



29 January 2015

By email: unileg@parliament.wa.gov.au

Att: The Honourable Kat Doust MLC

Chair

Standing Committee on Uniform Legislation and Statutes Review Committee

Legislative Council

Parliament House

PERTH WA 6000

Dear Ms Doust

Submission to Inquiry into Rail Safety National Law (WA) Bill

We refer to your letters dated 22 December 2014, inviting Aurizon Operations Limited and Australia Western Railroad Pty Ltd to provide written submissions on the impact of the *Rail Safety National Law (WA) Bill 2014 (Rail Safety (WA) Bill)* upon the sovereignty of the Parliament of Western Australia.

This submission is made by both Aurizon Operations Limited and Australia Western Railroad Pty Ltd (together, **Aurizon**).

Aurizon's recommendation

In summary, Aurizon believes that neither the *Rail Safety National Law (Model Laws)* nor the mechanisms proposed in the Rail Safety (WA) Bill impact on the sovereignty of the Parliament of Western Australia.

In light of this, Aurizon believes that the Rail Safety (WA) Bill should not be adopted. Instead, the Model Laws should be adopted. This is because the Model Laws will not have any impact on the sovereignty of the Parliament of Western Australia, and there is significant benefit to Western Australia in adopting the Model Laws over the Rail Safety (WA) Bill. Further details are provided below.

Sovereignty concerns

We understand that the sovereignty concerns of the Government of Western Australia arise from the mechanism adopted under the Model Laws for the making and disallowance of regulations, namely that:

- the national regulations are to be made by the Governor of South Australia and automatically adopted in each participating jurisdiction; and
- a "majority disallowance" clause means that a regulation made under the legislation may only be disallowed if a majority of participating jurisdictions vote against it.

By contrast, s 8(2) of the Rail Safety (WA) Bill provides that regulations will be made by the Western Australian Governor, and will be subject to the ordinary process of tabling and scrutiny as set out in ss 41 and 42 of the *Interpretation Act 1984* (WA).

No issue of sovereignty

For the following reasons, Aurizon believes that any sovereignty concerns regarding the Model Laws are misplaced and should not be taken into account in determining whether the Model Laws should be adopted in Western Australia.

The Model Laws do not pose any threat to sovereignty in any constitutional sense.¹

This is because the Model Laws will not curtail the capacity of the Western Australian Parliament to legislate in respect of rail safety or any other matter: any regulation made under the Model Laws can be excluded from application in Western Australia by an Act of State Parliament, which would not be constrained by any majority disallowance mechanism. Further, the Model Laws could themselves be repealed by Parliament, should the regime of the Model Laws no longer be appropriate for Western Australia.

Therefore, any concerns regarding sovereignty must relate to the practical implementation of the Model Laws. However, Aurizon believes that the Model Laws do not pose a threat in any practical sense either.

Firstly, there are no significant differences in rail operations between the various jurisdictions from a safety perspective: all jurisdictions share an interest in efficient and effective safety regulation, which is reflected in the stated objects and purpose of the Model Laws.² It has not been submitted that the Western Australian rail industry is unique in any way that would foreseeably render a regulation made under the Model Laws inappropriate in the Western Australian context.

Further, the power of the Governor of South Australia to make regulations under the Model Laws is dependent on the unanimous recommendation of the responsible Ministers from each participating jurisdiction.³ As a result, no regulation can be made without the approval of a Ministerial representative of Western Australia.

The question of disallowance is therefore unlikely to arise in a practical setting: a regulation that did not further the safety objects of the Model Laws is unlikely to be made by the Governor of South Australia (particularly following the unanimous Ministerial recommendation required under the Model Laws), and, even if it were, it seems likely that a majority of the participating States would disallow such a regulation.

Lastly, the importance of safety to rail operators, workers, employee and employer organisations and the public at large means that any inappropriate regulation will quickly be identified by or notified to the Parliament of Western Australia.

¹ See: *Melbourne v Commonwealth* (1947) 74 CLR 31; *Re AEU; Ex Parte Victoria* (1995) 184 CLR 188.

² Section 2(3) Model Laws.

³ Section 264(1) Model Laws.

Any further concerns regarding notification can be addressed by requiring the responsible Minister to notify the Western Australian Parliament when a unanimous recommendation is made to the Governor of South Australia.

In these circumstances, it is unnecessary to have each regulation made afresh by the Governor of Western Australia and subjected to scrutiny by the Western Australian Parliament in the ordinary manner. For the reasons that follow, it is also undesirable.

Benefits of adopting national uniform laws

Aurizon supports the adoption of truly uniform national laws concerning occupational health and safety in the rail industry. National uniform laws will lead to improved safety practices across Australia, and will significantly decrease operators' compliance costs.

The benefit of a single, national system of rail regulation has been valued at between \$28 and \$71 million. These savings arise from the consistent application and interpretation of rail safety laws, avoiding the duplication of procedures, advice and expertise.⁴

Aurizon is concerned that much of the benefit of adopting national uniform laws will be lost should the Rail Safety (WA) Bill be approved because, over time, it could foreseeably lead to regulations being made by the Western Australian Governor that create discrepancies between the WA regime and the Model Laws.

Multiple regimes may mean it is unclear which safety procedure is appropriate in any particular jurisdiction. Further, effective safety procedures developed under one regime may not be transferrable to another. The benefit of that procedure will then be lost.

As a result, and despite the best efforts of legislators, the risk of safety incidents may be increased by the need to implement safety procedures that vary between jurisdictions.

Further, operators will face increased compliance costs as a result of the separate implementation of regulations under the Rail Safety (WA) Bill. They will need to obtain separate compliance advice on regulations in force in Western Australia, and develop and implement separate health and safety procedures and training.

The Rail Safety (WA) Bill will therefore drive up the cost of rail operations in Western Australia relative to the rest of the nation. It will provide a disincentive for investment, to the detriment of operators, their employees and the broader Western Australian economy.

⁴ National Transport Commission, "Rail Safety National Law Draft Regulatory Impact Statement September 2011", p v.



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For these reasons, the Rail Safety (WA) Bill should not be adopted. Instead, the interests of Western Australia are best served by adopting the Model Laws.

Yours sincerely

Neil Backer
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Aurizon Holdings Limited