

**TRANSPORT AUTHORITIES (RAILWAY SAFETY)
AMENDMENT ACT 1987 No. 293**

NEW SOUTH WALES



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**TRANSPORT AUTHORITIES (RAILWAY SAFETY) AMENDMENT
ACT 1987 No. 293**

NEW SOUTH WALES



Act No. 293, 1987

An Act to amend the Transport Authorities Act 1980 with respect to employees of the State Rail Authority who engage in railway safety work while under the influence of alcohol or other drugs. [Assented to 16 December 1987]

See also Crimes (Railway Safety) Amendment Act 1987; Government Railways (Railway Safety) Amendment Act 1987.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Transport Authorities (Railway Safety) Amendment Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Amendment of Act No. 103, 1980

3. The Transport Authorities Act 1980 is amended by inserting after Part IV the following Part:

PART IVA—STAFF (RAILWAY SAFETY)

Division 1—Preliminary

Definitions

55A. (1) In this Part—

“analyst”, “breath analysing instrument”, “breath analysis” and “breath test” have the same meanings as they have in the Motor Traffic Act 1909;

“authorised officer” means an authorised officer under section 55B;

“drug” means—

(a) alcohol; or

(b) any substance that is a drug within the meaning of the Motor Traffic Act 1909;

“hospital” means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 4F of the Motor Traffic Act 1909 or that is prescribed by the regulations;

“prescribed concentration of alcohol” means a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood;

“railway employee” means an officer of the State Rail Authority;

“railway safety work” means any of the following work carried out by a railway employee:

(a) work as a driver, guard, observer or engineman on a train;

(b) work at a railway station or other place as a station-master, operator of train signals or shunter of trains or work which otherwise relates to the movement of trains;

(c) work on or about railway tracks relating to the repair, maintenance or upgrading of railway tracks or of any rolling stock or associated works or equipment;

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(d) any other work that is prescribed by the regulations as railway safety work,

but does not include any work that involves the driving of a motor vehicle on a public street.

(2) A reference in this Part to a member of the police force authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a member of the police force so authorised under the Motor Traffic Act 1909.

(3) For the purposes of this Part, a thing shall be regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of the medical practitioner or analyst.

(4) For the purposes of this Part, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

Appointment of authorised officers

55B. (1) The State Rail Authority may, by instrument in writing, appoint an officer of that Authority to be an authorised officer for the purposes of this Part.

(2) The State Rail Authority may appoint as an authorised officer—

(a) a person by name; or

(b) the holder from time to time of a particular office by reference to the title of the office concerned.

(3) The authority of an authorised officer may be limited by the relevant instrument of appointment to a particular part of the State or to particular railway employees, or otherwise.

(4) Anything done by an authorised officer in accordance with this Part is not invalid merely because of a contravention of a limitation to which the authority of the officer is subject.

(5) The State Rail Authority shall furnish authorised officers with certificates of their appointment as authorised officers.

(6) An authorised officer must, if requested to do so, produce the certificate of appointment to any person required by the officer to submit to a breath test or to do any other thing under this Part.

Division 2—Offences relating to alcohol or other drugs

Offence—carrying out railway safety work with prescribed concentration of alcohol in blood

55C. A railway employee who carries out railway safety work while the prescribed concentration of alcohol is present in the employee's blood is guilty of an offence.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

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Offence—carrying out railway safety work while under the influence of alcohol or other drug

55D. (1) A railway employee who carries out railway safety work while under the influence of alcohol or any other drug is guilty of an offence.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) Where a person is charged with an offence under this section—

- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information; and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of—
 - (i) a drug described in the information; or
 - (ii) a combination of drugs any one or more of which was or were described in the information.

Double jeopardy

55E. (1) A railway employee is not liable to be convicted of both—

- (a) an offence under section 55C of carrying out railway safety work while the prescribed concentration of alcohol is present in the employee's blood; and
- (b) an offence under section 55D of carrying out that railway safety work while under the influence of alcohol or any other drug.

(2) A railway employee is not liable to be convicted of both—

- (a) an offence under section 55D of carrying out railway safety work while under the influence of alcohol or any other drug; and
- (b) an offence under section 55Q of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine in connection with the carrying out of that railway safety work.

Division 3—Testing for alcohol or other drugs

Breath testing of railway employees about to carry out railway safety work

55F. (1) If an authorised officer has reasonable cause to believe that a railway employee is about to carry out railway safety work, the officer may require the employee to undergo a breath test in accordance with the directions of the officer.

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(2) A railway employee shall be regarded as being about to carry out railway safety work if the employee—

- (a) has left home or a temporary residence for work (being railway safety work); and
- (b) has not commenced work after having so left home or the temporary residence.

(3) The result of any such breath test (or of any subsequent breath or other analysis) may be used for the purposes of any disciplinary proceedings against the railway employee, but is not admissible in any proceedings for an offence under this Part.

Breath testing of railway employees carrying out railway safety work

55G. If an authorised officer or a member of the police force has reasonable cause to believe that—

- (a) a railway employee is carrying out railway safety work and there is alcohol in the employee's blood; or
- (b) a railway employee has been involved in an accident or irregular incident while carrying out railway safety work,

the officer or member may require the employee to undergo a breath test in accordance with the directions of the officer or member.

Assessment of sobriety where breath testing device not available

55H. (1) If—

- (a) an authorised officer or a member of the police force is entitled under this Part to require a railway employee to undergo a breath test; and
- (b) the device required to carry out the breath test is not readily available,

the officer or member may require the employee to submit to an assessment of the employee's sobriety in accordance with the directions of the officer or member.

(2) A requirement that a railway employee submit to such an assessment is not open to challenge in any proceedings on the basis that the device was readily available.

Breath analysis of railway employees following breath testing etc.

55I. (1) If—

- (a) it appears to an authorised officer or a member of the police force as a result of a breath test or assessment under this Part that the prescribed concentration of alcohol may be present in the railway employee's blood; or

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(b) a railway employee who is required by an authorised officer or a member of the police force to undergo a breath test or to submit to an assessment under this Part refuses or fails to do so in accordance with the directions of the officer or member, the officer or member may require the employee to submit to a breath analysis in accordance with the directions of the officer or member.

(2) If an authorised officer or a member of the police force is entitled to require a railway employee to submit to a breath analysis, the officer or member may—

- (a) arrest the employee without warrant; and
- (b) take the employee with such force as may be necessary to a police station or some other place as the officer or member considers desirable and there detain the employee for the purposes of the breath analysis.

(3) A breath analysis shall be carried out by—

- (a) an authorised officer; or
- (b) a member of the police force authorised by the Commissioner of Police to operate breath analysing instruments,

at or near a police station or such other place as the officer or member considers desirable.

(4) As soon as practicable after a railway employee has submitted to a breath analysis the authorised officer or member of the police force operating the breath analysis instrument shall deliver to the employee a statement in writing signed by the officer or member specifying—

- (a) the concentration of alcohol determined by the analysis to be present in the employee's blood and expressed in grammes of alcohol in 100 millilitres of blood; and
- (b) the day on which and time of the day at which the breath analysis was completed.

(5) A railway employee who is required to submit to a breath analysis may request the authorised officer or member of the police force making the requisition to arrange for the taking (in the presence of an authorised officer or a member of the police force) of a sample of the employee's blood for analysis, at the employee's own expense, by—

- (a) a medical practitioner nominated by the employee; or
- (b) a medical practitioner nominated by the officer or member at the employee's request.

(6) The making of any such request or the taking of a sample of a railway employee's blood does not absolve the employee from the obligation imposed on the employee to submit to a breath analysis in accordance with this section.

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(7) A medical practitioner by whom a sample of a railway employee's blood is taken in accordance with an arrangement referred to in subsection (5) shall divide the sample into 2 approximately equal portions of which one shall be handed to the employee from whom it was taken and one, enclosed in a suitable sealed container, shall be handed to the authorised officer or member of the police force present at the time the sample was taken.

Blood or urine samples taken at hospitals from railway employees involved in accidents in carrying out railway safety work

55J. (1) If a railway employee attends or is admitted to a hospital for examination or treatment because the employee has been involved in an accident while carrying out railway safety work, an authorised officer or a member of the police force may require the employee to provide as soon as practicable a sample of the employee's blood or urine in accordance with the directions of a medical practitioner who attends the employee at the hospital.

(2) Any such medical practitioner shall take the sample if informed by the authorised officer or member of the police force that the sample is required to be taken by the practitioner under this Act.

(3) A requirement under subsection (1) need not be made directly to the railway employee concerned but may be made through a medical practitioner who attends the employee at the hospital.

Blood or urine samples taken where breath analysing instrument not available

55K. (1) If—

(a) an authorised officer or a member of the police force is entitled under this Part to require a railway employee to submit to a breath analysis; and

(b) a breath analysing instrument is not readily available, the officer or member may require the employee to provide a sample of the employee's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the employee.

(2) Any such medical practitioner shall take the sample if informed by the authorised officer or member of the police force that the sample is required to be taken by the practitioner under this Act.

(3) A requirement that a railway employee provide a sample is not open to challenge in any proceedings on the basis that a breath analysing instrument was readily available.

(4) If an authorised officer or a member of the police force is entitled to require a railway employee to provide a sample of blood or urine, the officer or member may—

(a) arrest the employee without warrant; and

- (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

Blood or urine samples taken for detecting drugs

55L. (1) If—

- (a) a railway employee has undergone a breath test in accordance with this Part; and
- (b) the result of the test does not permit the employee to be required to submit to a breath analysis,

an authorised officer or a member of the police force may require the employee to submit to an assessment of his or her sobriety in accordance with the directions of the officer or member.

(2) A railway employee shall not be required to submit to the assessment unless the authorised officer or member of the police force has a reasonable belief that, by the way in which the employee was acting, the employee may be under the influence of a drug.

(3) If—

- (a) a railway employee refuses to submit to the assessment; or
- (b) after the assessment has been made, an authorised officer or a member of the police force has a reasonable belief that the employee is under the influence of a drug,

the officer or member may require the employee to provide a sample of the employee's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the employee.

(4) Any such medical practitioner shall take the sample if informed by the authorised officer or member of the police force that the sample is required to be taken by the practitioner under this Act.

(5) If an authorised officer or a member of the police force is entitled to require a railway employee to provide a sample of blood or urine, the officer or member may—

- (a) arrest the employee without warrant; and
- (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

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Restrictions on requiring breath test, assessment, breath analysis or sample

55M. An authorised officer or a member of the police force shall not require a railway employee to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine—

- (a) if the employee has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the employee at the hospital has been notified of the intention to make the requisition and the medical practitioner does not object on the ground that compliance would be prejudicial to the proper care or treatment of the employee;
- (b) if it appears to the officer or member that it would (because of injuries sustained by the employee) be dangerous to the employee's medical condition if the employee complied with the requisition;
- (c) at any time after the expiration of 2 hours from the time the employee carried out the railway safety work (or was due to commence the railway safety work) to which the requisition relates; or
- (d) at the employee's home.

Action by medical practitioner with respect to samples of blood or urine

55N. (1) A medical practitioner who takes a sample of blood or urine when required under this Part to do so shall—

- (a) divide the sample into 2 approximately equal portions;
- (b) place each portion into a container;
- (c) fasten and seal each container; and
- (d) mark or label each container for future identification.

(2) Of the 2 sealed containers—

- (a) one shall be handed by the medical practitioner to the railway employee from whom the sample was taken or to some other person on behalf of the railway employee; and
- (b) the other shall be handed by the medical practitioner to the authorised officer or member of the police force present when the sample was taken.

Analysis of samples of blood or urine

55O. (1) An authorised officer or a member of the police force may arrange for a portion of a sample of a railway employee's blood or urine taken in accordance with this Part to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.

(2) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under this section may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains a drug.

Medical practitioners—protection from liability

55P. No civil or criminal liability is incurred by a medical practitioner in respect of anything properly and necessarily done by the practitioner in the course of taking a sample of blood or urine from a person if the practitioner—

- (a) believed on reasonable grounds that the practitioner was required under this Act to take the sample of blood or urine from the person; or
- (b) was informed by an authorised officer or a member of the police force that the person was a person from whom the practitioner was required under this Act to take the sample of blood or urine;

nor by any person acting under the supervision or direction of the medical practitioner.

Division 4—Offences relating to testing for alcohol or other drugs

Refusal to be tested

55Q. (1) Any railway employee who, when required under this Part to do so, refuses or fails—

- (a) to undergo a breath test; or
- (b) to submit to an assessment,

in accordance with this Part is guilty of an offence.

Penalty: 10 penalty units.

(2) Any railway employee who, when required under this Part to do so, refuses or fails—

- (a) to submit to a breath analysis; or
- (b) to provide a sample of blood or urine,

in accordance with this Part is guilty of an offence.

Penalty: 15 penalty units or imprisonment for 9 months, or both.

(3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

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Interfering with results of test

55R. A railway employee who does anything to introduce, or alter the concentration of, alcohol or any other drug in the employee's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Part, is guilty of an offence if the employee does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the employee.

Penalty: 15 penalty units or imprisonment for 9 months, or both.

Taking of samples by medical practitioner

55S. (1) Any medical practitioner who, when required under this Part to take a sample of blood or urine from a railway employee—

- (a) refuses or fails to take the sample; or
- (b) does not comply with the requirements of section 55N with respect to any sample taken,

is guilty of an offence.

Penalty: 5 penalty units.

(2) It is a defence to a prosecution for an offence under subsection (1) if the medical practitioner satisfies the court that—

- (a) the practitioner believed on reasonable grounds that the taking of the sample from the railway employee would be prejudicial to the proper care and treatment of the railway employee;
- (b) the practitioner was, because of the behaviour of the railway employee, unable to take the sample; or
- (c) there was other reasonable cause for the practitioner not to take the sample.

(3) A person who hinders or obstructs a medical practitioner in attempting to take a sample of the blood or urine of any other person under this Part is guilty of an offence.

Penalty: 10 penalty units.

Division 5—Certificate evidence in proceedings**Certificate evidence of concentration of alcohol in blood determined by breath analysis**

55T. (1) In proceedings for an offence under section 55C, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by—

- (a) an authorised officer; or
- (b) a member of the police force authorised by the Commissioner of Police to operate breath analysing instruments.

(2) The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of the person at the time the person carried out the railway safety work to which the breath analysis relates if the breath analysis was made within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.

(3) In proceedings for an offence under section 55c, a certificate purporting to be signed by an authorised officer or a member of the police force certifying that—

- (a) the officer is a duly appointed authorised officer or (as the case requires) the member of the police force is duly authorised by the Commissioner of Police to operate breath analysing instruments;
- (b) the person named in the certificate submitted to a breath analysis;
- (c) the apparatus used by the officer or member to make the breath analysis was a breath analysing instrument within the meaning of the Motor Traffic Act 1909;
- (d) the analysis was made on the day and completed at the time stated in the certificate;
- (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate; and
- (f) a statement in writing required by section 55i (4) was delivered in accordance with section 55i (4),

shall be prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 55c, a certificate purporting to be signed by the Commissioner of Police that the member of the police force named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments shall be prima facie evidence of the particulars certified in and by the certificate.

(5) In any proceedings for an offence under section 55c, evidence of the condition of a breath analysing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

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Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood

55U. (1) In proceedings for an offence under section 55C, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Part of a portion of a sample of the person's blood.

(2) The concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of the person charged at the time the person carried out the railway safety work to which the analysed sample of blood relates, if that sample of blood was taken within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of the blood.

(3) In proceedings for an offence under section 55C, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
- (b) that the practitioner took a sample of the person's blood in accordance with this Part on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 55N;
- (d) that the practitioner used equipment of a specified description in so taking and dealing with the sample;
- (e) that the container was sealed, marked or labelled, in a specified manner,

shall be prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 55C, a certificate purporting to be signed by an authorised officer or a member of the police force certifying any one or more of the following matters:

- (a) that the officer or member received a portion of a sample of a specified person's blood taken in accordance with this Part;
- (b) that the officer or member arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood;
- (c) that the container was sealed, marked or labelled, in a specified manner,

shall be prima facie evidence of the particulars certified in and by the certificate.

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(5) In proceedings for an offence under section 55C, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Part;
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample;
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample;
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Motor Traffic Act 1909,

shall be prima facie evidence—

- (g) of the particulars certified in and by the certificate;
- (h) that the sample was a portion of the sample of the blood of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

Certificate evidence of presence of drugs

55v. (1) In proceedings for an offence under section 55D—

- (a) evidence may be given of—
 - (i) the presence of a drug; or
 - (ii) the presence of a particular concentration of a drug, in the blood or urine of the person charged, as determined pursuant to an analysis under this Part of a portion of a sample of the person's blood or urine; and
- (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, shall be deemed to have been present in the blood or urine of that person at the time the person carried out the railway safety work to which the analysed sample relates,

where the sample was taken within 2 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.

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(2) In proceedings for an offence under section 55D, a certificate purporting to be signed by a medical practitioner certifying any one or more of the following matters:

- (a) that the practitioner was a medical practitioner who attended a specified person at a hospital;
- (b) that the practitioner took a sample of the person's blood or urine in accordance with this Part on the day and at the time stated in the certificate;
- (c) that the practitioner dealt with the sample in accordance with section 55N,

is prima facie evidence of the particulars certified in and by the certificate.

(3) In proceedings for an offence under section 55D, a certificate purporting to be signed by an authorised officer or a member of the police force certifying any one or more of the following matters:

- (a) that the officer or member received a portion of a sample of a specified person's blood or urine taken in accordance with this Part;
- (b) that the officer or member arranged for the portion to be submitted for an analysis by an analyst to determine whether any drug was present in the sample;
- (c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(4) In proceedings for an offence under section 55D, a certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis under this Part;
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner;
- (c) that on receipt by the analyst of the container, the seal was unbroken;
- (d) that the analyst carried out an analysis of the portion to determine whether any drug was present in the sample;
- (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration;

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- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the Motor Traffic Act 1909,
is prima facie evidence—
- (g) of the particulars certified in and by the certificate;
- (h) that the portion was a portion of the sample of the blood or urine of that specified person; and
- (i) that the portion had not been tampered with before it was received by the analyst.

Certificate evidence of appointment of authorised officer

55w. In proceedings for an offence under this Part, a certificate purporting to be signed by the Chief Executive or Secretary of the State Rail Authority that the officer named in the certificate is an authorised officer shall be prima facie evidence of the particulars certified in and by the certificate.