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15 September 2009

Transport and Industrial Relations Committee
Parliament Buildings
Wellington
Attention: Graham Hill
Clerk of the Committee
Dear Sir,

Infrastructure Bill

This document contains the Federation's submission to the Infrastructure Bill.

The Federation wishes to appear before the committee to give oral evidence on its submission.

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Federation of Rail Organisations of NZ Inc Submission to the Infrastructure Bill

Introduction

The Federation of Rail Organisations of NZ Inc (FRONZ) is the umbrella organisation representing the tourist and heritage rail industry in New Zealand. Our 70 members (see attached list) range from commercial full time operators (eg Taieri Gorge Railway, Shantytown) to small, volunteer only, organisations (e.g. station precinct heritage sites).

FRONZ supports the principle that there needs to be a clear and agreed code of practise to be followed when utilities and transport corridors interact. However we believe that this Bill does not consider the situation of the majority of rail operators in NZ and will place unnecessary compliance costs on many of them.

As written the Bill:-

- Lacks appreciation of the diversity of railways in NZ.
- Lacks appreciation of varied ownership of the land on which rail corridors lie.
- Will impose compliance costs on small, volunteer run railways.
- Is likely to increase, rather than reduce, confusion over access to rail corridors.

Rail Industry in NZ

There are approximately 80 rail service license holders in NZ¹ and FRONZ represents approximately 50% of them. The remainder include the NZ Railways Corporation, Veolia in Auckland and industrial lines (mainly private sidings within industrial plants). Most are rail corridor managers.

Land ownership of railways falls into several categories:-

- National Rail System on Crown land controlled by NZRC (Ontrack).
- Railways that are on Crown land leased from NZRC (but for which NZRC is not the corridor manager).
- Railways that are on land leased (or have an easement) from private land owners or local authorities.
- Railways that are situated on land owned by the rail operator (the majority of railways, including most industrial lines).

Access by Utilities to Rail Corridors

While some railways are crossed by roads many are situated totally within private property. While these railways are obliged to give reasonable access to utilities under the Railway Act 2005, Section 75, utility operators do not necessarily have a right to cross the land surrounding the rail corridor. In these cases the utility operator will need to negotiate with the land owner(s) as well as the rail corridor manager.

In the past some utility operators have unwittingly contravened the Railways Act by believing that permission from the land owner (NZRC, local authority, etc) gives them the right to enter the rail corridor.

Currently many utility operators and their contractors lack understanding of the Railways Act 2005 and the difference between land ownership and control of railways.

This can be illustrated by a clause in the draft Code of Practice which states “The rail corridor is generally owned by the Crown and managed on the Crown’s behalf by the New Zealand Railways Corporation trading under the name ONTRACK; however, in a few instances, other parties have control of parts of the rail corridor. The first contact should be with ONTRACK as they have details where the latter is the case.”

This statement is wrong because:-

- It assumes that there is only one rail corridor in NZ, not the 80 that exist.
- It states that all corridors are owned by the Crown.
- It claims that Ontrack should be the first point of contact as they will have details of all rail corridor managers. In fact NZTA is the only agency that has records of all railways in NZ.

Furthermore many small railways are not crossed by utilities and are unlikely ever to be so. However they will be forced to comply with the provisions of an Act that may never be used.

Draft Code of Practice

We note that there is already a draft code “The National Code of Practice for Utilities’ Access to the Transport Corridors”. This has been developed by representatives of all utilities, local authorities, Transit New Zealand and ONTRACK under the auspices of the NZ Utilities Advisory Group (NZUAG) with the intention that it become the approved code under Section 12 of the Infrastructure Act 2009.

¹ NZTA internet site

While FRONZ has been aware of this Code we were not involved in its development and believed that it only applied to NZRC land as stated in the Code.

Because development of this Code has not included consultation with the approximately 80 rail corridor managers it cannot comply with Section 12 (2) of the Act which states:-

“The process for developing a draft Code must include, at a minimum, the following steps:
(a) consultation with utility operators and corridor managers:”

It is unfortunate that so much time has been wasted on creating this code as it will need extensive consultation and re-writing before the Minister can consider it for approval.

Internet Site

Section 38 of the Bill requires “(1A) Every licensed access provider and every railway premises owner must publish, on a publicly available Internet site, the criteria that the licensed access provider or railway premises owner will apply when considering whether to grant permission under subsection (1), and must apply those criteria when considering whether to grant permission.”

Many rail operators do not have access to an internet site as they are either (a) Too small to need a site or cannot afford the costs of one or (b) Part of industrial plants and have no need to advertise their existence.

The effect of this clause will be

- Creation of 80 internet sites listing contact details which utility operators will need to be aware of when deciding who to approach.
- Costs for small volunteer organisations that can ill afford the funds necessary to create and maintain an internet site. (While FRONZ could maintain a common site for its members that will still leave another 40 operators to arrange their own.)

Other Compliance Costs

One issue of concern to our members is the disparity in bank balances between small, volunteer run, heritage railways and large utility operators and contractors. There have been cases where our members have been unable to afford to enforce the provisions of the Railways Act to ensure public safety. (A recent instance involved a private road crossing where the company owning the road threatened to take a small rail operator to court to avoid the requirements the operator asked for to safely manage the crossing. Such a court case would have bankrupted the rail operator.)

We are concerned that such cases will arise again and note that there are provisions in the draft code for dispute resolution. However such resolution is likely to impose significant costs on our smaller members (eg “The costs of the expert must be borne equally by the parties”; “In the absence of agreement, the arbitration will take place in Auckland or Wellington”)

Changes to the Bill

We ask that the Bill be amended to

- Exempt all rail operators whose railways are not crossed by public roads. (The provisions of the Act are unlikely to apply to these railways and this exemption will reduce the costs of consulting with so many rail operators.)
- Provide for a single, publicly funded internet site to meet the requirements of Section 38.
- Provide safeguards for operators who may be overwhelmed by the costs of complying with this Act and its Code of Practice.

Yours Sincerely

Peter McCallum
FRONZ Secretary



MEMBERSHIP LIST AS AT 1 SEPTEMBER 2009

NORTH ISLAND

Bay of Islands Vintage Railway Trust	Kawakawa
Whangarei Steam & Model Railway Soc Inc	Whangarei
Whangaparaoa Narrow Gauge Railway Ltd	Hibiscus Coast
Helensville Railway Station Trust	Helensville
Waitakere Tramline Society Inc	Swanson
Watercare Services Ltd (Rainforest Express)	Nihotupu
Heritage Trams for Henderson Society Inc	Henderson
Railway Enthusiasts' Society Inc	Auckland
Glenbrook Vintage Railway	Waiuku
Western Springs Railway (MoTaT)	Auckland
Western Springs Tramway (MoTaT)	Auckland
DBM Contracting Ltd.,	Otahuhu
Bush Tramway Club Inc	Pukemiro
Driving Creek Railway & Potteries Ltd	Coromandel
Goldfields Railway Inc	Waihi
Victoria Battery Tramway Society Inc	Waikino
Te Aroha Mountain Railway Soc Inc	Te Aroha
Rotorua & Ngongotaha Railway Trust	Ngongotaha
Geyserland Express Trust	Rotorua
Climax 1317 Trust Inc	Te Awamutu
Waitara Rail Preservation Soc. Inc	Waitara
Friends of Waverley Station Society Inc	Waverley
Steam Rail Wanganui Society inc	Wanganui
Tramways Wanganui Trust	Wanganui
Main Trunk Rail Ohakune Inc	Ohakune
Taihape Rotary Club	Taihape
Gisborne City Vintage Rail Soc Inc	Gisborne
East Coast Museum of Technology Inc	Gisborne
Hawkes Bay Steam Society Inc	Napier
Ormondville Rail Preservation Soc Inc	Ormondville
Feilding & District Steam Rail Soc Inc	Feilding
Pahiatua Railcar Soc Inc	Pahiatua
Wairarapa Rail Restoration Soc Inc	Carterton
Fell Locomotive Museum Inc	Featherston
Rimutaka Incline Railway Heritage Trust	Upper Hutt
Silver Stream Railway Inc	Upper Hutt
Wellington & Manawatu Railway Trust	Paraparaumu
Wellington Tramway Museum Soc Inc	McKays Crossing
Steam Incorporated	Paekakariki
Paekakariki Station Precinct Trust	Paekakariki
Mainline Steam Heritage Trust.	Ak, Wgtn, Ch
Department of Conservation	Wellington
Rail Heritage Trust	Wellington
NZ Railway & Locomotive Soc Inc	Wellington
Wellington Cablecar Museum	Wellington

SOUTH ISLAND

Nelson Railway Society Inc	Nelson
Blenheim Riverside Railway Inc	Blenheim

Westport Railway Preservation Soc Inc	Westport
Reefton Historic Trust Board	Reefton
West Coast Mechanical & Historical Soc Inc	ShantyTown
Weka Pass Railway Inc	Waipara
Canterbury Steam Preservation Soc Inc	McLeans Island
Canterbury Railway Society Inc	Christchurch
Tramway Historical Society Inc	Christchurch
Heritage Tramways Trust	Christchurch
Christchurch City Tramway Ltd	Christchurch
Ferrymead 2-foot Railway Society Inc	Christchurch
Diesel Traction Group Inc	Christchurch
National Railway Museum Inc	Christchurch
Motorcar Consortium Ltd	Christchurch
Little River Railway Station Trust	Little River
Midland Rail Heritage Trust	Springfield
Ashburton Railway Preservation Society Inc	Ashburton
Pleasant Point Railway & Historical Soc Inc	Pleasant Point
Oamaru Steam & Rail Restoration Society Inc	Oamaru
Project Steam Inc	Dunedin
Otago Railway & Locomotive Soc Inc	Dunedin
Otago Excursion Train Trust	Dunedin
Taieri Gorge Railway	Dunedin
PACIFIC ISLANDS	
Rarotonga Steam Railway	Avarua (Cook Is)