



Mr Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

Summary Offences and Other Legislation Amendment Bill 2019

10 October 2019

Dear Mr Chairman and Members of the Committee,

Aurizon appreciates the opportunity to provide this submission regarding the ***Summary Offences and Other Legislation Amendment Bill 2019 (Bill)***.

Aurizon supports the Bill, recognising it would provide a ban on the possession of, and allow police to search for and to confiscate, certain dangerous substances and devices used to conduct unsafe protest activities.

We support the Bill because the substances and devices that would be banned represent, in the way that they are currently being used, a grave safety risk to the people using the devices for protest activities. These dangerous devices also represent a grave safety risk to which police and emergency services personnel, employees in the rail freight transport industry, including Aurizon employees, and members of the community are exposed.

We would also like to make some suggestions to amend the Bill. We believe our suggestions would further assist in reducing safety risks from the use of dangerous substances and devices for protest activity. These suggestions are outlined under the section 'suggestions for strengthening the Bill'.

Protest activities and the risk to safety

Aurizon supports the right of all Australians to engage in safe, law abiding and peaceful protest activity, recognising that having the opportunity to freely express views and positions on important issues is a vital part of our culture and democratic institutions.

It is important, however, to clearly distinguish between safe and peaceful protests in approved locations, and illegal and unsafe protest actions in locations, such as transport corridors, that pose an unreasonable risk to the safety of protest participants and to others. We welcome the fact the Bill is concerned with addressing activities relating to unsafe, unreasonable and illegal protest activity.

Aurizon has been, and remains, deeply concerned about the major risk posed to the safety of people engaged in protest activity in recent years, together with the risks faced by our employees, first responders and members of the community. Our concerns reflect the substantial increase in the number of extremely dangerous actions over the last two years, particularly planned and organised illegal trespass activity on freight transport supply chain corridors, including rail corridors and the interface between rail and port infrastructure.

Several extremely dangerous activities have taken place on Aurizon's Central Queensland Coal Network (**CQCN**), including:

- the use of tripods to suspend individuals over a railway line blocking the path of trains, with tripods only able to be taken down with specialised equipment and handling;
- tree-sit protests in which individuals are suspended over the railway line, including by attaching ropes to a rail line requiring the use of specialist police forces to remove them;
- the use of locking devices where individuals have locked themselves onto the railway line. These items have included the use of L-shaped cylinders or similar devices that are known as 'sleeping dragon' devices; and
- in relation to moving trains, the use of a red flag to signal and to cause the train driver to implement emergency braking procedures and stop the train.

Aurizon wishes to reinforce that it is illegal for unauthorised individuals to enter a rail corridor because of the dangers associated with being near or on the train tracks for any unauthorised purpose and without the knowledge of the network operator.

The reasons for this include the fact that the CQCN is very busy with dozens of train services operating on the network each day. Trains operating on the network have a mass of up to and sometimes exceeding 10,000 tonnes and they require a relatively long distance to stop. A fully loaded coal train takes up to 2.5 kilometres to reach a complete stop from the time driver the commences braking and other procedures involved in slowing a train and bringing it to a stop.

When protest activities involve the use of dangerous devices to suspend individuals over or to lock individuals on to the railway line or other infrastructure on a busy rail network, this compounds the grave risks involved in trespassing on the rail network. In other words, dangerous devices make an already unsafe situation far more dangerous for any individuals involved as well as for train crew, police and other first responders. It is also the case that these protest activities place an unreasonable and unacceptable burden on Aurizon's train crew, employees and on first responders.

Aurizon acknowledges the explanatory notes to the Bill state that the methods and devices used by protesters represent a real risk of injury or death as their incorrect disassembly or removal may lead to serious injuries, not only for the protester, but anyone in the vicinity. Recently a Queensland Police Officer was reportedly injured in the disassembly of a dragon's den device at Abbot Point.¹

The Bill therefore addresses an important issue of concern to our employees and our company and to the community.

¹ Jack Evans, 'Police officer injured at anti-Adani protest', *The Bulletin* (online), 1 October 2019 <<https://www.themorningbulletin.com.au/news/police-officer-injured-at-anti-adani-protest/3843762/?cspt=1569968582|a52ed30261cf04fc721e53189307e613>>

Actions taken to address protest activity on rail corridors

Aurizon appreciates the resources the Queensland Police have made available and their expertise and commitment to responding to dangerous protest activities on the rail network, including the CQCN, over recent years.

Aurizon has worked very closely with Queensland Police to assist in responding to dangerous protests on the CQCN and in providing for the safe removal of protesters from the rail corridor. To deter protest activities, Aurizon has also engaged police on special duties to conduct patrols of rail corridors.

In addition, Aurizon conducted a public advertising and media campaign earlier this year to raise community awareness about the grave risks to safety from dangerous protest actions and to appeal to anyone considering protest activity not to put themselves at risk.

As part of the campaign, one of Aurizon's train drivers, who has more than 40 years of driving experience, spoke about the burden protests take on industry employees, particularly the personal stress on employees who are deeply concerned that serious injuries or fatalities could occur on the rail corridor as a result of protest activity.

We are continuing to work closely with the Queensland Police and within our organisation to improve our ability to respond safely to dangerous protest actions.

The likely effects of the Bill

As has been mentioned, protest activities on rail corridors have involved the use of dangerous devices which have compounded the major risks to the safety of protesters and others.

The Bill would establish an offence of using a *dangerous attachment device* to unreasonably interfere with the ordinary operation of transport infrastructure.² The definition of *dangerous attachment device* captures most of the devices currently employed by protesters to disrupt resource transport infrastructure. The Bill also provides police with additional search and seizure powers, and the ability to issue on-the-spot fines for the use of dangerous devices.

Aurizon supports the Bill recognising that its intention is to deter protesters from the use of dangerous devices. Both in providing a deterrent and in allowing for dangerous devices to be confiscated by police, the Bill would help to reduce the additional safety risk to protesters, first responders and to train crew and other Aurizon employees from the use of these devices.

Application of the Bill to parties organising protest actions

One issue where Aurizon would appreciate clarification from the Committee is whether the Bill would apply to parties to an offence. In our view, it would be helpful if the Bill also applied to individuals or groups that organise and arrange for individuals to take possession of or to use a dangerous device in connection with planned or actual protest activity.

The reason for seeking clarification on this issue is that it appears individuals often take possession and use dangerous devices at the instigation of other parties who, while they may

² Summary Offences and Other Legislation Amendment Bill 2019, clause 11.

not be present at the location of planned protest action, have been closely involved in organising the protest related activities.

If the Bill were to apply to these individuals and organisations, it would help with providing an effective deterrent to dangerous actions taken by those who are involved in organising protests, but who rely on others to carry out the activities. Equally, if the Bill does not apply to other parties involved in organising protest activities, these parties are unlikely to be deterred from instigating extremely dangerous conduct.

Suggestions to assist in meeting the objectives of the Bill

Aurizon would like to propose some amendments to the Bill for the Committee to consider. The aim of these suggestions is to further the objectives of the Bill through practical actions that would reduce the safety risks to all individuals and groups exposed to the use of dangerous substances and devices for protest activity.

Definition of dangerous substance or thing

Aurizon suggests that language in, s14B(8), which provides a list of dangerous devices, should be amended to state that 'dangerous substance or thing includes', rather than the current wording in the Bill which is 'dangerous substance or thing means' so that the list is non-exhaustive. This amendment would assist in allowing greater flexibility in the definition of dangerous substances and things, allowing it to respond to new developments and changes in methods of protest.

It is likely that different or modified dangerous devices could be used for protest activities in the future. Aurizon submits that the enactment of this Bill may encourage protesters to develop new methods of protest using devices not currently caught by the drafting of the Bill, with the express purpose of falling outside of its scope. This is consistent with Aurizon's experience of protester actions on its rail network, where protest methods have changed in line with the introduction of new technologies, training and changes in response time. For example, since Queensland Police deployed its new tripod-cutting technology in March, drastically reducing the time taken to remove protesters from the rail network, there have been no further instances of tripod protests on the CQCN. Protesters have instead moved their focus to other methods of protest action.

Aurizon further suggests the Bill provide for the list of specific dangerous devices that are captured to be amended under delegated legislation. In making this suggestion, we recognise the use of a delegated legislation to amend the list would be subject to review and/or disallowance by the Parliament.

Providing for the list of dangerous devices to be amended by delegated legislation would allow the list to be quickly updated in the event of new devices being used that, consistent with the objective of the Bill, represent a grave safety risk.

Definition of attachment device

Section 14A(2)(d) expressly excludes rope by itself from the definition of 'attachment device'. A rope that is simply tied (e.g. to an over-track structure, and to which a protester is also attached by a simple knot) does not undergo modification or addition to its base object. As such, despite the inherently dangerous nature of this attachment to an over-track structure, it appears likely that it would be excluded from the definition of 'attachment device'.

Consistent with our submission above that on enactment of the Bill, protesters may simply develop alternative methods of protest not expressly caught by Bill, we are concerned that this express exclusion of rope from the definition of 'attachment device' will lead to protesters using ropes in the manner described above in the commission of illegal protest action.

We suggest that section 14A(2)(d) be amended to refer to 'untied rope' (instead of 'rope' as currently drafted), or in the alternative that section 14A(2)(d) be deleted in its entirety.

Definition of dangerous attachment device

We also suggest that items including, for example, ropes or flags that are either attached to, or used in conjunction with, dangerous devices such as tripods or locking devices should be captured under the legislation. In other words, if someone is found to be in possession of a locking device carried or stored together with rope and/or a flag, the rope and/or flag should be considered as part of, or an attachment to a dangerous device and captured under the proposed legislation.

This would help to prevent situations where ropes or flags are retained and used for dangerous protest actions.

For this reason, we suggest that the current drafting of section 14B(1) be amended from "*An attachment device is a dangerous attachment device if it - [...]*" to "*An attachment device is a dangerous attachment device if it, **by itself of in combination with another item** – [...]*" [emphasis added]. This would encapsulate the tree-sit protest actions that have been commonly used on the CQCN, or more recently, as used by the protester on the Story Bridge in Brisbane on 8 October 2019.

Penalties

In relation to proposed penalties, Aurizon suggests that consideration be given as to whether on the spot fines would provide a sufficient deterrent, commensurate with the major risk to safety, to cause individuals or groups to reconsider the use of dangerous devices as part of protests.

It may be necessary to specify that if an individual or group is suspected of having previously possessed or used a dangerous device for protest activity relating to transport infrastructure, the individual or group should be summoned to a Court hearing rather than having an on the spot fine imposed.

Allowable excuses

The present drafting of sections 14A(1) and 14C(1) allows for a Court to determine that an offender did not carry out an offence if:

1. the attachment device does not **reasonably** appear to be constructed or modified to disable safe removal from a place or safe separation from a thing; or
2. if the interference was **reasonable**.

This is an objective test and may result in multiple submissions being made to the Court concerning the reasonableness of activities and lead to delays in Court processes. This type of pleading can be seen in the transcript of the Sadie Jones' Magistrates Court hearing of 25

January 2019³ where significant time is spent discussing Ms Jones' views on the effects of coal mining.

As another example, Greg Rolles in his Magistrates Court hearing of 16 May 2019 pleaded not guilty on the basis of the necessity of his actions. It is foreseen that on the current drafting, submissions and pleadings such as these would continue, and would continue to use up the Court's time.

Aurizon suggests, for the purpose of the assisting the Bill to meet its objective, and to reduce the burden on Court resources, that the basis for having a defence to a charge should be one of authorisation. We take the view that the only excuse that an individual or group should be able to legitimately offer is that they have the proper authorisation to do the act that is the subject of the offence.

Conclusion

Aurizon supports the Bill and its objective of deterring individuals and groups from unsafe actions relating to protest activity.

In our assessment, the proposed legislation would make an important contribution to deterring individuals and groups from the major risks associated with using dangerous substances and devices on rail transport corridors and involving other supply chain infrastructure.

At the same time, the amendments suggested in this submission would further assist with deterring individuals and groups from engaging in dangerous actions, particularly actions involving unsafe and illegal activity on or near rail and other transport infrastructure.

Aurizon would be pleased to provide further information or answer questions about the matters raised in this submission. For further information, please contact Patrick Coleman, Principal Advisor Corporate Affairs, Aurizon, by email at: [REDACTED]

Yours sincerely,



Michael Riches
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³ Transcript of Proceedings, *Police v Jones* (Wynnum Magistrates Court, 222392/18, Magistrate Sarra, 25 January 2019)