



New South Wales

Rail Safety (Adoption of National Law) Amendment (Drug and Alcohol Testing) Regulation 2014

under the

Rail Safety (Adoption of National Law) Act 2012

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Rail Safety (Adoption of National Law) Act 2012*.

GLADYS BEREJIKLIAN, MP
Minister for Transport

Explanatory note

The objects of this Regulation are as follows:

- (a) to adopt and apply the term *authorised sample taker*, as defined in the *Road Transport Act 2013*,
- (b) to standardise references to an authority required from the Commissioner of Police under that Act to carry out a breath analysis,
- (c) to reframe the matters in relation to which certificate evidence may be given by analysts to accommodate performance of their duties by persons acting under their authority,
- (d) to make it clear that certificate evidence concerning sample taking or analysis that is performed in another jurisdiction may be given not only by persons who personally perform the analysis or sample taking but also by persons who supervise or direct those procedures,
- (e) to remove a requirement for registered nurses to be accredited by a hospital to perform sampling procedures,
- (f) to insert savings and transitional provisions relating to certain evidence certificates.

This Regulation is made under the *Rail Safety (Adoption of National Law) Act 2012*, including sections 8 and 10 (the general regulation-making power).

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Rail Safety (Adoption of National Law) Act 2012

1 Name of Regulation

This Regulation is the *Rail Safety (Adoption of National Law) Amendment (Drug and Alcohol Testing) Regulation 2014*.

2 Commencement

This Regulation commences on 1 February 2015 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Rail Safety (Adoption of National Law) Regulation 2012

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

authorised sample taker has the same meaning as in Schedule 3 to the *Road Transport Act 2013*.

[2] Clauses 3 (2), 11 (4) (b), 25 (2) (b) and 28 (2) (a) and (3)

Omit “operate breath analysing instruments” wherever occurring.

Insert instead “carry out a breath analysis”.

[3] Clause 9 Supervisee may perform functions of authorised sample taker or authorised person

Omit clause 9 (1). Insert instead:

- (1) Any duty of an authorised sample taker or an authorised person under this Part may be performed by a person acting at the direction or under the supervision of the authorised sample taker or an authorised person.

[4] Clause 9 (2)

Omit “medical practitioner, registered nurse”. Insert instead “authorised sample taker”.

[5] Clause 11 Breath analysis of rail safety workers following breath testing

Omit “a medical practitioner” from clause 11 (6).

Insert instead “an authorised sample taker”.

[6] Clause 12 Oral fluid analysis following drug screening test or request

Omit “a medical practitioner or registered nurse” from clause 12 (2).

Insert instead “an authorised sample taker”.

[7] Clause 13 (2) and (3)

Omit “who is accredited by a hospital as competent to perform the sampling procedures” wherever occurring.

[8] Clause 15 Taking of blood or urine samples

Omit “a medical practitioner who attends the worker” from clause 15 (3).

Insert instead “an authorised sample taker”.

[9] Clause 15 (4)

Omit the subclause.

[10] Clause 15 (5)

Omit the subclause. Insert instead:

- (5) An authorised sample taker must take a sample of blood if informed by the authorised person that the sample is required to be taken under the *Rail Safety National Law (NSW)* and this Regulation.

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

Omit “A medical practitioner, registered nurse” from clause 16 (1).

Insert instead “An authorised sample taker”.

[12] Clause 16 (5)

Omit “or registered nurse”. Insert instead “, registered nurse or other sample taker”.

[13] Clause 17 Action to be taken with respect to oral fluid samples

Insert “or other sample taker” after “medical practitioner” in clause 17 (7).

[14] Clause 19 Analysis of samples

Insert “at the direction or” after “acting” in clause 19 (5).

[15] Clause 20 Authorised sample takers and authorised persons—protection from liability

Omit clause 20 (1). Insert instead:

- (1) No civil or criminal liability is incurred by an authorised sample taker (or by any person acting at the direction or under the supervision of the authorised sample taker) in respect of anything properly and necessarily done by the authorised sample taker in the course of taking a sample of blood or urine from a person if the authorised sample taker:
 - (a) believed on reasonable grounds that the authorised sample taker was required under this Regulation to take the sample of blood or urine from the person, or
 - (b) was informed by an authorised person that the person was a person from whom the authorised sample taker was required under this Regulation to take the sample of blood or urine.

[16] Clause 23 Taking of samples

Omit “Any medical practitioner or registered nurse” from clause 23 (1).

Insert instead “An authorised sample taker”.

[17] Clause 23 (2)

Omit the subclause. Insert instead:

- (2) It is a defence to a prosecution for an offence under subclause (1) if the authorised sample taker satisfies the court that:
 - (a) the authorised sample taker believed on reasonable grounds that the taking of the sample from the rail safety worker would be prejudicial to the proper care and treatment of the worker, or
 - (b) the authorised sample taker was, because of the behaviour of the rail safety worker, unable to take the sample, or
 - (c) there was other reasonable cause for the authorised sample taker not to take the sample.

[18] Clause 23 (4)

Omit “a medical practitioner, nurse”. Insert instead “an authorised sample taker”.

[19] Clause 29 Certificate evidence about the taking and analysis of samples

Omit clause 29 (2). Insert instead:

- (2) A certificate purporting to be signed by an authorised sample taker and certifying any one or more of the following matters is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate:
- (a) that the certifier was an authorised sample taker who attended a specified person at a hospital,
 - (b) that the certifier took a sample of the person's blood or urine in accordance with the *Rail Safety National Law (NSW)* and this Regulation on the day and at the time stated in the certificate,
 - (c) that the certifier dealt with the sample in accordance with clause 16 or 18,
 - (d) that the certifier used equipment of a specified description in so taking and dealing with the sample,
 - (e) that the container was sealed, and marked or labelled, in a specified manner.

[20] Clause 29 (5) (a)–(c)

Omit the paragraphs. Insert instead:

- (a) that a sample of a specified person's blood, oral fluid or urine was received, on a specified day, in a container submitted for analysis (or testing and analysis) under this Regulation,
- (b) that the container, as received, was sealed, and marked or labelled, in a specified manner,
- (c) that, on receipt of the container, the seal was unbroken,

[21] Clause 29 (5) (d) (i) and (e) (i)

Omit "the analyst carried out an analysis of the sample" wherever occurring.

Insert instead "an analysis of the sample was carried out".

[22] Clause 29 (5) (f) (i)

Omit "the analyst carried out an oral fluid analysis of the sample".

Insert instead "an oral fluid analysis of the sample was carried out".

[23] Clause 29 (6) (c)

Omit "by the analyst".

[24] Clause 29 (7)

Omit "authorised person". Insert instead "sample taker".

[25] Clause 29 (8)

Omit the subclause. Insert instead:

- (8) In this clause:
interstate analyst means a person (however described) who analyses, or who supervised or directed the analysis of, a blood, urine or oral fluid sample in another jurisdiction.

interstate sample taker means a person (however described) who takes, or who supervised or directed the taking of, a blood, urine or oral fluid sample in another jurisdiction.

[26] Clauses 50 and 51

Insert after clause 49:

50 Application of certain amendments relating to certificate evidence by analysts and sample takers

- (1) In this clause and clause 51:
amending Regulation means the *Rail Safety (Adoption of National Law) Amendment (Drug and Alcohol Testing) Regulation 2014*.
- (2) The amendments made to clause 29 (5) and (6) by the amending Regulation apply to a certificate in relation to a sample regardless of whether the sample was received by or on behalf of the analyst before or after the commencement of the amending Regulation.
- (3) Clause 29 (7) and (8), as amended and substituted by the amending Regulation, apply in relation to a certificate regardless of whether the sample to which the certificate relates was taken before or after the commencement of the amending Regulation.

51 Use of existing evidence certificate forms by analysts

- (1) A form of evidence certificate that was prepared in accordance with former clause 29 (5) before the relevant day so that it could be used under that clause when completed:
 - (a) is taken to be, and is to be construed as, a form of evidence certificate prepared in accordance with new clause 29 (5), and
 - (b) may, during the transitional period, be completed in accordance with and used under that clause.
- (2) In this clause:
former clause 29 (5) means clause 29 (5) as in force immediately before the relevant day.
new clause 29 (5) means clause 29 (5) as amended by the amending Regulation (within the meaning of clause 50).
relevant day means 1 February 2015 (being the day on which the amending Regulation commences).
transitional period means the period of 12 months commencing on the relevant day.