

Land Transport Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations
Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Land Transport Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

Under the Land Transport Act 1998 there are several individuals who have had their passenger endorsements deemed expired because of a single qualifying conviction for a sexual offence that attracted a small non-custodial penalty, or a very short custodial sentence.

This bill amends the Land Transport Act 1998 to allow most former passenger service drivers who have had, or would have had, their passenger endorsements deemed expired by new provisions in the Land Transport Act 1998, which came into force on 16 January 2006, to apply to the Director of Land Transport to have their passenger endorsement reinstated.

The bill further amends the Land Transport Act 1998 to create an avenue for people with convictions under sections 134 and 135 of the Crimes Act 1961 who did not receive a sentence of imprisonment to apply for a passenger endorsement and have their application considered by the Director according to the criteria set out in section 29B of the Act. It also further strengthens these criteria.

Excluding new applications from individuals with convictions for serious offences

The majority recommend that clause 3 (inserting new subsections (3) and (4) into section 29A of the Act) be amended so that only a person with convictions under sections 134 and 135 of the Crimes Act 1961 who did not receive a sentence of imprisonment may apply for a passenger endorsement if the Director, having regard to the criteria in section 29(2)(b), is satisfied that allowing the applicant to hold a passenger endorsement would not be contrary to the public interest or pose an undue risk to public safety or security.

This clause of the bill deals with future or prospective applicants for a passenger endorsement. This bill as introduced allowed persons with a broad range of convictions for serious offences to apply to the Director to be considered for a passenger endorsement. The majority believe this change goes beyond the original intention of the 2005 amendment of the Land Transport Act 1998, which was to create a safer environment for all road users including those who work as drivers and those who use passenger transport.

We gave serious consideration to this issue and believe it is necessary to require that people convicted of serious offences should be barred from applying for a passenger endorsement. We believe barring individuals who have convictions for serious offences from applying for a passenger endorsement is the clearest way of ensuring both the perception and the reality of passenger safety.

However, there are some individuals with convictions for specified offences who the majority believe should be able to apply, under strict criteria, for a passenger endorsement.

Single-stage application process

The majority recommend that clause 3 be amended to allow a single-stage application process. This bill as introduced required that people with specified serious convictions who apply to the Director for a passenger endorsement be dealt with through a two-stage process. This meant that in some instances an applicant might be cleared to complete a full application after the Director had considered crimes under section 29A of the Act, only to then have their application declined because of other offending or behaviour.

The proposed single-stage process will allow the Director to consider an application for a passenger endorsement under all sections of the Act, and then make a comprehensive decision on whether the

applicant can proceed to a full application. These steps are designed to make the process fairer and more efficient.

Passenger endorsement reinstated in certain cases

The majority recommend that clause 4 be amended so that only a person with convictions under sections 134 and 135 of the Crimes Act 1961, who did not receive a sentence of imprisonment, may apply for a passenger endorsement if the Director, having regard to the criteria in section 29(2)(b), is satisfied that allowing the applicant to hold a passenger endorsement would not be contrary to the public interest or pose an undue risk to public safety or security.

This clause of the bill deals with those persons who have lost their passenger endorsement as a result of amendments made to the Land Transport Act 1998, which came into force on 16 January 2006. This bill as introduced allowed persons with a broad range of convictions for serious offences to apply to the Director to be considered for a passenger endorsement. The majority believe that the amendment proposed will give redress to most persons unfairly affected by the 16 January 2006 change, without going beyond the original intention of the 2005 amendment Act.

Tightening the criteria that the Director must consider

The majority recommend that clause 4 be amended to specify that the Director must be satisfied that a person with a qualifying conviction will not pose an undue risk to public safety or security. This elevates undue risk to public safety and security to make it a primary consideration (in addition to the public interest) in the Director's decision.

In addition it adds further criteria the Director must consider when deciding whether granting a passenger endorsement would be contrary to the public interest or an undue risk to public safety and security. This will require the Director to take explicit account of the nature and circumstances of the specified offences for which the applicant has been convicted.

Re-employment of drivers after reinstatement of passenger endorsement

We considered the possibility of legislating to ensure the re-employment of drivers who will have had their passenger endorsement reinstated as a result of this bill. We believe, however, that the legal

complexities of accomplishing this and the possibility of new injustices that could result make this possibility undesirable.

We have received assurances from employers that every effort to re-employ affected drivers will be made. We would like to commend those employers for the stance they have taken.

Appendix

Committee process

The Land Transport Amendment Bill was referred to the committee on 16 February 2006. The closing date for submissions was 23 February 2006. We received and considered three written submissions. Consideration took 4 hours and 18 minutes.

We received advice from the Ministry of Transport.

Committee membership

Hon Mark Gosche (Chair)

Hon Maurice Williamson (Deputy Chair)

David Bennett

Peter Brown

Bob Clarkson

Darien Fenton

Taito Phillip Field

Sue Moroney

Dr Wayne Mapp

Hon Judith Tizard

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act.

Text struck out by a majority

New (majority)

Subject to this Act.

Text inserted by a majority

Hon Harry Duynhoven

Land Transport Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Land Transport Amendment Act **2006**.
- (2) In this Act, the Land Transport Act 1998 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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Struck out (majority)

3 Persons convicted of specified serious offences prohibited from holding or applying for passenger endorsement

Section 29A of the principal Act is amended by inserting, after subsection (2), the following subsection:

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“(2A) Despite subsection (1), a person who has been convicted of a specified serious offence may apply for a passenger endorsement if the Director is, having regard to the criteria in section 29B(2)(b), satisfied that allowing the applicant to hold a passenger endorsement would not be contrary to the public interest.”

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Struck out (majority)

- 4 Passenger endorsement may be reinstated in certain cases**
- (1) Section 29B of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) A person who has a conviction specified under section 29A and whose passenger endorsement—
- “(a) is deemed to be expired and of no effect under section 29A(2) may apply to the Director to have the passenger endorsement reinstated; or
- “(b) expired during the period beginning on 22 June 2005 and ending on the close of 15 January 2006 may apply to the Director to have the passenger endorsement reinstated.”
- (2) Section 29B(2)(b) of the principal Act is amended by adding the word “; and”, and the following subparagraphs:
- “(iv) the length of time since the person’s last conviction for a specified serious offence under section 29A; and
- “(v) any other convictions that the person has; and
- “(vi) the likelihood that the person would, if granted a passenger endorsement, be a threat to public safety or security.”
- (3) Section 29B of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsections:
- “(3) If the Director decides to reinstate the applicant’s passenger endorsement under subsection (2) or allow a person to apply for a passenger endorsement under section 29A(2A), section 29A(1) does not apply with respect to the applicant unless the applicant commits a specified serious offence on or after the date of the Director’s decision.
- “(4) If the Director decides not to reinstate the applicant’s passenger endorsement under subsection (2) or allow a person to apply for a passenger endorsement under section 29A(2A), the applicant may appeal to the High Court.”

New (majority)

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| 3 | Persons convicted of specified serious offences prohibited from holding or applying for passenger endorsement | |
| (1) | The heading to section 29A of the principal Act is amended by omitting the words “ or applying for ”. | |
| (2) | Section 29A(1) of the principal Act is amended by omitting the words “or apply for”. | 5 |
| (3) | Section 29A of the principal Act is amended by repealing subsection (3), and substituting the following subsections: | |
| “(3) | Despite subsection (1) , a person may hold a passenger endorsement if— | 10 |
| “(a) | each conviction that the person has for a specified serious offence is for an offence under section 134 or 135 of the Crimes Act 1961; and | |
| “(b) | the person has not, with respect to a conviction for an offence under section 134 or 135 of the Crimes Act 1961, been sentenced to imprisonment; and | 15 |
| “(c) | the Director is, having regard to the criteria in section 29B(2)(b) , satisfied that allowing the person to hold a passenger endorsement would not— | |
| “(i) | be contrary to the public interest; and | 20 |
| “(ii) | pose an undue risk to public safety or security. | |
| “(4) | For the purposes of this section,— | |
| “ imprisonment | excludes— | |
| “(a) | corrective training; or | |
| “(b) | borstal training; or | 25 |
| “(c) | detention centre training | |
| “ specified serious offence | means— | |
| “(a) | murder; or | |
| “(b) | a sexual crime under Part 7 of the Crimes Act 1961 punishable by 7 or more years’ imprisonment (other than an act that is no longer an offence); and includes a crime under section 144A or section 144C of that Act; or | 30 |
| “(c) | an offence against any of the following sections of the Crimes Act 1961: | |
| “(i) | section 173 (attempt to murder): | |
| “(ii) | section 174 (counselling or attempting to procure murder): | 35 |

New (majority)

“(iii) section 175 (conspiracy to murder):	
“(iv) section 176 (accessory after the fact to murder):	
“(v) section 188 (wounding with intent):	
“(vi) section 189(1) (intent to cause bodily harm by injury):	5
“(vii) section 191 (aggravated wounding or injury):	
“(viii) section 198 (discharging firearm or doing dangerous act with intent):	
“(ix) section 199 (acid throwing):	
“(x) section 200(1) (intent to cause grievous bodily harm by poison):	10
“(xi) section 201 (infecting with disease):	
“(xii) section 208 (abduction for purposes of marriage or sexual connection):	
“(xiii) section 209 (kidnapping):	15
“(xiv) section 210 (abduction of young person under 16):	
“(xv) section 234 (robbery):	
“(xvi) section 235 (aggravated robbery):	
“(xvii) section 236 (assault with intent to rob):	20
“(d) an offence committed outside New Zealand that, if committed in New Zealand, would constitute an offence specified in paragraphs (a) to (c).”	
4 Passenger endorsement may be reinstated in certain cases	25
(1) The principal Act is amended by repealing section 29B, and substituting the following section:	
“29B Passenger endorsement may be reinstated in certain cases	
“(1) A person who has a conviction for a specified serious offence may apply to the Director to have the passenger endorsement reinstated if—	30
“(a) the person’s passenger endorsement—	
“(i) is deemed to be expired and of no effect under section 29A(2) ; or	35
“(ii) expired during the period beginning on 22 June 2005 and ending on the close of 15 January 2006; and	

New (majority)

- “(b) the person—
- “(i) has not been convicted of an offence specified in **paragraph (a) or (b)** of the definition of specified serious offence in **section 29A(4)** other than an offence under section 134 or 135 of the Crimes Act 1961; and 5
- “(ii) has not, with respect to a conviction for an offence under section 134 or 135 of the Crimes Act 1961, been sentenced to imprisonment.
- “(2) If an application is made under **subsection (1)**, the Director— 10
- “(a) may reinstate the applicant’s passenger endorsement if satisfied that allowing the applicant to hold a passenger endorsement would not—
- “(i) be contrary to the public interest; and
- “(ii) pose an undue risk to public safety or security; 15
and
- “(b) must, when determining whether reinstating the applicant’s passenger endorsement would not be contrary to the public interest and would not pose an undue risk to public safety or security, have regard to— 20
- “(i) the sentence imposed for the applicant’s last conviction for a specified serious offence; and
- “(ii) the length of time since the applicant’s last conviction for a specified serious offence; and
- “(iii) the nature and circumstances of each specified serious offence for which the applicant has been convicted; and 25
- “(iv) any other convictions that the applicant has; and
- “(v) the general safety criteria set out in section 30C; 30
and
- “(vi) any other matters that the Director considers relevant, including (but not limited to) submissions by any affected party.
- “(3) If the Director decides to reinstate the person’s passenger endorsement under **subsection (2)** or allow a person to hold a passenger endorsement under **section 29A(3)**, section 29A(1) does not apply with respect to the person unless the person commits a specified serious offence on or after the date of the Director’s decision. 35

New (majority)

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| “(4) | If the Director decides not to reinstate the person’s passenger endorsement under subsection (2) or allow a person to hold a passenger endorsement under section 29A(3) , the person may appeal to the High Court. | |
| “(5) | For the purposes of this section,— | 5 |
| | “ imprisonment has the same meaning as in section 29A(4) | |
| | “ specified serious offence has the same meaning as in section 29A(4) .” | |
| (2) | For the purposes of section 29B(2)(b)(v) of the principal Act (as substituted by subsection (1)), section 30C of the principal Act is deemed to be in force. | 10 |

Legislative history

13 February 2006	Introduction (Bill 17–1)
16 February 2006	First reading and referral to Transport and Industrial Relations Committee

