



Matter Number:

WHS 12021 1 106

Form 73A – Notice of WHS dispute

Work Health and Safety Act 2011, section 102B



NOTICE is hereby given under section 102B of the *Work Health and Safety Act 2011* to deal with a dispute.

BETWEEN

Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch

v

Please See Attached Form 1

1. Particulars of party making application to deal with the dispute

Name:	Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch		
Phone number:	07 3839 4988	Fax number:	
Mobile number:			
Email address:	industrial@rtbu.com.au		
Name of contact person:	Lucas Kennedy		
Direct phone number of contact person:	07 3839 4988	Mobile number:	
Email address of contact person:	lucas.kennedy@rtbu.com.au		

Workplace where dispute exists*1000 character limit. (Note: if more than 1000 characters are required please attach a schedule)*

The rail line that services IPL's Phosphate Hill Phosphate production plant in the Sellwyn locality of Queensland.

WHS matter subject of the dispute*(must include sufficient detail) 1000 character limit. (Note: If more than 1000 characters are required please attach a schedule)*

Please find attached information in Schedule A

Is a decision made by an Inspector to exercise, or not to exercise, compliance powers under part 10 to assist in resolving the dispute subject to review under part 12? YES NO**Particulars of the other party/parties to the dispute**

Organisation:	Please see attached Party List		
Phone number:		Fax number:	
Email address:			
Name of contact person:			
Direct phone number of contact person:		Mobile number:	
Direct email address of contact person:			

Signature of person notifying the dispute

Signature:	
Name:	Peter Allen
Position/Capacity:	Secretary, Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch
Date:	13 / 05 / 2021

Schedule to Form 73A – Notice of WHS dispute

Schedule A

WHS matter subject of the dispute

1. Workers from Aurizon's Cloncurry Depot perform shunt duties on the mainline at Phosphate Hill.
2. The track and infrastructure on the mainline at Phosphate Hill are not Aurizon's, Queensland Rail has authorised access to the Mt Isa Line to Aurizon via a nonexclusive access agreement that does not provide proprietary rights to Aurizon.
3. Under the access agreement, Queensland Rail maintains control of the rail network, including the maintenance of the track and facilities and has agreed to keep them to a standard so that rail operations may be carried out safely by Aurizon and their workers.
4. Additionally, a shunt may not be performed without Queensland Rail's authority, which must be sought on every occasion the shunt is performed from Queensland Rail's Control Centre situated in Townsville.
5. The infrastructure and track of the network mainline at Phosphate Hill is not of a safe standard. A worker broke her wrist while performing the shunt in January 2020 due to the uneven ballast and lack of appropriate walkways.
6. The shunt on the mainline is performed at night. There is no lighting at the shunt site provided or maintained by Queensland Rail to ensure safe operations, no appropriate permanent change pads for use and no walkways.
7. After the accident in 2020 a trial was conducted moving the shunt from the mainline at Phosphate Hill to the safer Queensland Rail controlled Cloncurry Yard. The trial was successful, and the shunting conditions were a vast improvement to those on the Mt Isa Line at Phosphate Hill.
8. After the trial, Queensland Rail refused to allow the shunt movement to be performed in the Cloncurry Yard permanently unless Aurizon paid a prohibitive fee, effectively blocking Aurizon from undertaking the safety initiative of shifting the shunt and creating a safe system of work.
9. Dispute notices were served on Queensland Rail and Aurizon on 12 April 2021. I have attached these notices as "RTBU1" and "RTBU2".
10. A meeting was held with Aurizon in respect of this dispute on 15 April 2021.
11. The parties were not able to reach a satisfactory outcome due to Queensland Rail's absence from the dispute meeting.
12. An amended notice of dispute was served on Queensland Rail on 22 April 2021. I have attached this document as "RTBU3".
13. As of the time of filing this matter, Queensland Rail has not replied to these notices nor have they replied to the notices of the Australian Federated Union of Locomotive Employees ("AFULE").
14. A request for assistance was made to Workplace Health and Safety Queensland to assist in settling the dispute on 11 May 2021. I have attached this document as "RTBU4".
15. In absence of Queensland Rail, acting as the PCBU, responding to these disputes the Applicant has been left with no other option but seek the assistance of the Queensland Industrial Relations Commission in resolving this WHS matter.



RTBU

Notice of Workplace Health and Safety Dispute

S 81(2), *Work Health and Safety Act 2011* (Qld)

Part 5, Division 7A, *Work Health and Safety Act 2011* (Qld)

To Whom It May Concern,

I hereby wish to advise you that the Australian Rail, Tram and Bus Industry Union, Queensland Branch ("RTBU") is in dispute with Aurizon due to the failure of Aurizon to discharge their obligations under the *Work Health and Safety Act 2011* (Qld) (the *Act*) in respect of the poor suitability of the trackside surfaces at Phosphate Hill to permit shunting tasks to occur safely.

Location of Dispute

Cloncurry Depot/ Phosphate Hill

Provisions being contravened

- s 19(3)(a), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(b), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(c), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(d), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(f), *Work Health and Safety Act 2011* (Qld)

Details of Issue

Before and since the commencement of the IPL Combo Operation, Aurizon has failed to adequately discharge certain duties under the *Workplace Health and Safety Act 2011* (Qld). These failures have directly resulted in the injuring of two workers and will lead to further WHS incidents if adequate control measures are not implemented to rectify this situation.

It appears that in both incidents the workers lost their footing on unstable trackside surfaces and were seriously injured. Both workers required hospitalisation for their injuries.

Rail, Tram & Bus Union (Brisbane Office) 1111 St George Street Brisbane

Office: First Floor, 457 Upper Edward Street Brisbane
Phone: 3839 4988 **Fax:** 3832 1278 **Email:** info@rtbu.com.au



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As the PCBU, Aurizon has a duty to ensure that risks and hazards in the workplace are, as so far as responsibly practicable, eliminated. Aurizon may not have direct control of the workplace; however, Aurizon has so far failed in their duty to make to make arrangements that ensure that their workers can work safely at the Phosphate Hill site.

In absence of Aurizon, and Queensland Rail (as the person with management or control of the workplace), addressing the risks and hazards that have caused these two incidents, the RTBU has had no option other than commence this dispute against both employers.

Proposed Solution

- Aurizon must immediately commence consultation with the RTBU, and local Health and Safety Representatives of the affected locomotive workforce to inform themselves of the concerns currently held by the workforce.
- Aurizon must act to rectify the deficiencies in the IPL Combo Operation's workplan and worksite to ensure that workers carrying out shunting tasks at Phosphate Hill are not exposed to the same uncontrolled risks involved in the two incidents.
- Aurizon and Queensland Rail will work together to expeditiously to eliminate the physical risks located at the site that caused these two injuries.

Kind Regards,
Lucas Kennedy
RTBU Industrial & WHS Officer
RTBU QLD Branch

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S 81(2), *Work Health and Safety Act 2011* (Qld)

Part 5, Division 7A, *Work Health and Safety Act 2011* (Qld)

To Whom It May Concern,

I hereby wish to advise you that the Australian Rail, Tram and Bus Industry Union, Queensland Branch ("RTBU") is in dispute with Queensland Rail due to the failure of Queensland Rail to discharge their obligations under the *Work Health and Safety Act 2011* (Qld) (the *Act*) in respect of the poor suitability of the trackside surfaces at Phosphate Hill to permit shunting tasks to occur safely.

Location of Dispute

Cloncurry Aurizon Depot/ Phosphate Hill

Provisions being contravened

- s 19(3)(a), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(b), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(c), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(d), *Work Health and Safety Act 2011* (Qld)
- s 19(3)(f), *Work Health and Safety Act 2011* (Qld)

Details of Issue

Before and since the commencement of the IPL Combo Operation, Queensland Rail has failed to adequately discharge certain duties under the *Work Health and Safety Act 2011* (Qld) in respect of properly managing the trackside space to ensure workers can conduct shunting tasks safely at the Phosphate Hill site.

It appears that in both incidents the workers lost their footing on unstable trackside surfaces and were seriously injured. Both workers required hospitalisation for their injuries.

As the PCBU involved in the management or control of the workplace, Queensland Rail has a duty to ensure that risks and hazards in the workplace are, as so far as reasonably

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practicable, eliminated. Queensland Rail may not have direct control of the workers conducting shunting activities on the site. However, Queensland Rail has failed to ensure that workers working at the workplace can work safely at the Phosphate Hill site.

In absence of Queensland Rail, and Aurizon, addressing the risks and hazards that have caused these two incidents, the RTBU has had no option other than commence this dispute against both employers.

Proposed Solution

- Queensland Rail must immediately commence consultation with the RTBU, and local Aurizon (Cloncurry Depot) Locomotive Health and Safety Representatives to inform themselves of the concerns currently held by the Aurizon workforce who work at the site.
- Queensland Rail must make changes to the worksite that ensure workers carrying out shunting tasks at Phosphate Hill are not exposed to the same uncontrolled risks involved in the two incidents.
- Aurizon and Queensland Rail will work together to expeditiously eliminate the physical risks located at the site that caused the two incidents.

Kind Regards,
Lucas Kennedy
RTBU Industrial & WHS Officer
RTBU QLD Branch

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22 April 2021

Dear Mr Benstead,

RE: Issue Resolution – Phosphate Hill

The RTBU has notified Queensland Rail that there is a safety issue that has not been resolved in relation to the suitability of infrastructure and facilities to perform shunt duties on the Mt Isa line at Phosphate Hill.

The issue requires resolution, and we are notifying Queensland Rail that we are at step one in the issue resolution process.

Particulars of the issue

The specifics of the issue are:

1. Workers from Aurizon's Cloncurry depot perform shunt duties on the mainline at Phosphate Hill.
2. The track and infrastructure on the mainline at Phosphate Hill are not Aurizon's, Queensland Rail has authorised access to the Mt Isa Line to Aurizon via a nonexclusive access agreement that does not provide proprietary rights to Aurizon.
3. Under the access Agreement Queensland Rail maintains control of the Network, including the maintenance of the track and facilities and has agreed to keep them to a standard so that Rail Operations may be carried out safely by Aurizon.
4. Additionally, the shunt may not be performed without Queensland Rail's Authority, which must be sought on every occasion the shunt is performed from Queensland Rail's Control Centre situated in Townsville.
5. The infrastructure and track of the network mainline at Phosphate Hill is not of a safe standard. A worker broke her wrist while performing the shunt in January 2020 due to the

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uneven ballast and lack of appropriate walkways.

6.The shunt on the mainline is performed at night. There is no lighting at the shunt site provided or maintained by Queensland Rail to ensure safe operations, no appropriate permanent change pads for use and no walkways.

7.Additionally, the Shunt requires workers to work up to and in some cases, beyond the legislated limitation of hours and exposes them to lengthy periods of motor vehicle driving on single lane, unlit highways at night and on roads that include unsealed sections. Near misses occur on a frequent basis as a result of livestock wandering onto the roadway and motor vehicles have been delayed and workers placed into unsafe situations as a result of flash flooding events.

8.After the accident in 2020 a trial was conducted moving the shunt from the mainline at Phosphate Hill to the safer Queensland Rail controlled Cloncurry Yard. The trial was successful, and the shunting conditions were a vast improvement to those on the Mt Isa Line at Phosphate Hill.

9.Subsequent to the trial Queensland Rail refused to allow the shunt movement to be performed in the Cloncurry Yard permanently unless Aurizon paid a prohibitive fee, effectively blocking Aurizon from undertaking the safety initiative of shifting the shunt and creating a safe system of work.

Duty Breached

The RTBU maintains that with respect to the shunting on the mainline at Phosphate Hill in accordance with s 20 of the *Work Health and Safety Act 2011* (Qld) (the Act) Queensland Rail has a duty imposed upon it as a PCBU involving the control or management of a workplace. Consequently, Queensland Rail must ensure in so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

20 Duty of persons conducting businesses or undertakings involving management or control of workplaces.

(1) In this section, person with management or control of a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include—

(a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

(b) a prescribed person.

(2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

Issue Raised

The RTBU formally raised this issue with Queensland Rail on April 14 2021 and has yet to receive a response from Queensland Rail.

Issue Resolution requirements

We assert that Queensland Rail has breached its s.20 Duty of care and the issues above and that discussions have not resolved the issue. We are notifying Queensland Rail that we now seek issue resolution under the provisions of section 81 of the Act are now being agitated in accordance with s. 81 of the Act, which provides for the following:

81 Resolution of health and safety issues

(1) This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.

(2) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed under a regulation.

(3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

Proposed resolution

To resolve this issue, we require the following timely actions:

1. Queensland Rail to consult with the local Work Health and Safety Committee, Aurizon safety representatives and the RTBU at the Cloncurry Depot to inform themselves of the concerns currently held by the Aurizon workforce who work at the site.
2. Queensland Rail must undertake in conjunction with the workers, their representatives and Aurizon a risk assessment with the view of identifying suitable control measures at the shunt site to ensure exposure to uncontrolled risks is eliminated.
3. The RTBU proposes that moving the shunt from the mainline at Phosphate Hill to the Cloncurry Yard would result in the most safe, final, and effective resolution to the issue.

Would you kindly acknowledge receipt of this correspondence and at the same time confirm that the disputes procedure found within the *QR Traincrew Enterprise Agreement 2020* is the correct procedure you wish us to follow, that you accept the notification or provide a referral to the Business' nominated Representative who will accept it and deal with the issue on the Business'

behalf and the time frame in which we can expect a response.

Where the Business has a procedure for issue resolution relating to Work health and Safety matters would you kindly provide it, and we will amend our notice to comply with the process.

Regards,

Lucas Kennedy

RTBU Industrial & WHS Officer

RTBU – Qld Branch

Work Health and Safety Act 2011
Complaint about a Work Health and Safety or Electrical Safety Issue
Date: 11/05/2021, Ref 54197



Details of person making complaint

Reporter: **MR LUCAS KENNEDY**

Telephone: **0738394988**

Email: **LUCAS.KENNEDY@RTBU.COM.AU**

Relationship to the workplace: **UNION ORGANISER**

Postal address: **Level 1
457 UPPER EDWARD ST
SPRING HILL 4000 QLD
AUSTRALIA**

Questions answered before complaint submission

Question	Answer	Special Notes
Do you approve Workplace Health and Safety Queensland or Electrical Safety Office raising the issue with the relevant parties?	Yes	
Do you approve Workplace Health and Safety Queensland or Electrical Safety Office making the parties aware that the issue has been raised by you?	Yes	

Details of business or undertaking directly associated with the Work Health and Safety or Electrical Safety Issues

Legal name:	QUEENSLAND RAIL TRANSIT AUTHORITY	ABN:	
Trading name:	QUEENSLAND RAIL	ACN:	
Business Address:	305 EDWARD ST BRISBANE 4000 QLD	Telephone:	
		Mobile:	
		Email:	JIM.BENSTEAD@QR.COM.AU

Details of Issues

Address where issue identified:	CLONCURRY 4824 QLD	Issue location description:	The dispute actually pertains to the rail line that services the Phosphate Hill - Phosphate Facility in Selwyn QLD 4823. However, the textbox doesn't register Selwyn in Queensland as a suburb or locality.
Date aware of the issue:	01-Feb-2020	Date issue last apparent:	11-May-2021
Description of issue:	Aurizon workers undertaking shunting tasks at Phosphate Hill are being injured due to a variety of WHS contraventions (lack of lights, unstable surfaces, etc) for which the rail infrastructure manager (Queensland Rail) is not seeking to address. A dispute was served on Queensland Rail in respect of this matter on 22 April 2021 but there has been no reply from Queensland Rail.		
Issue raised with person conducting the business or undertaking directly:	Yes		
Outcome from raising the issue with the workplace:	We have not received a reply.		

HSR details

Workplace has HSR:	Yes
Issue Raised with HSR:	Yes
HSR Details:	MR ROD MACNAMARA
HSR Actions:	A dispute has been served on both Queensland Rail and Aurizon. Aurizon has held a meeting with the HSRs and the RTBU (the Union) and has informed the HSRs and their Unions, the RTBU, and AFULE, that Queensland Rail is responsible with respect to the inability of Aurizon to address the safety concerns raised by Aurizon's workforce.

Other agency or person details

Other agencies involved in resolving the issue:	No
Any other person conducting businesses or undertakings involved in resolving the issue:	Yes
Details of other persons:	Aurizon Operations Limited - The employer of the injured workers and the user of the rail line. Contacts: David Wright david.wright@aurizon.com.au , mark.currin@aurizon.com.au .

