport as he is physically unable to board a normal vehicle."

5. On the hearing of this matter the complaint was refined with the consent of the respondents' solicitor to be, in essence, that the respondent, as the provider of a call centre for the public to request a taxi service and the provider of a dispatch system to fulfil those requests, discriminated against Jonathan Crowley on the evening of 10 into 11 July 2004 in not providing him with the same service provided to citizens with no disabilities.

The respondent

6. It became apparent during the hearing of this matter that the named respondent, Canberra Cabs Pty Limited, was not the company providing the service to the community and the taxi owners at the relevant time. The Solicitor for Canberra Cabs Pty Limited and Aerial Consolidated Transport Limited and Aerial Taxi Cabs Co-operative Limited indicated that there was no objection to joining a further respondent being "Aerial Taxi Cabs Co-operative Limited now incorporated as Aerial Consolidated Transport Limited". I gave leave to do so and at the conclusion of the hearing for the day I caused notice to be given to that company to be joined in accord with Section 106 of the Act.

7. This application has enabled the matter to proceed to the hearing of the substance of the complaint and the conduct of the second named respondent has appropriately and commendably assisted the legally unrepresented complainant in this.

The complainant's evidence.

8. As I have indicated the T documents were tendered as evidence. In essence, as far as this complaint is concerned, they show that on the evening of 10 July 2004 Mr Jonathan Crowley rang and booked a Wheelchair Access Taxi (WAT) to take him from his place of residence in Lazar Place, Chapman, with the destination being the Weston Creek Labor Club. This was a distance of approximately one kilometre. The booking was made at 9.19pm and the dispatcher was unable to find a suitable WAT until 10.01pm and the passenger (Jonathan) was picked up at 10.18pm.

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9. The return booking was made from the Club at 12.24.58 on the morning of 11 July 2004 and Jonathan was not picked up until 1.55am and then delivered him to his residence at 2.12am.

10. The T documents contain a statement from three employees of the Weston Creek Labor Club who stated that at 12.15am on Saturday 12 July 2004 a telephone call was made for a taxi to collect Jonathan and his father

> "*and we continued to make at least three other calls until 2.00am. We waited with Jonathan and his father as the security guard was anxious to lock the premises but waited when it was explained that if Jonathan, a quadriplegic, was required to wait outside in the wet, bitterly cold weather a medical emergency would occur. A wheelchair taxi arrived shortly after 2.00am. We also affirm that two normal cabs arrive (sic) within five minutes of being called for able bodied members.*"

11. Although it was not mentioned by either party, I am prepared to accept that the date mentioned in this statement is incorrect.

12. Mr Rodney Bruce McIntosh gave evidence that he was a taxi driver who was on duty on the evening of Saturday 10 into the early morning of Sunday 11 July 2004 driving WAT 925. He stated that he was contacted by an off duty driver who asked if he could take Jonathan from Weston to Chapman. At the time he was in the Ainslie area. He contacted the dispatcher and accepted the booking. He acknowledged that it was a very busy night and that the "s*creen was full of jobs.*" He said that he could not think of a reason for the dispatcher not contacting him about the booking through the voice contact facility available to him at the time. In cross-examination he conceded that he had not been aware of the availability of the booking and that he was pre-occupied on the "*other side of town*". He also conceded that as a WAT driver it was common to receive bookings directly from a passenger, but that it was his practice to advise the dispatcher of all bookings so made.

13. Mr Leslie John Wassall gave evidence that he had been operating WATs for fourteen years and had been in the taxi industry for 21 years. In his view, the dispatch system operated by the second named respondent company for WATs was "*inadequate, inefficient and unacceptable*". The acceptable accreditation standard for the completion of bookings for non-WAT users is 85% of all bookings are to be filled within ten minutes of receipt. This standard is generally met. The same standard is applied to the WAT service and is found to be never met. Mr Wassall attributed this principally to the rejection of the system he had introduced when he effectively controlled the dispatch of WAT vehicles. This system was operated in conjunction with "*Canberra Cabs*" and meant that pre-booked requests were given to him usually by 7:00am the day of the requested service and they were allocated in a considered, methodical way, taking into account the geographical locations of the bookings. It was said that this lead to certainty and the provision of an appropriate service. The number of pre-booked requests generally was approximately 80% of total bookings. He admitted that there were some delays in the filling of "*immediate bookings*", but that prolonged delays did not occur, as there was direct contact with the individual drivers of WATs.

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14. This system, which Mr Wassall called "Micro Management", was altered in 2001 when the second named respondent, or its corporate predecessor, brought the requests for WAT bookings within the same system as that for non-WATs. In essence, if there is an advance booking, the request is sent out through the computer system to individual taxis. In the case of a WAT, this is generally posted on the computer an hour before the booking is due.

15. Mr Wassall was of the view that, because of the inefficient, haphazard system, more than one half of the WAT operators have *"gone broke"*. He said in cross-examination that the respondent had the power to enforce the conditions applicable to the grant of a WAT licence through the provisions of the *Road Transport (Public Passenger Services) Regulation 2002* and its own by-laws. A condition on the grant of a WAT licence is that priority for the hiring of the WAT is to be given to wheelchair-dependent people. A driver of such a vehicle who does not accept a booking must be directed to do so by the dispatcher.

16. Mr Wassall said in cross-examination that there was no requirement for bookings for WATs to be made through the second named respondent's booking and dispatch service. He said that he had plans to commence his own taxi network and was awaiting approval from the authorities.

17. The only other witness called by the complainant was Ms Maree Frances Wright, who was herself a WAT user, suffering from cerebral palsy. She said that there was a dedicated telephone line for use by WAT users and that she had been under the impression that the second named respondent was going to ensure that there was a dedicated operator for that line. She said that this had not happened and it caused some frustration and delay as operators who did not know the users and their special requirements took longer to arrange such bookings. Ms Wright also gave evidence of an incident on the morning of 25 July 2006 when she rang and requested a WAT. She was asked whether she was attending a prearranged appointment and, when she replied that she was not, she was asked whether she could put her request for a WAT to a later time as it was raining and WAT operators were transporting other passengers to work. This is unacceptable conduct.

18. Ms Wright indicated another problem she encountered with the second named respondent's system of dispatch related to the type of vehicle sent to fill her request for a WAT. Her wheelchair was bulky and was unable to fit into some WATs. Occasionally an inappropriate vehicle was sent to collect her. She acknowledged in cross-examination that she rang directly to a WAT driver, bypassing the respondent's service approximately 50% of the time. She said she did so *"I guess because I know that I am going to get a cab I can fit my chair into"*. She said another reason for doing so was that she could be assured that she would get a WAT on time.

19. Further evidence, being statements from the T documents, showed instances of prolonged delays in the provision of a WAT for Jonathan over a period of time. These also indicated that such delays caused embarrassment and a threat of increase to his already significant health problems. A further statement from the Acting President of People with Disabilities ACT (Inc) outlined complaints received from WAT users over several years.

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The respondent's evidence.

20. Mr Lachlan Carl Phillips, the Business Development Manager for the second named respondent, gave sworn evidence. He said that, in July 2004, the call centre was operated by Idispatch ACT, which was a company half owned by Aerial Taxi Cabs Co-operative Limited and half by Sigtec, a Victorian company. He said that in 2004 there were 26 WAT plates that had been issued, four of which had been handed back to the Department of Urban Services and presently there were eighteen such vehicles in operation. The WAT plates were a specific series, being the TX900 series. Such vehicles were strictly regulated. For example they had to have provision for the transport of two wheelchair-using passengers and they had to have hoists. There were two types of hoist, a generic type and a Tieman hoist, which was stronger than the others. There were approximately 248 non-WAT licences issued at the present time in the ACT.

21. Mr Phillips said that, in terms of operations within the respondent company, requests from WAT users and non-WAT users were treated equally, but were treated differently in the distribution of work from the call centre. There was, and had been prior to July 2004, a dedicated line for WAT users. This was staffed by a dispatcher from 7:00am until 3:00pm daily and another from 3:00pm until 7:00pm. Outside those hours, and at the weekend, that line was serviced by the Shift Operator or, if that person was not available, by the general operator. Such staff received specialized training in the needs of WAT users. This training and service was not available for persons supplying services to non-WAT users.

22. Mr Phillips indicated that there were a significant number of permanent bookings in the system and the dispatcher attempted to set up "runs", but if a booking did not fit into a particular "run", it was entered into the general system and came onto the screen in taxis approximately 40 to 50 minutes from the time required. If the booking was not taken up, it would come up onto the screen ten minutes prior to the requested booked time. At that time the computer would look for a car in the area of the "pick up" and the fare offered to that taxi. The search for a car in the area commences at a distance within 500 metres of the pick up point and this continues to a radius of 6 kilometres from that point. There are nine search areas to this last point.

23. The history of the booking in the early hours of Sunday 11 July 2004 was part of the T documents in evidence before the Tribunal. This shows that, at 12.30am, the driver of TX 910 enquired concerning the job offer, but declined it as he did not have a Tieman hoist. I note in passing that Mr Crowley, on behalf of his son, indicated that he would have been willing to accept any WAT at that time of night, regardless of the type of hoist with which it was fitted. The second named respondent was not apprised of this. Apparently the second named respondent was aware that a Tieman hoist was required whenever Jonathan was picked up. At 12.30am the booking was offered directly to TX 918. This offer was rejected and the driver of TX 918 immediately logged out of the respondent's call centre network, thus preventing the dispatcher from directing the driver to accept the booking.

24. The booking was eventually taken up in the circumstances outlined by Mr McIntosh in his evidence. Mr McIntosh was not able to give any satisfactory answer as to why

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he did not see the booking request that had been on the computer screen in his cab from 12.24am and why he did not take it up until telephoned directly by another driver who was off duty.

25. Mr Phillips gave evidence that in the early hours of Sunday morning most of the taxis operated in the Civic, Manuka and Kingston areas and that a fare from the Labor Club at Weston to Chapman was not *"a good economic return"*. From 25 past midnight, this particular booking was shown to all cars through the cover screen of the computer in each vehicle. He indicated that privately accepted bookings, not through the network call centre, which amounted to approximately 50% of bookings for WATs, created problems for the call centre when they were not fed back into the system, as the operator was unaware of where each vehicle was located.

26. Mr Phillips acknowledged that there were shortfalls within the system and stated that more could have been done in relation to this particular booking, but, given the nature of the business that evening, it was his view that the operator had acted reasonably in the circumstances. These shortfalls were as a result of the three parties concerned in the provision of the WAT service, Government, licence holders and the second named respondent, as well as people such as Mr Wassall, all having separate and divergent views and the parties were yet *"to find a way forward"*. He noted 32 complaints to the Department of Urban Services concerning the service provided by WAT operators and noted that none of the complaints had resulted in disciplinary action.

27. Mr Crowley cross-examined Mr Phillips and the latter acknowledged that the call centre operator would have been aware that there was an outstanding request for the provision of a WAT. He conceded that the operator made no attempt to use voice contact, noting that it is not possible to use a blanket voice contact for all vehicles. It was necessary, he said, to contact each car individually and considered it unreasonable to expect the dispatcher to contact each of the 18 WAT vehicles at that time of the morning, which was the busiest time of the night and the busiest time of the week. He advised that Mr McIntosh, at the time he took the booking, was more than six kilometres distant from the pick up point and thereby outside the accepted radius for voice contact with individual drivers.

28. He discussed accreditation and noted that it was considered acceptable for 85% of bookings to be taken up within 10 minutes of bookings and 95% within 20 minutes, with the times expanding to 18 minutes and 30 minutes during peak times. He said that this target was met most of the time for standard taxis, but rarely for WATs. He noted that it was the second named respondent's responsibility to collect bookings and send the requests out to taxi drivers. He conceded that the accreditation standards were not met in relation to this booking, but would not agree that the "micro management" system espoused by Mr Wassall would have been able to handle this booking any differently as "*immediates would have challenged any model during this peak period*".

The law to be applied

29. It was common ground in this matter that the conduct described in Section 20(c) of the Act was the conduct alleged as the discrimination in this case.

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20 Goods, services and facilities

It is unlawful for a person ***(the provider)*** *who (whether for payment or not) provides goods or services, or makes facilities available, to discriminate against another person-*

(a) ...
(b) ...
(c) in the way in which the provider provides those goods or services or makes those facilities available to the other person.

30. Conduct amounting to discrimination is set out in Section 8 of the Act.

8 What constitutes discrimination

(1) For this Act, a person **discriminates** *against another person if –*

(a) the person treats or proposes to treat the other person unfavourably because the other person has an attribute referred to in section 7; or

(b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging people because they have an attribute referred to in section 7.

(2) Subsection (1)(b) does not apply to a condition or requirement that is reasonable in the circumstances.

(3) In deciding whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include–

(a) the nature and extent of the resultant disadvantage; and

(b) the feasibility of overcoming or mitigating the disadvantage; and

(c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.

31. The attribute referred to in Section 7 of the Act apposite in this case is contained in paragraph (j) being *disability.*

32. The Tribunal has previously set out the requirements for establishing an allegation under the Act in the matter of ***Allan (Royce) Harrison –v- ACT Housing*** **[2002] ACTDT 3 (28 May 2002)** where it cited with approval the following passage **from** ***Anderson and ACT Community Care*** **[2004] ACTDT 3 (2 April 2004)**

"48. The respondent's legal representative, Dr D Jarvis, did not contest Mr Wilson's submission that the approach taken by the Tribunal in resolving complaints of discriminatory conduct under the Discrimination Act in Alan

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(Royce) Harrison v ACT Housing *[2002] ACTDT 3 (28 May 2002) was the correct approach to be taken in this case. In that case the Tribunal observed:*

> 35. Unlike other anti-discrimination legislation in Australia which involves concepts of differentiation or distinction in the consequences of the impugned treatment as between persons with different characteristics or attributes, discrimination under section 8 of the Discrimination Act is constituted by conduct which treats another person unfavourably (see *Edgley v Federal Capital Press of Australia Pty* [1999] *ACTSC 95* (1 October 1999)).
>
> 36. In proceedings before the Tribunal the allegations of discrimination made by the complainant are required to be proved to a proper standard based upon proper evidentiary material (see *De Domenico v Marshall* (unreported) [1999] ACTSC 1 (3 February 1999)). It is not necessary that the allegations be proved beyond reasonable doubt but there must be a comfortable degree of satisfaction that they have been proved by evidence which is sufficiently robust to justify the conclusion arrived at rather than inexact proofs, indefinite testimony or indirect inferences (see *Briginshaw v Briginshaw* (1938) 60 CLR 336).
>
> 37. Section 8 of the Discrimination Act also makes it necessary to establish a causative link between the conduct complained of and the adverse consequences for the person making the complaint (see *Waters v Public Transport Commission* (1991) 173 CLR 349). It is necessary, therefore, to seek out the true basis of the respondent's conduct insofar as it may be found to constitute unfavourable treatment. It is unnecessary, however, to establish that the conduct complained of was intended or motivated by a discriminatory attitude (*Edgley v Federal Capital Press of Australia Pty Ltd*)."

33. In ***Judith Edgley –v –Federal Capital Press of Australia Pty Limited*** **[1999] ACTSC 95 (1 October 1999)** the Court discussed the meaning of the word **"unfavourable"** in Section 8 of the Act

> *"36. ... According to the ordinary use of language, which for present purposes I do not see modified or removed by the terms or objects of the Act, a person who imposes a condition that has the effect of disadvantaging a category of other persons necessarily treats unfavourably any person within that category. If the condition is imposed because persons in that category have a particular attribute, then the unfavourable treatment of any person within the category is because of that attribute. In the context of the present case, and with regard to the provision of services, if the provider of services provides those services subject to a condition that disadvantages persons because they have a particular attribute, it necessarily follows that, in applying that condition to the provision of services to a particular person with the attribute, the supplier treats that other person unfavourably because that other person has that particular attribute."*

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34. In the application of the provisions of the Act I bear in mind the High Court's exhortation concerning similar provisions in Western Australia as followed in the **Edgley** matter:

> *"15. The Act has counterparts in the States, in the Northern Territory and at the Commonwealth level. Anti-discrimination legislation in Australia appears to have some common features which have been the subject of comment by the High Court. In general terms the High Court has made it clear that such legislation is to be regarded as "remedial": I W v City of Perth (1997) 191 CLR 1, per Kirby J at 58, and should be given an interpretation which is "fair, large and liberal", per Brennan CJ and McHugh J at 12, and not "narrow or pernickety", per Kirby J at 58. The aim and function of the Act being educative rather than pecunitive or compensatory, courts and tribunals should be astute to see that proceedings taken in accordance with it do not "misfire" in the circumstances of a particular case: I W v Perth, per Kirby J at 52."*

Reasons for decision

35. It is common ground between the complainant and the second named respondent that Jonathan Crowley has a disability as set out in Section 7 of the Act. In order for the complainant to substantiate his complaint, it is necessary for him to establish that the second named respondent's conduct towards him was unfavourable and that this was because of his disability.

36. There was a significant amount of evidence that the taxi service provided to the complainant was not on an equal footing as that provided to citizens without any such disability. The evidence is clear that generally the accreditation requirements are met by the 248 non-WAT taxis but that that standard is rarely met by WAT operators.

37. The second named respondent's primary submission was that it did not provide a service as required under Section 20 of the Act. It submitted that any service it provided was a service to the WAT operators and not to the complainant. It was, it was submitted, merely an agent for the WAT operators in its dealings with persons making booking for a taxi service. This glosses over the true relationship. The second named respondent holds itself out as a service provider to the general public. It accepts bookings for taxi services and then passes on those requests to the operators of taxi services. It provides a service within the requirement of Section 20 of the Act.

38. The provision of that service, on the evidence available, is unequal in its response time as between WAT operators and the operators of non-WAT taxis. The service to people with disabilities is not the same as that afforded to people without those disabilities, at least during the peak period in the early hours of Sunday 11 July 2004. Although no evidence was before the tribunal, it seems to have been accepted by the second named respondent that the response time for taking up requests for a WAT exceeded that for a non-WAT. The evidence put before the Tribunal was that the particular delay the subject of the complaint was not an isolated incident but rather, unfortunately, a constant occurrence. The real question for determination is whether there is any nexus between this inequality and the disability of Jonathan Crowley.

Retrieved from AustLII on 20 January 2021 at 21:25:28

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39. At law (Regulation 82A(2)) where a WAT is issued it must include a condition *"that the licence holder must ensure that priority for the hiring of the taxi is given to wheel chair dependent people"*. There is evidence that this never occurred on the evening in question, as is particularly evidenced by the failure of the driver of TX 918 to take up the booking and his removal of himself from the computerized booking system. The regulations set up special requirements for wheelchair accessible taxi hirings and particularly in Regulation 74, where it is provided that if a WAT is available for hire and the driver does not accept an offer of the booking the network provider, here the second named respondent, *"must direct the driver to accept the booking"*. A monetary penalty is provided for failing to do so.

40. There are other penalties provided within the regulations for breaches of the regulations. These penalties are monetary and proceedings are to be brought by the Department of Urban Services following a complaint by a person or organization. The complainant submitted that, as there had never been a complaint against a driver of a WAT, a culture, effectively, existed where the drivers did what they wished, clearly of the view that there would be no prosecution for any infraction of the regulations. This view would seem to be borne out by the evidence, where it was stated that there were 32 reports to the Department over a short period of time and not one prosecution had been instituted. But this is not the fault of the second named respondent. All it can do is report the alleged shortcomings to the Department, which is responsible for the prosecution, if it considers this to be appropriate after investigating the complaint.

41. It is apparent that in the early hours of the morning of 11 July 2004, the complainant was treated *"unfavourably"* in the time he had to wait for a taxi. The complainant stressed that this treatment could have resulted in serious medical implications and caused discomfort and embarrassment.

42. To succeed in his claim under the Act, the complainant must show that the second named respondent has treated him unfavourably because of his disability. There is no doubt that the delay in obtaining a WAT was completely inexcusable and that persons requiring a non-WAT were able to obtain one without such a significant delay. But this is not the determinative factor. Was the delay caused by the second named respondent and was it due to the complainant's disability? I am unable to say that it was. The primary cause of the delay was the failure of the drivers of WATs to fulfil their statutory obligations in taking up, as a matter of precedence under the conditions of their grant of licence, the booking that had been showing for some considerable time on their computer screens. The booking was made at a time that I must accept was the busiest time of the week and for whatever reason the drivers of WATs did not accept it. In saying so, it is noted that Mr McIntosh did not take the booking up from the second named respondent's system but from the intervention of an off duty driver who took a private telephone call from the complainant.

43. Whatever the difficulties with the system may be, and whether Mr Wassall was, and is, able to offer a more efficient service, it would appear that the real difficulty with the present system is the failure of the WAT operators to comply with these statutory obligations. There was no evidence before me that, if there had been a booking for a

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non-WAT for a journey over the short distance that this was intended in similar circumstances, that the result would have been any different.

44. Evidence was before me that two taxis for passengers not suffering a disability arrived at the club within a short time after the booking was made. There was no evidence as to where the taxis in question were at the time of the booking and what the economic incentive for taking up the booking was, i.e. the anticipated value of the fare. Unfortunately, it would seem that economics have played a role in the provision of this service for the complainant, as is evidenced by the conduct of the driver of TX 918, which on its face, without giving the individual concerned the right to be heard, was inexcusable.

45. The complainant submitted that the dispatcher could have done more to ensure the booking was filled. The WAT drivers, it was submitted, should have been individually contacted in an endeavour to do so. I am of the view that such action could not reasonably be expected during the busiest time of the week for the dispatcher where there was no facility for contacting WAT drivers as a collective group. Such contact had to be made individually to the eighteen drivers who were working at the relevant time.

46. Although the complainant has received unfavourable treatment, I am unable to find that it was at the hand of the second named respondent.

47. There being no evidence that the first named respondent was a company in existence as at 10/11 July 2004, the complaint against it is dismissed. I dismiss the complaint against the joined second named respondent as lacking in substance.

I certify that this and the 12 preceding pages are a true copy of the decision and reasons for decision herein of Mr G C Lalor, Deputy President.

S M Welsh
Associate
Dated: 2 November 2006

Retrieved from AustLII on 20 January 2021 at 21:25:28

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AUSTRALIAN CAPITAL TERRITORY
DISCRIMINATION TRIBUNAL

APPEARANCE DETAILS

FILE NO: DT05/550

COMPLAINANT:	KEITH CROWLEY on behalf of JONATHAN CROWLEY	
FIRST RESPONDENT:	CANBERRA CABS LIMITED	
SECOND RESPONDENT:	AERIAL TAXI CABS CO-OPERATIVE LIMITED now incorporated as AERIAL CONSOLIDATED TRANSPORT LIMITED	
COUNSEL APPEARING:	**COMPLAINANT:**	
	RESPONDENT:	
SOLICITORS:	**COMPLAINANT:**	
	RESPONDENT:	MR E EYERS
OTHER:	**COMPLAINANT:**	SELF
	RESPONDENT:	
TRIBUNAL MEMBER:	MR G C LALOR, DEPUTY PRESIDENT	
DATE OF HEARING:	26 OCTOBER 2006	**PLACE:** CANBERRA
DATE OF DECISION:	2 NOVEMBER 2006	**PLACE:** CANBERRA

COMMENT:

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