LEGAL RESEARCH FOUNDATION INC.
Seminar

THE LEGAL AND PRACTICAL EFFECTS
OF THE TRANSPORT LICENSING ACT
(No. 2) 1983

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FOREWORD

The Hon. Mr Justice R.I. Barker
Chairman of the Legal Research Foundation Inc.

The Legal Research Foundation Inc. first sponsored a seminar on transport licensing in 1980. A very large number of people involved in the transport industry attended. A booklet produced by the Foundation giving the text of the papers presented has since sold steadily. There is evidently a considerable demand for analysis of and information on the complex legislation which governs one of the most significant New Zealand service industries.

It was clear to the Foundation that this demand could only increase with the passage late last year of one of the more controversial pieces of legislation in the term of the present Parliament, the Transport Amendment Act (No. 2) 1983. But, while all concerned were agreed that the Act had made significant changes, there was uncertainty as to the areas the changes encompassed or how far they might eventually lead.

The Foundation sponsored a seminar on the Act in the hope that such questions might be answered and the impact of the Act clarified. The high quality of the speakers who agreed to contribute meant that this hope was bound to be fulfilled. Their excellent papers are now offered to a wider audience than was able to attend the seminar to contribute further to those involved in a vital national industry understanding and appreciating the impact of the legislation which is to reshape it in 1984 and beyond.

Judges' Chambers,
High Court,
AUCKLAND.

R.I. Barker
INTRODUCTION

1. At common law no restriction on right to carry goods or passengers for hire or reward.

2. In New Zealand, greater part of that activity prohibited by Statute unless the carrier is licensed.

3. Main purposes of licensing:
   (a) Maintaining proper standard (quality) of operators.
   (b) Some regulation of competition between carriers:
       (i) Temporary and limited protection of Rail.
       (ii) Some regulation in relation to taxi cab and scheduled passenger services.

4. Broad manner of achieving those objects is:
   (a) Prohibition against carrying on any transport service without a licence - S.108.
   (b) Prescribing criteria for the granting of licences.
   (c) Prohibiting transfer of licences (except taxis).
   (d) Providing for Public Inquiries into licences.
(e) restricting the carriage of goods by road when not less than 150 km of rail is available (including provisions as to "linking-up" of services and defining availability); but permitting such carriage subject to a financial penalty.

(f) Severe penalty provisions.

PRINCIPAL EFFECTS OF TRANSPORT AMENDMENT ACT (NO.2) 1983

As from 1/11/83
1. New provisions as to Licensing Authorities and Appeal Authorities inserted (S.103-107 replaced).

2. 108 and Rail restriction provisions (S.109-113F rewritten).


4. Permit system to permit carriage against rail introduced. (S.113G).

5. Enforcement provisions strengthened (S.183 et seq) and additional provisions for public inquiry (S.142A).

As from 1/6/84
1. New procedure relating to applications for transport licences.

2. Completely changed criteria for grants of licences (except taxis).

3. Limited power to impose conditions in licences.

4. Services (except temporary taxi and scheduled passenger or harbour ferry services generally) not to be limited as to area.

5. Goods services licences to be generally without limitation as to class of goods.
6. Inclusion of fairly wide powers of inquiry by Licensing Authorities (including as to pricing).

7. Changed appeal provisions.

8. Provisions to bring existing licences into conformity with new requirements.

As from 31/10/86 - Repeal of Rail protection provisions.

RAIL RESTRICTION PROVISIONS


2. When available route exists including:
   (a) 150 km of open railway; or
   (b) Murapara/Kawerau railway (for logs)
   it is an offence (with penalty to $10,000):
   (a) To carry goods between those places.
   (b) To carry goods for part of a journey in which they are carried between those places, or further than is necessary to permit their carriage by rail on that available route (irrespective of knowledge that the carriage forms part of the journey in breach of the provision). S.109(1) and (2)

3. Restriction applies notwithstanding holding or storing of goods at intermediate stopping place unless Court satisfied that goods were held or stored for purposes unrelated to:
   (i) The avoidance of the restrictions; or
   (ii) Avoidance of economic or other disadvantage of carriage by rail; or
   (iii) The vehicle or its driver. S.109(3)

4. Restriction does not apply to:
   (i) Certain carriage by farmers. S.109(4)
   (ii) Carriage on passenger service vehicle of passengers
personal luggage; or (in terms of passenger service licence) to freight pre-paid parcels. S.109(5)

5. One-third rule retained (S.109(6)).

6. Defences:

(a) Carriage not for hire or reward and in a goods service vehicle not exceeding 3,500 kg.
(b) Carriage on transport service exempted from licensing. (see T.L. Regs 1963 Amendment No.32 SR 1983/218)
(c) Carriage of certain classes of goods specified.
(d) Carriage in terms of exempt licence.
(e) Carriage in terms of route licence.
(f) Carriage in terms of S.113G permit.
(g) Certain terminal area cartage. S.109(8) S.112

7. Note that certain routes deemed to be available and, in particular, that a route is available notwithstanding any economic or other disadvantages associated with rail transport. S.111

Enforcement Provisions

(a) Waybills (S.113A and S.113B).
(b) "Initiators" of transport to give information (S.113C).
(c) Powers of entry and inspection (S.113D).
(d) Inspection and sealing of vehicles and loads (S.113E).
(e) Offences on part of occupiers of intermediate stores (S.113F).

Permit System

1. Permit system under S.113G together with 6 of Amendment Act (revoking many restrictive conditions in licences) brings about substantial relaxation of rail restriction.

2. Practical effect is that provided he purchases appropriate permit, carrier may lawfully cart goods anywhere in New Zealand.
3. Provision will have substantial impact on applications for exemption.


5. Effect of permit is to allow holder to carry:

(a) Any goods whatever.
(b) On the goods service vehicle to which the permit relates.
(c) Between any points and on any routes.
(d) Free from restrictions of Section 109.
(e) So long as the other provisions of the Act and any goods service licence and the permit are complied with.

Note applications must be made in respect of a specified goods service vehicle.

6. Subject to proper completion of the application and payment of the appropriate fees, the Secretary must issue a permit.

7. Goods service licence still required if for hire or reward.  S.113G

REVOCATION OF RESTRICTED TERMS IN LICENCES

1. S.6 of Amendment Act revoked (as from 1/11/83) terms or conditions of existing licences relating to:

(a) Kinds or quantities of goods that may be carried.
(b) Limitations as to area, places or directions of travel.
(c) Limitations as to frequency of service.
(d) Limitation as to carriage on behalf of any other person (licensee or otherwise).
(e) The right of any person other than the Licensing Authority to cause or apply for cancellation of the licence.

but subject to para.2.

2. Terms and conditions not revoked are:
(a) Rail exemptions provisions.
(b) Any terms which would otherwise be revoked which are linked within the licence to any exemption provision.
(c) Terms imposed by the Licensing Authority or Appeal Authority on any inquiry or review or appeal from such.

3. Licence holder can apply, without fee, to have licence amended in accordance with the Section and Licensing Authority, without hearing, must amend it.

APPLICATIONS FOR TRANSPORT LICENCES AFTER 1/6/84

1. Preliminary Considerations:

(a) Is licence required at all:
   (i) Hire or reward.
   (ii) Letting on hire of vehicle and driver.
   (iii) Excludes carriage of goods by their owner (but note S.109).
   (iv) Exemptions (under Regs SR 1983/218).

(b) Area limitations not relevant except for temporary taxi or scheduled passenger or harbour ferry licences.

(c) Class of goods limitations not relevant except for temporary licences or in case of exemptions from rail restriction.

(d) Number of vehicles required. Except for taxis no limitation as to number of vehicles but query in relation to grant of exemption from S.109. New regulations will presumably deal with vehicle authorities.

(e) Is rail exemption required.

2. Alternatives to New Application:

(a) Purchase of existing business and transfer of existing licence not available; but

(b) Purchase of shares in company which holds licence permitted subject to notification (S.127) and possible review (S.140).
3. New Applications

(a) Preparation and Lodging

(i) Application to be in prescribed form and sent to Secretary for Transport. (No form yet prescribed).

(ii) Application to include three copies in written form setting out:
   A. Type of business and nature and type of proposed service.
   B. Financial details in form to show assets and liabilities and likely outgoings in respect of operations.
   C. Supporting submissions.
   D. Supporting documents, testimonials etc.
   E. Persons to be involved including person/s responsible for management and control.
   F. Equivalent for corporate applicant.
   G. (For goods service) whether application involves or will have effect of exemption from rail restrictions.
   H. Statutory declaration as to correctness.

(b) Proper Licensing Authority

(i) For new applications:
   1. For a single place of business, LA for that district.
   2. For multiple places of business, or when any doubt, LA appointed by Secretary.

(ii) For existing licences, LA who granted licence. (Note harbour ferries under S.96(4). S.115

(c) Processing of Application

(i) Secretary to transmit to LA and may within 14 days thereafter furnish additional relevant information.

(ii) Copy of such additional information to be sent to applicant who has further 7 days in which to comment on it. S.118

(iii) In case of:
   A. Goods services licences not involving exemptions from S.109;
B. Rental services;
C. Passenger or harbour ferry services (except those involving scheduled services or seeking exemption from S.109);

LA to determine application on the papers unless:
D. LA forms provisional view to decline or feels he should hear applicant or Secretary.

(iv) If in cases under (iii) above a hearing is required, then:
A. 14 days notice of application;
B. Only applicant and Secretary may be parties. S.119

(v) Where rail exemption is sought (ie passenger or goods) hearing required:
A. 14 days notice of application.
B. Only:
   Applicant
   Secretary
   NZ Railways Corporation
   may be parties. S.120

(vi) In case of taxi or scheduled passenger or harbour ferry services:
A. 14 days notice of application.
B. Only:
   Applicant
   Secretary
   Any person whom LA considers is directly interested in or affected by the application (subject in case of taxis to S.122) may be parties. S.121

(vii) For taxi applications, LA not entitled to receive objections against grant of taxi service by a taxi licensee or group unless:
A. Objection relates to suitability of applicant; or
B. Objection relates to desirability of providing and maintaining reasonable standard of living and satisfactory working conditions in taxi industry; or
C. It is proved that objector (or its licensee members) are subject to roster of duties approved under S. 143 and it is being effectively operated. (Possibility of mini trial on this issue and note also discretion of LA under S.122(2)). S.122

(viii) For temporary licences see S.117
4. Criteria for Granting of Licenses

Basic Rule

(a) After consideration (on papers or at hearing) of application (except taxis) LA must grant application if satisfied that service is likely to be carried on in safe and reliable manner.

(b) Only matters LA permitted to have regard to (and limited to extent they are relevant to criteria under 1. above) are:

(i) Type and nature of proposed service, vehicles (ferries) to be used, facilities and arrangements for survey, maintenance and repairs;

(ii) Experience, competence and repute as operators or participators in any business, trade or profession of persons responsible for management or control.

(iii) Financial matters, S.123(1) & (2)

Exceptions to the Basic Rule

(a) Where exemption sought:

(i) Same basic criteria apply; but

(ii) Exemption or partial exemption not to be granted unless LA satisfied that the exemption or partial exemption would not operate adversely to the public interest.

S.123(4)

(b) Scheduled Passenger/Harbour Ferry Services

Basic rule applies unless LA satisfied:

(i) Existing services adequate to meet reasonable public demand.

(ii) Grant would affect materially the economic stability of existing licensee carrying on service at least as efficiently as that proposed by the applicant.

but LA must also be satisfied that applicant's service would be carried on in conformity with any approved urban transport scheme.

S.123(5) & (6)

(c) Taxi Services

Basic rule does not apply and provisions of existing Act substantially reproduced.

S.124

Additional Requirements of Grant

1. Except for temporary, taxi or scheduled passenger or harbour ferry licences (and subject to S.109) a re-licence must authorise carrying on of the service without limitation as to area.
2. Except for temporary licence and subject to Section 109 the goods service licence must authorise licensee to carry on the service without limitation as to the kind of goods carried.

5. Conditions in Licences

1. Very limited power for LA to impose conditions except:
   (a) Statutory conditions (S.127-133).
   (b) Following inquiry under S.140-142.
   (c) Relating to exemption from S.109.
   (d) Permitting goods to be carried for hire or reward on passenger services vehicle or vice versa.
   (e) Taxi licences. S.125

2. Statutory conditions:
   (a) Apply to all existing licences from 1/6/84 S.126.
   (b) Requirement to notify Secretary within 14 days of changes in persons responsible for management or control or in those who in fact control a corporate body. (Not applicable to taxi licences). S.127
   (c) Compliance with Urban transport scheme for taxis and passenger or harbour ferry licences. S.128
   (d) Prohibition against carrying on scheduled passenger or harbour ferry services except as specifically authorised by the licence. S.129
   (e) Fares for children on scheduled passenger services.
   (f) Conditions relating to route or localities to be served, timetables and frequency, and pick-up or set-down rights for scheduled passenger and harbour ferry services. S.130
   (g) As to joining or agreements with taxi organisations for taxi licences. S.131
   (h) Maintenance and payment of fees etc in respect of vehicles or vessels. S.132
   (i) Restrictions on abandoning or curtailing services in respect of taxi and scheduled passenger or harbour ferry services. S.133

6. Amendment of Licences

1. Application may be made for amendment at any time.
2. Application to be advertised and considered and the same criteria applied as for new licence.
If amendment includes abandonment or curtailment of service, then also to be dealt with under S.133. S.135

7. Transfer of Licences
1. Transfers now prohibited except for taxi licences.
2. Transfer of shares in corporate licensee not prohibited - but subject to notice under S.127 and possible subsequent inquiry under S.140. S.136

8. Inquiries into Licences
Under Section 140
1. At discretion of LA or on direction by the Minister where on stated grounds, suspected that:
   (a) Because of changed circumstances, service or licensee no longer meets criteria for grant.
   (b) Licensee has failed to comply with conditions.
   (c) Licensee knowingly supplied false information on application for licence.
   (But not where same matters are inquired into under S. 141).
2. Twenty-eight days notice to licensee specifying:
   (a) Licence and matters to be inquired into.
   (b) Time and place of inquiry.
   (c) Grounds upon which the suspicion is based.
3. Only parties are licensee and secretary.
4. Powers of LA (if satisfied) as to (a) (b) or (c) in 1. above:
   (a) Revoke licence and prohibit application for another for three years.
   (b) Suspend for up to three years.
   (c) Impose conditions relating to number of vehicles or ferries.
   (d) Cancel or suspend exemption from Section 109 for any period down to 31/10/86.
   (e) Fine licensee up to $5,000.
   (f) In case of taxi licence, give licensee opportunity of transferring it.

Under Section 141
1. Mandatory inquiry where:
(a) Minister directs.
(b) LA thinks the number and nature of offences to be sufficiently serious.

2. Offences are:
   (a) Breach of rail restriction (S.109).
   (b) Breach of waybill provisions (S.113B).
   (c) Breach of Road User Charges Act 1977.

3. Similar provisions as to procedure and parties as under S.140 but Railways may be party in respect of 2.(a) and (b) above.

4. Test for action by LA on inquiry is whether it is in the public interest to revoke, suspend or vary conditions (essentially protective condition).

5. Powers of LA as for Section 140 except power to fine.

Under Section 142
1. Discretionary inquiry by LA into pricing practices of a "dominant licensee".

2. Note definitions of:
   - market for transport services
   - price
   - dominant position in market.

3. Basic issue is whether the interests of users of transport services in that market are or are likely to be harmed by dominant licensee engaging in pricing practices to:
   (a) Eliminate or damage competitor in that market.
   (b) Restrict entry of others to that market.
   (c) Deter or prevent competitive pricing in that market.

4. Power to impose interim price control for period up to 6 months.

5. Equivalent requirements to Ss 140 and 141 as to notices; but parties include actual or potential competitor and a recognised "consumer" organisation in that market.

6. If LA satisfied as to 3. power to:
   (a) Impose price control for up to 6 months.
   (b) Suspend licence for up to 2 years.

7. Power to review any order made.

Under all inquiry provisions, LA has power to direct payment of costs by or between parties whether or not any other order is made.
1. To Licensing Appeal Authority

   (a) Appeal lies from following decisions:

      (i) Granting or declining to grant a transport licence (includes a decision on such application imposing a condition or granting an exemption).

      (ii) Substantive or costs orders under inquiry provisions (Ss 140-142).

   (b) Although appeal rights limited, LAs will still be subject to review in other areas.

   (c) Note the requirement in S.123(7) as to LAs decisions being in writing and where reasons must be given.

   (d) Time for appeal 28 days from noting of decision in Register, with power to extend under S.55.

   (e) Except in cases of taxis, rights of appeal limited to:

      (i) Applicant for licence.

      (ii) Licensee.

      (iii) Secretary

      (iv) Any other party at the hearing or inquiry (or who was entitled to be a party and was unjustifiably denied that right). S.154

   (f) Note intermediate rights of licensee pending determination of appeal under S.57 or pending reconsideration by LA on reference back under S.59(3).

   (g) LAA to receive notes of evidence taken before LA and to fix time for hearing of appeal (contemplates oral hearing). S.156.

   (h) LAA may confirm, modify, reverse decision or direct a reconsideration by LA. Ss158 and 159

2. From Licensing Appeal Authority to High Court

   (a) Appeal lies on point of law to High Court.

   (b) Time for appeal, 28 days from date of LAAs decision.

   (c) Appeal instituted by notice of appeal:

      (i) To High Court at Wellington.

      (ii) To LAA.

      containing particulars in S.162(3).

   (d) Service on other parties before LAA required before or immediately after lodging notice of appeal. S.162
(e) Intending respondents to give notice of intention to appear.

S.163

(f) Note procedural provisions contained in Ss164-168.

3. From High Court to Court of Appeal

(a) Appeal lies on question of law.

(b) Procedure to be followed is that in S.144 of Summary Proceedings Act 1957 (as if the High Court's determination were made under S.107 of that Act).
SOME PRACTICAL EFFECTS OF LEGISLATIVE CHANGES TO THE TRANSPORT ACT

by J.W. Foster, M.C.I.I.

Auckland Transport District Licensing Authority

We are now in the middle of the transitional period from a quantitative to a qualitative transport licensing system resulting from the passing of the Transport Amendment Act (No 2) 1983. This amending Act is possibly the most historic and far reaching piece of transport legislation in the past 50 years.

It is not my function in this paper to attempt to traverse so great a field as all the effects that the amended legislature will have on transport licensing. I shall therefore only endeavour to confine what I have to say to the question of goods service licences commencing with a very brief history of transport licensing.

Transport licensing has been with us for nearly 50 years and commenced in the mid 20's in order to regulate competition between buses and trams and avoid uneconomic duplication of transport services. This was in the form of the Motor Omnibus Traffic Act 1926. Within a few years with the advent of road transport in earnest transport regulation was fast becoming a major concern as heavy trucks were growing in numbers and threatened not only the standard of roads but also public safety. There was also the question of heavy vehicle and passenger vehicle construction and standards of service in public passenger transport which had to be considered. Within a few years the economic regulation of all passenger transport was instigated in terms of the Transport Licensing Act 1931. Shortly after this goods services were added and again within a few years concerned at the protection of the enormous capital investment in Railways, the Government introduced rail protection within a 30 mile limit. By 1936 the legislative structure to encompass land transport licensing was in place and the effect of the subsequent amendment acts has basically been that of refinement without substantial material change. In the 40's Auckland harbour ferries were included and later rental cars. Later still the 30 mile rail restriction was lifted to 150 kilometres. But the principles of transport licensing based on the quantitative system has been the foundation of entry into this licensed industry with the exception of some liberalisation of the rental car industry.

By way of clarification, in simplest terms the quantitative system is in effect the test of proof of demand for the service as one of public interest, whereas the qualitative system is a much less stringent test where the onus rests on the applicant to prove financial ability to operate coupled with management expertise.

New Zealand's geographical and difficult topography with a great inbalance of population distribution adds considerable costs to transportation particularly due to unbalanced loadings and this has undoubtedly been a significant factor in the maintenance of economic restraints up to the present time.
To some extent it may be said that New Zealand has over invested in transport proportional to population and a figure of something like 12,000 million dollars of investment in the licence road industry may be a conservative estimate and highlights the situation.

To put the licensed road transport operation into true perspective, as at December 31, 1982 (the latest statistical available through the Ministry of Transport) there were 25,027 licensed goods service vehicles operating under the licensing system, an estimated 3,000 buses, 2,917 taxis and 10,394 rental vehicles. In all 41,328 vehicles under transport licensing. For this fleet there were something in the order of 13,068 licences in force. The industry employs something like 15% of the total labour force in the country.

With these figures in mind and to the fact that there are over 3,000 appeal decisions on record against decisions of Licensing Authorities, it is not surprising that the field of transport licensing occupies a not insignificant and immensely complex part in the administrative law structure in this country.

Before proceeding to consider the broad outline of the changed legislation with regard to goods services it is important at this juncture to understand the role of the Transport Licensing Authority.

At the present time there are sixteen Transport Licensing Districts presided over by five Transport Licensing Authorities. Four of the Transport Districts are metropolitan districts dealing with public transport alone and one district is unique - I refer to the Auckland Regional Transport Licensing Authority which is a three man tribunal to deal with buses and harbour ferries within the Auckland Region. As from June 1 this year, this Regional Transport Licensing Authority will cease to exist and harbour ferries will have to be handled by a reconstituted Harbour Ferry Licensing Authority.

Apart from dealing with applications for new licences and amendments, temporary licences and so on, the Authorities also review licences and conduct public inquiries into the operation of licences, act as Appeal Authorities in certain areas of taxi operations and have an extended function in a wider sphere in terms of the Transport Licensing Regulations, particularly in the areas of driving hour exemptions and passenger transport operations. In fact the Authority's role is much wider than might be anticipated. I should also mention the Authorities have a statutory requirement to undertake triennial reviews of taxi fleets in all urban areas exceeding 20,000 population (this means 7 or 8 reviews in the greater Auckland area).
As from November 1, 1983 Transport Licensing Authorities were given wider powers to equip them for the change to the qualitative system. Up until that time the Authorities had the powers and privileges of a District Court Judge at all public hearings but there was a grey area as to their immunities in law when dealing with matters "on the papers". A study of the Official Information Act 1982 led to some uncertainties as to the true legal position of a Licensing Authority and in this context it seemed to fall under a heading of a tribunal with judicial powers. Now in terms of Section 103 of the Amendment Act, this matter has been resolved. Licensing Authorities now have full judicial powers and immunities for dealing with any matters which they are required by law to attend to during the course of exercise of their duties.

At the present time there are five Transport Licensing Authorities, but as I understand Government thinking, the proposal is to consolidate in view of the reduction of public hearings as a consequence of the change to the qualitative system. With this background therefore I now come to the introduction of qualitative licensing which is to operate from June 1, 1984.

In terms of the Amendment Act the Authorities now have power collectively to set practice procedures. In reality it will not be possible to formulate any practice procedures until the revamped Transport Licensing Regulations are promulgated and in this regard I do not expect these Regulations will be sighted before May of this year. Furthermore I believe the Authorities will want some practical experience of handling applications under the new system before they could contemplate any code of procedures. As time proceeds I am sure a set of practice directions will be published and will be of assistance for dealing with future applications. In late May the Authorities propose to hold a conference on this very subject.

In preparation for June 1, some softening up has been accomplished by the lifting of a number of restrictions subsequent to November 1, 1983. In this regard all area and commodity restrictions have been removed although this does not apply to licences subject to rail exemption. Last year at a conference of Licensing Authorities it was decided to act consistently with regard to the interpretation of Section 6 of the Amendment Act in that new general goods service licences would be issued, where evidence supported the application, in standard terms. Thus a general goods service licence is now issued showing the area as New Zealand and commodity as general goods with the respective number of vehicle authorities granted. The repeal of Section 26 of the Transport Licensing Regulations 1963 has removed the requirement to insert a business domicile.

It can be seen then that those matters requiring so much hearing time by Licensing Authorities have been eliminated overnight.
Looking specifically at the rail situation, the introduction of a three year graded permit system for the right to carry goods where rail protection applies has also eliminated the necessity in many instances for applications being lodged for rail exemption. Coupled with this the aggressive marketing policy of the New Zealand Railways Corporation which has been clearly revealed may also diminish any real need for many further major fights with regard to rail exemption applications. It is clear that most carriers are now prepared to apply and pay for a permit which is borne at the client's expense rather than embark upon expensive legal argument before a Licensing Authority.

The media has frequently referred to the changes in transport licensing as simply de-regulation suggesting that the licensing system is to be abolished. I believe that this is very misleading and confusing to the public as well as to many transport operators. Section 108 of the Amendment Act provides for a penalty of $10,000 for anyone upon conviction who carries out a Passenger Service, Taxi Service, Rental Service, Goods Service or Harbour Ferry Service without the appropriate licence. I suggest this is far from de-regulation.

Recently I read in a major daily newspaper that as from June 1 a passenger transport operator would be able to amend his timetable without any recourse to the Transport Licensing Authority. This of course is simply not true. In fact the Amendment Act provides for very tight control over route passenger operations with even more stringent requirements for public hearings than at present applies.

As from June 1 this year entry into the licence transport industry, with the exception of taxis, will be on a qualitative basis. Broadly as I have stated entry will be based on management expertise coupled with satisfactory financial ability to operate in conjunction with safety factors. All arbitrary economic restraints are thus removed and so entry into the industry will be considerably easier.

At this stage it is necessary to break down the different types of licensed applications for transport licences into four distinct categories for further consideration of the practical effects that will emerge in the changed legislative amendments.

These are:

1. Goods Service, Rental Service, Passenger Service Licence applications where the applications for passengers do not fall under the heading of a scheduled timetable route service.
2. Goods Service Licence requiring rail exemption.
3. Passenger Services for scheduled services and taxis. With regard to taxis the changed legislation has no practical effect on this industry (with some exceptions) and the quantitative requirements still stand.

Common to all these categories with the exception of taxis is the abolition of the right to transfer licences. All new entrants into the industry will be required to undergo the 'qualitative test' for a new licence. Once a licence has been obtained it is understood there will be no limit on the number of vehicle authorities and applications will, to a greater extent, be considered on the papers alone. In regard to vehicle authorities to be issued I understand these will be allied with the registration number of the actual vehicles in use and will be of considerable benefit for enforcement procedures. The mechanics for all this are still to emerge.

Looking specifically at applications for a general goods licence the most fundamental change is the removal of the compulsion of the Licensing Authority to hold public sittings except under certain circumstances. The substantive majority of all applications will be dealt with on the papers.

Further unless the Authority receives a submission from the Secretary for Transport the Licensing Authority is unlikely to hold any public hearing over an application unless he is clearly of the opinion that the papers indicate something is amiss and that he should decline the application in which case a hearing is to take place. However for all practical purposes unless a submission from the Ministry is received an application is likely to be granted on the papers. In one sweeping change then, two thirds of all the public hearings presently held by Licensing Authorities will cease to be necessary.

It is important to stress at this point that as a judicial officer a Licensing Authority employs no staff. Consequently any investigation has to be undertaken by the Ministry of Transport's specialist staff. It seems therefore highly unlikely that an Authority would find it necessary to decline an application in the absence of any submission from the Ministry after the application had been scrutinised in accordance with Section 116 (3) of the Amendment Act.

For the past few months my policy has been to deal with as many applications for transfers and amendments of goods and passenger licences (except taxis) by way of Section 140 of the present Act that is, by public notice advising that the application will be granted unless objections are received. This policy has enabled a speedy solution to my usual backlog of applications pending public hearings and, perhaps more importantly, has commenced a dual process of dealing with applications by determining as many applications as are possible on the papers with recourse to public hearings where information is woefully lacking.
The present application form is unsatisfactory in this regard, but the Ministry staff have gained much experience in assembling the pertinent missing facts which I consider necessary for the success of an application. In other words the transitional period is being put to maximum benefit as far as I am concerned.

For determination on the papers a much more complex application form will need to be devised by the Ministry of Transport. Section 116 of the Amendment Act 1983 lays down the requirements in this regard. I do not believe the Ministry is likely to embark upon a form so complex as that which applies in Great Britain. Nevertheless an application has to be made out in triplicate accompanied by a written statement setting out the type of transport licence sought and also showing the equity of the applicant in the proposed service, the details of capital requirements and the details of any arrangements under which monies are borrowed as well as details of all land, buildings, vehicles etc. The application is to include any submission which the applicant wishes to make, documents and testimonials which will assist the Authority in considering the application and a written statement identifying the persons to be involved for the running of the transport business. If the applicant is a body corporate indication of the persons responsible for running the organisation are to be included and in the event of the application being for a goods service, an indication of whether or not the application will have any effect on the rail restriction. The application is to be accompanied by a statutory declaration and following receipt of this application and being satisfied that the application is properly made the Secretary for Transport will forward all the papers on to the Licensing Authority so that the Authority may come to a proper decision. It will be possible for an application to be granted in a relatively short space of time if the papers are in order.

At the present time, with the public hearing requirement, there is a substantial time elapse necessary between the filing of an application and the holding of a public hearing. Under the new system it would be possible for an urgent application to be dealt with instantly subject to the availability of the Authority. In practice the Authorities will still be required to undertake circuit work in conjunction with passenger and taxi applications as well as public inquiries so that it is likely there will always be some delay in the application being considered. Furthermore there is the right of the Secretary for Transport to make a submission within 14 days of an application being received and forwarded to the Authority as to whether the application should be declined or otherwise and a further 7 days for the applicant to comment on the Ministry's submission. In this case where a public hearing is to be held there could be a further month's delay before a hearing can be arranged. As no goods service or passenger service licences can be transferred all applications taking over an existing business must be dealt with as a new application.
The matters which have to receive the Authorities' attention are difficult areas to adjudicate upon particularly when dealing with the papers alone. To a very large extent the format of the application form to be designed and produced by the Ministry of Transport will be critical for ease and speed in considering each application a factor which I cannot over stress.

Section 123(2) of the Amendment Act lays down the framework that an Authority must have regard to in reaching a satisfactory conclusion that the proposed service is likely to be carried on in a 'safe and reliable manner'.

Significantly most of the matters requiring an Authority's consideration under this new section were in fact matters to be considered under the old requirements. Section 123(2)(a) covers the type and nature of the proposed service and the vehicles to be used as well as arrangements for survey maintenance and repair; Subsection (B) covers experience, competence and repute in other words if the applicant is a fit and proper person to operate a transport business; Subsection (C) covers financial matters. Specifically the new Section 123(3) requires details of the person or persons who control a body corporate - this is an entirely new criterion.

However under the old system the primary requirement was to ascertain the need for the proposed goods service and the necessity of proving this requirement as being in the public interest and the needs of the district.

In my experience the substantial time of any public hearing in the past to consider a new general goods service licence was devoted to hearing evidence and argument on the quantitative test and if an applicant established the evidence of need then he usually succeeded in the financial tests on the basis that if the work was genuinely there, then so was the income to ensure the operation was a viable success.

Not so, of course under the new system, so that in considering the applicant's financial ability to carry on the proposed service in a safe and reliable manner, without any requirement to show evidence of work, particular attention will have to be given to the financial data filed with the application to indicate that satisfactory equity and working capital is available to carry out the service proposed.

For example, a number of owner driver type of applications can only be held to be financially viable due to minimum guarantees of work. Without a guarantee many of these operators do not have sufficient capital to borrow funds to purchase expensive rigs. This is particularly relevant to young operators entering the transport industry who obviously have insufficient working time to accumulate capital.
In such cases in future more emphasis will probably have to be placed on such things like work references and bankers references to support an applicant's personal financial standing.

However, being completely practical, following close scrutiny by trained Ministry of Transport personnel of all applications, the Authorities themselves, with no further information than contained on the application form are unlikely to form any other conclusion than those of the examiners. Where something is obviously lacking I feel confident that the Ministry will highlight the concern by a submission to the Authority. There will be occasions where the Authority is unsatisfied on some item and requests additional information from the applicant.

I expect the Ministry will only lay a formal submission to the Authority where there is a history of criminal or traffic convictions, offences against rail or road user charges, or other offences against the Transport Licensing Regulations. These areas are within the natural resources of the Ministry to evaluate and I have some doubt as to whether for the purpose of a transport licence other misdemeanours of administrative law would be canvassed. There may be questions of financial ability which demand further proof and some hearings may rest solely on this factor.

If the Licensing Authority forms a provisional view on studying the papers that the application should be declined or feels he should hear either the applicant or the Secretary for Transport, a formal hearing is to be arranged.

The mechanics for arranging the hearing where they become necessary remain similar to the old law with the exception that a notice in the gazette is a pre-requisite. The format however of the hearing is vastly different in that the parties entitled to be heard are the applicant and the Secretary for Transport only. Whilst the hearing is 'public' the procedure is very much simplified in that the applicant knows the other party in advance. I am aware that the legal profession have always found hearings before Transport Licensing Authorities difficult in that they are never too sure until the hearing who will oppose their client's application.

If the application is for rail exemption a hearing is a mandatory requirement and in this case as well a representative of the Secretary for Transport, the New Zealand Railways Corporation is also automatically a cited party.

Where hearings take place the Ministry of Transport's role will undergo a change as, being a cited party with right of appeal, the Ministry's previous position as an amicus at transport licensing hearings is automatically altered.
This should not really effect the relationship which the Licensing Authorities presently enjoy with the Ministry's staff as it has long been the policy of the Authorities to observe strict procedures to ensure complete impartiality with the Ministry's staff who appear at public sittings. I believe it will be necessary for those exercising the delegated authority of the Secretary of Transport to ensure a degree of consistency when making a formal submission to the Licensing Authority which may set in train the holding of a public hearing.

One matter which is probably worth mentioning at this juncture is the importance in my opinion of submitting a copy of the Certificate of Incorporation where the applicant seeks a licence in the name of a private company. This is a routine procedure for the legal profession but is likely to be overlooked by a private individual filing his own application.

Before moving on to briefly discuss the often vexed question of temporary licences, I believe that where professional advice is sought in regard to the filing of an application for a goods service licence, or any other type of transport licence, the application is likely to be completed in sufficient depth and detail to permit a smooth passage for consideration and consequently a relatively quick decision may be possible. Obviously the form to be designed will have to be quite complex to cover all the matters set out for statutory consideration. A poorly designed layout will just create additional work for Ministry of Transport staff.

The law relating to the granting of temporary licences has been considerably extended by Section 117 of the Amendment Act. The most dramatic alteration being that once granted, a temporary licence is valid for no longer than 28 days and cannot be renewed in similar terms within a 28 day period after the lapse of the initial grant. This will mean an end to operators running on continually renewed temporary licences and may create some problems in the passenger transport and taxi industry.

As no goods service licences will be transferrable a new licence application will be necessary for what was previously dealt with by transfer. The importance then of furnishing full details with each new application becomes apparent when considering that if the application is defective and leads to the necessity of holding a hearing there is no way in which the transport business can be legally continued whilst these procedures are followed.

The Railways Corporation are also to be consulted, if the temporary licence involves rail exemption, but the Act lays no other consultative procedure other than considering any submission from the Secretary for Transport. I imagine the Ministry will liaise with such organisations as the Road Transport Assn and others.
There is considerable case law on the question of the granting of temporary licences as being a judicial act by a Licensing Authority and I anticipate this is an area which for consistency's sake needs to be incorporated into published practice procedures of Licensing Authorities in due course.

In view of the statutory restriction of the term of any temporary licence it would seem prudent when seeking a transport licence for the new prospective licensee to file the papers and obtain his licence before any sale is finalised. This is really similar to the sale of property when vacant possession is not usually obtainable until the completion of all the legal formalities.

Interestingly my office handled 6322 applications for temporary licences in 1982 and 4965 in 1983. The marked reduction resulted from a fall off in applications just prior to November 1 last year. Presently the applications appear to hover around 200 a month having fallen from 500 to 600 per month and now mainly relate to additional vehicle authorities, goods which are unsuitable for rail transportation and transfers and amendments pending hearing. From June 1 I anticipate a further reduction in requests for temporary licences in view of the changed emphasis now required by statute. However I am extremely reluctant to even consider a temporary licence application where a matter is likely to be contested at a public sitting, and leaving aside the public passenger section of the transport industry and exemptions from rail, I do not foresee too many temporary licences being issued for general goods operations.

To conclude I have not endeavoured to cover the subject of public inquiries and reviews as these areas of transport licensing law fall outside the somewhat narrow parameters of this paper. Nor has it been possible to explore the effects of the legislative change in passenger transport which might well be the subject of a paper itself. It can be seen though that the role of the Transport Licensing Authority also undergoes a radical change to accommodate the new legislation.
In ten years time, the recent changes to the systems of road transport licensing and intermodal competition may seem like part of a natural progression. In global terms, they have precedents in a number of Western countries including Great Britain, Australia and the United States. In local terms they are consistent with the removal of protection in other sectors such as the delicensing of the freezing works and the phasing out of trade barriers with Australia. In early 1982, however, the changes seemed far from inevitable, and it was only due to the confluence of a number of factors congenial to the changes that they occurred at all.

The first such factor was an increasing number of calls from industry, particularly manufacturers and exporters, for a change to the somewhat arbitrary and restrictive 150 km restriction. While these calls came from a number
of different industries, they were united in a belief that removal of the restriction would permit major savings in transport or distribution costs. Typically, while transport users often conceded that rail and road transport freight rates were comparable, the major savings lay in indirect transport costs such as loss and damage; pilferage; delays; unreliability and resultant high inventory costs. These calls for relaxation were echoed by the Industries Development Commission which, in the course of reviewing a number of marginal industries, identified the rail restriction as representing an area of significant potential cost savings.

The second factor of importance to the change was the existence of a willingness within the Government to withdraw protection from sectors of the economy if it was in the national interest, even where this involved making "tough" decisions.

One of the first actions of the Hon. George F Gair when he took over the transport portfolio was to announce the establishment of a major review into the land transport licensing legislation. After consultation with the Ministry of Transport, it was decided that the review
would be carried out by the Ministry through the medium of a discussion document which would be released to interested parties for comment.

The discussion document, released in September 1982, was in two parts. The first part was devoted to the quantitative system of licensing which is, as I write this, still in force. The document postulated that this system restricts competition within the road transport industry by making prospective entrants comply with a strict requirement to prove that there is a demand for the service and that it will not adversely affect the viability of existing services. These provisions give existing operators a measure of monopoly which results in many cases in higher prices and a less satisfactory standard of service to the user than would be available if entry were easier. The regulation of freight rates by the Ministry of Transport also acts to promote inefficiency because the cost plus formulae used guarantee commercial returns to all but the most inefficient of operators. In addition, the present licensing system restricts vehicle use as licence holders are generally restricted to a given area, route, commodity or company. This often results in vehicles being under-utilised, with costly capital being tied up in non-productive activity.
Having attempted to identify these problems, the paper then went on to outline a system of qualitative licensing which would remove them by using entry criteria based on the quality or suitability of new entrants rather than on the control of capacity.

The subject of qualitative licensing had been aired with the transport industry on a number of occasions, most notably with the Transport Advisory Council, the body formed to advise the Government on transport matters and containing representatives from every major transport sector. On that occasion, it seemed that the industry's suspicion of the concept stemmed at least in part from the difficulty in identifying the nature of the beast. The qualitative system outlined in the discussion document was put forward to give interested parties a clearer concept of this type of system on which to comment.

The second part of the paper dealt with competition between road and rail and covered in some detail the problems I have already described.

Over 200 submissions on the discussion document were received, and these tended to support the adoption of a qualitative licensing system, as well as confirming
the existence of costly problems associated with the 150 km restriction.

As a result of the review of land transport policy, the Transport Amendment Bill (No. 5) 1982 was introduced to the House near to the close of the 1982 session for study over the recess. The Bill contained the two important changes which came out of the review: it introduced a system of quality licensing for commercial road transport, and it provided for the phased withdrawal of the rail restriction.

The following year, 1983, saw substantial Select Committee hearings on the Bill and there were vigorous representations by all the major interest groups.

The Ministry was associated with much of this activity, and I must say it was gratifying to see that most of the parties involved, as well as members of Parliament from both sides of the House, put aside their differences and concentrated on the important business of making the legislation work. The end result was a Bill substantially changed in detail, virtually rewritten in fact, but retaining the main policy features of the earlier draft. The Act was finally assented to on 26 October 1983, barely a week before implementation of the first stage.
I will not discuss the new Act in detail here; to do so would go outside my brief. I would, however, like to explain the reasoning behind some of its main features.

The first feature of note is the permit system which is designed to provide for an orderly shift of the goods traffic from rail to road which is intrinsically more suited to road transport.

The Ministry has estimated that rail will lose approximately 18 percent by volume of its current traffic when the limit is completely removed. The permit fee, which is currently $6 per tonne per day, will ensure that in the first year only that traffic with potential savings greater than this amount will transfer from rail to road. The phasing will be accomplished by reducing the permit fee to $4.50 on 1 November 1984, and to $2.50 on 1 November 1985. By this means, about a quarter of the traffic will transfer each year. When the limit is abolished from the same date in 1986, the remaining quarter of traffic will transfer. This phasing is designed to cushion the impact on the Railways Corporation, and on the road transport industry which is to carry the extra traffic.
The second feature to note is the new enforcement package in the Act. No doubt many in the Foundation are aware that there has been a substantial amount of illegal activity in the road transport industry, with most offences being associated with breaches of the rail restriction. The enforcement package is designed to ensure that this activity stops, or is at least dramatically curtailed, and that people wishing to compete with rail do so by purchasing permits. Our observation is that this has occurred, thus ensuring that the phasing mechanism works and restoring equity among road transport operators.

The third feature of the Act is the introduction from 1 June this year of quality licensing for commercial road transport. No doubt most of you have read the Act and a consideration of what the new system will mean will form a significant part of our panel discussion. I am happy to leave a more detailed consideration of the subject until then. I should point out, however, that a major revision of the Transport Licensing Regulations will be needed to ensure the smooth implementation of the system. At the time of writing, work in this area is still in its early stages. For this reason our discussion on this topic will necessarily be incomplete.
Now that the Amendment is finalised, one of the important tasks that remains is to monitor its effects. Much of the public debate has centred on the withdrawal of the 150km restriction, and this is an area where we will be particularly interested to see the outcome. Monitoring will be done by computer analysis of permit sales and by analysis of changes in rail goods traffic levels. Another important indicator will be changes in traffic density on the country’s roads and I hasten to add that we expect these to be insignificant. We are also studying the feasibility of conducting user surveys. On the licensing side, we will be looking at effects on concentration, business failures, services to rural areas, and vehicle utilisation.
1. **BACKGROUND:**

1.1 The previous major alteration to Transport Licensing legislation was the relaxation of the 40 mile restriction to 150km on 1 October 1977. This move led directly to tonnage losses for Railways over a number of important trading routes—particularly between Auckland and the Bay of Plenty. In the main the losses arose from rate cutting within the 150km limit, and illegal cartage beyond this distance. The illegal cartage was generally carried out door to door, for railhead to railhead rates—unless competition between illegal operators forced rates even lower. Although it was not possible to isolate precisely the levels of traffic lost through the relaxations and illegal cartage, in the year ended 31.3.78 Railways suffered major tonnage losses in wool (74,000t), dairy by-products (58,000t), agricultural lime (32,000t), timber (200,000t) (1977 figure inflated by windfall logs) and General goods (345,000t). It must be emphasised that no one would suggest that road transport was solely responsible for these losses. However the road industry undoubtedly had a significant effect.

1.2 The Ministry of Transport found that its traditional methods were not adequate to enforce the extended limit, and in mid-1978 the Transport Licensing Unit was created. This unit—originally set up in the Auckland-Waikato-Bay of Plenty area and only recently extended to cover the balance of the country—specialised in transport licensing. But even with this unit the Ministry has never succeeded in eliminating illegal cartage. However, after many Court actions, the point had been reached under the "old" law where most "points of law" had been resolved and the success rate for prosecutions was steadily increasing.
2. MINISTRY OF TRANSPORT DISCUSSION DOCUMENT:

2.1 It was against this background, and in the midst of a overall decline in the freight market generally, that the Ministry released their Discussion Document on Land Transport Licensing and Regulation. This document, which was released on 2 September 1982, invited submissions on its contents to be lodged with the Secretary for Transport by 22 October of that year.

2.2 The Railways Corporation opposed many aspects of the Discussion Document and presented lengthy detailed submissions against its contents. This opposition was directed to what the Corporation saw as errors in fact and to differing views on the effects of any proposed changes.

The Corporation regarded the views put forward in the document with such concern that it engaged Senior Counsel to assist in the preparation of its reply (and to represent the Corporation before the Select Committee hearings which followed).

2.3 The main points advocated within the discussion paper which would affect Railways were:

- Qualitative Licensing to replace the present quantitative system for both goods and passenger.

- Relaxation of the Rail Restriction by substituting the 150km limit with one of the following:
  - a further extension of limit
  - a positive list of goods which must travel by rail
  - applying limit to main trunk only
  - long distance fee.

- A general tightening of enforcement legislation.

2.4 Of the four suggested methods of relaxing the rail restriction, the option incorporated in the legislation - the
long distance fee - was in the Corporation's view the lesser of a number of evils. Despite our doubts regarding overloading and speeding, it would have in all probability presented a reasonable phasing mechanism, had the fee been set to equate with 18-22% of the costs of the carriers most likely to compete with rail after the law was passed. Even the present level of the fee, (which is scheduled to reduce) is far too low to achieve an equitable phasing. It is significant that most of the road transport industry's complaints in relation to the present fee arise where mixed loads lift the fee well above the basic $6 per tonne.

2.5 There were more than 180 submissions received by the Ministry which were categorised by them as follows:

- 41 sought the retention of the present (old) system
- 61 sought an easing of the quantitative licensing
- 40 sought qualitative licensing
- 58 sought retention of the rail restriction
- 86 sought relaxation of the rail restriction

Rail, Road Operators and the Freight Forwarding industry all opposed any major change to the rail restriction.

3. TRANSPORT AMENDMENT (NO.5) BILL:

3.1 The Transport Amendment (No.5) Bill was introduced to Parliament just prior to Christmas 1982 with submissions to the Select Committee to be filed early in 1983.

3.2 The Corporation accepted at that stage that the Bill reflected Government policy, and thus its comments were necessarily restricted to the mechanics of the legislation.

3.3 The main points in the Corporation's submissions to the Select Committee suggested;

- that waybill and enforcement provisions applied to light vehicles
that the proposed level of the permit fee was far too low
permanent weigh stations to assist with enforcement
the right for Railways to be heard in any application seeking exemption
the right for parties to test statements made in support of applications other than for exemption
a definition of "a scheduled service over a specified route"
that when considering an application for a competitive scheduled route passenger service the economic criteria should apply to the licencee's activities only over the route in question rather than its whole business
and asked how the Authority was to consider the matters set out in the papers in support of an application (how to consider safe and efficient operation etc).

3.4 The final Act as passed included a number of amendments sought by the Corporation although the major submissions regarding the level of the long distance fee and some degree of protection for route passenger services were not adopted.

4. **EFFECT ON NZR OF NEW LEGISLATION:**

4.1 The Corporation estimated at the time that abolition of the rail restriction would effect 1981/82 traffic levels by a loss of:

- 18% of nett tonne kilometres (600 million)
- 25% of Revenue ($102m)
- an additional $16 million in revenue due to rate reductions.
- Result in 3600 wagon equivalents becoming surplus
  24 locomotives becoming surplus
  2500 staff becoming surplus
(estimated 5 years of natural attrition to reduce to this level).

5. EFFECT ON RAILWAYS TO DATE:

5.1 Although the rail restriction was not relaxed in total, the level of the long distance fee is so low that it is anticipated the full effect of deregulation will be felt long before the end of the phasing period.

5.2 Tonnage levels to the end of December have been to a large extent maintained, however this trend is not expected to continue into the New Year when there will be a seasonal reduction in the freight pool. Revenue has shown a significant reduction due to the need to reduce rates to maintain tonnage levels.

5.3 There has been a positive response by Railways in the areas of marketing and service which has aided in the retention of tonnage.

- Field Sales staff have been increased from 12 in 1982, to 27 at present with a further 8 new positions to be filled in the near future.

- A nationwide door to door freight service has been introduced using town carriers to bridge to and from rail.

- Train schedules between major centres have been accelerated to provide overnight services and "slot" trains introduced for premium freight.

- The Freight Handling Section has been restructured to place greater emphasis on customer services.

6. AFFECT ON OTHERS:

6.1 Railways' calculations showed a nett loss to the economy of $30m as opposed to the MOT figure of $37m gain. (Later amended to $15-20m). Railways also predicted:
- Increases in traffic density on roads, with associated increases in accidents and travel costs and reduced convenience.

- Greater expenditure of overseas funds for fuel, new road vehicles and parts.

- Pollution increases in the form of noise, vibration and fumes - especially in provincial towns on main routes e.g. Levin, Otaki, Huntly.

7. PROBLEMS FORESEEN WITH THE LEGISLATION:

7.1 Waybills:

While the waybill legislation will simplify the gathering of evidence to support a prosecution I foresee difficulties for the road operator in cases of multiple hauls. For example, if a consignment is received on rail at Wellington for delivery to the Hutt Valley, the carrier is required by S113 subsection 4(c)(iii) to produce a waybill showing:

"The person carrying the goods, or in the case of carriage in a succession of heavy motor vehicles, the persons carrying the goods" and by subsection 4(c)(iv)

"In sufficient detail to permit ready measurement of road distances for the purposes of Section 109 of this Act, the place at which the goods were first uplifted for the purpose of carriage and the place at which their carriage is intended to end."

Unless the carrier who delivered the goods to rail at the originating station is shown it would be very difficult for the delivering carrier to present a complete waybill in compliance with the legislation.

7.2 Nearest Station:
Although this rule was unchanged from the previous legislation it has been highlighted by new Section 109(8)(g). As a result of the difficulties which arose from the increased awareness of these provisions, the Corporation has now reprinted the Working Timetable distance tables (which tabulate the distances between places by rail) in order to "delete" a number of stations to enable a reasonable distribution area from major centres. Examples of stations deleted are Te Rapa and Claudelands adjacent to Hamilton. Matangi and Hautapu on the Cambridge line have been converted to private sidings, and Bruntwood closed. Bell Block, Smart Road and Breakwater near New Plymouth have been deleted. These stations will still exist for Railway purposes but cannot be used as part of an available route for licensing calculations.

7.3 Grandfather Rights

Section 6 of the Amendment Act removes all commodity and area restrictions within the rail restriction from licences. I can foresee some difficulties, and certainly disagreement, when this section is applied to amend licences.

For example, if a carrier already has North Island rights for TV sets, does he get New Zealand general goods subject to the rail restriction and retain North Island rights for TV's with exemption?

A literal reading of the legislation would suggest that he could not - yet he held the right to carry TV's within the 150km limit and had that been the only rights he held, the licence would have been amended to New Zealand general goods.

FUTURE:

8. While at the present time it appears that most of the previous regular illegal cartage simply continued moving with permits, it is the view of the Corporation that as the market diminishes following the Christmas upsurge, carriers will see
the $6 per tonne charge for a permit as being the difference between obtaining or missing out on work and will elect to run without permits. Evidence of overloading is appearing and a drive down any major road in the country will show that speeding by heavy motor vehicles is widespread. These activities are encouraged by the time basis of permits, and were predicted by many of the submissions to both the Ministry of Transport and the Select Committee. These and driving hours, an aspect of the legislation which has not recently been actively pursued by the Ministry, will need constant attention if the phasing sought by Government in the legislation is to work.

The transition from Department to Corporation and then to deregulation has occurred too quickly to enable Railways to make all the changes necessary to meet the new market requirements. The electrification of the main trunk will prove to be a vital marketing asset, bringing reduced costs and transit times. However these benefits tend to be long term. In the short term future the Corporation faces the immediate challenge of survival. And to do this it must develop strategies that will, among other things, reduce its relatively high cost structure. These strategies are now being finalised, and in the coming months the public and the marketplace will see many changes implemented by the Corporation to enable it to remain a major land and sea transport operator in New Zealand.
GENERAL

It is assumed that this Seminar wishes to address itself to the practical effects that impinge on legal matters rather than the practical effects that have to do with the physical distribution of goods.

The legal effects are in two broad fields.

1. The removal of protection for Railways phased over a three year period.

2. The change for Road Transport Operators from quantity licensing to quality licensing on the 1 June 1984.

In addition there are a number of provisions aimed at more rigid enforcement of present Rail protection rules.

REMOVAL OF RAIL PROTECTION

The legislation is an expediency to carry through for a temporary or transition phase Governments's policy to deregulate freight movements. Very little was done to remove anomalies in the previous legislation other than draconian measures to close up some of the loopholes that prevented enforcement of the law as it stood.

The N.Z.R.T.A. agreed and insisted that strict enforcement was necessary particularly as the Government was contemplating the addition of further monetary costs. We had hoped however that there would be some tidying up of existing legislation with amendments incorporated into the Act particularly in the following areas.

1. Tidying up of the "one third rules" particularly with regards to the use of impractical road components and retrograde movements at either ends of the "available" route.

2. A more sensible set of rules concerning the available route.

3. Some guidelines on legally acceptable warehousing.

4. The inclusion of provincial distribution zones similar to the urban zones defined in the main centres.

Because of this lack of tidying up some difficulties have arisen. Because enforcement is strict and penalties are high operators have become very nervous about many "border line" distribution methods.

In this context it is necessary to differentiate "linehaul" from "distribution". Linehaul is the bulk hauling of consolidated loads between two points, whereas distribution is the breaking down and final delivery of the consolidated loads or, at the
initiating end, the picking up and consolidation of loads.

Under the new legislation the linehaul of bulk loads is quite clear cut and there are few problems. The user has a choice of road costs plus between $3 and $6 per tonne additional charge against the rail costs. The user can decide on whichever mode he finds most economic or suitable to his goods.

In the area of distribution however there are a lot of problems due to the unwillingness of Government to tackle modifications of the previous legislation and the ill-conceived late addition of Section 109 (8) (g) to the Amendment Bill.

This sub-section deals with how far goods may be carried before consolidation or after deconsolidation without a further permit being purchased. The sub-section was included at the Committee of the Whole House stage without consultation with N.Z.R.T.A. as to its practical effects. The result is that distribution patterns which have been to the benefit of everyone involved including users and the Railways are now highlighted as being illegal.

Over recent years distribution patterns have been allowed to develop which were not strictly legal such as the distribution throughout provincial areas from centrally located main railheads. This pattern in turn was continued after the 150 Km relaxation of rail protection for the distribution from similiarly located "road-heads".

Now that there is the threat of heavy penalties and there is stricter enforcement these short distribution movements are being subject to the imposition of "permit" fees:-

a) Where the cartage goes past "the halfway to another station" point or

b) The distribution from a road depot where the additional short journey takes the total movement past the 150 Km limit.

These additional costs are a nuisance but the worst aspect is the fact that one small parcel in this category "taints" the whole load and therefore an extra charge is imposed on movements that have got nothing to do with rail protection.

These problems are going to lead to a large number of licensing applications.

Certain expedients have been adopted and N.Z.R.T.A. is grateful for the assistance from Railways and Ministry of Transport in trying to alleviate some of the problems.

Railways have removed some of the smaller stations from their working timetables particularly where there is more than one station in the smaller towns. They have also agreed not to oppose "local distribution" exemption applications for special licenses for the cartage from railheads.

However, these expedients do not help with the distribution from road depots and also there have been created some anomalies by removing stations from the working timetables. In some marginal cases the removal of a particular station can make the nearest
rail station more than 150 Km from the other end of the journey when previously it had been just under 150 Km.

There will undoubtedly be some further interesting cases before the Licensing Authorities to deal with this aspect.

Another expedient is that the Ministry of Transport have undertaken to adjudicate on the legality of certain types of warehouse and in particular concerning Fertiliser Bulk Stores. The undertaking apparently is that if details of the operations are submitted then Ministry of Transport will approve or disapprove and follow this ruling in their attitude to prosecutions. It seems a pity that this sort of thinking could not have been incorporated into the legislation as N.Z.R.T.A. had been pressing for.

QUALITY LICENSING

It is the N.Z.R.T.A.'s contention that the Quality Licensing aspects in the Amendment Act are tantamount to delicensing.

It is difficult to see how the applicant for a new licence who takes the trouble to obtain the professional advice of his Accountant in making application for a licence will be refused. Apart from a criminal record or a previous revocation for disciplinary reasons there seems to be little chance that unfavourable aspects will be considered.

The only evidence to support an application will be that submitted by the applicant himself or the submissions of the Investigating Officer of the Ministry of Transport.

There is no provision for public notice and no right of objection or submission from any other party.

The N.Z.R.T.A. is continuing to press for further amendments in this area. If public notice of an application is not acceptable then we believe that notification to the local N.Z.R.T.A. branch with the right to make submissions is a minimum reasonable request.

The procedures incorporated in the Act are extremely bureaucratic. If any person has a complaint against a licensee they are required to take this complaint to the Ministry of Transport and persuade the Secretary to take a case to the Licensing Authority. There is no direct access to the Licensing Authority. The Ministry of Transport will therefore control what is presented to the Licensing Authority and there is little opportunity even for the Licensing Authority to seek independent evidence.

We are concerned about the lack of protection from exploitation for Owner/Drivers and small one truck operators. There is ample overseas evidence of the problems involved and we see similar development in this area.

The life-savings of many small people will be liquidated particularly as we see a propensity for Finance Companies to take on such financing by including a mortgage over the operators' house.
as a major part of their security.

Such Owner/Drivers that are exploited have a potential tendency towards dishonesty when they become desperate and are likely to indulge in all sorts of malpractices such as the cheating of Road User Charges, purchasing of fuel and tyres without too much questioning of the sourcing of supply, gross overloading and long hours driving.

It is difficult to see how the quality criteria can be interpreted by a Licensing Authority without some better guidelines than those built into the Act or some better contact with practical operations:

There is no authority or guidelines of competence, there is no testing procedure and there are no courses prescribed. There are no guidelines on financial ability or the minimum equity that should be involved.

The Licensing Authority will be in a difficult position to rule against a written submission based on a theoretical exercise by a qualified Chartered Accountant. The Ministry of Transport itself will not be in a position to judge transport costs as they are terminating their interest in rate fixing.

The control of much of the Nation's movement of goods particularly inter-city will be in the hands of forwarders and brokers who are not subject to licensing.