

PRACTICAL EFFECTS OF LEGISLATIVE CHANGES IN THE TRANSPORT  
AMENDMENT ACT (No.2) 1983

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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 rail-heads. This pattern in turn was continued after the 150 Km relaxation of rail protection for the distribution from similarly 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.