

SESSION: "WHAT TO DO UNTIL THE CORONER COMES"

PHIL A'VARD - THE PUFFING BILLY SOCIETY

In the late 1950's a small group of people in Wales started a movement which was to be copied all over the world.

A dedicated band of young enthusiasts proved to the Government and to the population of England that a railway could be restored and operated by volunteers, i.e. by ordinary people working in their own time.

The late 50's and early 60's saw this urge to preserve railways and tramways spread to all points of the compass, with the result that there are now hundreds of rail guided systems of one form or another, preserved and operated by amateurs in almost every country.

In the 70's and 80's we saw these groups develop into small businesses in which well-wishing amateurs gave their labour free to the enterprise, allowing them to invest their fares in capital development and in the employment of personnel to service their equipment and in some cases, to operate and market.

Development and consolidation was perhaps not as difficult as one might think. The organisers, i.e. the management, had years of tradition and practice upon which they could model the development of each enterprise. There were existing rule books, practices and laws which would guide them in the restoration of their relics and satisfy the nostalgic needs of the volunteers, club members and patrons. In many ways the 80's were perhaps the halcyon years of the preservation movement.

The late 90's however, are different. These are the years in which the preservation movement will have to grow up. Forty years after the first act of preservation, we find that our preserved relics are operating in a different world. We are still offering enjoyment to patrons and volunteers. Their expectations are however, no longer those of the people of the 50's. Patrons see our enterprise as a tourist attraction (i.e. as a business) and have much less sentiment for voluntary operation. Volunteers today are now in a second generation phase, without the same dedication and wisdom of their earlier brethren. Most cannot recall the preservation phase and have joined the organisations for reasons other than that of saving it.

Something else has happened however, and it may be time for amateur management of preserved railways and tramways to be aware of this. I refer to the fact that in the 90's the environment in which our businesses operate has changed dramatically. The rules of a century ago are no longer relevant or are under challenge.

Since the mid 80's we've seen at least three changes which will, in time, have enormous effects on our businesses. There are more to come ! The first of these changes was the lifting of the bans upon the legal profession advertising for their services. This means that every newspaper one turns to, will have ad claiming that one solicitor or another can "get you money" by acting on your behalf against the perpetrator of an outrage against you. The net effect of this is that we are moving very quickly to the American style of economy where the first words that are uttered after the word "ouch" are "who do I sue" ?

The second change and probably the most far reaching, is the Occupational Health and Safety philosophy. This had its roots in the United Kingdom and Europe many years ago and has the effect of taking from Government authority the responsibility for ensuring safety in the work place and other areas, and transferring it to the occupiers or the proprietors of the work places. Occupational Health and Safety Acts do not prescribe any specific safety procedures, yet they have the powers to "hang" anybody who does not follow one. They also have the power to trace responsibility for any negligence or malpractice down to an individual, be it a volunteer or an employee of the organisation.

A third one is director's liability. We have seen in the last decade the removal of the corporate protection of decision makers and it is now possible for individuals serving on the committee or on the board of any of our preservation businesses to be sued by shareholders (i.e. members), or by the Australian Securities Commission for negligence in exercising their directorial duties. This almost means that every member of a board can be sued if an error is made in a balance sheet and not detected by their vigilance. It can also extend to management at all levels.

Related to all of this, and perhaps a fourth in this series, is an Act of the Victorian Parliament, the "Equipment Public Safety Act, 1994" which will have, I believe, a substantial impact on all of our operations.

The object of the Act is to secure the health and safety of persons in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of prescribed equipment, to protect people generally against risks to health or safety in relation to prescribed equipment and to eliminate at the source, risk to health and safety of persons in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of prescribed equipment.

The definition of the words "prescribed equipment" is given as "any equipment which is declared by the regulations as "prescribed equipment". I have yet to find any reference to qualify this further other than a reference that The Governor In Council may make regulations declaring any equipment to be prescribed equipment.

What is it that we are operating other than equipment ? Implications behind this are not unlike that of Occupational Safety & Health. It places the onus of ensuring that the equipment is safe upon the proprietor, the designer and probably, the operator.

Let me ask you now, does any of us really understand the full design parameters of the ancient equipment we are now running ? Have we added to it in anyway ? In so doing, did we undergo a full analysis as to the safety of the particular item we added ? Has it been appropriately stressed from an engineering point of view ? Was the timber used in a repair the appropriate structural grade for the job to which it is being applied ? What are the qualifications of the person who decided to make the repair and/or what were the qualifications of the person who designed the improvement ? How many times have we, as amateurs, done things to our equipment and then placed it in public traffic ? That individual as well as the employer can be culpable under the Act.

Neither the Occupational Health and Safety Act, nor the Equipment, Public Safety Act, 1994 gives any guidance or clear definition for their term "so far as practical" with regards to safety procedures. They do provide, however, for the relevant Minister to approve a code of practice.

Compliance with such a code absolves individuals or organisations from civil or criminal proceedings. However, the preparation of such codes is not prescribed by any Act and requires a vast amount of spade work to be done by the organisations concerned.

The existence of these acts brings into question the rules, regulations and practices which have been used by the preservation groups since they began and since the enterprises they preserve began. They also highlight the risks to which volunteers expose themselves in undertaking roles in operating under these rules, regulations and practices.

All is not as gloomy as it may sound. Fortunately, these same acts also apply to the professional railways.

Most of the preserved railways in Australia are supervised by their respective public transport commissions. Most States have now introduced a system of accreditation against which railways, professional or amateur, can be assessed. The process refers to any gauge 2ft and upwards. This Railway safety accreditation process examines safe working procedures, administration, engineering practices and standards, training and certification of staff competency, emergency procedures and management policies. In fact, almost every aspect of operating the rail enterprise is subject to detailed examination.

At present the system is being administered through agencies in each state and applies to all rail operators. I however suggest it is only a matter of time before a National Rail Safety accreditation process will apply to every railway and tramway system throughout the country. Whilst such a system will not replace Occupational Health and Safety and similar Acts, it will provide the mechanism for the establishment for Codes of Practice.

It would behove all preservation groups to adopt common practices, standards and procedures so that a common code of safe practice would apply across all preserved railways. Victoria has taken a step in this by adopting standard regulations and safe working procedures which apply to all preserved lines.

The amount of work involved in this however, is prodigious. The rail safety accreditation process is not one which specifies the practice. It is, as the name says, one which gives accreditation to the practices and procedures which are adopted by the organisations.

Every organisation can submit its own set of practices to the process and be given accreditation individually. I suggest however that we would be better served if we were to establish an Industry Code of Practice which would be approved under O.H. & S and similar Acts. The great advantage of this would be in the mobility of volunteers.

If safety procedures were standardised throughout the industry, the transition of volunteers between preserved systems would simply involve certification in local knowledge and practice rather than full scale training and certification for each organisation.

Having painted a part-picture of the environment in which our enterprises now exist, I now turn to a small aspect of the scene in order to justify the colourful title of this paper - that of procedures in an emergency !

A detailed examination of such procedures will be one of the first aspects of your operation to be considered under any form of accreditation.

In its forty plus years of existence, the railway preservation movement in Australia has led a "charmed life" in so far as accidents are concerned. However, as the insurance companies say, "the longer you go without an incident, the bigger it will be when it happens". In short, the next big one could just be around the corner.

Avoid complacency ! It can happen on your railway at any time ! Already we have had, to my knowledge, two fatalities on preserved rail systems. 1993 saw a boiler incident on a railway in South Australia in which at least one person was killed. I believe in New South Wales some years ago, a footplate man was fatally injured. We are operating dangerous equipment and despite stringent operating precautions, anything can and invariably will happen. When it does, the entire reputation of your organisation, which may have been built up over forty or more years, will be put to the test. After the crunch, you only have a matter of minutes in which to save the reputation, the organisation and perhaps its directors, staff, and volunteers from prosecution.

Let me now paint another picture.

It is a quiet Sunday afternoon during the January school holidays. Most of your regular volunteers are on vacation, as is most of the executive management. Despite their best efforts, the roster officers have been unable to fill all operating positions for the day, so you are running slightly short-staffed. As most of your skilled and experienced volunteers are absent, the operation is being performed by those of lesser skills and experience. These may be very willing and, in fact, qualified personnel who are second and third generation volunteers. Even though qualified, they may not have the experience of older members or full time employees.

This, I am sure is a familiar scenario. Now let's introduce an unfamiliar one.

Through equipment failure, a train loaded with people derails on an embankment. The train rolls on its side down the embankment ripping down the adjacent telephone line. The nearest road is 500 metres away across a field. Trapped in the train are injured children, people possibly killed. The train crew is unconscious. The guard, a youth.

If this was your railway what would happen next.

- Would the guard know who to call for assistance ?

- Is there are communication system available for the guard to use ?
- Is their a senior person on duty for the guard to contact ?
- Has that senior person been trained in what steps to take in this situation ?
- Has that senior person the means to make that contact ?
- Does that senior person (if any) have instant access to telephone numbers for emergency services ?
- Will he lose valuable minutes rummaging through the telephone directory ?
- Does the railway have emergency breakdown equipment available and does it have people available who are trained in its use ?
- Is there a system whereby the location of the incident can be identified clearly to emergency vehicles. There is no sense in telling the emergency services that the incident took place at "Fred Nurk's Curve" on the "XYZ Railway".

Let's now assume that someone has managed to make the right decisions and that the emergency services have been called, the State Emergency Services, ambulances and fire trucks et alia have all turned up on the scene and the dead and injured are being taken away. The police arrive !

- Who represents the organisation on the scene to the police ? Bear in mind the incident took place on your own property and is not a road traffic matter.
- Is there a mechanism in place for the gathering of information and evidence which can be used by the organisation to determine the cause of the incident ?
- Is this mechanism sufficient to be used as a defence in subsequent litigation in a court of law or in the Coroner's Court ?
- Is there a mechanism to protect volunteer staff from incriminating themselves when making statements to the police ?
- Has anybody thought of bringing out their camera and photographing the incident from every possible angle ?
- Is there a competent person available to handle questions from the press ?

Let us now move to events after the incident. The wreckage has been cleared away, the damage has been repaired and it is time for the great wash-up.

- Is there a formal mechanism for the evaluation of the evidence which was gained from the site ?
- Has the cause of the incident been identified ?
- Has appropriate action been taken to ensure that it will not happen again ?
- If there is any blame, has it been apportioned ?

- What disciplinary steps, if needed, have been taken ?
- Has the organisation a policy of assisting volunteers when in court ?
- Has the organisation any system where a volunteer who has been traumatised by an incident of this nature can be counselled ? In this case, think of the guard, or the first on the scene, each of whom has witnessed death and serious injury.
- Has the administration of the organisation evolved a system whereby reports arising from incidents of this and any other nature are systematically recorded ?

And last, but certainly not least;

- How far is the organisation prepared to go in supporting a volunteer whose negligence contributed to the accident and the deaths of the people concerned ? Employees generally have their Unions. What support do volunteers have ?

Most of the points covered above are sufficient to make our collective hair stand on end but I assure you they are real.

As mentioned at the beginning of this discussion, the emergency services vehicle will probably run neck and neck with the legal profession trying to get to the victims and law suits will follow an incident of this nature like waves on a beach.

"But that then is the job of the insurance company" I can hear you saying. That may well be. The insurance company will certainly research behind the scenes, will take advantage of all the information you gather and will fight on your behalf, but it involves an enormous amount of input on your part. Volunteers will be called to give evidence. The integrity of your organisation will be called into question by the prosecution. The press will be in court to see what dirt they can get upon you. Prosecuting barristers will have a field day about "amateurs playing trains or playing trains".

Think about what they would do to the youth who was guard on the train !!

The insurance company will certainly look after their interests in the case. They will not necessarily seek to protect volunteers or your organisation and they are not necessarily interested in "hosing down" the press. This leads to my first question - has your organisation the executive resource to oversee its interest in such a situation ?

Now that's a grim picture and it's on the cards for every one of us. So having terrified you, I hope I'll now give you some examples of what my organisation has sought to do in these matters.

It's not possible to cover every contingency in planning emergency procedures, but with an incident such as that described, any procedures that have been laid down are going to save precious seconds, will save lives, and may in the long term, save your reputation and credibility as an operating entity. I ask you to use these ideas and examples not as a total solution to your problems, but as a basis to form your own procedures.

Firstly, we have in place a system of incident reporting. Located in the kit of every guard on every train, in every signal box, in every station, in every office, is a blue form or "The Incident and Defect Report" - the ubiquitous "I.D.R". This is a form which, if followed correctly, will note most important details surrounding an incident. We have conditioned our workforce, both voluntary and professional, that they must complete one of these

forms when any incident occurs that could cause injury, be of any embarrassment to the organisation, or be of potential damage or injury. These are collected by the station-master every day and transmitted to the relevant divisional manager. After action, they are filed.

Secondly, we have invested heavily in communications. From the beginning we had a telephone line which ran adjacent to the right of way between the terminal stations. Very early in our history we went to train-to-base communications by the installation of portable radios in each guard's van. We have latterly installed a far more flexible and wide reaching system and are now encouraging all drivers and guards to carry hand-held radios to supplement the main train-to-base system. The telephone line has been retained with a more sophisticated exchange system and we have installed telephone boxes along the track at approximately every 500 metres. Telephones are also installed at every level crossing. As a backup to our own system, Telecom telephones are located at every station along the line. It is possible therefore for an officer on the train to have access to some form of communication within minutes of any incident happening.

Thirdly, we have evolved a system of identification for places along the railway. The poles of the old telephone system have been placed to good use. Starting at Belgrave every telephone pole along the right of way has been numbered. The location of each pole has been recorded on a strip map of the railway line. Copies of this strip map have been distributed to the emergency services in the district, namely the Fire Brigade and Ambulance services. Hence it is possible for an officer of the railway to indicate to the Ambulance or Fire Brigade the pole number at which their attention is required.

The service is then able to locate that number and its adjoining road by reference to the plan provided for their reference.

Fourthly, located in every station along the railway line where they are constantly in view to senior personnel are copies of the folder labelled "Emergency procedures Manual". Personal copies of this manual have been issued to every Station Master on the roster along with instructions as to their use. Fortunately, from the very beginning the Puffing Billy organisation instituted an hierarchical structure where the station master of the Belgrave station was to be the key person in the day's operation. The station master is always in attendance at Belgrave whenever the train runs and therefore is a logical focus for the first point of call in an emergency. The emergency procedures manual defines incidents or accidents in a series of three categories.

- The first being simple derailments, with no injuries being involved, or simple level crossing collisions.
- The second being incidents which occur on the property which results in injury or death to any person but not which we consider to be a disaster of major proportions.
- The third is any incident or accident of major proportions such as a major derailment, major level crossing accident, fire, flood, landslide or other "Act of God".

The manual lists a set of contacts which must be made by the officer in charge or the station master for each of these categories. They range from a "call out" for staff for the first category, through to a major call out of Board Members and senior management in category three. It also indicates the emergency services to be called out in each category and lists the numbers of the services in the area.

Attached to the three main pages of the manual is a comprehensive listing of senior management, all operative staff and all Board Members. With this manual the station

master is able to assess the scale of the incident and contact the appropriate people to take the matter in hand thereafter.

Fifthly, the railway has invested heavily in a breakdown resource. Working on the premise that there are parts of the railway which are inaccessible for road vehicles containing heavy salvage equipment, a special van has been fitted out with jacks, oxy-cutting equipment, tackle winches and other materials which may be required to move, re-rail or perhaps wreck equipment involved in an incident. This is located at the middle point of the railway line, i.e. Emerald, where on most occasions a small shunting locomotive is available to move the breakdown van to any part of the railway.

Sixthly, the senior management of the railway holds workshop sessions among themselves as to what would be required in the event of a disaster. At present this takes the form of general discussions between people who are likely to be concerned. However, it is proposed in the future to conduct actual mock exercises.

Seventhly, we put our mechanisms to the test. In recent times the Emerald Tourist Railway Board co-operated with local authorities in staging "a disaster" which involved local police, local ambulance, local fire brigade and local emergency services. Thus, a mock accident was staged which involved a car colliding with a locomotive and a petrol tanker subsequently colliding with the side of the stationary train at a road crossing. Naturally the exercise was conducted out-of-hours. The exercise was useful to all concerned as we all found the flaws in our arrangements, particularly in communications.

Eighthly, we have in place mechanisms of enquiry into accidents and the reason for their happening to make recommendations to see that they do not happen again and to apportion blame, if necessary.

These are on two levels. The lower level enquiry coincides with accidents in category one of the Emergency Procedures Manual. This takes the form of an inquiry conducted by the manager of the relevant division concerned with one other manager from a totally uninvolved area. The other form is a formal "board" of enquiry which is set up for incidents under categories two and three.

Each of these requires the gathering of written evidence generally on the I.D.R. forms mentioned earlier and interviews with people concerned with the accident or eye witnesses. These reports are gathered, numbered and filed in chronological order on a master file which is kept permanently in the main office. Under the Act of Parliament which controls the Emerald Tourist Railway Board, the results of any board of enquiry, i.e. for categories two and three, must be submitted to the Minister for Tourism.

In the event of a category two or three disaster on Puffing Billy, the role of the senior board member when summoned by the station master, is to attend the site and appoint as quickly as possible a board of competent people to enquire into the cause of the event. This board is generally made up of two members of the Emerald Tourist Railway Board, at least one manager of a division of the railways management whose division is not involved in the incident, if appropriate the manager of the division involved, and a person/persons with skills which relate to the perceived cause of the incident. For example, if the incident was caused by a safe-working misdemeanor, the appropriate person would be the railways safe-working officer.

To assist this group of people, some person with stenographic or secretarial experience is recruited. One of the board members selected for the board of enquiry is nominated as the convenor.

The board is convened as soon as possible after the event. This is necessary for obvious reasons - the closer to the event, the more accurate is the evidence to be obtained,

recollection is sharp and there is less opportunity for collusion. It is surprising that the longer the time lapse between the incident and the enquiry, the more identical does the evidence from all participants become.

The first role of the board is to examine all written submissions received and decide which witnesses should be interviewed. The conduct of the enquiry is done on much the same way as for a job interview. The person is brought into a full, formal interview situation and quietly asked questions with regard to what took place. Questions are based upon the previously obtained written submissions and other oral evidence received. Over a period of time the board gains a fairly clear picture as to what took place at the event and where any faults may have lain. On occasions, a board has adjourned to inspect certain aspects on the site. In one case, a separate meeting was held on the site of the derailment along with the manager, mechanical engineering, to check the gauge and cant of the curve at which the derailment took place.

Once the board has processed all the information and is satisfied that it has sufficient evidence, it then formulates its conclusion and any recommendations that it may see fit. This is then written and presented to the management of the railway.

The board is required to determine the reason for the incident and to apportion blame and to make any recommendations it sees fit to see that such an incident may not happen again.

The board does not discipline anybody. That is left to the management which may choose to withdraw qualification, suspend volunteers or reprimand staff. The report is generally signed by the convenor of the board and is forwarded to the Chairman of the Emerald Tourist Railway Board. The Emerald Tourist Railway Board then may accept the report and forward a copy to the Minister of Tourism as is covered in the Act of Parliament. Recommendations made by the board of enquiry become very important and must be acted upon or consciously rejected by management. If rejected, there must be very good reasons because obviously, if a board of enquiry has examined an incident and detected a fault in the system and if that fault should happen again and result in serious injury or death to a passenger or volunteer, then management itself will become culpable.

The Emerald Tourist Railway Board has a policy that in the event of an incident involving death or serious injury, its solicitor will be appointed as a member of the board of enquiry particularly to make certain that the correct questions are asked of all witnesses. This, of course, is in the interests of the Emerald Tourist Railway Board as the report from the board of enquiry is bound to finish up as evidence in a coroner's examination.

I see that the number of pages I have taken up in this paper is now approximating to a number of small trees. I will therefore finish.

I hope I have given you enough nightmares to keep you going for the rest of the year, but I'll leave you with just a number of questions which I hope you will mull over and may keep you awake for a few nights more.

- How would your operation stand up to an "Occupational Health and Safety" audit ?
- Does your organisation have a disaster plan ?
- Have you documented your engineering, operating and training standards and have they been certified by some competent person ?
- Have you developed a policy as to how much you would support a volunteer who has to confront a Coroner's Court enquiry, or in the case

of litigation against your organisation ?

- Does your first aid policy conform with the present codes of practice ?
- If any of these or any of the questions I have asked throughout this paper cannot be answered in the affirmative, I suggest my last question should be:
- "Have you taken out Director's insurance to cover the liability of your executive and management members" ?

DISCUSSION:

Graeme Richardson (The Tramway Historical Society Inc.) asked that Glen Summers detail the system in New Zealand for operations by Societies.

Glen Summers (New Zealand Railway and Locomotive Society) spoke at some detail to this request.

Tony Whyte (WPR) stated that early action is essential when an incident happens

Peter McCallum (Glenbrook Vintage Railway) felt that good and detailed maps are very important to locate the situation of an incident.

Phil A'Vard (Puffing Billy Railway Society) commented that legal support for volunteers is essential.

Euan McQueen (Rail Heritage Trust) stressed that accurate communications are essential