

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

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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.