

14 October 2011

Ms Jenny Moles
Chair
Regional Rail Link Section 2 Advisory Committee
PO Box 500
East Melbourne VIC 3002

By email greta.grivas@dpcd.vic.gov.au

Dear Ms Moles

Regional Rail Link Section 2

I am writing in relation to the Advisory Committee's Hearings into the management of noise impacts of the Regional Rail Link Section 2.

I understand that public submissions to the Committee have closed, however I have only recently become aware of the Hearings and believe my office can provide an insight into noise impacts on consumers for the Committee's consideration.

My interest in making comment is based on the experience my office has had in handling consumer complaints regarding Victorian public transport operators. I will only provide comment on aspects of the Committee's Hearings that are relevant to our experience, particularly regarding consumer complaints about noise emanating from rail sidings¹.

Given that the timeframe for provision of submissions has passed, I have provided a brief comment only. If the Committee would like any additional comment I would be happy to provide it.

Role of the Public Transport Ombudsman (PTO)

The PTO is an independent industry-based Ombudsman scheme, established in 2004 to receive, investigate and resolve complaints about public transport services provided by Victorian public transport operators that are members of the PTO scheme. PTO scheme members include passenger train, tram and bus companies, and others involved in providing public transport services, such as Metlink, the Transport Ticketing Authority and Southern Cross Station Pty Ltd. Victorian public transport operators are required to be members of the PTO. The scheme is funded by the industry, based on an annual fixed membership fee and on a variable user pays basis, calculated on annual complaint numbers.

The PTO complies with the *National Benchmarks for Industry-Based Customer Dispute Resolution Schemes*² and utilises the principles of alternative dispute resolution to handle complaints. If a complaint cannot be resolved through agreement, the Ombudsman is able to make a Binding Decision to resolve the complaint, or may dismiss the complaint.

¹ All reference to sidings is intended to include depots, workshops and stabling yards.

² The *National Benchmarks for Industry-Based Customer Dispute Resolution Schemes* can be viewed at www.anzoa.com.au/National%20Benchmarks.pdf

The PTO has extensive experience in handling customer complaints and working with the public transport industry to improve operator practices and to strengthen their internal dispute resolution (IDR) processes³.

Noise Complaints received by the PTO

The PTO receives complaints from consumers impacted by noise emanating from sidings. The majority of complaints relate to noise from trains being cleaned at the end of service, or having maintenance work undertaken on them prior to re-entering service. Generally, these complaints involve trains idling in sidings for long periods of time in the late evening or early hours of the morning. Complaints relate to sidings across the Victorian rail network.

The train operator's position in relation to these complaints is that noise emanating from sidings due to idling trains waiting to be cleaned or for reactive maintenance work is exempt from the usual claims of nuisance or environmental controls, under section 251(B) of the *Transport (Compliance and Miscellaneous) Act 1983* (the Act)⁴. The operator's view is that that cleaning or maintaining a train forms part of the shutting down process after the train has been used in connection with the provision of a passenger service.

The PTO has recently had cause to question the interpretation of the exemptions. As a result I have obtained independent legal advice regarding the exemptions and their application to the shutting down process of trains in sidings in the context of the PTO's jurisdiction.

The PTO is concerned with obtaining clarity around these issues, as the increase in passenger services, the opening of new sidings and the building of new rail infrastructure such as the Regional Rail Link, all create the potential for increased consumer complaints.

Extent of exemptions of section 251(B)

I note that the Committee's Hearings include consideration of the extent of the exemptions for passenger rail noise provided by section 251(B) of the Act, including whether stabling yards for passenger trains are exempted, or whether they are subject to the environmental controls of the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N1, (SEPP N1).

Sidings are subject to SEPP N1, however some (but not all) noise emanating from trains in sidings is exempt from its provisions, including when a train is powering up to commence to be used in connection with the provision of a passenger service, or shutting down after being used in connection with the provision of a passenger service.

The independent legal advice to the PTO systematically considered the application of section 251(B) of the Act to noise emanating from trains in sidings regarding cleaning and maintenance at the end of service. Consideration has been given to whether this forms part of the shutting down process and is therefore exempt from claims of nuisance and other environmental controls.

The advice also comprehensively considered the legal framework relevant to these issues, including:

- The *Transport (Compliance and Miscellaneous) Act 1983*;
- The laws of nuisance;
- The *Environment Protection Act 1970*;
- SEPP N1;

³ Further information about the PTO and its public reports are on our website www.ptovic.com.au

⁴ [Transport \(Compliance and Miscellaneous\) Act 1983 - SECT 251B Nuisances and noise emissions](#)

- The *Transport Integration Act 2010*;
- The *Charter of Human Rights and Responsibilities Act 2006*;
- The *Interpretation of Legislation Act 1984*; and
- The Franchise Agreement between the Victorian Government and the transport operator.

Consideration has also been given to the relevant parliamentary debates and second readings speeches regarding the intended application of the exemptions.

The advice indicates that while cleaning and maintenance may form part of the operator's process for shutting down a train once it has been in service, it does not form part of the shutting down process as intended by the Act.

The advice notes that even if these actions were exempt, there is still a requirement under the Franchise Agreement for the operator to act reasonably when emitting any noise from sidings.

Summary

The PTO believes that careful consideration of the issues around the extent of the exemptions of the Act should be undertaken in relation to any new sidings built as part of the Regional Rail Link.

The PTO's experience is that the train noise emissions, particularly late in the evening or early in the morning, have a significant physical and emotional impact on consumers. Noise emissions can also create barriers to a consumer's ability to enjoy their land, an important aspect of daily life.

The current application of the Act to existing sidings by operators poses problems for the effective resolution of complaints, as operators are often reluctant to take any additional steps to reduce noise impacts as there is a belief they are exempt from doing so.

Any steps recommended by the Advisory Committee to clarify the extent of the exemptions under the Act, to limit the potential impact of noise emanating from new sidings from idling trains or to create standards for operator behaviour regarding the reduction of noise emissions would be welcomed.

While again noting that the timeframe for submissions has passed, I would appreciate the Advisory Committee's consideration of my comments, as actions taken now may obviate future individual and community complaints.

I would also welcome the Advisory Committee's views about the application of Section 251(B) of the Act with respect to noise emanating from trains in sidings associated with cleaning and maintenance activities.

If you would like any further information, please feel free to contact me on 03 8623 2111 or at _____

Yours sincerely



Janine Young
Ombudsman
Public Transport Ombudsman Limited