



Matter Number:

WHS120211107

## Form 73A – Notice of WHS dispute

Work Health and Safety Act 2011, section 102B

  
INDUSTRIAL REGISTRAR

14 MAY 2021

  
QUEENSLAND

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

### BETWEEN

Australian Federated Union of Locomotive Employees

v

Queensland Rail Transit Authority t/a Queensland Rail,

Aurizon Operations Limited t/a Aurizon Bulk

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

Name:	Australian Federated Union of Locomotive Employees		
Phone number:	0738449163	Fax number:	
Mobile number:			
Email address:	statesecretary@afule.org.au		
Name of contact person:	Ms Mel Brewer		
Direct phone number of contact person:	07 38449163	Mobile number:	
Email address of contact person:	mel@afule.org.au		

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

Mt Isa Rail Line at Phosphate Hill, Selwyn, 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 see attached 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**

<b>Organisation:</b>	Aurizon Operations Ltd		
	Queensland Rail Transit Authority		
<b>Phone number:</b>	AZJ (07) 3019 2540 QR (07)3072 097	<b>Fax number:</b>	
<b>Email address:</b>	Nadine.Morris@aurizon.com Dion.Matley@qr.com.au		
<b>Name of contact person:</b>	Nadine Morris		
<b>Direct phone number of contact person:</b>	0447023152 (QR) 0428483794	<b>Mobile number:</b>	
<b>Direct email address of contact person:</b>	Nadine.Morris@aurizon.com Dion.Matley@qr.com.au		

**Signature of person notifying the dispute**

<b>Signature:</b>	
<b>Name:</b>	Michael McKitrick
<b>Position/Capacity:</b>	AFULE State Secretary
<b>Date:</b>	12 / 05 / 2021



Matter Number:

/ /

## Form 1 – Parties list

<input checked="" type="radio"/> 1st Applicant:	Australian Federated Union of Locomotive Employees
<input type="radio"/> 1st Appellant:	
and	
<input type="radio"/> 2nd Applicant:	
<input type="radio"/> 2nd Appellant:	
and	
<input type="radio"/> 3rd Applicant:	
<input type="radio"/> 3rd Appellant:	
and	
<input type="radio"/> 4th Applicant:	
<input type="radio"/> 4th Appellant:	
and	
<input type="radio"/> 5th Applicant:	
<input type="radio"/> 5th Appellant:	
and	
<input type="radio"/> 6th Applicant:	
<input type="radio"/> 6th Appellant:	
and	
<input type="radio"/> 7th Applicant:	
<input type="radio"/> 7th Appellant:	
and	
<input type="radio"/> 8th Applicant:	
<input type="radio"/> 8th Appellant:	
and	
<input type="radio"/> 9th Applicant:	
<input type="radio"/> 9th Appellant:	
and	
<input type="radio"/> 10th Applicant:	
<input type="radio"/> 10th Appellant:	

V

<b>1st Respondent:</b>	Aurizon Operations Limited t/a Aurizon Bulk

and

<b>2nd Respondent:</b>	Queensland Rail Transit Authority t/a Queensland Rail

and

<b>3rd Respondent:</b>	

and

<b>4th Respondent:</b>	

and

<b>5th Respondent:</b>	

and

<b>6th Respondent:</b>	

and

<b>7th Respondent:</b>	

and

<b>8th Respondent:</b>	

and

<b>9th Respondent:</b>	

and

<b>10th Respondent:</b>	

1st Applicant/Appellant			
<b>Name of 1st applicant/ appellant:</b>	Australian Federated UNION of Lovcomotive Employees		
<b>Name of contact person:</b>	Ms Mel Brewer		
<b>Postal address:</b>	41 Peel Street		
	Suburb/Town	South Brisbane	Postcode 4101
<b>Phone number:</b>	0738449163	<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>	Mel@afule.org.au		

1st Applicant's/Appellant's representative			
<b>Organisation:</b>			
<b>Name of contact person:</b>			
<b>Postal address:</b>			
	Suburb/Town		Postcode
<b>Phone number:</b>		<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>			

2nd Applicant/Appellant			
<b>Name of 2nd applicant/ appellant:</b>			
<b>Name of contact person:</b>			
<b>Postal address:</b>			
	Suburb/Town		Postcode
<b>Phone number:</b>		<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>			

1st Respondent			
<b>Name of 1st respondent:</b>	Aurizon Operations Limited t/a Aurizon Bulk		
<b>Name of contact person:</b>	Nadine Morris		
<b>Postal address:</b>	Level 2, 100 Brookes Street		
	Suburb/Town	Fortitude Valley	Postcode 4006
<b>Phone number:</b>	(07) 3019 2540	<b>Fax number:</b>	
<b>Mobile number:</b>	0447 023 152		
<b>Email address:</b>	Nadine.Morris@aurizon.com.au		

1st Respondent's representative			
<b>Organisation:</b>			
<b>Name of contact person:</b>			
<b>Postal address:</b>			
	Suburb/Town		Postcode
<b>Phone number:</b>		<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>			

2nd Respondent			
<b>Name of 2nd respondent:</b>	Queensland Rail Transit Authority t/a Queensland Rail		
<b>Name of contact person:</b>	Dion Matley		
<b>Postal address:</b>	GPO Box 149		
	Suburb/Town	Brisbane	Postcode 4001
<b>Phone number:</b>	3072 0979	<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>	Dion.Matley@qr.com.au		

2nd Respondent's representative			
<b>Organisation:</b>			
<b>Name of contact person:</b>			
<b>Postal address:</b>			
	Suburb/Town		Postcode
<b>Phone number:</b>		<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>			

3rd Respondent			
<b>Name of 3rd respondent:</b>			
<b>Name of contact person:</b>			
<b>Postal address:</b>			
	Suburb/Town		Postcode
<b>Phone number:</b>		<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>			

3rd Respondent's representative			
<b>Organisation:</b>			
<b>Name of contact person:</b>			
<b>Postal address:</b>			
	Suburb/Town		Postcode
<b>Phone number:</b>		<b>Fax number:</b>	
<b>Mobile number:</b>			
<b>Email address:</b>			

# 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 "AFULE1" and "AFULE2".
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 "AFULE3".
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 Rail, Tram and Bus Industry Union of Employees, Queensland Branch ("RTBU").
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 "AFULE4".
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.



# Australian Federated Union of Locomotive Employees

41 Peel Street  
South Brisbane Qld 4101  
P: 07 3844 9163  
F: 07 3252 3682  
E: [statesecretary@afule.org.au](mailto:statesecretary@afule.org.au)

ABN: 60 694 355 298



**14 April 2021**

Wayne Prosser  
Queensland Rail

**By email:** [Wayne.Prosser@qr.com.au](mailto:Wayne.Prosser@qr.com.au)

**RE; 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)

Dear Wayne,

The Australian Federated Union of Locomotive Employees (AFULE) is in dispute with Queensland Rail over 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.

There have been at least two serious injuries whereby workers lost their footing on unstable trackside surfaces and were seriously injured. Both workers required hospitalisation for their injuries.

**Traincrew Representing Traincrew**

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 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 AFULE has had no option other than to commence this dispute against both employers.

**Proposed Solution**

- Queensland Rail must immediately commence consultation with the AFULE, 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,

Mick McKittrick  
State Secretary  
**AFULE**

**Traincrew Representing Traincrew**

# Australian Federated Union of Locomotive Employees

41 Peel Street  
South Brisbane Qld 4101  
P: 07 3844 9163  
F: 07 3252 3682  
E: [info@afule.com.au](mailto:info@afule.com.au)

ABN: 60 694 355 298



**14 April 2021**

David Wright  
AZJ GM Bulk  
Townsville

**By email:** David.Wright@aurizon.com.au

**RE: 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)

Dear Mr. Wright,

The Australian Federated Union of Locomotive Employees (the AFULE) is in dispute with Aurizon over 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.

**Traincrew Representing Traincrew**

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 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 AFULE has had no option other than commence this dispute against both employers.

**Proposed Solution**

- Aurizon must immediately commence consultation with the AFULE, 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

I am available on 0409 281 000 should you wish to clarify any of the above.

Kind Regards,

Mick McKittrick  
State Secretary  
AFULE

**Traincrew Representing Traincrew**

# Australian Federated Union of Locomotive Employees

41 Peel Street  
South Brisbane Qld 4101  
P: 07 3844 9163  
F: 07 3252 3682  
E: [secretary@afule.org.au](mailto:secretary@afule.org.au)

ABN: 60 694 355 298



22 April 2021

Dear Mr Benstead,

**RE: Issue Resolution – Phosphate Hill**

The AFULE 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 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 AFULE 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 AFULE formally raised this issue with Queensland Rail on April 14 2021 and I as State Secretary have in the past weeks held a number of discussions with you in an attempt to resolve our safety concerns. At no time has Queensland Rail indicated it intends to ensure the workplace it controls is without risk.

### **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;

#### **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.*

**Traincrew Representing Traincrew**

### **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 AFULE 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 AFULE 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,

---

Michael McKittrick  
State Secretary  
AFULE

**Traincrew Representing Traincrew**

**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 Michael McKittrick

Telephone: 0738449163

Email: [statesecretary@afule.org.au](mailto:statesecretary@afule.org.au)

Relationship to the workplace: Union State Secretary

Postal address: 41Peel Street  
South Brisbane  
QLD 4101A

**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  
Business Address: 305 EDWARD ST  
BRISBANE 4000 QLD

CAN:

Telephone:

Mobile:

Email: [Jim.Benstead@qr.com.au](mailto: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 AFULE (the Union) and has informed the HSRs and their Unions, 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](mailto:david.wright@aurizon.com.au) ,  
mark.currin@aurizon.com.au .**

