

# Rail Safety (Adoption of National Law) Act 2012 No 82

[2012-82]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Rail Safety (Adoption of National Law) Act 2012 No 82



New South Wales

An Act to apply as a law of this State a national law that makes provision for a national system of rail safety; to repeal the *Rail Safety Act 2008* and make consequential amendments to other legislation; to amend the *Passenger Transport Act 1990* and the *Transport Administration Act 1988* with respect to the regulation of transport safety; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Rail Safety (Adoption of National Law) Act 2012*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Rail Safety National Law set out in the Schedule to the South Australian Act.

### 3 Interpretation

- (1) In this Act:

***Rail Safety National Law (NSW)*** means the provisions applying in this jurisdiction because of section 4.

***South Australian Act*** means the *Rail Safety National Law (South Australia) Act 2012* of South Australia.

- (2) Terms used in this Act and also in the Rail Safety National Law set out in the Schedule to the South Australian Act have the same meanings in this Act as they have in that Law.
- (3) This section does not apply to the extent that the context or subject-matter otherwise indicates or requires.

(4) Notes included in this Act do not form part of this Act.

## Part 2 Application of Rail Safety National Law

### 4 Application of Rail Safety National Law

The Rail Safety National Law, as amended from time to time, set out in the Schedule to the South Australian Act:

- (a) applies as a law of this jurisdiction, with the modifications set out in Schedule 1, and
- (b) as so applying may be referred to as the *Rail Safety National Law (NSW)*, and
- (c) so applies as if it were an Act.

**Note—**

A copy of the Rail Safety National Law is set out at the end of this Act.

### 5 Interpretation of certain expressions for the purposes of this jurisdiction

In the *Rail Safety National Law (NSW)*:

**Rail Safety National Law** or **this Law** means the *Rail Safety National Law (NSW)*.

**the jurisdiction** or **this jurisdiction** means New South Wales.

### 6 Exclusion of legislation of this jurisdiction and South Australia

(1) The following Acts of this jurisdiction do not apply to the *Rail Safety National Law (NSW)* or to the instruments made under that Law:

- (a) the *Freedom of Information Act 1989*,
- (b) the *Government Information (Information Commissioner) Act 2009*,
- (c) the *Government Information (Public Access) Act 2009*,
- (d) the *Interpretation Act 1987* (except Part 6A and the provisions applying under section 7),
- (e) the *Ombudsman Act 1974*,
- (f) the *Subordinate Legislation Act 1989*,
- (g) the *State Records Act 1998*.

(2) Despite section 263 (2) of the *Rail Safety National Law (NSW)*, the following Acts of South Australia apply as laws of this State for the purposes of the *Rail Safety National Law (NSW)* or to instruments made under that Law:

- (a) the *Freedom of Information Act 1991*,

(b) the *Ombudsman Act 1972*,

(c) the *State Records Act 1997*.

(3) The *Acts Interpretation Act 1915*, and other Acts (other than Acts referred to in subsection (2)), of South Australia do not apply to the *Rail Safety National Law (NSW)* or the instruments made under that Law.

## **7 Disallowance of national regulations**

(1) Sections 40 and 41 of the *Interpretation Act 1987* apply to the national regulations.

(2) However, if a national regulation is disallowed in this jurisdiction, the regulation does not cease to have effect in this jurisdiction unless the regulation is disallowed in a majority of the participating jurisdictions (and, in such a case the regulation ceases to have effect on the date of its disallowance in the last of the jurisdictions forming the majority).

## **Part 3 Provisions relating to drug and alcohol testing and train communications**

### **Division 1 Drug and alcohol testing**

#### **8 Regulations relating to alcohol and drug testing**

(1) The regulations may make provision for or with respect to the following:

(a) the authorisation of persons (including rail safety officers):

(i) to administer breath tests, breath analyses, drug screening tests or other tests for the purpose of detecting the presence of alcohol or drugs, and

(ii) to operate equipment for that purpose,

(b) the circumstances when tests for detecting the presence of alcohol or drugs may be conducted, including (but not limited to) random testing and testing of rail safety workers when about to carry out, or while on duty for the purpose of carrying out, rail safety work,

(c) the conduct of testing, which may include the taking of blood or urine samples or other body tissues or fluids,

(d) the taking of samples of blood, oral fluids, urine or other body fluids or tissues,

(e) the devices used in carrying out breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,

(f) the accreditation of persons conducting analyses for the presence of drugs,

- (g) the procedure for the handling and analysis of samples of blood, oral fluids, urine or other body tissues or fluids,
  - (h) offences relating to refusal or failure to undergo tests or otherwise comply with test procedures or interference with test results,
  - (i) offences relating to refusal or failure to administer tests or take samples or to do so in accordance with required procedures,
  - (j) evidence in proceedings as to matters relating to drug and alcohol testing,
  - (k) without limiting paragraph (j), the use of certificates as to concentration of alcohol or presence of drugs as evidence of the matters stated in the certificate in proceedings for offences,
  - (l) confidentiality of test results,
  - (m) protection against liability for persons administering tests or taking samples of blood, urine or other body tissues or fluids,
  - (n) disciplinary action that may be taken consequent on a breach of regulations made under this section.
- (2) The regulations may provide that an offence under a regulation made under this section relating to a refusal or failure by a rail safety worker to undergo tests or otherwise comply with test procedures or the interference by a rail safety worker with test results, may, in addition to the penalty provided for by section 10 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.

## **Division 2 Train communications**

### **9 Regulations relating to train communications**

The regulations may make provision for or with respect to requirements for train communication systems.

## **Part 4 Miscellaneous**

### **10 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may:
  - (a) amend Schedule 1, and

- (b) prescribe modifications to the regulations, as amended from time to time, under the Rail Safety National Law set out in the Schedule to the South Australian Act for the purposes of section 4 of this Act.
- (3) Regulations made under this Act may create offences punishable by a penalty not exceeding 250 penalty units.
- (4) The Governor may make such regulations as are contemplated by the *Rail Safety National Law (NSW)* as being made under this Act.

#### **11 Regulations containing savings and transitional provisions**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the *Rail Safety National Law (NSW)*) or any Act that amends this Act or that Law.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

#### **12 Proceedings for offences**

Proceedings for an offence against regulations made under this Act are to be dealt with summarily before the Local Court.

#### **13 Provision of information and assistance by ITSR**

- (1) The Independent Transport Safety Regulator (the *ITSR*) is authorised, on its own initiative or at the request of the Office of the National Rail Safety Regulator, to provide that Office with the following:
  - (a) any information (including information given in confidence) in the possession or control of the ITSR that is reasonably required by that Office for the purposes of this Act or the *Rail Safety National Law (NSW)*,
  - (b) any other assistance that is reasonably required by that Office to exercise a function or power under this Act or that Law.



- (2) The ITSr may authorise the Office of the National Rail Safety Regulator to disclose information provided under this section even if the information was given to the ITSr in confidence.
- (3) Nothing done or authorised to be done by the ITSr in acting under this section:
  - (a) constitutes a breach of, or default under, an Act or other law, or
  - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking, or
  - (c) constitutes a breach of duty of confidence (whether arising by contract, in equity or by custom or in any other way), or
  - (d) constitutes a civil or criminal wrong, or
  - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy, or
  - (f) releases a surety or any other obligee wholly or in part from an obligation.
- (4) This section has effect despite any other Act or law.

#### **14 (Repealed)**

### **Schedule 1 New South Wales changes and additions to Rail Safety National Law**

#### **[1] Section 4 Interpretation**

Insert in alphabetical order in section 4 (1):

***emergency services*** means—

- (a) the NSW Police Force; or
- (b) Fire and Rescue NSW; or
- (c) any other person or body prescribed by the regulations under the application Act for the purposes of this definition;

**Note—**

This definition is an additional New South Wales provision.

***Gazette*** means the New South Wales Government Gazette;

**Note—**

This definition is an additional New South Wales provision.

**Health Practitioner Regulation National Law** means—

(a) the Health Practitioner Regulation National Law—

- (i) as in force from time to time, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland; and
- (ii) as it applies as a law of New South Wales or another State or a Territory; or

(b) the law of another State or a Territory that substantially corresponds to the law referred to in paragraph (a);

**Note—**

This definition is an additional New South Wales provision.

**magistrate** means a person appointed or taken to be appointed under the *Local Court Act 2007* as a Magistrate of the Local Court;

**Note—**

This definition is an additional New South Wales provision.

**police officer** means a member of the NSW Police Force who is a police officer within the meaning of the *Police Act 1990*;

**Note—**

This definition is an additional New South Wales provision.

**road** has the same meaning as it has in the *Roads Act 1993*;

**Note—**

This definition is an additional New South Wales provision.

**road vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle;

**Note—**

This definition is an additional New South Wales provision.

**shared path** has the same meaning as in the *Road Rules 2008*;

**Note—**

This definition is an additional New South Wales provision.

## [2] Section 4 (1), definition of “public road”

Omit the definition. Insert instead:

**public road** means a public road within the meaning of the *Roads Act 1993* (other than a Crown road within the meaning of that Act);

**Note—**

This definition is an additional New South Wales provision.

**[3] Section 4 (1), definition of “responsible Minister”**

Omit the definition. Insert instead:

**responsible Minister** means the Minister administering the *Rail Safety (Adoption of National Law) Act 2012*.

**Note—**

This definition is an additional New South Wales provision.

**[4] Section 4 (3A)**

Insert after section 4 (3):

(3A) In this Law, a reference to a **court**—

- (a) in sections 197 and 255, is a reference to the District Court; and
- (b) in section 217, in relation to a decision set out in items 1–23, 30 and 32–39 of the table to section 215(1), is a reference to the Civil and Administrative Tribunal; and
- (c) in section 217, in relation to a decision set out in items 24–29 and 31 of the table to section 215(1), is a reference to the Industrial Relations Commission.

**Note—**

This subsection is an additional New South Wales provision.

**[5] Section 126 Authorised person may require preliminary breath test or breath analysis**

Insert at the end of section 126 (1) (e):

; or

(e1) without limiting a preceding paragraph—is involved in an accident or irregular incident while carrying out rail safety work,

**Note—**

This paragraph is an additional New South Wales provision.

**[6] Section 127 Authorised person may require drug screening test, urine screening test, oral fluid analysis and blood test**

Insert at the end of section 127 (1) (e):

; or

(e1) without limiting a preceding paragraph—is involved in an accident or irregular incident while carrying out rail safety work,

**Note—**

This paragraph is an additional New South Wales provision.

**[7] Section 127**

Insert “urine screening test,” after “drug screening test,” wherever occurring.

**[8] Section 129 Oral fluid or blood sample or urine sample or results of analysis etc not to be used for other purposes**

Insert “or urine” after “oral fluid or blood”.

**[9] Section 129**

Omit “oral fluid analysis or blood test”.

Insert instead “urine screening test, oral fluid analysis or blood or urine test”.

**[10] Section 129A**

Insert after section 129:

**129A Additional NSW matters related to drug and alcohol testing and related offences**

- (1) For the purposes of sections 126 and 127, a rail safety worker is to be regarded as being about to carry out rail safety work if the worker—
  - (a) has left home or a temporary residence for work (being rail safety work); and
  - (b) has not commenced work after having so left home or the temporary residence.
- (2) It is a defence to a prosecution for an offence under section 126 or 127 if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.
- (3) A rail safety worker is not liable to be convicted of both—
  - (a) an offence under section 126 (3) and an offence under section 128 (1) (c); or
  - (b) an offence under section 127 (3) and an offence under section 128 (1) (c); or
  - (c) an offence under section 128 (1) (a) and an offence under section 128 (1) (c); or

- (d) an offence under section 128 (1) (b) and an offence under section 128 (1) (c).
- (4) The regulations under the application Act may make provision for or with respect to the following—
- (a) limiting the circumstances when a requirement may be made under section 126 or 127;
  - (b) the circumstances in which a rail safety worker may not be required to undergo a test or analysis or provide a sample for the purposes of this Division;
  - (c) limiting the use of testing or analysis results from a rail safety worker who was about to carry out rail safety work,
  - (d) requirements to undergo sobriety assessments.

**Note—**

This section is an additional New South Wales provision.

**[11] Section 150 Search warrants**

Insert after section 150 (6):

(6A) In this section, **magistrate** means an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**Note—**

This subsection is an additional New South Wales provision.

**[12] Section 218A**

Insert after section 218:

**218A Proceedings for offences**

- (1) Except as provided by this section, proceedings for an offence against this Law or the national regulations are to be dealt with summarily—
  - (a) before the Local Court; or
  - (b) before the District Court in its summary jurisdiction.
- (2) Proceedings for a Category 3 offence are to be dealt with summarily—
  - (a) before the Local Court; or

- (b) before the Industrial Court.
- (3) Proceedings for a Category 1 offence committed by an individual are to be taken on indictment.
- (4) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Law or the national regulations is \$50 000, despite any higher maximum monetary penalty provided in respect of the offence.
- (5) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from the Local Court to the Industrial Court in connection with offences against that Act apply to proceedings before the Local Court for Category 3 offences.

**Note—**

Section 197 of the *Industrial Relations Act 1996* deals with appeals against convictions or penalties in connection with offences against that Act.

**Note—**

This section is an additional New South Wales provision.

## **Schedule 2 (Repealed)**