



Defence (Road Transport Legislation Exemption) Bill 2005

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Defence (Road Transport Legislation Exemption) Bill 2005

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House: Senate

Portfolio: Defence

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Purpose

To provide a legislative basis for the Defence Road Transport Exemption Framework which details exemptions from the operation of state and territory road transport laws that will be applied uniformly across Australia in certain circumstances.

Background

Section 123 of the *Defence Act 1903* (the Defence Act) provides immunity from certain state and territory laws for members of the Australian Defence Force (ADF). Subsection 123(1) states that:

- (1) a member of the Defence Force is not bound by any law of a State or Territory:
 - (a) that would require the member to have permission (whether in the form of a licence or otherwise) to use or to have in his or her possession, or would require the member to register, a vehicle, vessel, animal, firearm or other thing belonging to the Commonwealth; or
 - (b) that would require the member to have permission (whether in the form of a licence or otherwise) to do anything in the course of his or her duties as a member of the Defence Force.

The present Bill limits that immunity by establishing a Defence Road Transport Exemption Framework that details the exemptions and processes that will be applied uniformly across the states and territories to support the conduct of ADF road transport operations.

The Exemption Framework was negotiated between the ADF and state and territory road transport authorities, with the assistance of the National Transport Commission. According to the Minister's second reading speech on this Bill, '[t]he Exemption Framework establishes the specific categories of exemptions that will apply for principal

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ADF routes used in exercises, operations and day-to-day activities'.¹ In addition, the Exemption Framework is intended to ensure the integrity of civilian infrastructure and facilities used by the ADF.² To this end, the Exemption Framework matches load limits on vehicles with the current capacity of roads and bridges. It imposes mass limits for ADF vehicles and combinations, including their loads, as well as mass limits for individual tyres, wheels, axles and axle groups. The Exemption Framework also imposes rules about the size of a load, how far it may project from the vehicle, warning signals for certain projections, and securing loads.

The Exemption Framework details the specific licensing and road rules exemptions for ADF personnel when they are engaged in 'defence related activities' (defined subclause 5(3) below). The ADF has a system of accredited training for its professional drivers. The basic drivers' course includes training in the carriage of dangerous goods and explosives, and drivers are required to requalify every three years. Where state and territory legislation imposes a requirement for a special licence, and the ADF trains to a similar standard, then compliance with state and territory requirements is deemed to occur.³ The Exemption Framework provides that 'Defence Members are not required to produce a State or Territory licence when driving an authorised Defence vehicle on Defence business'.⁴ However, ADF members are required to carry and produce on demand, their current Defence licence, their Driver Qualification Log, and the vehicle authorisation and task form. These three documents will provide evidence that the Defence member is trained on the equipment being operated, is on an authorised task, and details of the member's movements and routes travelled.⁵ The Exemption Framework further provides (at 3.2.2) that when a civilian member of Defence is subject to the *Defence Force Discipline Act 1982*, then they should have the same road transport licensing status and obligations as a Defence member.⁶

Defence licences are cancelled if the holder's civilian licence is cancelled in any state of territory, or if the holder's employment with the Department of Defence is terminated. Similarly, a Defence licence will be suspended if the holder's civilian licence is suspended in any state or territory, or if the holder fails to maintain currency of their Defence licence where particular currency requirements exist (at 3.2.3).⁷ Defence licences are also reviewed when the holder is transferred or moves to another position within Defence.

These exemptions will also apply to personnel from visiting foreign defence forces acting in accordance with an arrangement approved by the ADF.⁸

Some provisions have still to be agreed. These are detailed on pages 107 and 108 of the current version of the Exemption Framework. One matter has to do with the road rules applying to Defence Service Police vehicles which may be recognised for escort duties or traffic duty. A note in the framework records that the most significant difference between Defence Service Police vehicles and civilian Police vehicles is that Defence vehicles are not, and will not be authorised to conduct pursuit operations on public roads. Where there exists a need for such pursuit, civilian police vehicles will be requested to assist.⁹

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The Exemption Framework is to be maintained by the National Transport Commission and the text is to be made available for public viewing on the National Transport Commission's website at <http://www.ntc.gov.au/>.

A previous attempt

In 1998 the Government introduced road transport exemptions for the ADF to limit the immunity contained in the Defence Act and replace it with a more specific exemption regime. At that time, an amendment was made to the *National Road Transport Commission Act 1991* (NRTC Act), providing the ADF with a broad exemption from Commonwealth, state and territory road transport laws in special defence related circumstances. This was to be done through the Federal Minister for Transport conferring powers on the Chief of the Defence Force to make exemptions in specific circumstances and for particular vehicle categories. These exemptions were never implemented because the regime prescribed was dependent on the adoption by the states and territories of model road transport legislation, which did not occur. In 2002, during a review of the NRTC Act,¹⁰ the Department of Transport and Regional Services stated that the Defence exemptions did not fit into the policy framework underpinning the replacement legislation. Subsequently, the NRTC Act was repealed on 14 January 2004 and replaced by the *National Transport Commission Act 2003* (NTC Act). The pre-existing Defence exemption provisions were not carried forward to the new legislation.

In his second reading speech on the present Bill, the Minister was at pains to point out that this Bill does not impose any requirements on state and territory governments; rather, it reflects the ADF's willingness to work with the states and territories on these matters.¹¹ However, it should be noted that the exemptions do not commence in individual states and territories until they are notified in the respective jurisdiction's Government Gazette or similarly published.¹²

Main provisions

Central to how the exemption regime will operate are various terms or concepts contained in the Bill. A number of terms are defined in **clause 3**, and are derived from definitions of similar terms in the Exemption Framework.¹³ These include

defence contractor in the framework means 'any civilian who is, or whose services are, contracted, sub-contracted, leased, rented or hired by the Department of Defence to perform, or provide an authorised Defence task or service, who is not a Defence Member or Australian Public Servant'.¹⁴

defence employee 'means a civilian employee of the Department of Defence'.¹⁵

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defence vehicle means ‘any vehicle that is owned by, or leased or hired by, the Department of Defence. It can be plated with Defence, Commonwealth, or civilian number plates’.¹⁶ (A later definition of **vehicle** says that it ‘includes the vehicle’s equipment and any substances that the vehicle is carrying that are essential for its operation’.¹⁷)

A definition of **specific engineering exemption** is not included in Chapter 9 (Interpretations) of the Exemption Framework. It is defined by the Bill, in relation to a defence vehicle, to mean ‘an exemption of that kind that the vehicle has under the Exemption Framework’.

The aim of the Bill is, of course, to exempt the ADF from state and territory road transport laws in particular situations. Under **clause 4**, a ‘**road transport law**’ is defined as either:

- a law relating to the use of vehicles in a place to which the Exemption Framework applies, or
- a law declared to be road transport law by relevant regulations.

Regulations may however also declare that a state or territory law falling within the **clause 4** definition is *not* a road transport law for the purposes of this Bill.

Sub-clause 5(1) provides that the ADF, members of the ADF, and civilians serving with the ADF, will be exempt from state and territory road transport laws for anything done, or omitted to be done for a **defence-related purpose**, provided that the thing is done or omitted in accordance with the Exemption Framework. A more limited exemption is provided by **sub-clause 5(2)** for defence contractors and defence employees who are operating a defence vehicle that has a specific engineering exemption. For the exemption to apply, the vehicle must be being used for a defence-related purpose and the exemption only applies to the extent of the matters to which the specific engineering exemption relates. According to the Explanatory Memorandum, ‘[d]efence contractors and defence employees will still be required to comply with all the other State and Territory road transport laws that apply to them, such as the requirement to hold a valid licence and comply with the road rules’.¹⁸

Sub-clause 5(3) provides a broad definition of **defence-related purposes** or the purposes for which the exemptions may apply. They include ADF operations and preparations in connection with the defence and security of Australia, the provision of civil aid and humanitarian assistance, emergency and disaster relief, and support to ‘community activities of national or international significance’. This last purpose could include the forthcoming Commonwealth Games in Melbourne. **Paragraph 5(3)(I)** provides for the operation of the ADF in connection with the protection of the interests of the Commonwealth or of a state or territory from domestic violence, if the state or territory has applied for that protection. ‘Domestic violence’ is a term used in section 119 of the *Constitution* which provides that the Commonwealth ‘shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence’. This provision is reflected in Part IIIAAA of the *Defence Act 1903*

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which allows the Governor-General to call out the Permanent Forces, and such Emergency and Reserve Forces as may be necessary, for the protection of a State against domestic violence. The power to order the call out is subject to a proviso that the Emergency and Reserve Forces 'shall not be called out or utilized in connexion with an industrial dispute'.¹⁹

Clause 6 provides that the exemptions will also apply to the armed forces of other countries and members of those forces, provided that their operations are carried out under an arrangement approved by the ADF, and are in accordance with the Exemption Framework.

Clause 7 provides that the regime created the Exemption Framework (and implemented by this Bill) overrides any existing immunity under section 123 of the Defence Act. However it also provides that any ADF operations not specifically covered by the Exemption Framework will retain their existing immunity under section 123 or any part of the Defence Act and other Defence powers.

Concluding comments

According to the introduction to the Exemption Framework, its success will depend on the implementation, maintenance and the development of the framework in the coming years.²⁰ The exemptions will be implemented by the states and territories in accordance with their particular policies and processes. The exemptions will commence in each state and territory on the day on which they are notified in the respective jurisdictions' *Gazettes*, or equivalent. For the ADF, the exemptions will be implemented through Defence Road Transport Instructions.

The Exemption Framework will be maintained by the National Transport Commission in conjunction with the ADF. This is to ensure that the framework remains relevant and meets the requirements of the ADF and the states and territories. The ongoing maintenance of the framework will allow for those exemptions yet to be agreed to be further negotiated, and for the refining of exemptions to meet the future needs of the ADF and the states and territories. The effect of the Bill is that any changes to, or expansions of the Exemption Framework will become the law without any further involvement of the Commonwealth Parliament or any legislative requirement from the Minister to report on any changes or expansions.

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Endnotes

1. Sen the Hon Robert Hill, 'Second Reading Speech', Defence (Road Transport Legislation Exemption) Bill 2005, Senate, *Hansard*, 30 November 2005, p. 2.
2. *Defence Road Transport Exemption Framework* Version 1a, Dated 23/10/05, p. 3. I would like to acknowledge the help of the Department of Defence Legal Branch in providing me with a copy of the latest version of the Exemption Framework ahead of its publication on the NTC website.
3. *ibid.*, Chapter 3, p. 37-38.
4. *ibid.*, 3.2.1 (1), at page 37.
5. *ibid.*, p. 38.
6. The Exemption Framework, at p. 115, defines a Defence civilian who is subject to the *Defence Force Discipline Act 1982* as 'a person (other than a Defence member) whom:
 - (a) with the authority of an authorised officer, accompanies a part of the Defence Force that is:
 - (1) outside Australia; or
 - (2) on operations against an enemy; and
 - (b) has consented, in writing, to subject himself or herself to Defence Force discipline while so accompanying that part of the Defence Force.
7. *ibid.*, p. 38.
8. *ibid.*, p.10. Clause 6 of this Bill provides the legal basis for this provision.
9. *ibid.*, p. 107.
10. Details of the *Terms of Reference* for the review and the composition of the review panel were provided to Parliament in a written answer to a Question on Notice from Senator Kerry O'Brien on 25 February 2002 (Question No. 139) which was answered on 14 May 2002. Senate, *Hansard*, 14 May 2002, p. 1471.
11. Sen the Hon Robert Hill, 'Second Reading Speech', Defence (Road Transport Legislation Exemption) Bill 2005, Senate, *Hansard*, 30 November 2005, p. 2.
12. *Defence Road Transport Exemption Framework* Version 1a, Dated 23/10/05, p. 9.
13. The terms vary slightly between the Bill and the current version of the Exemption Framework. For example, 'defence contractor' in the Bill is 'defence civilian contractor' in the framework.
14. *ibid.*, p. 115.
15. *ibid.*, p. 115.
16. *ibid.*, p. 116.
17. *ibid.*, p. 120.

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18. Explanatory Memorandum, Defence (Road Transport Legislation Exemption) Bill 2005, p. [3].
19. Elizabeth Ward, 'Call out the troops: an examination of the legal basis for Australian Defence Force involvement in 'non-defence' matters', [*Parliamentary Library*] *Research paper no. 8 1997-98*, pp. 5-6.
20. *Defence Road Transport Exemption Framework* Version 1a, Dated 23/10/05, p. 6.

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