Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011

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Law and Bills Digest Section

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Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011

Date introduced: 23 November 2011
House: House of Representatives
Portfolio: Education, Employment and Workplace Relations
Commencement: At the same time as the Road Safety Remuneration Act 2011.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011 (the Bill) is twofold. First, the Bill amends the Administrative Decisions (Judicial Review) Act 1977 to exclude decisions under the Road Safety Remuneration Act (when enacted) from its operation. Second, the Bill provides that it will only apply to certain disputes occurring after the commencement of the Road Safety Remuneration Act (when enacted).

Background

This Bills Digest should be read in conjunction with the companion to the Bill—the Road Safety Remuneration Bill 2011 which establishes the Road Safety Remuneration Tribunal (the Tribunal).¹

The Tribunal is authorised to set pay and contract rates in the road transport industry in respect of both employed drivers and independent contractor drivers.

The Tribunal is also empowered to resolve disputes between drivers, hirers and employers and participants in the road transport industry supply chain, with any orders being enforced by the Fair Work Ombudsman.

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Committee consideration

Senate

At its meeting of 25 November 2011, the Senate Selection of Bills Committee resolved that the Bill not be referred for inquiry and report.²

House of Representatives

On 24 November 2011, the Bill (and the companion Bill) were referred to the House of Representatives Standing Committee on Infrastructure and Communications for inquiry and report. No reporting date has been set.³ At the date of the writing of this Bills Digest no submissions had been published on the inquiry website.

Financial implications

According to the Explanatory Memorandum, the cost of establishing the Road Safety Remuneration System is $11.77 million over four years commencing in 2011–12. These costs will be fully offset by the Department of Employment, Education and Workplace Relations.⁴

Key provisions

Item 1 of Schedule 1 to the Bill amends the Administrative Decisions (Judicial Review) Act 1997 (ADJR Act) so that decisions made under the Road Safety Remuneration Act 2011 will not be reviewable: proposed paragraph (a) of Schedule 1.

The ADJR Act allows a person to apply to the Federal Court or the Federal Magistrates Court to have an administrative decision judicially reviewed. Under the ADJR Act, the Federal Court and the Federal Magistrates Court have jurisdiction to review decisions under Commonwealth enactments on the grounds that there has been a breach of natural justice, an error of law, or that in the making of the decision, an irrelevant matter was taken into consideration.

The Federal Court also has jurisdiction under subsection 39B(1) of the Judiciary Act 1903 (Judiciary Act) with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.⁵

³ Details of the inquiry are at: http://www.aph.gov.au/house/committee/ic/24Nov/index.htm
⁴ Explanatory Memorandum, Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011.
⁵ Additionally, the Federal Court has an overlapping, though not identical, jurisdiction under subsection 39B(1) of the Judiciary Act with respect to any matter arising under the Constitution or involving its interpretation and arising under the laws made by the Parliament.

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An injunction is an order preventing or requiring certain action by a party, while a writ of mandamus or prohibition provide as follows:

**Mandamus** is an order issued by the court against a tribunal, public body or official requiring it to perform a duty which it has failed to perform. For example, an official might be required to consider an application for a licence that it had refused to consider.

**Prohibition** is an order to a tribunal, public body or official requiring it to cease proceedings. An order for prohibition should be sought where a body has failed to exercise its jurisdiction properly or failed to provide natural justice and its proceedings are continuing.6

The jurisdiction of the Federal Court under subsection 39B(1) is the same as the jurisdiction of the High Court under section 75 of the Constitution.

In summary, this Bill provides that a decision made under the *Road Safety Remuneration Act 2011* (when enacted) will not be subject to judicial review under the ADJR Act, although review would be available, in the manner outlined, by way of the prerogative writs.

Relevantly also, no provision is made under the companion Bill to allow for the merits review of decisions under the *Road Safety Remuneration Act 2011* (when enacted) by the Administrative Appeals Tribunal (AAT). It should be noted that access to review of decisions by the AAT is not automatic. Rather, specific legislative provision must be made for such rights to accrue.7

**Concluding comments**

One of the functions of the Road Safety Remuneration Tribunal (the Tribunal) which is established by the companion Bill is to deal with disputes. Together, the Tribunal powers enunciated in proposed section 86, the availability of a prescribed appeals process under proposed sections 92–95, and the retention of the use of section 39B(1) of the Judiciary Act will ensure that the Bill does not impose a limit on individual rights—despite the removal of access to merits review under the ADJR Act or by the AAT.

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7. A merits review tribunal ‘stands in the shoes’ of the primary decision maker and makes a fresh decision based on all the information available to it. The object of merits review is to ensure that ‘the correct or preferable’ decision is made on the material before the decision-maker. In contrast, the object of judicial review is to ensure that the decision was properly made within the legal limits of the relevant power.

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