



Perth Electric Tramway Society (Inc)

Operators of Western Australia's Heritage Tramway at Whiteman Park

ABN 93 261 224 696

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Patron: Mr Stuart Hicks AO

DPI
GPO Box C102
Perth WA 6839
Attention: Mr P. Ariti

Dear Phil,

Submission re: WA Rail Safety Bill 2009 (Draft 2 of 8th May 2009)

As a brief background note, the Perth Electric Tramway Society (Inc.) [PETS] is the operator of the Whiteman Park Heritage Tramway, which is the only Electric Tramway in WA. The tramway is operated and maintained entirely by the Society's members, all of whom are Volunteers. We have no employees at all.

We raise here the following matters of concern, regarding parts of **Section 188**.

“188. Offences by bodies corporate, partnerships, associations and employees.

(1) If a body corporate commits an offence against a rail safety law, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and is punishable accordingly. [Our emphasis.]

- **This is completely and totally unacceptable** to Volunteers who carry out all of these roles in an Association like PETS; and there is no doubt that this will apply equally to all similarly-structured Tourist and Heritage rail operators in WA, as well as nationally.
- We raised this same objection in the strongest terms with NTC representatives at the **NTC's Perth Information Session** on the Exposure Draft of the National Model Bill, on 7th November 2005.
- We were assured at that meeting by the NTC reps that this matter had already been raised [in other States], and that the Section was to be amended to ensure immunity for volunteers. [See over, Page 2 re the Model Bill.]
- **If Section 188 is implemented in its present form, it will be impossible for Associations like PETS to retain or attract members to fill any of their administrative and management positions, or the operational Supervisory and Committee roles as described in their Rail Safety Management Plans. This is 100% certain.**
- **The present occupants of all such positions would most likely resign, immediately.**
- **Consequently, our whole tramway operation would cease.**
- Furthermore, it is our understanding that this part (1) conflicts with the WA **Associations Incorporation Act** regarding the individual liability of Association Members to prosecution.
- Clarification as to which of these Acts will take precedence is therefore needed.

However, we note that the **Model Rail Safety Bill, Section 128** (of 14th December 2007) states:

“128 Offences by bodies corporate, partnerships, associations and employees ...

(10) An officer –

(a) of a body corporate (including ...); or

(b) of a partnership or unincorporated body or association – *who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.*” [Our emphasis.]

This part (10) [and the associated part (11)] from the Model Bill explicitly provides volunteer immunity, as required by volunteer-based operators and as was promised by the NTC in 2005, but now it has been omitted in full from the present draft of the WA Bill.

WHY?

It is **crucial** for operators like PETS that, rather than being omitted from the WA Bill, this part (10) from the Model Bill be **included**, **and strengthened** (if necessary) to apply (specifically) also to Incorporated Associations.

Further, this crucial omission of part (10) was not listed specifically in the Summary of Variations that was circulated by you with the draft WA Bill, while the insertion of Section 216 (Immunity from Tortious Liability) was listed.

There are two other items of concern:

- We note that **Section 188 part (6) in the WA Bill** does NOT appear in the Model Bill. So, why is it necessary in the WA Bill? It does **not** explicitly give volunteers immunity, and in that respect it is a very poor substitute for the omitted part (10) of the Model Bill. [This addition of part (6) was not listed specifically in the Summary of Variations either.]
- **Section 188 part (7) in the WA Bill** (= part 6 in the Model Bill) seems vague in its intent, and could be seen as unnecessarily threatening to all individual members of the rail operator’s workforce. If the body corporate or other person who actually committed the offence have been proceeded against, that should be the end of the matter. Why is this part needed?

We thank you for this opportunity to comment on the draft WA Bill, and trust that these issues can be satisfactorily resolved.

Yours sincerely,

Mike Stukely
President, Perth Electric Tramway Society
8 June 2009



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Dear Phil,

Submission (Part 2) re: WA Rail Safety Bill 2009 (Draft 2 of 8th May 2009)

The additional point below is submitted, regarding **Section 188 (Offences by bodies corporate... etc)** and the omission from the draft WA Rail Safety Bill of the parts (10) and (11) of Section 128 in the **Model Rail Safety Bill** (of 14th December 2007).

[These omitted parts from the Model Bill explicitly provide volunteer immunity/exemption from prosecution when the body corporate, etc commits an offence against a rail safety law. It is **crucial** for volunteer operators like PETS that, rather than being omitted from the WA Bill, parts (10) and (11) in the Model Bill be **included, and strengthened** (if necessary) to apply (specifically) also to Incorporated Associations.]

Further to our submission of 8th June 2009, we are advised that:

- **Following the submission by the Association of Tourist & Heritage Rail Australia (ATHRA) to the NSW Government regarding the omission from the draft NSW Bill of the above volunteer exemption clause in the Model Bill, this was rectified in the final NSW Act.**

Again, we thank you for this opportunity to comment on the draft WA Bill, and trust that the issues we have raised can be satisfactorily resolved.

Yours sincerely,

Mike Stukely
President, Perth Electric Tramway Society
16 June 2009