

# Transport (Rail Safety) Bill 2010

## Amendments agreed to during Consideration

### 1 After clause 41

Page 47, after line 21—

*insert—*

### **‘Subdivision 3A Exemption for particular railway operations on application**

#### **‘41A Exemption may be granted**

- ‘(1) The chief executive may exempt a person from the requirement to be accredited for railway operations, on or at a private isolated railway, of a stated scope and nature that are proposed to be carried out by or on behalf of the person.
- ‘(2) For subsection (1), the stated scope and nature of the railway operations includes—
  - (a) the railway operations for which the exemption is granted under subsection (3); and
  - (b) details of the nature of the railway operations mentioned in paragraph (a), including, for example—
    - (i) the location of the railway operations or the rail infrastructure to which the railway operations relate; and
    - (ii) for railway operations relating to rolling stock—the type of rolling stock that can be used for the railway operations or the type of traction system that can be used for the railway operations.
- ‘(3) An exemption under subsection (1) may be granted for 1 or more of the following—
  - (a) all or stated railway operations on or at a stated private isolated railway;

- (b) a service or aspect, or part of a service or aspect, of stated railway operations on or at a stated private isolated railway;
- (c) construction of stated rail infrastructure for a stated private isolated railway;
- (d) an activity that is part of railway operations on or at a stated private isolated railway, including, for example, the following—
  - (i) site preparation;
  - (ii) restoration or repair work;
  - (iii) testing of a railway track or other rail infrastructure;
  - (iv) another activity considered appropriate by the chief executive.

#### **‘41B Application for exemption**

- ‘(1) A person may apply to the chief executive to exempt the person from the requirement to be accredited for railway operations, on or at a private isolated railway, of a stated scope and nature that are proposed to be carried out by or on behalf of the person.
- ‘(2) The application for the exemption must—
  - (a) be in the approved form; and
  - (b) state the scope and nature of the railway operations for which the exemption is sought.
- ‘(3) The chief executive may, by notice, require the applicant—
  - (a) to supply further information; or
  - (b) to verify by statutory declaration any information supplied to the chief executive.

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**‘41C What applicant must demonstrate and conditions that may be imposed**

- ‘(1) The chief executive may grant an exemption under this subdivision, with or without conditions, to the applicant only if the chief executive is satisfied that granting the exemption would not be likely to create risks to the safety of the railway operations greater than that which would be the case if the applicant was required to be accredited for the railway operations.
- ‘(2) In making a decision under subsection (1), the chief executive must have regard to the following—
- (a) the scope and nature of the railway operations;
  - (b) for railway operations relating to the operation or movement of rolling stock on a railway track—
    - (i) whether the rolling stock is to move on the railway track during daylight hours only; and
    - (ii) the speed at which the rolling stock is to move on the railway track; and
    - (iii) whether there is to be more than 1 rolling stock moving on the railway track at the same time and, if so, whether the rolling stock will cross on the track; and
    - (iv) whether any members of the public will be at or near the railway track while the rolling stock is moving on it;
  - (c) anything else the chief executive considers relevant.
- ‘(3) For subsection (1), the chief executive may impose on the exemption a condition about the safe construction, maintenance or operation of—
- (a) rail infrastructure for the railway operations; or
  - (b) rolling stock used as part of the railway operations.

*Note—*

This subsection empowers the chief executive to impose conditions about the safe construction, maintenance or operation of rail infrastructure or rolling stock used in railway operations the subject of

an exemption under this subdivision because divisions 3 to 5 (which include requirements about safety management) do not apply to the railway operations.

However, a rail transport operator carrying out the railway operations, or a person carrying out the railway operations on behalf of a rail transport operator, is also subject to rail safety duties under part 2, and obligations about safety under the Workplace Health and Safety Act and Electrical Safety Act, in relation to the railway operations.

- ‘(4) However, a condition imposed under subsection (3) can not apply to railway operations the subject of an accreditation.
- ‘(5) To remove any doubt, it is declared that a condition imposed by the chief executive under subsection (3) may be the same as, or similar to, a requirement of a provision of divisions 3 to 5 applying to railway operations the subject of an accreditation.

#### **‘41D Considering application**

- ‘(1) This section applies if a person applies for an exemption under section 41B for railway operations.
- ‘(2) The chief executive must consider the application and—
  - (a) if the chief executive is satisfied of the matter mentioned in section 41C(1) in relation to the railway operations—grant the exemption, with or without conditions; or
  - (b) refuse the application.
- ‘(3) The chief executive must grant the exemption, or refuse the application, before the latest of the following periods ends—
  - (a) 6 months after the application was received by the chief executive;
  - (b) if the chief executive requested further information in relation to the application—6 months, or another period agreed to by the chief executive and the applicant, after the chief executive receives the final information requested;
  - (c) if the chief executive, by notice to the applicant before the expiry of a period mentioned in paragraph (a) or (b),

nominates another period ending after the period mentioned in paragraph (a) or (b)—the nominated period.

- ‘(4) If the chief executive gives a notice under subsection (3)(c), the notice must include, or be accompanied by, an information notice for the decision to extend the period mentioned in the subsection.

#### **‘41E Steps after application decided**

- ‘(1) If the chief executive grants an exemption under this subdivision, the chief executive must give the applicant—
- (a) a notice stating the matters mentioned in subsection (2); and
  - (b) if the chief executive has imposed a condition on the exemption—an information notice for the decision to impose the condition.
- ‘(2) A notice under subsection (1)(a) must state the following—
- (a) the details of the applicant prescribed under a regulation;
  - (b) that the applicant is exempt from the requirement to be accredited for railway operations of the scope and nature for which the exemption is granted;
  - (c) the scope and nature of the railway operations for which the exemption is granted;
  - (d) if the chief executive has imposed conditions on the exemption—the conditions.
- ‘(3) If the chief executive decides to refuse an application for an exemption under this subdivision, the chief executive must give the applicant an information notice for the decision.

#### **‘41F Effect of exemption**

‘A person who is granted an exemption under this subdivision for railway operations of a stated scope and nature is exempt

from the requirement to be accredited for the railway operations.

**‘41G Operator etc. must not contravene condition of exemption**

- ‘(1) This section applies if the chief executive imposes conditions on an exemption granted under this subdivision.
- ‘(2) A person carrying out railway operations for which the exemption is granted must not contravene a condition of the exemption.

Maximum penalty—80 penalty units.

**‘41H Grounds for varying, suspending or revoking exemption**

- ‘(1) This section applies if—
  - (a) an exemption under this subdivision was granted because of a document or representation that is false or misleading or obtained or made in another improper way; or
  - (b) the chief executive reasonably considers—
    - (i) risks to the safety of the railway operations the subject of an exemption under this subdivision are greater than that which would be the case if the person granted the exemption was required to be accredited for the railway operations; or
    - (ii) the person granted an exemption under this subdivision is unable to carry out railway operations the subject of the exemption in a way that complies with the duties or requirements under this Act for the railway operations; or
  - (c) the person granted an exemption under this subdivision has contravened this Act.
- ‘(2) The chief executive may, by complying with section 41I—
  - (a) vary the exemption in either or both of the following ways—

- (i) by varying the scope and nature of the railway operations that are the subject of the exemption;
- (ii) by varying the conditions of the exemption, including by imposing new conditions; or
- (b) suspend the exemption wholly or partly, or in relation to stated railway operations, for a stated period; or
- (c) revoke the exemption wholly or partly, or in relation to stated railway operations, with immediate effect or with effect from a stated future date.

**‘411 Procedure for varying, suspending or revoking exemption**

- ‘(1) Before making a decision under section 41H, the chief executive must—
  - (a) give the person a notice stating—
    - (i) that the chief executive is considering making a decision under section 41H of the type, and for the reasons, stated in the notice; and
    - (ii) that the person may, within the period of at least 28 days stated in the notice, make written representations to the chief executive showing cause why the decision should not be made; and
  - (b) consider any representations made under paragraph (a)(ii) that have not been withdrawn.
- ‘(2) If, after considering the written representations, the chief executive decides to act under section 41H, the chief executive must give the person an information notice for the decision.
- ‘(3) If the chief executive decides to revoke the exemption, the information notice must also include a direction to the person to return the notice given under section 41E(1) for the exemption to the chief executive within 14 days after receiving the information notice.
- ‘(4) A person who is directed under subsection (3) to return a notice must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- ‘(5) A decision under section 41H takes effect on the later of the following—
  - (a) the day the information notice is given to the person;
  - (b) the day of effect stated in the information notice.
- ‘(6) If, after considering the written representations, the chief executive decides action is no longer required under section 41H in relation to the exemption, the chief executive must give the person notice of the decision.

#### **‘41J Suspending exemption immediately**

- ‘(1) This section applies if the chief executive reasonably considers there is, or would be, an immediate and serious risk to the safety of persons if a person’s exemption under this subdivision is not suspended immediately.
- ‘(2) The chief executive may, by notice given to the person and without complying with section 41I, immediately suspend the person’s exemption—
  - (a) wholly or partly, or in relation to stated railway operations; and
  - (b) for a stated period not exceeding 6 weeks.
- ‘(3) The notice given under subsection (2) must include, or be accompanied by, an information notice.
- ‘(4) The chief executive may amend a suspension of a person’s exemption under this section to—
  - (a) reduce the period of suspension; or
  - (b) extend the period of suspension so long as the total suspension period does not exceed 6 weeks.
- ‘(5) Before amending a suspension of a person’s exemption under this section to extend the period of suspension, the chief executive must—
  - (a) give the person a notice stating—

- (i) that the chief executive is considering extending the period of suspension for the reasons stated in the notice; and
    - (ii) that the person may, within the period of at least 7 days stated in the notice, make written representations to the chief executive showing cause why the suspension should not be extended; and
  - (b) consider any representations made under paragraph (a)(ii) that have not been withdrawn.
- ‘(6) If, after considering the written representations, the chief executive decides to amend the suspension of a person’s exemption to extend the period of suspension, the chief executive must give the person an information notice for the decision.
- ‘(7) If the chief executive decides to amend the suspension of a person’s exemption to reduce the period of suspension, the chief executive must give the person a notice stating the new period of suspension.’.

**2 Clause 51 (Requirement to obtain exemption notice)**

Page 56, line 3, after ‘Act’—

*insert—*

‘, other than subdivision 3A.’.

**3 Clause 63 (Rail infrastructure manager’s obligation relating to rail or road crossing for a public road)**

Page 65, line 25, after ‘infrastructure’—

*insert—*

‘manager’.

**4 Clause 86 (Relevant documents must be kept and made available for inspection)**

Page 83, lines 8 and 9—

*omit, insert—*

‘operations—

- (i) for a rail transport operator exempt from the requirement to be accredited for railway operations under section 41F—the notice about the exemption given to the operator under section 41E(1); or
- (ii) for a rail transport operator exempt from the requirement to be accredited for railway operations under another provision of this Act—the exemption notice given to the operator under section 51;’.

**5 Clause 100 (Procedure for suspending or revoking accreditation)**

Page 94, line 33 and page 95, line 24, ‘applicant’—

*omit, insert—*

‘person’.

**6 Schedule 2 (Internal and external reviews)**

Page 249, after line 2, before entry for section 45(4)—

*insert—*

‘section 41D(2)(a)	decision of chief executive to impose conditions on exemption
section 41D(2)(b)	decision of chief executive to refuse application for exemption
section 41D(3)(c)	decision of chief executive to extend the period for deciding an application for exemption

section 41I(2)	decision of chief executive to vary, suspend or revoke exemption
section 41J	decision of chief executive to immediately suspend exemption, or extend period of immediate suspension of exemption’.

## 7 Schedule 3 (Dictionary)

- (1) Page 254, line 6—

*omit.*

- (2) Page 255, after line 29—

*insert—*

***‘private isolated railway*** means a railway—

- (a) that is wholly contained on private land; and
- (b) is not connected to or associated with—
  - (i) railway tracks, or any other rail infrastructure, of a railway that is on other land; or
  - (ii) a rail or road crossing; and
- (c) is operated for personal enjoyment and is not for use by the general public.

***private land*** means land that is not a public place.’.

- (3) Page 261, lines 5 and 6—

*omit, insert—*

***‘scope and nature***, of railway operations—

- (a) in relation to an exemption under part 4, division 2, subdivision 3A, or an application for an exemption under part 4, division 2, subdivision 3A—see section 41A; or
- (b) in relation to an accreditation or an application for an accreditation—see section 89.’.