

NORTHERN TERRITORY OF AUSTRALIA

RAIL SAFETY (NATIONAL UNIFORM LEGISLATION) ACT 2012

As in force at 21 January 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 21 January 2013. Any amendments that commence after that date are not included.

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## RAIL SAFETY (NATIONAL UNIFORM LEGISLATION) ACT 2012

An Act to apply as a law of the Territory a national law regulating rail safety, and for related purposes

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Rail Safety (National Uniform Legislation) Act 2012*.

#### 2 Commencement

- (1) This Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) Different days may be fixed under subsection (1) for the commencement of different provisions of the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA).

#### 3 Definitions

- (1) For the purposes of this Act, the *local application provisions of this Act* are the provisions of this Act other than the *Rail Safety National Law (NT)*.
- (2) In the local application provisions of this Act:  
  
*local regulations* means regulations made under section 36 or 47.  
  
*Rail Safety National Law (NT)* means the provisions applying in this jurisdiction because of section 4.
- (3) Also, in the local application provisions of this Act:  
  
*analyst*, for Part 4, see section 10(1).  
  
*BAC*, for Part 4, see section 10(1).

**BrAC**, for Part 4, see section 10(1).

**breath analysis instrument**, for Part 4, see section 10(1).

**drug screening test**, for Part 4, see section 10(1).

**health practitioner**, for Part 4, see section 10(1).

**oral fluid analysis**, for Part 4, see section 10(1).

**preliminary breath test**, for Part 4, see section 10(1).

**prescribed BAC**, in relation to a rail safety worker, for Part 4, see section 10(1).

**prohibited drug**, for Part 4, see section 10(1).

**qualified person**, for Part 4, see section 10(1).

- (4) Terms used in the local application provisions of this Act and also in the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA) have the same meanings in those provisions as they have in that Law.

## Part 2 Adoption of Rail Safety National Law

### 4 Adoption of Rail Safety National Law

The Rail Safety National Law, as in force from time to time, set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA):

- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the *Rail Safety National Law (NT)*; and
- (c) so applies as if it were a part of this Act.

### 5 Meaning of generic terms in *Rail Safety National Law (NT)* for purposes of this jurisdiction

- (1) In the *Rail Safety National Law (NT)*:

**court** means the following:

- (a) for Parts 5 and 6 – the Local Court;
- (b) for Part 9, Division 6 – a court of summary jurisdiction.

**emergency services** means each of the following:

- (a) the Police Force of the Northern Territory established by section 5(1) of the *Police Administration Act*,
- (b) the Northern Territory Fire and Rescue Service established by section 5(1) of the *Fire and Emergency Act*,
- (c) the Northern Territory Emergency Service as mentioned in section 17 of the *Disasters Act*,
- (d) another body or organisation prescribed by local regulations.

**Gazette** means the Government *Gazette* of the Northern Territory.

**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* (Qld); and
  - (ii) as it applies as a law of the Territory, a State or another Territory (with or without modification); or
- (b) the law of a State or another Territory that substantially corresponds to the law referred to in paragraph (a).

**magistrate** means a Magistrate as defined in section 3 of the *Magistrates Act*.

**medical practitioner** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student).

**Minister** means the Minister allotted responsibility for the administration of this Act by an Administrative Arrangement Order made under section 35 of the *Interpretation Act*.

**police officer** means a member of the Police Force of the Northern Territory established by section 5(1) of the *Police Administration Act*.

**prescribed notifiable occurrence** means a prescribed notifiable occurrence within the meaning of the national regulations.

**public sector auditor** means the Auditor-General of the Northern Territory.

**registered nurse** means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

**road** means an area that:

- (a) is open to or used by the public; and
- (b) is developed for, or has as one of its main uses, the driving, riding or towing of road vehicles.

**road vehicle** means a motor vehicle as defined in section 3(1) of the *Traffic Act*.

**shared path** means an area that:

- (a) is open to or used by the public; and
- (b) is developed for, or has as one of its main uses, use by both pedestrians and riders of bicycles.

**the jurisdiction or this jurisdiction** means the Northern Territory.

- (2) For the local application provisions of this Act, the *Rail Safety National Law (NT)* and any other Act or law:
  - (a) the Office of the National Rail Safety Regulator is not an Agency as defined in section 18A of the *Interpretation Act*, and
  - (b) an employee of the Office of the National Rail Safety Regulator is not an employee as defined in section 3(1) of the *Public Sector Employment and Management Act*.

## 6 No double jeopardy

Proceedings for an offence against the *Rail Safety National Law (NT)* (the **NT offence**) cannot be brought against a person if the person has, for the same alleged act or omission, been convicted or found guilty in a participating jurisdiction of an offence that substantially corresponds to the NT offence.

## 7 Exclusion of legislation of this jurisdiction

- (1) The *Interpretation Act* does not apply to the *Rail Safety National Law (NT)* or to instruments made under that Law, other than to the extent provided for in section 8(3).

*Note for subsection (1)*

*Even though the Interpretation Act does not apply to the Rail Safety National Law (NT) or to instruments made under that Law, it applies to the local application provisions of this Act and to instruments made under those provisions (including local regulations).*

- (2) Subject to subsection (3), the following Acts, or provisions of Acts, of this jurisdiction do not apply to the *Rail Safety National Law (NT)* or to instruments made under that Law (except as applied under the Law):

- (a) the *Audit Act*,
- (b) the *Financial Management Act*,
- (c) the following provisions of the *Information Act*.
  - (i) Parts 2, 3 and 4;
  - (ii) sections 103, 108(1) and (2) and 114;
  - (iii) Part 9;
  - (iv) sections 147, 152(2), 153, 156, 157, 159(1), (2) and (3), 158 and 160;
  - (v) Schedule 1;
- (d) the *Ombudsman Act*,
- (e) the *Procurement Act*,
- (f) the *Public Information Act*,
- (g) the *Public Interest Disclosure Act*,
- (h) the *Public Sector Employment and Management Act*.

- (3) The Acts referred to in subsection (2) apply to a Territory entity, or an officer or employee of the entity, exercising a function under the *Rail Safety National Law (NT)*.



## Part 3 National regulations

### 8 National regulations to be tabled in Legislative Assembly

- (1) The Minister must table national regulations in the Legislative Assembly within 3 sitting days of the Assembly after they are published as mentioned in section 265(1) of the *Rail Safety National Law (NT)*.
- (2) If national regulations are not tabled in the Legislative Assembly in accordance with subsection (1), the regulations that have not been tabled cease to apply as laws of this jurisdiction.
- (3) Section 67 of the *Interpretation Act* applies in relation to the tabling of national regulations under this section.

*Note for subsection (3)*

*Section 67 of the Interpretation Act relates to the method of tabling of documents in the Legislative Assembly.*

### 9 National regulations disallowed by Legislative Assembly

- (1) If the Legislative Assembly passes a resolution (notice of which has been given at any time within 12 sitting days after national regulations have been tabled in the Assembly) disallowing national regulations, or provisions of national regulations, the disallowance has the same effect as a repeal of the regulations or provisions.
- (2) If the disallowed national regulations or a disallowed provision of the national regulations (each of which is the ***disallowed provision***) amended or repealed another provision of the national regulations in force in this jurisdiction immediately before the commencement of the disallowed provision, the disallowance revives the other provision from the date of the disallowance as if the disallowed provision had not been made.
- (3) In this section:

***commencement***, of a provision of national regulations, means commencement as mentioned in section 265(2) of the *Rail Safety National Law (NT)*.

## Part 4            Local provisions for alcohol and drug testing

### Division 1        Preliminary matters

#### 10            Interpretation

(1) In this Part:

***analyst*** means a person prescribed by local regulations to be an analyst for this Part.

***BAC*** means blood alcohol concentration.

***BrAC*** means breath alcohol concentration.

***breath analysis instrument*** means a device prescribed by local regulations to be a breath analysis instrument for this Part.

***drug screening test*** means a test of a kind approved by the Commissioner of Police as a drug screening test for this Part.

***health practitioner*** means:

- (a) a medical practitioner as defined in section 5(1); or
- (b) a registered nurse as defined in section 5(1); or
- (c) a qualified person.

***oral fluid analysis*** means a method of analysis of a kind approved by the Commissioner of Police as an oral fluid analysis for this Part.

***preliminary breath test*** means a test of a kind approved by the Commissioner of Police as a preliminary breath test for this Part.

***prescribed BAC***, in relation to a rail safety worker, means the prescribed concentration of alcohol, as defined in section 128(5) of the *Rail Safety National Law (NT)*, in the rail safety worker's blood.

***prohibited drug*** means a prescribed drug as defined in section 128(5) of the *Rail Safety National Law (NT)*.

***qualified person*** means a person who has been trained to take samples of blood from persons by a registered training organisation within the meaning of the Australian Quality Training Framework as approved from time to time under the *Skilling Australian Workforce Act 2005 (Cth)*.

- (2) For this Part and Part 3, Division 9 of the *Rail Safety National Law (NT)*, anything done by a person acting under the supervision or direction of a medical practitioner, registered nurse or analyst is taken to have been done by the medical practitioner, registered nurse or analyst, as the case may be.
- (3) For this Part, anything done by a person acting under the supervision or direction of a qualified person is taken to have been done by the qualified person.
- (4) For this Part and section 128 of the *Rail Safety National Law (NT)*, if a breath analysis instrument gives a result expressed as BrAC of a particular numerical value, the result is taken to be expressed as BAC of a corresponding numerical value as mentioned in local regulations.

## **Division 2            Alcohol testing**

### **11            Preliminary breath test or breath analysis**

- (1) An authorised person's power under section 126 of the *Rail Safety National Law (NT)* to require a rail safety worker to submit to testing by means of a preliminary breath test or breath analysis (or both) is subject to this Division.
- (2) A requirement mentioned in subsection (1) in relation to a rail safety worker for the purpose of requiring the worker to submit to testing by means of a preliminary breath test or breath analysis (or both) is a direction to the worker as mentioned in section 126(3) of the *Rail Safety National Law (NT)*.

### **12            When breath test or breath analysis may be required**

- (1) An authorised person may require a rail safety worker to submit to a preliminary breath test or breath analysis (or both):
  - (a) on a random basis – without suspecting the worker has the prescribed BAC; or
  - (b) on a non-random basis – in either or both of the following circumstances:
    - (i) the authorised person suspects, on reasonable grounds, that the worker has the prescribed BAC;
    - (ii) a prescribed notifiable occurrence happens involving the worker.
- (2) Subsection (1) is subject to sections 13 to 15.

**13 Rail safety worker not obliged to comply with requirement in certain circumstances**

- (1) A rail safety worker who is still on railway premises after carrying out rail safety work is not obliged to comply with a requirement made under section 126(1) of the *Rail Safety National Law (NT)* if:
- (a) the worker is not involved in a prescribed notifiable occurrence; and
  - (b) more than 30 minutes have passed since the worker carried out the work.
- (2) A rail safety worker who is involved in a prescribed notifiable occurrence is not obliged to comply with a requirement made under section 126(1) of the *Rail Safety National Law (NT)* if:
- (a) more than 4 hours have passed since the worker was involved in the occurrence; or
  - (b) the worker:
    - (i) has completed rail safety work for the work shift and departed from his or her work location for the work shift; and
    - (ii) was unaware of the occurrence when the worker completed work for the work shift.

**14 Authorised person must not make requirement in certain circumstances**

An authorised person must not require a rail safety worker to submit to a preliminary breath test or breath analysis (or both) if the authorised person suspects, on reasonable grounds:

- (a) that the worker is injured and that it might be detrimental to the worker's medical condition for the worker to submit to the preliminary breath test or breath analysis; or
- (b) that the worker has a physical disability that prevents the worker from providing a sufficient sample of breath for the completion of a preliminary breath test or breath analysis.

## **15 Conduct of breath analysis**

- (1) An authorised person must not conduct a breath analysis for this Division unless the authorised person is:
  - (a) a police officer authorised by the Commissioner of Police to use a breath analysis instrument for this Act or any other Act; or
  - (b) any other person authorised by the Regulator to use a breath analysis instrument.
- (2) An authorised person conducting a breath analysis for this Division must use a breath analysis instrument.

## **16 Further breath analysis**

- (1) An authorised person may require a rail safety worker to submit to one or more breath analyses whether or not the worker provided a sufficient sample for an earlier analysis.
- (2) A requirement under subsection (1):
  - (a) may be made only if it is reasonable in the circumstances; and
  - (b) is subject to section 13.

## **17 Rail safety worker may request further breath analysis**

- (1) A rail safety worker who has submitted to a breath analysis (whether or not the sample provided was sufficient) may request that a further analysis be conducted on another sample of the worker's breath.
- (2) The request must be made without undue delay after the rail safety worker is advised of the outcome in relation to the initial sample.
- (3) An authorised person must conduct an analysis on the other sample unless it is insufficient.

## **18 Breath analysis indicates prescribed BAC**

If an analysis of breath by a breath analysis instrument indicates a rail safety worker has the prescribed BAC, the authorised person who operated the instrument must give to the worker without delay a written statement (or a statement printed by the instrument) stating:

- (a) the date the sample of breath was taken and analysed; and
- (b) the time of the breath analysis; and

(c) the result of the analysis.

**19            Rail safety worker may request blood sample be taken after breath analysis**

A rail safety worker who submits to a breath analysis may, after the breath analysis and whether or not the analysis was successful, request that a sample of his or her blood be taken for analysis.

**20            Rail safety worker may request blood sample be taken instead of preliminary breath test or breath analysis**

- (1) A rail safety worker who refuses or fails to submit to a preliminary breath test or breath analysis under section 12, or a further breath analysis under section 16(1), because of a medical or physical condition may request a sample of his or her blood be taken instead.
- (2) The rail safety worker does not commit an offence under section 126(3) of the *Rail Safety National Law (NT)* if the worker provides the sample of his or her blood in accordance with the authorised person's reasonable directions.

**Division 3            Drug testing**

**21            Drug screening test or oral fluid analysis**

- (1) An authorised person's power under section 127 of the *Rail Safety National Law (NT)* to require a rail safety worker to submit to a drug screening test or oral fluid analysis (or both) (whether or not in combination with a blood test) is subject to this Division.
- (2) A requirement mentioned in subsection (1) made in relation to a rail safety worker for the purpose of requiring the worker to submit to a drug screening test or oral fluid analysis (or both) is a direction to the worker as mentioned in section 127(3) of the *Rail Safety National Law (NT)*.

**22            When drug screening test or oral fluid analysis may be required**

- (1) An authorised person may require a rail safety worker to submit to a drug screening test or oral fluid analysis (or both):
  - (a) on a random basis – without suspecting the worker has a prohibited drug in his or her body; or

- (b) on a non-random basis – in either or both of the following circumstances:
  - (i) the authorised person suspects, on reasonable grounds, that the worker has a prohibited drug in his or her body;
  - (ii) a prescribed notifiable occurrence happens involving the worker.

- (2) Subsection (1) is subject to sections 23 and 24.

**23 Rail safety worker not obliged to comply with requirement in certain circumstances**

- (1) A rail safety worker who is still on railway premises after carrying out rail safety work is not obliged to comply with a requirement made under section 127(1) of the *Rail Safety National Law (NT)* to submit to a drug screening test or oral fluid analysis (or both) if:
  - (a) the worker is not involved in a prescribed notifiable occurrence; and
  - (b) more than 30 minutes have passed since the worker carried out the work.
- (2) A rail safety worker who is involved in a prescribed notifiable occurrence is not obliged to comply with a requirement made under section 127(1) of the *Rail Safety National Law (NT)* to submit to a drug screening test or oral fluid analysis (or both) if:
  - (a) more than 4 hours have passed since the worker was involved in the occurrence; or
  - (b) the worker:
    - (i) has completed rail safety work for the work shift and departed from his or her work location for the work shift; and
    - (ii) was unaware of the occurrence when the worker completed work for the work shift.

**24 Authorised person must not make requirement in certain circumstances**

An authorised person must not require a rail safety worker to submit to a drug screening test or oral fluid analysis (or both) if the authorised person suspects, on reasonable grounds:

- (a) that the worker is injured and that it might be detrimental to the worker's medical condition for the worker to submit to a drug screening test or oral fluid analysis; or
- (b) that the worker has a physical disability that prevents the worker from providing a sufficient sample for a drug screening test or oral fluid analysis.

**Division 4 Blood sample**

**25 Provision of blood sample**

- (1) An authorised person's power under section 127 of the *Rail Safety National Law (NT)* to require a rail safety worker to submit to a blood test (whether or not in combination with a drug screening test, oral fluid analysis or both) is subject to this Division.
- (2) A requirement mentioned in subsection (1) made in relation to a rail safety worker for the purpose of requiring the worker to submit to a blood test is a direction to the worker as mentioned in section 127(3) of the *Rail Safety National Law (NT)*.

**26 Blood sample after preliminary breath test or breath analysis requirement**

- (1) If a rail safety worker who is required by an authorised person to submit to a preliminary breath test or breath analysis under section 12, or a further breath analysis under section 16(1), refuses or fails to provide a sufficient sample of breath, the authorised person may require the worker to provide a sample of the worker's blood.
- (2) However, the authorised person cannot require a rail safety worker to provide a sample of his or her blood under subsection (1) if the worker is not obliged to submit to a preliminary breath test or breath analysis as mentioned in section 13.



- (3) An authorised person may also require a rail safety worker to provide a sample of his or her blood if, as a result of a preliminary breath test under section 12, the authorised person has formed the opinion the worker might have the prescribed BAC and it is not possible to conduct a breath analysis.

*Examples for subsection (3)*

- 1 *There is no authorised person available to operate a breath analysis instrument.*
- 2 *Breath analysis is attempted but the instrument malfunctions.*

**27 Blood sample after drug screening or oral fluid analysis requirement**

An authorised person may require a rail safety worker to provide a sample of the worker's blood in any of the following circumstances:

- (a) if an authorised person requires the worker to submit to a drug screening test or oral fluid analysis and the worker refuses to submit to, or fails to provide a sufficient sample for, the test;
- (b) if, as a result of a drug screening test or oral fluid analysis, the authorised person suspects on reasonable grounds that the worker might have a prohibited drug in his or her body;
- (c) if the authorised person did not require the worker to submit to a drug screening test or oral fluid analysis for a reason mentioned in section 24;
- (d) if the worker is involved in a prescribed notifiable occurrence.

**28 Rail safety worker not obliged to comply with requirement in certain circumstances**

- (1) A rail safety worker who is still on railway premises after carrying out rail safety work is not obliged to comply with a requirement made under section 127(1) of the *Rail Safety National Law (NT)* to submit to a blood test if:
  - (a) the worker is not involved in a prescribed notifiable occurrence; and
  - (b) more than 30 minutes have passed since the worker carried out the work.

- (2) A rail safety worker who is involved in a prescribed notifiable occurrence is not obliged to comply with a requirement made under section 127(1) of the *Rail Safety National Law (NT)* to submit to a blood test if:
- (a) more than 4 hours have passed since the worker was involved in the occurrence; or
  - (b) the worker:
    - (i) has completed rail safety work for the work shift and departed from his or her work location for the work shift; and
    - (ii) was unaware of the occurrence when the worker completed work for the work shift.

**29 Compulsory blood testing following a prescribed notifiable occurrence**

- (1) If a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and, within 4 hours after the occurrence, the worker attends at, or is admitted to, a hospital or health centre to receive treatment for the injury, the person in charge of the hospital or health centre must ensure that a sample of the worker's blood is taken as soon as practicable (even though the worker might be unconscious).
- (2) If a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and the worker is dead on arrival at the hospital or health centre, or dies before a sample of blood has been taken, the medical practitioner who, under section 12 of the *Coroners Act*, reports the death to a coroner must:
- (a) take a sample of blood from the body of the deceased or cause a sample to be taken; or
  - (b) notify the coroner as soon as practicable that, in view of the circumstances in which the death occurred, a sample of blood should be taken from the body of the deceased.
- (3) The coroner, on receipt of notice under subsection (2)(b), may authorise and direct a pathologist to take a sample of blood from the body of the deceased.
- (4) A health practitioner is not obliged to take a sample of blood under this section if a sample of blood has previously been taken under this section by another health practitioner.

(5) In this section:

*health centre* means a health centre within the meaning of the *Medical Services Act*.

*hospital* means premises declared under section 6(2) of the *Medical Services Act* to be a hospital.

## Division 5 Evidence

### 30 Use of test or analysis result in court proceedings

(1) This section applies in any court proceedings in relation to a rail safety worker even if evidence is given in the proceedings that the worker consumed alcohol or a prohibited drug:

- (a) after the relevant time in relation to the worker; and
- (b) before a preliminary breath test, breath analysis, drug screening test or oral fluid analysis was conducted in relation to the worker or a sample of the worker's blood was taken.

(2) If the breath analysis was conducted in relation to the person in accordance with this Part, the BrAC or BAC indicated by the analysis is taken to be the BAC of the person at the relevant time.

(3) If more than one breath analysis was conducted, the lower of the BrACs or BACs indicated is taken to be the BAC of the person at the relevant time.

(4) If a sample of a person's blood was taken under this Part:

- (a) the BAC indicated by an analysis of the sample is taken to be the BAC of the person at the relevant time; and
- (b) any prohibited drug detected by an analysis of the sample is taken to have been present in the person's body at the relevant time.

(5) In this section:

*relevant time*, in relation to a person who is a rail safety worker, means:

- (a) if the worker was tested for alcohol or prohibited drugs because of the worker's involvement in a prescribed notifiable occurrence – the time the occurrence happened; or
- (b) otherwise – the time the worker last carried out rail safety work.

### 31 Evidence by certificate

- (1) In any court proceedings, a certificate in an approved form purporting to be signed by any of the following is prima facie evidence of the matters stated in the certificate and the facts on which they are based:
- (a) the Commissioner of Police – certifying either of the following about a person named in the certificate:
    - (i) the person is a police officer authorised to use a breath analysis instrument;
    - (ii) the person is an analyst;
  - (b) the Regulator – certifying a person named in the certificate is an authorised person;
  - (c) an authorised person – certifying the following:
    - (i) the apparatus used by the authorised person was a breath analysis instrument;
    - (ii) the breath analysis instrument was in proper order and properly operated;
    - (iii) the breath analysis instrument was used in a manner that complied with this Part;
    - (iv) a sample of the breath of a rail safety worker named in the certificate was provided for analysis using a breath analysis instrument;
    - (v) a BrAC expressed in grams per 210 L of exhaled breath was indicated by the breath analysis instrument as being present in the breath of the rail safety worker named in the certificate on the day and at the time specified in the certificate;
    - (vi) a BAC expressed in grams per 100 ml of blood was indicated by the breath analysis instrument as being present in the blood of the rail safety worker named in the certificate on the day and at the time specified in the certificate;
    - (vii) a requirement imposed on the authorised person by local regulations has been complied with;
  - (d) a member of the staff of a hospital or health centre – certifying something arising out of the member's occupation;

- (e) an analyst, or a person employed by an analyst – certifying something arising out of the analyst's or person's occupation.
- (2) A certificate mentioned in subsection (1)(c), (d) or (e) cannot be received as evidence against a person (the *defendant*) in proceedings for an offence against this Part or Part 3, Division 9 of the *Rail Safety National Law (NT)* if:
  - (a) a copy of the certificate has not been served on the defendant at least 7 days before the commencement of the proceedings;  
or
  - (b) the defendant has, at least 2 days before the commencement of the trial, given to the court written notice requiring the attendance at the trial of the person who signed the certificate;  
or
  - (c) the court requires the person who signed the certificate to attend at the trial.
- (3) For subsection (1), the Regulator may approve forms of certificates to be used by different persons on different occasions.

## **Division 6      Other matters for this Part**

### **32      Reports relating to worker's refusal or failure to comply with requirement of authorised person**

- (1) This section applies if a rail safety worker:
  - (a) is required by an authorised person to submit to a preliminary breath test or breath analysis and the worker:
    - (i) refuses or fails to comply with the requirement; and
    - (ii) does not provide a sample of his or her blood as mentioned in section 20(2); or
  - (b) is required by an authorised person to submit to a drug screening test, oral fluid analysis or to provide a sample of his or her blood and the worker refuses or fails to comply with the requirement.
- (2) The authorised person must, as soon as practicable, report the refusal or failure to comply with the requirement to:
  - (a) the accredited person for whom the rail safety worker performs rail safety work; and
  - (b) the Regulator.

**33            Duty of health practitioner who takes sample**

- (1) This section applies if a health practitioner takes a sample of a rail safety worker's blood for this Part.
- (2) The health practitioner must take the measures reasonably practicable in the circumstances to ensure the sample is not adulterated and does not deteriorate in a way that might prevent a proper assessment of the concentration of alcohol, or presence of a prohibited drug, by an analysis of the sample.

**34            Protection from liability of health practitioners and analysts**

A health practitioner or an analyst, or a person acting under the supervision of a health practitioner or analyst, is not criminally liable for an act done or omitted to be done by the health practitioner, analyst or person in good faith for this Part or Part 3, Division 9 of the *Rail Safety National Law (NT)*.

**35            Self-incrimination no excuse**

A person is not entitled to refuse or fail to comply with a requirement or direction relating to the taking of a sample of the person's breath, oral fluid or blood under this Part or Part 3, Division 9 of the *Rail Safety National Law (NT)* on the ground the person:

- (a) would or might, by complying with the requirement or direction, provide evidence that could be used against the person; or
- (b) consumed alcohol or a prohibited drug after the person last performed railway safety work and before the requirement or direction was made or given to him or her.

**36            Local regulations**

- (1) The Administrator may make regulations:
  - (a) under this Part or for Part 3, Division 9 of the *Rail Safety National Law (NT)*; or
  - (b) that are necessary or convenient for this Part or Part 3, Division 9 of the *Rail Safety National Law (NT)*.

- (2) The regulations may provide for the following:
- (a) the procedures for, and equipment to be used in:
    - (i) conducting a preliminary breath test, breath analysis, drug screening test or oral fluid analysis; or
    - (ii) taking a blood sample;
  - (b) the procedures for, and equipment to be used in, the analyses, tests or taking of samples mentioned in paragraph (a);
  - (c) the destruction of:
    - (i) a sample taken for this Part or Part 3, Division 9 of the *Rail Safety National Law (NT)*; and
    - (ii) any other forensic material taken incidentally for this Part or Part 3, Division 9 of the *Rail Safety National Law (NT)*.

## Part 5            Local repeal and transitional provisions

### Division 1        Preliminary matters

#### 37            Definitions

In this Part:

*commencement day* means the day on which this section commences.

*repealed Act* means the *Rail Safety Act* as in force immediately before the commencement day.

### Division 2        Repeal

#### 38            Repeal

The *Rail Safety Act 2010* (Act No. 10 of 2010) is repealed.

## Division 3 Transitional provisions

### 39 Accreditation

- (1) An application for accreditation, or variation of accreditation, made but not determined under the repealed Act immediately before the commencement day, is taken to be an application for accreditation, or variation of accreditation, under the *Rail Safety National Law (NT)* and must be determined in accordance with that Law.
- (2) A rail transport operator that, immediately before the commencement day, holds an accreditation under the repealed Act in respect of railway operations carried out by or on behalf of the operator is, on and after the commencement day, taken to hold an accreditation in respect of those railway operations under the *Rail Safety National Law (NT)* subject to any conditions and restrictions that applied to the accreditation under the repealed Act immediately before the commencement day.
- (3) If, immediately before the commencement day, the accreditation, or part of the accreditation, of a rail transport operator has been suspended under the repealed Act, the accreditation under the *Rail Safety National Law (NT)* that the operator is taken to have because of subsection (2) is subject to the same suspension as applied to the accreditation under the repealed Act immediately before the commencement day.

### 40 Registration

- (1) A rail infrastructure manager of a private siding that, immediately before the commencement day, is registered under the repealed Act is, on and after the commencement day, taken to be registered under the *Rail Safety National Law (NT)* in respect of the private siding.
- (2) A registration under subsection (1) is subject to the following conditions or restrictions determined by the Regulator by notice to the relevant rail infrastructure manager:
  - (a) any conditions or restrictions that applied to the registration under the repealed Act (whether or not they are varied by the Regulator);
  - (b) any new conditions or restrictions determined by the Regulator.



- (3) A notice under subsection (2):
- (a) must be in writing and given to the rail infrastructure manager; and
  - (b) if a condition or restriction has been imposed on the registration, must include:
    - (i) the reasons for imposing the condition or restriction; and
    - (ii) information about the right of review under Part 7 of the *Rail Safety National Law (NT)*.

#### **41 Police officers continue to be authorised**

- (1) A police officer in relation to whom an breath analysis authorisation is in force immediately before the commencement day is, on and after the commencement day, taken to be authorised to use a breath analysis instrument mentioned in section 15(1)(a).
- (2) In this section:

***breath analysis authorisation*** means an authorisation under regulation 59(1) of the *Traffic Regulations* to use a prescribed breath analysis instrument within the meaning of those Regulations.

#### **42 Alleged offences against repealed Act**

- (1) Despite the repeal effected by section 38, the repealed Act continues to apply to an offence allegedly committed against that Act before the commencement day as if that Act had not been repealed.
- (2) For this section, if an act or omission constituting an offence against the repealed Act is alleged to have taken place between 2 dates, one before and one on or after the commencement day, the act or omission is taken to be alleged to have taken place before the commencement day.

#### **43 Notifiable occurrences**

- (1) A report of a notifiable occurrence made under Part 3, Division 6 of the repealed Act immediately before the commencement day has effect as if it were a report of that occurrence made under Part 3, Division 8 of the *Rail Safety National Law (NT)*.
- (2) A notifiable occurrence that is being investigated under Part 3, Division 6 of the repealed Act immediately before the commencement day continues as if it were an investigation under Part 3, Division 8 of the *Rail Safety National Law (NT)*.

#### **44            Notices**

- (1) An improvement notice in force under Part 4, Division 7 of the repealed Act immediately before the commencement day continues to have force and effect as if it were an improvement notice under Part 5, Division 1 of the *Rail Safety National Law (NT)*.
- (2) A prohibition notice in force under Part 4, Division 8 of the repealed Act immediately before the commencement day continues to have force and effect as if it were a prohibition notice under Part 5, Division 2 of the *Rail Safety National Law (NT)*.

#### **45            Reviews and appeals**

- (1) If an application for accreditation, or variation of accreditation, has been refused under the repealed Act and the period within which the applicant could have applied for a review of the decision had that Act not been repealed has not, immediately before the commencement day, expired, the applicant may, before the expiry of that period, apply for a review of the decision under the *Rail Safety National Law (NT)* as if the decision had been made under the Law.
- (2) A person who is to be granted accreditation as the result of a review of, or appeal against, a decision made under the repealed Act who has not, immediately before the commencement day, been accredited, must be granted accreditation under the *Rail Safety National Law (NT)* subject to any conditions and restrictions that would have applied to the accreditation under the repealed Act.

#### **46            Provision of information and assistance by Director of Rail Safety**

Despite any other Act or law, the Director of Rail Safety under the repealed Act is authorised, on his or her own initiative or at the request of ONRSR:

- (a) to provide ONRSR with any information (including information given in confidence) in the possession or control of the Director that is reasonably required by ONRSR for the local application provisions of this Act or the *Rail Safety National Law (NT)*; and
- (b) to provide ONRSR with any other assistance that is reasonably required by ONRSR to exercise a function or power under the local application provisions of this Act or the *Rail Safety National Law (NT)*.

**47            Transitional regulations**

- (1) The Administrator may make regulations for this Part.
- (2) A regulation may provide for a matter of a transitional nature:
  - (a) because of the enactment of this Act; or
  - (b) to otherwise allow or facilitate the transition from the operation of the repealed Act to this Act.
- (3) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (4) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (5) The regulation must declare it is made under this section.
- (6) This section, and each regulation made under it, expire 1 year after the commencement day.

## ENDNOTES

### 1

### KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2

### LIST OF LEGISLATION

**Rail Safety (National Uniform Legislation) Act 2012 (Act No. 27, 2012)**

Assent date	6 December 2012
Commenced	20 January 2013 ( <i>Gaz</i> G1, 2 January 2013, p 3)

### 3

### LIST OF AMENDMENTS

pt 6 hdg	exp No. 27, 2012, s 49
ss 48 – 49	exp No. 27, 2012, s 49
sch	exp No. 27, 2012, s 49