

THE CHALLENGE OF RAIL SAFETY COMPLIANCE FOR THE TOURIST AND HERITAGE SECTOR

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Summary

Victoria has 18 Rail Safety Accredited tourist railway (inc. tramway) operators. Tourist Railways in Victoria involve an estimated 3500 volunteers and generate approximately \$16.5m \$Aus per annum turnover. Over 600,000 passenger journeys are made annuallyⁱ.

Legislative compliance for these groups, where there is a high reliance on volunteer input, has been perceived as an additional burden on their scarce resources. Equally, failure to comply with the Rail Safety Act threatened their operating viability.

With the introduction of the 2006 Rail Safety Act in Victoria, the opportunity existed for the Government to provide strategic assistance to the sector to enable each of the operators to achieve Rail Safety Accreditation.

During the project delivery phase it became obvious that the T&H operators also needed assistance with other areas of governance including insurance, tenure and asset allocation.

The presentation focuses on

- how the T&H sector achieved a successful transition for their rail safety obligations
- the strategic assistance provided by government and
- how legislation was formulated to achieve viability for the sector in the future.
- it also outlines a successful model that could be used elsewhere.

Introduction

Active railway preservation appears to be a post WW II phenomenon. 2011 is the 60th anniversary of the first successful Heritage Rail group being formed in Englandⁱⁱ. The railway preservation movement in Australia commenced with the formation of the Puffing Billy Preservation Society in Victoria in 1955. These modest beginnings have resulted in tourist and heritage railways and tramways, operated with volunteer assistance, existing throughout the World. Tim Fisher, in his recent publication suggests there are close to 300 tourist railways in Europe and the United Kingdom, and over 500 in the United States of America.ⁱⁱⁱ



Fig 1. - Puffing Billy at Emerald 2005

Throughout Australia there are more than 60 operating Tourist and Heritage Railways, with 20^{iv} of these ventures being located in the State of Victoria. In addition to operational Tourist and Heritage Railways there are museums with static exhibits and local preservation groups managing heritage infrastructure no longer retained for operational needs.

This paper focuses on the operating tourist and heritage undertakings.

This paper refers to *Tourist Railways* which are defined as a railway operating on its own right of way, independently of the revenue railway network, *Heritage Operators* are considered to be organisations operating charter diesel, steam or diesel rail cars or electric rolling stock on the Main Rail Network and *Tourist Tramways* operate street tramway rolling stock. In each situation, these activities are provided in a tourism context rather than to enable passengers to commute.



Fig 2. – (Left to Right) Restored and preserved tram at Bendigo Tramways – 2005; Tourist Railway (Australian Narrow Gauge Railway Museum Society) – Woodford Qld – 2007; Steamrail charter – Footscray - 2005

Context

During the 1960's railway administrations throughout Australia were dealing with the phasing out of steam power and the rationalisation of railway networks. Whilst Puffing Billy was well established in the Dandenong Ranges, only 30 kilometres from the Melbourne CBD, it was the only operating tourist railway. The Tramway Museum Society of Victoria, had acquired a number of withdrawn trams from the Melbourne and Metropolitan Tramways Board but had nowhere to operate them. Heritage operations on the revenue network were operated using locomotives and rolling stock that in the main had been withdrawn from normal operations and held by the Victorian Railways for special charters. The railway enthusiast groups established a Steam Preservation Co-ordinating Committee to manage these charters and to streamline negotiations with railway management. Similar situations existed in other Australian States. However, at the time the voluntary effort was restricted by the railway management to ancillary roles with the rail operating responsibilities (such as driver, fireman, signaller and guard still being paid railway employees).

The closure of the tramway networks in Australia's Capital Cities (with the exception of Melbourne) in the 1950's and 60's encouraged the establishment of tramway preservation movements in Sydney (Loftus), Adelaide (St Kilda), Brisbane (Ferny Grove) and Perth (Whiteman Park). In Victoria, the Tramway Museum Society took over portion of a closed railway at Bylands (40 kilometres North of Melbourne) and established an operating museum.

The closure of the provincial electric tramway systems in Ballarat and Bendigo in the early 1970's created the



Fig 3. – Sydney Tramway Museum. Sydney and Brisbane Tram 2006

opportunity for tourist tramways to be established in these two regional centres. This required the groups to take on all tasks associated with tram operation, including civil and mechanical inspection and maintenance, training and rostering volunteers to drive the trams along with restoring trams to operating condition. The early success of these tramway preservation ventures was largely due to the support of the respective councils, the Melbourne and Metropolitan Tramways Board coupled with the enthusiasm of volunteers, many who had no real interest in tramway restoration but felt it was a worthwhile project to be involved with.

Railway Management and the Puffing Billy Preservation Society came to the realisation in the mid-1970's that Puffing Billy's future interests were best served through the establishment of an independent authority to operate and manage a tourist railway that had become one of Victoria's top three tourist attractions. The Emerald Tourist Railway Act came into effect on 1st October 1977.^v

The emergence of the other tourist railway ventures in Victoria during the late 1970s and 1980s was influenced by two key factors. The extensive restructuring of the railway business in Victoria resulting in the closure of regional branch lines accompanied by the downsizing of the rolling stock fleet and the selective replacement of aging locomotives and rolling stock with newer more efficient equipment.

Concurrent with line closure announcements by the authorities, community groups were formed to either 'save' portion of the railway as a static memorial, or rejuvenate the railway and operate it as a tourism venture. The process from the Government's perspective was an annoyance and viewed cynically. Equally, the railway enthusiasts and community groups felt the process was designed to frustrate and force the groups and their proposals out of existence. At least four proposed tourist railway ventures failed.

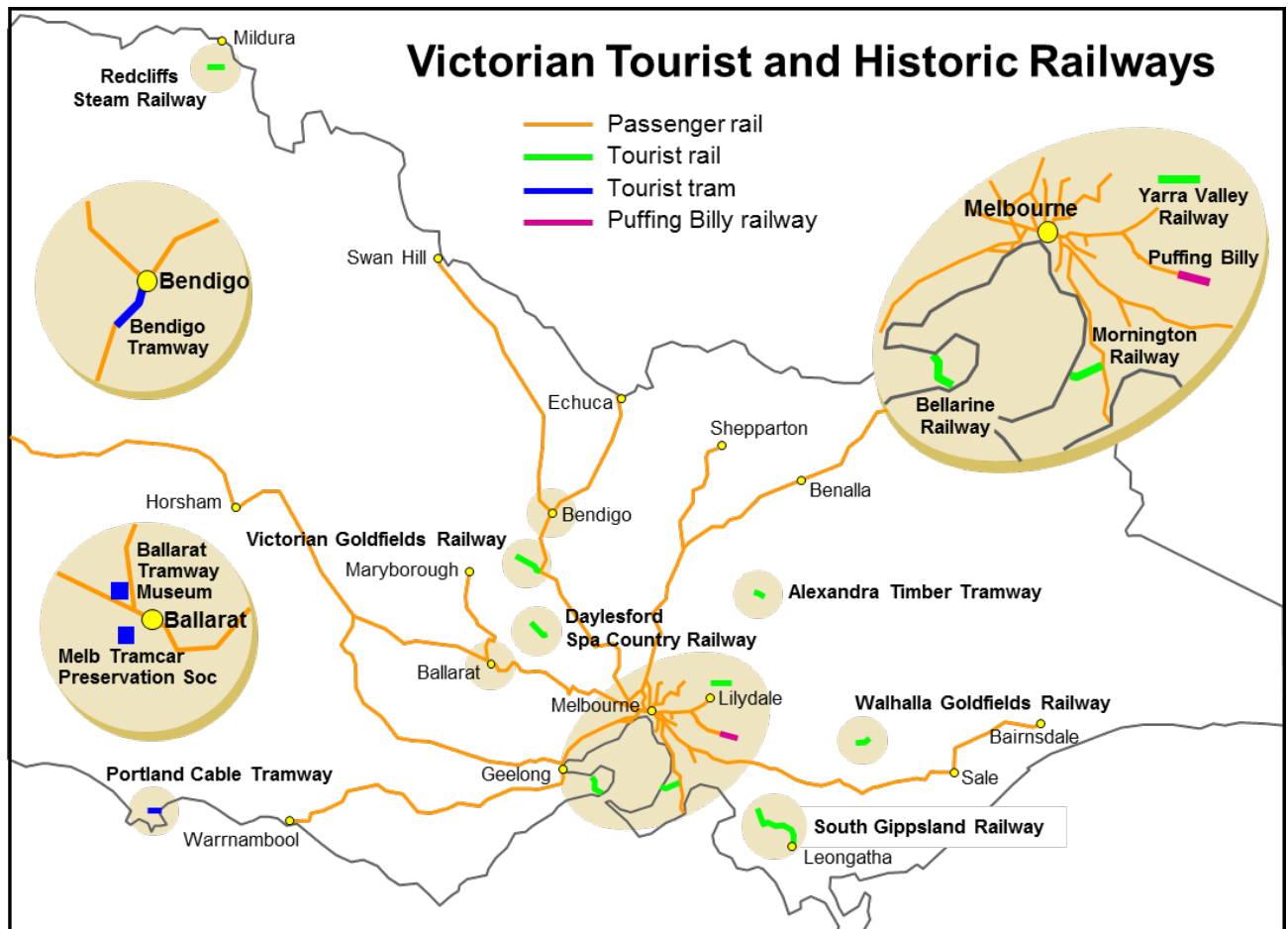


Fig 4. (Left) Central Highlands Tourist Railway – Easter 2003, ex Victorian Railways articulated 280 horse power Diesel Rail Car approaching Daylesford.

(Right) Bellarine Peninsula Railway – ex South Australian Railways T class steam locomotive arriving at Queenscliff station.

It took some years for the first five of the successful groups to commence operations. Problems with the lack of a legislative framework, theft of materials and continued deterioration of the infrastructure, which in most cases was in substandard condition when the railway closed. This resulted in many of the groups only being able to establish an operational presence on a small portion of the railway. Full restoration, with two of the groups, 40 years later, still has not been achieved. The other 3 groups took more than two decades to realise their full potential.

Further modernisation of the Victorian railway network in the 1990's created opportunities for the groups to obtain more discarded material and additional preservation groups were formed. The map on page 4 shows the current locations of Tourist Railway ventures.



The business

The Tourist and Heritage business is diverse and its success is essentially dependant on two key factors

- ongoing volunteer participation
- continued support through patronage.

This may be best described as “....the railway enthusiast provides the basis of our volunteer workforce and knowhow, but if we only relied on railway enthusiasts to patronise our railway we would soon cease operating.....”

The viability of a tourist railway venture is therefore highly reliant on patronage by the public at large, but the general public has a very limited



Fig 5. – Bendigo Trust – Nov 2010. Former Melbourne Tram operating the service. This class of tram did not operate in Bendigo during the SEC Era.

perception of historic authenticity. Conversely, the railway enthusiasts place a greater emphasis on precise recreation of the past and many become critical of compromises required to grow the business or reduce operating costs.

The reality is the majority of the operating tourist and heritage railways are in the tourism business and are required to operate safely in compliance with their Occupational Health and Safety and Rail Safety obligations. They also need to be economically sustainable including appropriate funding allocation for periodic asset maintenance and renewal.

There are many challenges which continue to constrain viability

- aging volunteers, (the majority of the 'first generation' volunteers are now in their 80's or have passed away),
- relevance to the community
- reliance on scarce government funds
- viable marketing strategies to sustain and grow the business
- aging and deteriorating assets, with scarcity of spare parts
- regulatory burden – which extends well beyond compliance to a Rail Safety Act.
- Changes in community expectation of what is safe coupled with a greater reliance on litigation to resolve disputes
- Increasing overhead costs, especially insurance and fuel.

Privatisation and Rail Safety

Until the 1990's the mainstream rail industry was vertically integrated and self regulated. During that decade, significant and far reaching changes occurred, outsourcing, downsizing, corporatisation and privatisation along with the progressive introduction of Rail Safety Legislation from 1993 onwards, completely changed the way the rail industry conducted business.

For many of the Tourist and Heritage Groups, the loss of contacts within the rail industry and the outsourcing of non-core business, for example workshops, meant that obtaining spare parts or redundant equipment for free or at greatly reduced cost ceased.

The introduction of Rail Safety Compliance was not well received. In volunteer groups it is typically difficult to find someone to manage the task of creating and maintaining documentation required to achieve statutory compliance. The concepts of risk management were not well understood and many groups saw compliance as largely irrelevant.



**Fig 6. -. The Kingston Flyer about to depart Fairlight.
October 2006. New Zealand**

The 2006 Rail Safety Act

In 2005 following the Waterfall accident in NSW^{vi}, a more rigorous standard for rail safety accreditation evolved. Victoria became the lead agency for developing the new legislation that would be adopted nationally. On 1st August 2006, the Rail Safety Act came into being and the functional tourist and heritage railways had three years to achieve transition and be compliant with the new legislation.

Following approaches from the T&H sector, the Department of Transport facilitated a project using independent resources to work with the Victorian based T&H Groups and achieve a smooth transition for their new obligations.

In the early stages of this project it was apparent there were 7 areas of concern for the member organisation to achieve compliance. These were

- Asset ownership
- Land Tenure
- Governance
- Insurance
- Volunteer participation
- Level Crossing and Reserve Management
- Improved communication channels with Government

Development of the Tourist and Heritage Legislation

In 2006, all Tourist and Heritage Rail Operators in Victoria, with the exception of Puffing Billy, were responding to the requirements of various legislative requirements but did not have the benefit of specific legislation to provide the context for their existence. Previous legislation including 'The Tramways Act' and 'The Transport Act^{vii}' were no longer relevant. Even the 5 tourist railways operating under an 'Order-in-Council' were being frustrated in their negotiations with Government Agencies as the 'Orders-in-Council' were instituted prior to industry privatisation, council amalgamations and the introduction of the Rail Safety regulatory requirements.



Fig 7.– Bay of Islands Tourist Railway. January 2011.
New Zealand

During the early stakeholder discussions it became evident that a legislative framework that would define the tourist and heritage rail business and provide strategic support was the most appropriate outcome. It was also realised that without legislation many of the groups faced the threat of extinction.

An independent assessment was undertaken to review the various models in place in Australia and Overseas. It would have been preferable to adopt or adapt existing legislation, however, no suitable model existed.

Additionally, the review established there were complex arrangements covering land tenure, involving more than one government department. Current land tenure arrangements involve private land, council land and Crown land.

Source records covering rolling stock allocation were largely non-existent. A further variable was some locomotive and rolling stock assets were still owned by the Government, whilst others were owned by the group or alternatively are in private ownership. Some allocated items were allocated to one group but are in the hands of another organisation.

As the context of the proposed legislation developed, regular dialogue occurred with both the Tourist and Heritage Groups and involved government departments. This ongoing consultation was essential to ensuring the legislation reflected the needs for the sector. Finally, the legislation was passed by the Victorian Parliament in October 2010.

During 2011, Regulations required to support the Legislation were drafted and two stakeholder workshops occurred to ensure the draft Regulations addressed the needs of the sector. The Act came into effect on 1st October 2011.

What the legislation has achieved

A voluntary registration scheme for Tourist and Heritage Railways to participate. It is not compulsory for the groups to join. However, participation ensures, that with professional assistance, the groups will

- By October 2012 have a structured business plan
- By October 2013 have a structured marketing plan and an asset conservation plan.



**Fig 8. -Abt Wilderness Railway – Strahan, Tasmania.
August 2007**

Until then, the only criteria for inclusion in the voluntary registration scheme are that a group must be

- Located in Victoria
- An incorporated association – not for profit
- Operating
- Have appropriate rail safety accreditation status.
- Have an appropriate working with children policy.

The Act does not include static museums, private operators, interstate operators, underground mine railways, miniature railways or commercial vintage operations (for example the Melbourne City Circle Tram or the Colonial Tramcar Restaurant.

The Department of Transport will develop and maintain an Asset Register on behalf of the Tourist and Heritage operators. Additionally, a standard form of lease has been developed so that all Tourist and Heritage operators have the same tenure arrangements where the land they occupy is vested in VicTrack

Over the next few months an Advisory Committee will be established. This will be chaired by the Registrar and have 7 members appointed by the Director of Public Transport. The 7 nominees will encompass

- A person nominated by Tourism Victoria
- A person nominated by Regional Development Victoria
- A person nominated by VicTrack

- 4 persons nominated by the tourist and heritage sector to provide representation to cover
 - Broad Gauge tourist railways
 - Narrow Gauge tourist railways
 - Tramways
 - Main line operations

Over the last two years, the Department of Transport has provided assistance to the sector in making

- surplus material (rail, sleepers, points, signalling equipment and rolling stock) available to the sector at no cost other than transport.
- Provided technical and engineering assistance
- Sponsored a number of workshops to address emerging issues

The regulations supporting the Tourist and Heritage Railways Act provides remedy for a number of offences. The purpose of these provisions is to make it easier for the groups to address the annoying and mindless behavior of a minority in the community who graffiti, trespass, damage property and dump rubbish.

The future

The approach of the DoT is to provide ongoing strategic support to the Tourist and Heritage operators and not interfere with their day to day activities. Obviously, the groups will still be accountable for the Rail Safety performance and the financial obligations as 'not for profit' entities.

The area where the advisory committee will be of greatest support to the Tourist and Heritage operators is securing capital for new projects. One of the longer term objectives is to achieve financial viability for the sector.

A strategic advantage of appointing an advisory committee reporting to the Director of Public Transport is that many of the long term needs of the sector can be addressed holistically, including for example

- Training and competency of volunteers
- Cross sector promotion
- A reference library of technical material relevant to the sector
- Information and resource sharing
- Provide an accessible inventory of State owned assets used by operational groups.

An independent economic analysis of the legislation concluded the intent of the legislation is to support operators and sustain and help them improve their business. It was also found that the legislation should achieve these outcomes without placing a significant burden on the sector.

The issue of adequate insurance for the sector is still to be addressed, and will be one of the first tasks to be undertaken by the advisory board.



Fig 9. -.Main line steam train charter to Albury. August 2008

Adoption/adaptation

The legislation is seen to significantly assist the sector with meeting their requirements with regulatory compliance on a much broader sphere than just Rail Safety Compliance.

Strategic assistance to improve the competency of the individual groups' board of management should ensure the stability and sustainability of the sector.

As such, the experience that the Department of Transport personnel have gained during the development of the legislation, is something that we are happy to readily share with the Tourist and Heritage rail sector both in Australia and Overseas.

The legislation is available on the Victorian Government Web site [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/E2CBEABED816BBCDCA2577C1001D6F7A/\\$FILE/10-079a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/E2CBEABED816BBCDCA2577C1001D6F7A/$FILE/10-079a.pdf)

Conclusion

During my career in the rail industry I have been involved in the formulation and delivery of many diverse and complex rail projects. Usually, these projects have involved rationalisation of railway assets.

It is a refreshing change to be involved in a project that will enhance a section of the rail industry involved with tourism and recreation.

Acknowledgements

The delivery of this project has been a team effort. In particular, the strategic alliance with Safety Action in the early stages of the project enhanced the outcome considerably. Their involvement as a 'non-government facilitator assisted with the credibility of the project.

The Department of Transport legal team involved in drafting the legislation and guiding both the Tourist and Heritage groups along with other Government Departments through the rather lengthy and involved process of consultation.

The Tourist and Heritage groups supported by their peak body, the Association for Tourist Railways placed considerable trust in the Department. Without that trust the project would not have been delivered.

Finally, the support of my own small team as we have worked through the issues is certainly appreciated

References

ⁱ Association of Tourist Railways (ATR) – Statistics for Heritage and Tourist Railways in Victoria (as at 14 July 2011) – from ATR Web Site

ⁱⁱ ATR – July 2011 Newsletter ‘The Electric Telegraph’ (Issue 10) – from ATR Web Site

ⁱⁱⁱ ‘Trains Unlimited in the 21st Century’ by Tim Fisher, published ABC Books 2011.

^{iv} In the opening paragraph a figure of 18 is quoted. There are two organizations which are currently exempt from Rail Safety Accreditation.

^v Emerald Tourist Railway Act, No. 9020, 1977.

^{vi} On 31st January 2003 an Electric Multiple Unit train overturned at Waterfall NSW. A Special Commission of Inquiry made 127 recommendations the majority affecting rail safety compliance.

^{vii} The Tramways Act provided legitimacy for non-government railways to operate in Victoria. This requirement ceased with privatization of the Government rail business in the 1990s. The Transport Act previously contained some provisions for tourist railways. However these sections had been repealed. The introduction of Rail Safety provisions within the Transport Act in 1997 provided safety accountability for tourist railways.