



New South Wales

# Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation 2006

under the

Rail Safety Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Rail Safety Act 2002*.

JOHN WATKINS, M.P.,  
Minister for Transport

## Explanatory note

The object of this Regulation is to amend the *Rail Safety (Drug and Alcohol Testing) Regulation 2003* to change the way that urine samples are dealt with for the purposes of testing for alcohol or other drugs. The new provisions ensure that urine will undergo initial testing and confirmatory testing for the presence of a drug or drugs in urine in accordance with AS/NZS 4308:2001, *Procedures for the collection, detection and quantitation of drugs of abuse in urine*.

This Regulation also provides for:

- (a) the authorisation and functions of testing officers, and
- (b) the provision of information relating to drug and alcohol testing activities by operators of rail services.

This Regulation is made under the *Rail Safety Act 2002*, including section 117 (the general regulation-making power) and clause 2 of Schedule 1 to the Act.

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Clause 1 Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation  
2006

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**Rail Safety (Drug and Alcohol Testing) Amendment  
(Samples) Regulation 2006**

under the

Rail Safety Act 2002

**1 Name of Regulation**

This Regulation is the *Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation 2006*.

**2 Amendment of Rail Safety (Drug and Alcohol Testing) Regulation 2003**

The *Rail Safety (Drug and Alcohol Testing) Regulation 2003* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 2)

**[1] Clause 3 Definitions**

Omit the definition of *analyst* from clause 3 (1). Insert instead:

*analyst* means a person employed by the owner or operator of an approved laboratory as an analyst.

**[2] Clause 3 (1), definition of “approved laboratory”**

Omit the definition. Insert instead:

*approved laboratory* means:

- (a) in relation to blood samples—the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service, and
- (b) in relation to urine samples—a laboratory that has been accredited by the National Association of Testing Authorities, Australia for the purposes of AS/NZS 4308:2001.

**[3] Clause 3 (1), definition of “ASNZ 4308”**

Omit the definition. Insert instead:

*AS/NZS 4308:2001* means Australian/New Zealand Standard AS/NZS 4308:2001, *Procedures for the collection, detection and quantitation of drugs of abuse in urine*.

**[4] Clause 3 (1), definition of “authorised officer”**

Omit the definition.

**[5] Clause 3 (1), definitions of “breath analysing instrument”, “breath analysis” and “breath test”**

Omit the definitions. Insert in alphabetical order:

*breath analysing instrument* and *breath analysis* have the same meanings as they have in the *Road Transport (Safety and Traffic Management) Act 1999*.

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### [6] Clause 3 (1)

Insert in alphabetical order:

***breath test*** means a test for the purpose of indicating the concentration of alcohol in a person's blood, carried out on that person's breath by means of a device, not being a breath analysing instrument, of a type that complies with the requirements of AS 3547—1997, *Breath alcohol testing devices for personal use*.

***on-site drug screening device*** means a device which determines the presence or absence of drugs in urine using an immunoassay technique that meets the initial test cut-off levels listed in Table 1 of AS/NZS 4308:2001.

***prescribed incident*** means any of the following that occur on railway premises:

- (a) a collision between trains,
- (b) a collision between a train and a person,
- (c) a collision between a train and a road vehicle or plant equipment,
- (d) the derailment of a train,
- (e) a breach of the rail infrastructure owner's safeworking rules,
- (f) such other incident that the ITSRR may, by notice in writing to the operator of a railway, declare to be a type of prescribed incident in respect of that railway.

***testing officer*** means:

- (a) a person authorised for the time being under clause 4 as a testing officer, or
- (b) an authorised officer.

### [7] Clause 4

Omit the clause. Insert instead:

#### 4 Authorisation of testing officers

- (1) The ITSRR may, by notice in writing, authorise any person to be a testing officer for the purposes of exercising functions under this Regulation.
- (2) An operator of a railway may, by notice in writing, authorise any person to be a testing officer for the purposes of exercising functions under this Regulation.

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- (3) The operator of a railway or the ITSRR may authorise as a testing officer:
    - (a) a person by name, or
    - (b) the holder from time to time of an office by reference to the title of the office concerned.
  - (4) The authority of a testing officer authorised under this clause is limited:
    - (a) by any conditions or other limitations specified in the relevant notice of authorisation, and
    - (b) in the case of a testing officer authorised by the operator of a railway—to the railway specified in the accreditation of the operator.
  - (5) The operator of a railway must furnish a testing officer authorised by the operator with a certificate of authorisation as a testing officer.
  - (6) The ITSRR must furnish a testing officer authorised by the ITSRR with a certificate of authorisation as a testing officer.
  - (7) A testing officer must, if requested to do so, produce the certificate of authorisation to any person required by the officer to submit to a breath test or to do any other thing under this Regulation.
  - (8) If a person is authorised as a testing officer by virtue of being the holder of an office, evidence that the testing officer holds the office concerned has the same effect as the production of a certificate of authorisation as a testing officer.
  - (9) The ITSRR may, by notice in writing to the operator of a railway, revoke the authorisation of a person authorised as a testing officer by the operator.
  - (10) The ITSRR may, by notice in writing, revoke the authorisation of a person authorised as a testing officer by the ITSRR.
  - (11) The operator of a railway may, by notice in writing, revoke the authorisation of a person authorised as a testing officer by the operator.

**[8] Clause 8 Random and targeted testing of railway employees**

Omit “An authorised officer” from clause 8 (1).

Insert instead “A testing officer”.

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**[9] Clause 8 (3)**

Omit the subclause. Insert instead:

- (3) A railway employee may be:
  - (a) breath tested or required to undergo breath analysis whether or not there is any suspicion that the employee has recently consumed alcohol, or
  - (b) required to provide a urine sample whether or not there is any suspicion that the employee has recently taken drugs.

**[10] Clause 8 (5)**

Insert “or the result of any such testing or analysis performed on a sample of the employee’s urine” before “may”.

**[11] Clause 9 Testing of railway employees in specified situations**

Omit “An authorised officer” from clause 9 (1).

Insert instead “A testing officer”.

**[12] Clause 10 Assessment of sobriety if breath testing device not available**

Omit “an authorised officer” from clause 10 (1) (a).

Insert instead “a testing officer”.

**[13] Clause 11 Breath analysis of railway employees following breath testing**

Omit “an authorised officer” and “the authorised officer” wherever occurring in clause 11 (1), (3)–(5).

Insert instead “a testing officer” and “the testing officer” respectively.

**[14] Clause 11 (2) and (2A)**

Omit subclause (2). Insert instead:

- (2) If a police officer is entitled to require a railway employee to submit to a breath analysis, the officer may:
  - (a) arrest the employee without a warrant, and
  - (b) take the employee with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the employee for the purposes of the breath analysis.

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(2A) If a testing officer is entitled to require a railway employee to submit to a breath analysis, the officer may direct the employee to attend the nearest police station, or such other place as the officer may reasonably require, and there submit to a breath analysis.

**[15] Clause 12 Blood or urine samples taken at hospitals from railway employees involved in accidents in carrying out railway safety work**

Omit “an authorised officer” from clause 12 (1).

Insert instead “a testing officer”.

**[16] Clause 12 (3)**

Omit “authorised officer”. Insert instead “testing officer”.

**[17] Clause 13 Additional circumstances when blood or urine samples may be taken**

Omit “An authorised officer” wherever occurring in clause 13 (1) and (2).

Insert instead “A testing officer”.

**[18] Clause 14 Taking of blood or urine samples**

Omit “an authorised officer” from clause 14 (1).

Insert instead “a testing officer”.

**[19] Clause 14 (5)**

Omit “the authorised officer”. Insert instead “the testing officer”.

**[20] Clause 14 (6) and (7)**

Omit subclause (6). Insert instead:

(6) If a police officer is entitled to require a railway employee to provide a sample of blood, the officer may:

- (a) arrest the employee without a 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.

(7) If a testing officer is entitled to require a railway employee to provide a sample of blood, the officer may direct the employee to attend the nearest hospital for the purpose of obtaining the sample.

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**[21] Clause 15 Restrictions on requiring breath test, assessment, breath analysis or sample**

Omit “An authorised officer”. Insert instead “A testing officer”.

**[22] Clause 16 Action to be taken with respect to blood samples**

Omit “authorised officer” from clause 16 (2).

Insert instead “testing officer”.

**[23] Clause 16 (2) (b)**

Omit “the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service,”.

Insert instead “an approved laboratory”.

**[24] Clause 17**

Omit the clause. Insert instead:

**17 Action to be taken with respect to urine samples**

- (1) If a testing officer or police officer requires a railway employee to provide a sample of urine, the sample must be collected in accordance with section 3 of AS/NZS 4308:2001.
- (2) The testing officer or police officer who required the employee to provide a sample must arrange for the sample to be submitted for initial testing.
- (3) Initial testing may be carried out:
  - (a) at the place where the sample was taken, using an on-site drug screening device, or
  - (b) by an analyst at an approved laboratory, in accordance with section 4 of AS/NZS 4308:2001.
- (4) A sample that is submitted for initial testing or confirmatory analysis at an approved laboratory is to be transported in accordance with section 3 of AS/NZS 4308:2001.
- (5) If initial testing of the sample indicates that the urine contains a drug or drugs:
  - (a) in the case of an initial test conducted in accordance with subclause (3) (a)—the testing officer or police officer who required the employee to provide the sample must arrange for the sample to be submitted to an analyst at an approved laboratory for confirmatory analysis in accordance with clause 18, or



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- (b) in the case of an initial test conducted in accordance with subclause (3) (b)—the analyst is to conduct a confirmatory analysis in accordance with clause 18.
  - (6) If a confirmatory analysis is carried out on a urine sample, the person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory at which the sample is being kept for a portion of the sample to be sent for analysis, at the person's own expense, to an approved laboratory nominated by the person.
  - (7) Samples are to be stored in accordance with section 3 of AS/NZS 4308:2001.

**[25] Clause 18 Analysis of samples**

Omit clause 18 (1).

**[26] Clause 18 (2)**

Omit "or urine" wherever occurring.

**[27] Clause 18 (2)**

Omit "or 17".

**[28] Clause 18 (3)–(6)**

Omit subclauses (3) and (4). Insert instead:

- (3) An analyst to whom a sample of urine is submitted for analysis under clause 17 may carry out a confirmatory analysis of the sample, or a portion of the sample, to determine whether the urine contains a drug or drugs. The confirmatory analysis must be carried out, and a report provided, in accordance with sections 5 and 6 of AS/NZS 4308:2001.
- (4) A confirmatory analysis under subclause (3) may be carried out only if initial testing determines that the urine contains a drug or drugs.
- (5) For the purpose of sections 3 and 4 of AS/NZS 4308:2001 as it applies under this Regulation, initial testing done in accordance with clause 17 (3) (a) is taken to have been performed in the same approved laboratory as subsequent confirmatory analysis of the sample under subclause (3).

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- (6) Without limiting subclause (3), the ITSRR may, generally or in a particular case or class of cases, direct that an analysis is to be carried out in order to determine whether there is present in a sample a drug specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*.

**[29] Clause 19 Medical practitioners, nurses and testing officers—protection from liability**

Omit “an authorised officer” from clause 19 (1) (b).

Insert instead “a testing officer”.

**[30] Clause 19 (2)**

Insert at the end of clause 19:

- (2) No civil or criminal liability is incurred by a testing officer in respect of anything properly and necessarily done by the officer in the course of administering a breath test or breath analysis, conducting an assessment of sobriety or taking a sample of urine in the exercise of the functions of a testing officer under this Regulation.

**[31] Clause 20A**

Insert after clause 20:

**20A Failure to conduct test**

An operator of a railway must not, without reasonable excuse, fail to ensure that a railway employee is required:

- (a) to undergo a breath test and, if it appears to the testing officer as a result of the breath test that the prescribed concentration of alcohol may be present in the employee’s blood, a breath analysis, or
- (b) to provide a sample of blood or urine, within 3 hours immediately after the employee is involved, or is reasonably suspected of being involved, in a prescribed incident while carrying out railway safety work.

Maximum penalty: 250 penalty units.

**[32] Clause 24 Certificate evidence of concentration of alcohol in blood determined by breath analysis**

Omit “an authorised officer” from clause 24 (1) and (3).

Insert instead “a testing officer”.

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- [33] Clause 25 Certificate evidence of concentration of alcohol in blood determined by analysis of blood sample**  
Omit “an authorised officer” from clause 25 (4).  
Insert instead “a testing officer”.
- [34] Clause 25 (5) (f)**  
Omit the paragraph. Insert instead:  
(f) that the analyst was, at the time of the analysis, employed by the owner or operator of an approved laboratory as an analyst,
- [35] Clause 26 Certificate evidence of presence of drugs**  
Omit “an authorised officer” from clause 26 (4).  
Insert instead “a testing officer”.
- [36] Clause 26 (4) (b)**  
Insert “(or testing and analysis)” after “submitted for analysis”.
- [37] Clause 26 (5) (a)**  
Insert “(or testing and analysis)” after “submitted for analysis”.
- [38] Clause 26 (5) (f)**  
Omit the paragraph. Insert instead:  
(f) that the analyst was, at the time of the analysis, employed by the owner or operator of an approved laboratory as an analyst,
- [39] Clause 26 (7)**  
Omit “, unless the court is satisfied that the analysis was not arranged in contravention of clause 18 (1).”.
- [40] Clause 27 Certificate evidence of authorisation of testing officer**  
Omit “an authorised officer”. Insert instead “a testing officer”.

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### [41] Clauses 29 and 30

Insert after clause 28:

#### 29 Notification of drug and alcohol testing

- (1) An operator of a railway is to notify the ITSRR, in a form approved by the ITSRR, of the following:
  - (a) any analysis of blood confirming the presence of a drug (other than alcohol) in the blood of an employee,
  - (b) any analysis of blood confirming that the prescribed concentration of alcohol is present in the employee's blood,
  - (c) any analysis of urine confirming the presence of a drug in the urine of an employee,
  - (d) any breath test confirming that the prescribed concentration of alcohol is present in the employee's blood,
  - (e) any breath analysis confirming that the prescribed concentration of alcohol is present in the employee's blood,
  - (f) any employee who, when required to do so under this Regulation, fails to undergo a breath test, undergo a breath analysis, or provide a sample of blood or urine,
  - (g) any incident or suspected incident involving the interference or tampering with, or the destruction of, a sample of a person's blood or urine provided or taken under this Regulation in contravention of this Regulation,
  - (h) any incident or suspected incident involving something being done in contravention of this Regulation to introduce, or alter the concentration of, alcohol or any other drug in a railway employee's blood or urine before the employee submitted to a breath analysis or provided a sample of blood or urine under this Regulation.

**Note.** Clause 3 of this Regulation provides that drug includes alcohol.

- (2) An operator of a railway is to provide the ITSRR with statistical reports relating to the conduct of drug and alcohol testing at such times as requested by the ITSRR, in the form provided by the ITSRR for that purpose.

**30 Savings and transitional**

- (1) Any person who, immediately before the commencement of the *Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation 2006*, was authorised under clause 4 (as in force immediately before the commencement of that Regulation) to exercise the functions of an authorised officer under this Regulation, is taken (on that commencement) to have been authorised as a testing officer under clause 4.
- (2) This Regulation, as in force immediately before the commencement of the *Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation 2006*, continues to apply in respect of any sample of urine or blood collected before that commencement.