

*Elliott v Minister for Transport and Infrastructure Development & Northern Territory of Australia,
Perperiadis v Minister for Transport and Infrastructure Development & Northern Territory of Australia
Walters & Walters v Northern Territory of Australia [2000] NTSC 91*

PARTIES:

ELLIOTT, IAN ASHLEY

v

MINISTER FOR TRANSPORT AND
INFRASTRUCTURE DEVELOPMENT

AND

NORTHERN TERRITORY OF AUSTRALIA

PARTIES:

PERPERIADIS, EVANGELOS

v

MINISTER FOR TRANSPORT AND
INFRASTRUCTURE DEVELOPMENT

AND

NORTHERN TERRITORY OF AUSTRALIA

PARTIES:

WALTERS, GWENETH BEATRICE and
WALTERS, GUY ANDREW

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT:

SUPREME COURT OF THE NORTHERN
TERRITORY OF AUSTRALIA

JURISDICTION:

CIVIL

FILE NO:

No 168 of 1999 (9924702)
No 170 of 1999 (9925123)
No 132 of 1999 (9919377)

DELIVERED:

9 November 2000

HEARING DATES: 24, 25 October 2000

JUDGMENT OF: ANGEL J

CATCHWORDS:

REPRESENTATION:

Counsel:

Plaintiffs Elliott & Perperiadis
Plaintiffs Walters
Defendants

Mr C McDonald QC & Mr R Webb
Mr J B Waters QC
Mr T I Pauling QC, Solicitor-General
& Mr M Grant

Solicitors:

Plaintiffs Elliott & Perperiadis:
Plaintiffs Walters
Defendants

Mr K Parish
De Silva Hebron
Solicitor for the Northern Territory

Judgment category classification:

B

Judgment ID Number:

ang20009

Number of pages:

23

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 168 of 1999 (9924702)

No. 170 of 1999 (9925123)

No. 132 of 1999 (9919377)

Elliott v Minister for Transport and Infrastructure Development & Northern Territory of Australia,
Perperiadis v Minister for Transport and Infrastructure Development & Northern Territory of Australia
Walters & Walters v Northern Territory of Australia [2000] NTSC 91

BETWEEN:

IAN ASHLEY ELLIOTT

Plaintiff

v

MINISTER FOR TRANSPORT AND
INFRASTRUCTURE DEVELOPMENT

First Defendant

AND:

NORTHERN TERRITORY OF AUSTRALIA

Second Defendant

EVANGELOS PERPERIADIS

Plaintiff

v

MINISTER FOR TRANSPORT AND
INFRASTRUCTURE DEVELOPMENT

First Defendant

AND:

NORTHERN TERRITORY OF AUSTRALIA

Second Defendant

GWENETH BEATRICE WALTERS and
GUY ANDREW WALTERS

Plaintiffs

v

NORTHERN TERRITORY OF AUSTRALIA

Defendant

REASONS FOR JUDGMENT

(Delivered 9 November 2000)

ANGEL J:

- [1] Each plaintiff in these three actions, which were ordered to be heard together, was the holder of a taxi licence in force immediately before 1 January 1999.
- [2] The plaintiff Ian Ashley Elliott was the holder of taxi licences in respect of taxis numbered 68, 69, 70, 71 and 121 which operated in the Gove taxi area. The plaintiff Evangelos Perperiadis was the holder of taxi licence 1031 in respect of taxi 64 and taxi licence 1032 in respect of taxi 56 operating in the Tennant Creek taxi area. The plaintiffs Gweneth Beatrice Walters and Guy Andrew Walters were the holders of taxi licences in respect of taxis numbers 26 and 52 operating in the Darwin taxi area.
- [3] The relevant taxi licences were issued pursuant to the provisions of the Commercial Passenger (Road) Transport Act (NT) at a time when taxi licences were limited in number (s 16), could be obtained by tender (s 17),

or at an auction (s 18), and could be transferred, upon application to the Director (s 26).

[4] All changed with the passing of the Commercial Passenger (Road) Transport Amendment Act 1998 (No 83 of 1998) (“the Amendment Act”) which came into force on 1 January 1999. The Amendment Act “deregulated” the Northern Territory taxi industry. By virtue of the Amendment Act anyone could apply for a licence, s 17, which, if granted, entitles the holder to operate a taxi, s 22. A licence is renewable annually upon payment of a prescribed fee, s 23. There is no limit on the number of taxi licences and the Amendment Act provides a compensation scheme for previous licence holders: s 23, giving effect to the Schedule. Clause 3 of the Schedule cancelled all taxi licences in force immediately before 1 January 1999 on a date between 28 February 1999 and 1 August 1999 nominated by the licensee – clause 3(a) – or, absent a nominated date, on 31 July 1999 – clause 3(b). The Elliott taxi licences were cancelled on or about 20 July 1999 by operation of clause 3(a). The Perperiadis taxi licences were cancelled on 31 July 1999 by operation of Clause 3(b), as were the Walters taxi licences.

[5] Clause 4 of the Schedule provides for a licence holder to be compensated. It provides:

“4. Claims for Compensation

(1) Subject to this clause and clauses 5 and 6, a licensee of a taxi is entitled to receive compensation not later than 31 July 1999.

(2) A licensee of a taxi who wishes to receive compensation must lodge a claim for compensation with the Minister not later than 28 days before the date nominated by the licensee under clause 3(a) as the date the licence is cancelled.

(3) A claim for compensation is to be in the form of a statutory declaration stating the following particulars, as applicable:

- (a) the amount of compensation claimed;
- (b) the details of all loan agreements under which the cancelled licence is being used as security for a loan or liability, including the name and address of each lender and the total amount of money owed by the licensee under each loan agreement on the date of signing the statutory declaration;
- (c) the names and addresses of all other persons who, to the licensee's knowledge, claim or may claim to have an interest in the cancelled licence and the nature of that interest, if known;
- (d) any other particulars required by the Minister.

(4) A licensee of a taxi must also lodge a statement, on an approved form and signed by the licensee, acknowledging the requirement for the licensee to sign a deed of indemnity in accordance with clause 6(5).

(5) A lender or other person claiming an interest in a taxi licence may lodge a notice of that claim, on an approved form, with the Minister on or before 28 February 1999.

(6) The Minister may, by written notice, require a licensee of a taxi, a lender or other person claiming an interest in a cancelled licence -

- (a) to provide further information relevant to the claim for compensation; or
- (b) to deliver to the Minister an instrument or other thing specified in the notice,

within the time specified in the notice.

(7) The Minister may extend the time limited by subclause (2) or (5) or specified in a notice referred to in subclause (6).

(8) If –

(a) a licensee of a taxi does not lodge a claim for compensation; or

(b) a lender or other person claiming an interest in a cancelled licence does not lodge a notice of the claim,

under this clause before 1 March 2001, that person's claim for compensation is statute barred.”.

[6] “Compensation” is defined in clause 1 to mean “compensation to be paid by the Territory in respect of the cancellation of a taxi licence under clause 3”. The Schedule lays down time limits within which a claim for compensation might be made which are not relevant for present purposes. A claim for compensation is required to be made to the Minister for Transport and Infrastructure Development in the form of a statutory declaration setting out the “amount of compensation claimed” and giving other information including any other particulars required by the Minister – clause 4(3). Clause 4(6) provides that the Minister may, by written notice, require further information to be provided. Clause 5(2)(a) provides that subject to clause 6(1) the Minister must determine whether compensation is payable, and if so, the amount of compensation to be paid having regard to the matters set out in the Regulations. Clause 6(1) provides for disputes as to

compensation between persons claiming an interest in the taxi licence to be determined by a court of competent jurisdiction.

- [7] Together with the Amendment Act there came into operation on 1 January 1999 the Commercial Passenger Vehicles (Cancelled Licences) Regulations. Regulation 4 provides:

“The matters that the Minister must have regard to in determining the amount of the compensation to be paid in clause 5(2)(a) of the Schedule of the Commercial Passenger (Road) Transport Amendment Act 1998 are those matters specified in this Part.”.

Regulations 5, 6 and 8(1)(a) relevantly provide:

“5. TAXIS IN TENNANT CREEK TAXI AREA

The amount of compensation to be paid for a cancelled taxi licence in respect of a taxi that was operated in the Tennant Creek taxi area is the amount last paid for the transfer of a taxi licence in the Tennant Creek taxi area escalated by the average percentage increase of taxi licences in the Darwin and Alice Springs taxi areas since the date of the transfer until 28 February 1998.

6. TAXIS IN GOVE TAXI AREA

The amount of compensation to be paid for a cancelled taxi licence in respect of a taxi that was operated in the Gove taxi area is the amount last paid at tender for a taxi licence in the Gove taxi area

escalated by the average percentage increase of taxi licences in the Darwin and Alice Springs taxi areas since the date of the tender until 28 February 1998.

8. TAXIS GENERALLY

(1) The amount of compensation to be paid for a cancelled taxi licence (other than a cancelled taxi licence referred to in regulations 5, 6 and 7) is -

- (a) the amount that was paid at the last tender for the purchase of a taxi licence in respect of the same class of taxi to which the cancelled taxi licence relates, operated in the same taxi area as the taxi to which the cancelled taxi licence relates, adjusted to reflect changes in the Consumer Price Index during the period since the date of the tender until 28 February 1998; ”.

[8] Relevant to any consideration of the legislative scheme established by the Amendment Act are s 86 of the Commercial Passenger (Road) Transport Act and s 50 of the Northern Territory (Self-Government) Act 1978 (Clth).

[9] Section 86 of the Commercial Passenger (Road) Transport Act provides:

“86. Acquisition to be on just terms

Where the application of a provision of this Act would, but for this section, result in an acquisition of property otherwise than on just terms, the person from whom the property is acquired shall be

entitled to receive just compensation for the acquisition, and a court of competent jurisdiction may determine the amount of the compensation or make such order as, in its opinion, is necessary to ensure that the acquisition is on just terms.”

[10] Section 50 of the Northern Territory (Self-Government) Act provides:

“50. (1) The power of the Legislative Assembly conferred by section 6 in relation to the making of laws does not extend to the making of laws with respect to the acquisition of property otherwise than on just terms.

(2) Subject to section 70, the acquisition of any property in the Territory which, if the property were in a State, would be an acquisition to which paragraph 51 (xxxi) of the Constitution would apply, shall not be made otherwise than on just terms.”.

[11] For present determination are certain preliminary questions for trial ordered pursuant to O 47.04 of the Supreme Court Rules. In the Elliott action those questions are as follows:

“Preliminary Questions

2. The questions for separate trial pursuant to Order 47.04 of the Supreme Court Rules are as follows:

2.1 As a matter of statutory construction, is the amount of compensation for the cancellation of the Elliott taxi licences pursuant to clause 5 of the Schedule lawfully determined solely on the basis of the matters prescribed by Part 2 of the Commercial Passenger Vehicles (Cancelled Licences) Regulations (“the Regulations”)?

- 2.2 Did the cancellation of the Elliott taxi licenses (sic) amount to an acquisition of property within the meaning of section 50 of the Northern Territory (Self-Government) Act 1978 (Cth) and for the purposes of section 86 of the Act?
- 2.3 Was the purported determination of compensation ultra vires the Act on the basis that the determination was not made by the first defendant and there is no power in the Act to delegate the determination of compensation to any other person?
- 2.4 Was the determination of compensation unlawful on the following bases or either of them:
- 2.4.1 The first defendant failed to take into account a relevant consideration being the commercial valuations of the Elliott taxi licences submitted with the claim for compensation.
- 2.4.2 The first defendant adopted an inflexible rule of policy (being matters set out in Regulation 6 of the Regulations) without having regard to the merits of the case.”.

- [12] In the Walters action the questions are repeated. The first two questions only are posed in the Perperiadis action.
- [13] Clause 3 of the Schedule of the Amendment Act brought about a cancellation of the plaintiffs' then existing taxi licences. The Amendment Act also operated to deregulate entry into the industry by enabling anybody to obtain an annual licence upon application subject to satisfaction of the prescribed safety and service criteria. The Minister's previous ability to confine the maximum number of taxi licences in any given taxi area was removed, as was a requirement to offer licences by tender or auction.
- [14] Section 50(1) of the Northern Territory (Self-Government) Act renders invalid any law which provides for the acquisition of property otherwise than on just terms. Section 86 of the Commercial Passenger (Road) Transport Act circumvents any potential invalidity of the Amendment Act. Section 86 is an anticipatory provision in the event that the Amendment Act is construed to operate such as to provide for acquisition of property otherwise than on just terms; see *Minister for Primary Industry and Energy and Anor v Davey* (1993) 119 ALR 108 at 125 per Black CJ and Gummow J.
- [15] The defendant properly conceded that the plaintiffs' pre-existing taxi licences were property in the relevant sense. This concession is plainly correct: *Banks v Transport Regulation Board (Vic)* (1968) 119 CLR 222 at 232 per Barwick CJ; *Federal Commissioner of Taxation v Murry* (1998) 193 CLR 605 at 630. The principal submissions focused upon whether, given

that the taxi licences were property, there had been an acquisition of property in the relevant sense. The defendant's written submissions in this regard were as follows:

“13. It falls then to determine whether there has been an ‘acquisition’ in the relevant sense. The term as it appears in s86 of the Commercial Passenger (Road) Transport Act is properly accorded the same construction as that given to the acquisition of property provision in placitum 51(xxxi) of the Constitution. When considering that latter provision in *Commonwealth v Tasmania* (1983) 158 CLR 1 at 145, Mason J said:

‘To bring the constitutional provision into play it is not enough that legislation adversely affects or terminates a pre-existing right that an owner enjoys in relation to his property. There must be acquisition whereby the Commonwealth or another acquires an interest in property however slight or insubstantial it may be.’.

14. Thus, in order for there to be an acquisition, it is necessary to identify a proprietary benefit enjoyed either by the acquiring authority or by a third party as a consequence of the acquisition: see *Australian Capital Television v Commonwealth (No 2)* (1992) 177 CLR 106 and *Australian Tape Manufacturers Association v Commonwealth* (1993) 112 ALR 53. In that latter case Dawson and Toohey JJ observed:

‘[t]he mere extinguishment by the Commonwealth of a right enjoyed by an owner in relation to his or her property does not amount to an acquisition of property; in the absence of an acquisition of a benefit or an interest in property, however slight and insubstantial it may be. The complete extinguishment of contractual rights does not constitute such an acquisition.’.

15. Similarly, in *Mutual Pools v Commonwealth* (1994) 179 CLR 155 at 172-3, Mason CJ stated:

‘ ... the mere extinguishment by the Commonwealth of a right enjoyed by an owner in relation to his or her property does not amount to an acquisition of property; in the absence of an acquisition of a benefit or an interest in property, however slight and insubstantial it

may be. The complete extinguishment of contractual rights does not constitute such an acquisition.’.

16. In that same case Deane and Gaudron JJ observed at 185:

“Nonetheless, the fact remains that s 51(xxxi) is directed to ‘acquisition’ as distinct from deprivation. The extinguishment, modification or deprivation of rights in relation to property does not of itself constitute an acquisition of property. For there to be an ‘acquisition of property’, there must be an obtaining of at least some identifiable benefit or advantage relating to the ownership or use of property. On the other hand, it is possible to envisage circumstances in which an extinguishment, modification or deprivation of the proprietary rights of one person would involve an acquisition of property by another by reason of some identifiable and measurable countervailing benefit or advantage accruing to that other person as a result. Indeed, the extinguishment of a chose in action could, depending upon the circumstances, assume the substance of an acquisition of the chose in action by the obligee.’.

17. This principle has been adopted in subsequent authorities: see, for example, *Minister v Davey* (supra) and *Bienke and Ors v Minister for Primary Industries & Anor* (1996) 135 ALR 128. Both cases deal with a factual matrix similar to that here under consideration. Special leave to appeal to the High Court in *Bienke* was refused on 30 September 1996 without calling on the respondent, there being no doubt as to the correctness of the decision.

18. Applying this principle, the passage of the amending Act did not vest property (in this case the existing licences) in the Territory in any relevant sense. Property in the licences was simply extinguished. Equally, the implementation of the new scheme did not vest the existing licences in any new entrant into the market. The fact that certain new entrants into the market may acquire licensing rights pursuant to the amended legislation cannot amount to a conferral of a benefit sufficient to constitute an acquisition of property. Such benefits extend from the initiative of individual operators and market forces rather than any acquisition by means of the amending Act: see *Minister v Davey* (supra) per Black CJ and Gummow J. Whether former licensees continue to operate under the new scheme is also dictated by the initiative of those operators and market forces.

19. There is nothing arising under the scheme implemented by the passage of the amending Act that may properly be categorised as the conferral of some countervailing benefit or advantage on another person: see *Georgiadis v Australian and Overseas Telecommunications Corp* (1994) 179 CLR 297.
20. That the underlying objective of the plan was to effect an economic rationalisation of the commercial passenger industry is not indicative of an acquisition of property: see *Minister v Davey* (supra) per Black CJ and Gummow J.”.

[16] Counsel for Perperiadis’ written submissions in this regard were as follows:

- “26. The principles developed by the High Court as to ‘acquisition’ require that ‘the deprivation of proprietary rights of one person would involve an acquisition of property by reason of some identifiable and measurable countervailing benefit or advantage accruing to that other person as a result of the deprivation *Mutual Pools v Commonwealth* at 185 per Deane and Gaudron JJ; and see 172-73 per Mason CJ, 194-95, 223. But where an identifiable and measurable benefit, or advantage, passes to another person as a result of a diminution of rights, there will be an acquisition *Commonwealth v Tasmania (Tasmanian Dam Case)* (1983) 158 CLR 1 at 208.
27. The cancelled taxi licences are ‘property’ by any usual definition *Federal Commissioner of Taxation v Murry* (1998) 193 CLR 605 at 630. The ‘deregulation’ of the taxi industry by cancellation (or extinguishment) of existing licences, limited in number, and held virtually in perpetuity and the implementation of a scheme which involves the issue of an unlimited number of taxi licences, renewable annually, on payment of a fee, confers a clear benefit or advantage on the Northern Territory in terms of revenue.
28. In effect, the valuable rights previously purchased by the plaintiff for valuable consideration and transferred to him, have been cancelled and then effectively regranted to anyone who is qualified, and who applies, for a fee.
29. A benefit or advantage clearly flows to those persons who are now able to obtain taxi licenses on application and payment of a prescribed fee subject to consideration by the Director, rather than by purchase of an existing taxi licence.

30. Accordingly there was an acquisition of property for the purposes of section 50 of the *Self Government Act* and section 86 of the Act and the answer to question 2.2 is ‘Yes’.”.

[17] The written submissions were supplemented by oral submissions which covered some familiar territory, eg. that s 50 of the Northern Territory (Self-Government) Act was a constitutional guarantee which should therefore be construed liberally, that the Court is to consider substance and not form and that the legislature is not free to do indirectly that which it is forbidden to do directly, and I was referred to, amongst other cases, *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297 at 305. The arguments ultimately focused upon the following passage in the judgment of Gaudron J in *Commonwealth v WMC Resources Ltd* (1998) 194 CLR 1 at 35-36:

“In *Georgiadis v Australian and Overseas Telecommunications Corporation*, Mason CJ, Deane J and I pointed out that, prima facie at least, a statutory right is inherently susceptible of statutory modification or extinguishment and no acquisition of property is effected by a law which simply modifies or extinguishes a statutory right that has no basis in the general law (124). That is because, ordinarily at least, a law of that kind does not confer an interest in property or any other benefit on the Commonwealth or any person; and, ordinarily at least, it does not constitute a law that is properly characterised as a law with respect to the acquisition of property. Thus, when s 51(xxxi) is invoked, it may be helpful to ask whether the law in question does no more than modify or extinguish a statutory right which has no basis in the general law and which is inherently susceptible to modification or extinguishment. However, the questions which, ultimately, have to be answered are whether the law effects an acquisition of property and, if so, whether it is properly characterised as law with respect to the acquisition of property.

If a law modifies or extinguishes a statutory right which has no basis in the general law in circumstances in which some person obtains some consequential advantage or benefit in relation to property, that law may and, ordinarily, will effect an acquisition. And there may and, ordinarily, will be an acquisition if a law operates to transfer a right to some other person, even though the right has no basis in the general law and is inherently susceptible of modification or extinguishment. So, too, there may and, ordinarily, will be an acquisition if a law extinguishes a right of that kind (particularly a monopoly right) and vests a similar right or a right with respect to the same subject matter in some other person. In cases of that kind, there is something more than the mere modification or extinguishment of a right that is inherently susceptible to that course; the law also operates to confer a benefit.”.

[18] The learned Solicitor-General, Mr Pauling QC, when pressed, ultimately argued that the passage was bad in law. However if he is to challenge the reasoning, I think, with respect, he is to do so elsewhere, for, sitting alone in this jurisdiction, I consider I should follow it.

[19] In the present case I think there has been an acquisition of property. The plaintiffs’ taxi licences, a monopoly right shared by a restricted number, have been cancelled and coincidentally and correspondingly a right with respect of the same subject matter, the ability to operate a taxi cab for reward, is given to any number of the public upon application and payment of a prescribed fee. The scheme as a whole is more than the mere extinguishment of a right which is inherently susceptible to that course.

[20] I was asked to consider what consequence flows from this conclusion. Mr McDonald QC for Elliott and Perperiadis submitted that the question of compensation necessarily required the Minister to consider matters other than those specified in the Regulations. Mr Waters QC for the plaintiffs

Walters went further and submitted that by operation of s 86 of the Amendment Act the Regulations were necessarily invalid. The learned Solicitor-General, on the other hand submitted that whether the Regulations in terms provided for fair compensation for the acquisition of property on just terms is a matter that required evidence and further consideration and was not able to be decided at this stage of the proceedings. I agree with this latter submission, even though the terms of the Regulations, at first blush, appear odd. Why Regulations 5 and 6 distinguish between “the amount last paid for the transfer of a taxi” (Regulation 5) and “the amount last paid at tender for a taxi licence” (Regulation 6) and why there is the distinguishing reference to the Consumer Price Index in Regulation 8 is by no means immediately apparent.

[21] As to the question whether the amount of compensation is to be lawfully determined solely having regard to the matters prescribed in Part 2 of the Regulations, counsel for the respective plaintiffs differed in their submissions markedly. Mr McDonald QC strongly submitted that the assessment of compensation was not to be limited to the matters set out in the Regulations. He submitted that in the absence of any relevant statutory definition compensation should be assumed to have been used in the sense in which it has been judicially interpreted and reference was made to *Nelungaloo v Commonwealth* (1948) 75 CLR 495 at 529-530, per Latham CJ, and to the well known passage in the judgment of Dixon J at 571 and the principle that compensation means a person will be compensated for his or

her loss, that is, a person will be placed in the same pecuniary position as though the loss had not occurred. It was submitted that although the formula contained in the relevant Regulation stipulated what was to be a relevant factor in determining compensation it was not necessarily to be the sole determinant of the proper quantum of compensation. Mr Waters QC, on the other hand, in common with the learned Solicitor-General, submitted that the Schedule constituted a statutory mechanism for the determination of the quantum of compensation. Mr Waters QC submitted that Part 2 of the Regulations clearly prescribed the sole criteria which determined the quantum of compensation. It followed, it was submitted, that the Regulation was invalid by virtue of s 86 of the Act and s 50 of the Northern Territory (Self-Government) Act. I have already indicated that this latter point is not appropriately to be determined at this stage of the proceedings as I would wish to hear evidence as to whether or not the Regulations might nevertheless provide proper compensation. This being so it is inappropriate to answer this question at this stage of the proceedings. I think the Regulations stipulate the sole criteria to which the Minister is to have regard in determining the amount of compensation. Whether such a determination is “lawful” shall have to be decided later in the proceedings in light of the evidence.

[22] Question 2.3 in the Elliott action raises the issue of whether quantification of compensation payable could be delegated by the Minister to another person or whether it was a matter in which he was required to act personally.

In agreement with the submissions of Mr McDonald QC I have reach the conclusion that given the changes brought about by the Amendment Act and from a reading of the whole of its provisions and the original Act that it was intended that it would be the Minister who would personally make a compensation determination and not a delegate. The role of the Minister under the Act is limited but specific. The Director has other roles. The requirement for personal Ministerial consideration being given to quantification of compensation in respect of cancelled taxi licences is evident, inter alia, from the fact that the claim for compensation is lodged with the Minister – clause 4(2), a lender or other person claiming an interest in a taxi licence lodges a claim with the Minister – clause 4(5), it is the Minister who may require further information – clause 4(6), it is the Minister who may extend time – clause 4(7), it is the Minister who is required to consider the claim and other material provided – clause 5(1), it is the Minister who is to determine whether compensation is payable and if so, the amount of compensation to be paid – clause 5(2) and it is the Minister, under clause 6, who must pay or withhold payment of compensation in the event of a dispute. I think it is significant that compensation for cancellation of taxi licences is firmly in the hands of the Minister whereas the Director is the one concerned with the cancellation of private hire car licences and the claim for omnibus licences – see clauses 7 and 8.

[23] It is also not without significance that s 51 of the Act expressly enables the Director to delegate his functions in relation to motor omnibuses and yet there is no provision for delegation by the Minister of his responsibilities. In my view the provisions of the Act and Regulations read as a whole require the Minister personally to determine compensation. In the Elliott action it was common ground that the Minister did not set and determine compensation and that if I reach the conclusion I have the purported determination was ultra vires the Act and that the answer to question 2.3 should be “Yes”.

[24] I now set out the questions ordered pursuant to O 47.04 of the Supreme Court Rules to be determined prior to trial and my answers:

In the Elliott action:

“2.1 As a matter of statutory construction, is the amount of compensation for the cancellation of the Elliott taxi licences pursuant to clause 5 of the Schedule lawfully determined solely on the basis of the matters prescribed by Part 2 of the Commercial Passenger Vehicles (Cancelled Licences) Regulations (“the Regulations”)?”

ANSWER: Unable to answer at this stage of the proceedings.

2.2 Did the cancellation of the Elliott taxi licences amount to an acquisition of property within the meaning of section 50 of the

Northern Territory (Self-Government) Act 1978 (Cth) and for the purposes of section 86 of the Act?

ANSWER: Yes.

2.3 Was the purported determination of compensation ultra vires the Act on the basis that the determination was not made by the first defendant and there is no power in the Act to delegate the determination of compensation to any other person?

ANSWER: Yes.

2.4 Was the determination of compensation unlawful on the following bases or either of them:

2.4.1 The first defendant failed to take into account a relevant consideration being the commercial valuations of the Elliott taxi licences submitted with the claim for compensation.

2.4.2 The first defendant adopted an inflexible rule of policy (being matters set out in Regulation 6 of the Regulations) without having regard to the merits of the case.

ANSWER: Unable to answer at this stage of the proceedings.

In the Perperiadis action:

2.1 As a matter of statutory construction, is the amount of compensation for the cancellation of the Perperiadis taxi licences pursuant to clause 5 of the Schedule lawfully determined solely on the basis of the matters prescribed by Part 2 of the Commercial Passenger Vehicles (Cancelled Licences) Regulations (“the Regulations”)?

ANSWER: Unable to answer at this stage of the proceedings.

2.2 Did the cancellation of the Perperiadis taxi licenses amount to an acquisition of property within the meaning of section 50 of the Northern Territory (Self-Government) Act 1978 (Cth) and for the purposes of section 86 of the Act?

ANSWER: Yes.

In the Walters action:

2.1 As a matter of statutory construction is the amount of compensation for the Walters licences pursuant to clauses 4 and 8 of the Schedule lawfully determined solely on the basis of the matters prescribed by Part 2 of the Commercial Passenger Vehicles (Cancelled Licences) Regulation (“the Regulations”)?

ANSWER: Unable to answer at this stage of the proceedings.

2.2 Did the cancellation of the Walters taxi licences amount to an acquisition of property within the meaning of section 50 of the Northern Territory (Self-Government) Act 1978 (Cth) and for the purposes of Section 86 of the Act?

ANSWER: Yes.

2.3 Was the purported determination of compensation ultra vires the Act on the basis that the determination was not made by the first defendant and there is no power in the Act to delegate the determination of compensation to any other person?

ANSWER: Yes.

2.4 Was the determination of compensation unlawful on the following basis or either of them;

2.4.1 The first defendant failed to take into account a relevant consideration being the commercial valuations of the Walters taxi licences submitted with the claim of compensation.

2.4.2 The first defendant adopted an inflexible rule of policy being the matter set out in Regulation 6 and (8) of the Regulations without having regard to the merits of the case.

ANSWER: Unable to answer at this stage of the proceedings.