

## TRANSPORT LICENSING SEMINAR

### AN OUTLINE OF TRANSPORT LICENSING AS AFFECTED BY THE TRANSPORT AMENDMENT ACT (NO.2) 1983

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#### 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).
3. Many restrictive provisions in goods service licences (except rail restriction/exemption) revoked. (S.6 of Amendment Act).
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

1. New approach under S.109 - Reg.24 Transport Licensing Regulations 1963 revoked and now a statutory prohibition.
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.
4. Permit fees prescribed in Schedule 2A and diminish annually to 1986.
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).

- (c) Use of someone else's licence not permitted.

### 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.

S.116

#### (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.

3. 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.

## APPEALS

### 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).