

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Rail Safety National Law (ACT) Bill 2014

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Rail Safety National Law (ACT) Bill 2014

A Bill for

An Act to provide for a national system of rail safety, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Rail Safety National Law (ACT) Act 2014*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see [Legislation](#)
11 [Act](#), s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see [Legislation Act](#), s 79).

15 **3 Dictionary**

16 (1) The dictionary at the end of this Act is part of this Act.

17 (2) A definition in the dictionary applies to the local application
18 provisions of this Act.

19 *Note 1* The dictionary at the end of this Act defines certain terms used in this
20 Act, and includes references (*signpost definitions*) to other terms
21 defined elsewhere in this Act.

22 For example, the signpost definition '*this Act*, for subdivision 3.4.3
23 (Other provisions about evidence)—see section 44.' means that the term
24 'this Act' is defined in that section for subdivision 3.4.3.

25 *Note 2* A definition in the dictionary (including a signpost definition) applies to
26 the entire Act unless the definition, or another provision of the Act,
27 provides otherwise or the contrary intention otherwise appears (see
28 [Legislation Act](#), s 155 and s 156 (1)).

1 **4 Terms used in Rail Safety National Law (ACT)**

2 Terms used in the local application provisions of this Act and also in
3 the *Rail Safety National Law (ACT)* have the same meanings in
4 those provisions as they have in that Law.

5 *Note* A definition in an Act applies except so far as the contrary intention
6 appears (see [Legislation Act](#), s 155).

7 **5 Notes**

8 A note included in the local application provisions of this Act is
9 explanatory and is not part of those provisions.

10 *Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of
11 notes.

1 **Part 2** **Application of Rail Safety**
2 **National Law**

3 **6 Application of Rail Safety National Law**

4 The Rail Safety National Law set out in the schedule to the South
5 Australian Act, as amended from time to time—

- 6 (a) applies as a territory law; and
7 (b) as so applying may be referred to as the *Rail Safety National*
8 *Law (ACT)*; and
9 (c) so applies as if it were part of this Act.

10 **7 Exclusion of Legislation Act**

11 (1) The [Legislation Act](#) does not apply to the *Rail Safety National*
12 *Law (ACT)*.

13 (2) However, the [Legislation Act](#), chapter 7 (Presentation, amendment
14 and disallowance of subordinate laws and disallowable instruments)
15 applies to a national regulation as if—

16 (a) a reference to a subordinate law were a reference to a national
17 regulation; and

18 (b) a reference to ‘notification day’ in the [Legislation Act](#),
19 section 64 (Presentation of subordinate laws and disallowable
20 instruments) were a reference to ‘published’ as mentioned in
21 the *Rail Safety National Law (ACT)*, section 265 (1)
22 (Publication of national regulations); and

23 (c) any other necessary changes were made.

24 (3) Also, the [Legislation Act](#), section 104 (References to laws include
25 references to instruments under laws) and section 191 (Offences
26 against 2 or more laws) apply to the *Rail Safety National Law (ACT)*
27 as if that Law were an Act.

1 (4) This section does not limit the application of the [Legislation Act](#) to
2 the local application provisions of this Act.

3 (5) If a national regulation is published as mentioned in
4 subsection (2) (b) before the day this section commences, the
5 regulation is taken to have been published on the day this section
6 commences.

7 (6) Subsection (5) and this subsection expire 12 months after the day
8 this section commences.

9 **8 Exclusion of other territory laws**

10 (1) The following territory laws do not apply to the Regulator:

11 (a) the [Annual Reports \(Government Agencies\) Act 2004](#);

12 (b) the [Auditor-General Act 1996](#);

13 (c) the [Criminal Code](#);

14 (d) the [Financial Management Act 1996](#);

15 (e) the [Freedom of Information Act 1989](#);

16 (f) the [Government Procurement Act 2001](#);

17 (g) the [Public Interest Disclosure Act 2012](#);

18 (h) the [Public Sector Management Act 1994](#);

19 (i) the [Territory Records Act 2002](#).

- (2) However, if a function of the Regulator under the *Rail Safety National Law (ACT)* is exercised by an entity that would, apart from subsection (1), be subject to a law mentioned in that subsection, the law applies to the entity.

Example

The Regulator has an agreement mentioned in the *Rail Safety National Law (ACT)*, s 15 (2) (a) with an ACT entity. The entity is a territory authority. The *Financial Management Act 1996* applies to territory authorities. Therefore, the entity must comply with that Act when doing things under the agreement.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

9 Meaning of generic terms for Rail Safety National Law (ACT)

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

Australian Road Rules—see the *Road Transport (Safety and Traffic Management) Regulation 2000*, section 5.

Note The *Australian Road Rules* are applied in the ACT under the *Road Transport (Safety and Traffic Management) Regulation 2000*. They are to be read with, and as if they formed part of, that regulation (see s 6 (1)).

court means—

- (a) for part 5 (Enforcement measures) and part 10, division 6 (Enforceable voluntary undertakings)—the Magistrates Court; and

- (b) for part 7 (Review of decisions)—the ACAT.

emergency service—see the *Legislation Act*, dictionary, part 1, definition of **emergency service**.

Note The *Legislation Act*, dict, pt 1 defines **emergency service** as the ambulance service, fire and rescue, the rural fire service or the SES.

- 1 **magistrate** means a Magistrate under the *Magistrates Court*
2 *Act 1930*.
- 3 **Minister**—see the *Legislation Act*, section 162.
- 4 **police officer** means a member or special member of the Australian
5 Federal Police.
- 6 **public sector auditor** means the auditor-general appointed under the
7 *Public Finance and Audit Act 1987* (SA), section 24.
- 8 **road**—see the *Road Transport (General) Act 1999*, dictionary.
- 9 **road vehicle** means a motor vehicle as defined in the *Road*
10 *Transport (General) Act 1999*, dictionary.
- 11 **shared path** has the same meaning as in the *Australian Road Rules*,
12 rule 242.
- 13 **the jurisdiction** or **this jurisdiction** means the ACT.
- 14 (2) In the *Rail Safety National Law (ACT)*, a reference to giving notice
15 of something in the *Gazette* is a reference to giving notice of the
16 thing in the ACT legislation register under the *Legislation Act 2001*
17 as a notifiable instrument.

Part 3 Alcohol and drug testing

Division 3.1 Preliminary

10 Definitions—pt 3 and testing provisions

(1) In this part and the testing provisions:

alcohol screening device means a device prescribed under—

- (a) the *Road Transport (Alcohol and Drugs) Act 1977*, section 7;
or
- (b) this Act.

alcohol screening test, for a person—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

Note An alcohol screening test is a preliminary breath test for the *Rail Safety National Law (ACT)*, s 126 (see this section, def **preliminary breath test**).

analyst means an analyst appointed under—

- (a) the *Road Transport (Alcohol and Drugs) Act 1977*, section 5B;
or
- (b) section 11.

approved laboratory means a laboratory or other entity approved under—

- (a) the *Road Transport (Alcohol and Drugs) Act 1977*, section 6;
or
- (b) section 12.

blood test, for a person, means a test of a sample of the person's blood carried out in accordance with this part and the testing provisions.

- 1 ***breath analysis instrument*** means an instrument prescribed under—
- 2 (a) the *Road Transport (Alcohol and Drugs) Act 1977*, section 7A;
- 3 or
- 4 (b) this Act.
- 5 ***breath analysis***, for a person, means an analysis of a sample of the
- 6 person's breath carried out for this part and the testing provisions by
- 7 a breath analysis instrument.
- 8 ***drug screening device*** means a device prescribed under—
- 9 (a) the *Road Transport (Alcohol and Drugs) Act 1977*, section 7B;
- 10 or
- 11 (b) this Act.
- 12 ***drug screening test***, for a person, means a test of a sample of the
- 13 person's oral fluid using a drug screening device.
- 14 ***oral fluid analysis***, for a person, means an analysis of a sample of
- 15 the person's oral fluid carried out for this part and the testing
- 16 provisions using an oral fluid analysis instrument.
- 17 ***oral fluid analysis instrument*** means an instrument prescribed
- 18 under—
- 19 (a) the *Road Transport (Alcohol and Drugs) Act 1977*, section 7C;
- 20 or
- 21 (b) this Act.
- 22 ***preliminary breath test*** means an alcohol screening test.
- 23 ***prescribed concentration of alcohol***, in relation to a rail safety
- 24 worker—see the *Rail Safety National Law (ACT)*, section 128 (5).
- 25 ***prescribed drug***—see the *Rail Safety National Law (ACT)*,
- 26 section 128 (5).
- 27 ***sample taker*** means a doctor or nurse.

sampling facility means a facility prescribed under—

- (a) the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary, definition of *sampling facility*; or
- (b) this Act.

testing provisions means the *Rail Safety National Law (ACT)*, part 3, division 9.

- (2) In this part, a reference to a regulation is a reference to a regulation made for this part and the testing provisions.
- (3) For this part and the testing provisions, a thing is taken to have been done by a doctor, nurse or analyst if it is done by a person acting under the supervision or direction of the doctor, nurse or analyst.

11 Appointment of analysts

The Minister may appoint a person as an analyst for this part and the testing provisions.

Note 1 For the making of appointments (including acting appointments), see the *Legislation Act*, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see *Legislation Act*, s 207).

12 Approval of laboratories

- (1) The Minister may approve a laboratory or other entity as an approved laboratory for this part and the testing provisions.
- (2) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act*.

Division 3.2 Procedures relating to testing and analyses

Subdivision 3.2.1 Alcohol—breath testing and analysis

13 Conduct of alcohol screening test

- (1) This section applies if an authorised person requires a rail safety worker to submit to an alcohol screening test under the *Rail Safety National Law (ACT)*, section 126 (Authorised person may require preliminary breath test or breath analysis).
- (2) An authorised person must not require a rail safety worker to submit to an alcohol screening test—
- (a) if the worker was involved in a prescribed notifiable occurrence and—
- (i) the worker was taken to hospital—if more than 8 hours has passed since the worker's arrival at the hospital; or
- (ii) the worker was not taken to hospital—if more than 8 hours has passed since the prescribed notifiable occurrence happened; or
- (b) if the worker was not involved in a prescribed notifiable occurrence—if more than 8 hours has passed since the worker stopped carrying out rail safety work.

14 Detention for breath analysis

- (1) This section applies if—
- (a) the following applies:
- (i) a rail safety worker submits to an alcohol screening test under a requirement made by an authorised person under the *Rail Safety National Law (ACT)*, section 126 (Authorised person may require preliminary breath test or breath analysis);

- 1 (ii) the alcohol screening device used for the test shows that
2 the concentration of alcohol in the worker's blood or
3 breath is the prescribed concentration of alcohol; or
- 4 (b) a rail safety worker required by an authorised person to submit
5 to an alcohol screening test under the *Rail Safety National Law*
6 (*ACT*), section 126 fails to submit to the test in accordance
7 with the directions of the authorised person.
- 8 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).
- 9 (2) A police officer may take the rail safety worker into custody for the
10 worker to undertake breath analysis.
- 11 (3) If a breath analysis instrument is not available at the place where the
12 alcohol screening test is, or may be, undertaken, the police officer
13 must take the worker, as soon as practicable, to a police station or
14 other convenient place (for example, a police vehicle) for the worker
15 to undertake breath analysis.
- 16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 [Legislation Act](#), s 126 and s 132).
- 19 (4) The rail safety worker must not be held in custody after the earlier
20 of the following:
- 21 (a) the time when the authorised person gives the worker the
22 written statement mentioned in section 15 (6);
- 23 (b) the end of whichever of the periods mentioned in section 15 (2)
24 applies in relation to the worker.
- 25 (5) This section does not prevent an authorised person other than a
26 police officer from carrying out breath analysis under section 15 if
27 the circumstances mentioned in subsection (1) (a) apply to the rail
28 safety worker.

- 1 **15 Conduct of breath analysis**
- 2 (1) This section applies if an authorised person requires a rail safety
- 3 worker to submit to breath analysis under the *Rail Safety National*
- 4 *Law (ACT)*, section 126 (Authorised person may require preliminary
- 5 breath test or breath analysis).
- 6 (2) An authorised person must not require a rail safety worker to submit
- 7 to breath analysis—
- 8 (a) if the rail safety worker was required to submit to an alcohol
- 9 screening test under the *Rail Safety National Law (ACT)*,
- 10 section 126—if more than 2 hours has passed since the alcohol
- 11 screening test was carried out; or
- 12 (b) in any other case—
- 13 (i) if the worker was involved in a prescribed notifiable
- 14 occurrence and—
- 15 (A) the worker was taken to hospital—if more than
- 16 8 hours has passed since the worker's arrival at the
- 17 hospital; or
- 18 (B) the worker was not taken to hospital—if more than
- 19 8 hours has passed since the prescribed notifiable
- 20 occurrence happened; or
- 21 (ii) if the worker was not involved in a prescribed notifiable
- 22 occurrence—if more than 8 hours has passed since the
- 23 worker stopped carrying out rail safety work.
- 24 (3) Breath analysis may only be carried out by—
- 25 (a) a police officer; or
- 26 (b) for an authorised person other than a police officer—an
- 27 authorised person authorised to do so by the Regulator.
- 28 (4) A regulation may provide for the following:
- 29 (a) the conditions for carrying out breath analysis;

- 1 (b) the procedures to be followed in relation to carrying out breath
2 analysis;
- 3 (c) the circumstances in which the result of a breath analysis must
4 be disregarded for this part and the testing provisions.
- 5 (5) If, because of a regulation made for subsection (4) (c), the result of a
6 breath analysis must be disregarded for this part and the testing
7 provisions, the authorised person may, if another breath analysis
8 instrument is available at the police station or other place where the
9 requirement under subsection (1) is made, require the rail safety
10 worker to give, in accordance with the authorised person's
11 reasonable directions, a sample of the worker's breath for breath
12 analysis using another breath analysis instrument.
- 13 (6) As soon as practicable after the breath analysis has been carried out,
14 the authorised person who carried out the analysis must give the rail
15 safety worker a written statement, signed by the authorised person,
16 containing the particulars required by regulation to be included in
17 the statement.
- 18 **Example—written statement**
19 a print-out from the breath analysis instrument
- 20 *Note* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 [Legislation Act](#), s 126 and s 132).
- 23 (7) If the reading from the breath analysis instrument shows that the
24 concentration of alcohol in the rail safety worker's blood or breath is
25 the prescribed concentration of alcohol, the authorised person must
26 give the worker the written notice prescribed by regulation.

27 **16 Precautions for privacy—breath analysis**

- 28 (1) An authorised person carrying out breath analysis for a rail safety
29 worker must take all practicable steps to ensure that it is not readily
30 apparent to members of the public that the breath analysis is being
31 carried out.

3 **Subdivision 3.2.2 Prescribed drugs—screening test and**
4 **analysis**

(1) This section applies if an authorised person requires a rail safety worker to submit to a drug screening test under the *Rail Safety National Law (ACT)*, section 127 (Authorised person may require drug screening test, oral fluid analysis and blood test).

- (2) A drug screening test may only be carried out by—
- (a) a police officer; or
- (b) for an authorised person other than a police officer—an authorised person authorised to do so by the Regulator.
- (3) The rail safety worker must stay at the place where the drug screening test is being carried out for the time (not exceeding 30 minutes from the time the worker starts the test) reasonably necessary for the test to be completed in accordance with the authorised person's directions.

20 a drug screening device is not immediately available and the authorised person
21 directs the worker to stay at the place while a device is made available

26 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 [Legislation Act](#), s 126 and s 132).

- 1 (4) An authorised person must not require a rail safety worker to submit
2 to a drug screening test—
- 3 (a) if the worker was involved in a prescribed notifiable
4 occurrence and—
- 5 (i) the worker was taken to hospital—if more than 8 hours
6 has passed since the worker's arrival at the hospital; or
- 7 (ii) the worker was not taken to hospital—if more than
8 8 hours has passed since the prescribed notifiable
9 occurrence happened; or
- 10 (b) if the worker was not involved in a prescribed notifiable
11 occurrence—if more than 8 hours has passed since the worker
12 stopped carrying out rail safety work.

13 **18 Detention for oral fluid analysis**

- 14 (1) This section applies if—
- 15 (a) the following applies:
- 16 (i) a rail safety worker submits to a drug screening test under
17 a requirement made by an authorised person under the
18 *Rail Safety National Law (ACT)*, section 127 (Authorised
19 person may require drug screening test, oral fluid analysis
20 and blood test);
- 21 (ii) the drug screening device used for the test shows that a
22 prescribed drug is present in the worker's oral fluid; or
- 23 (b) a rail safety worker required by an authorised person to submit
24 to a drug screening test under the *Rail Safety National Law*
25 (*ACT*), section 127 fails to submit to the test in accordance
26 with the directions of the authorised person.

27 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- 28 (2) A police officer may take the rail safety worker into custody for the
29 worker to undertake oral fluid analysis.

- 1 (3) If an oral fluid analysis instrument is not available at the place
2 where the drug screening test is, or may be, undertaken, the police
3 officer must take the worker, as soon as practicable, to a police
4 station or other convenient place (for example, a police vehicle) for
5 the worker to undertake oral fluid analysis.

6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 [Legislation Act](#), s 126 and s 132).

- 9 (4) The rail safety worker must not be held in custody after the earlier
10 of the following:

11 (a) the time when the authorised person gives the worker the
12 written statement mentioned in section 21 (4) (Oral fluid—
13 sample taken by police officer from worker in custody—
14 preliminary analysis);

15 (b) the end of whichever of the periods mentioned in section 19 (2)
16 applies in relation to the worker.

- 17 (5) This section does not prevent an authorised person other than a
18 police officer from carrying out oral fluid analysis under section 19
19 if the circumstances mentioned in subsection (1) (a) apply to the rail
20 safety worker.

21 **19 Conduct of oral fluid analysis—generally**

- 22 (1) This section applies if an authorised person requires a rail safety
23 worker to submit to oral fluid analysis under the *Rail Safety National*
24 *Law (ACT)*, section 127 (Authorised person may require drug
25 screening test, oral fluid analysis and blood test).

- 26 (2) An authorised person must not require a rail safety worker to submit
27 to oral fluid analysis—

28 (a) if the rail safety worker was required to submit to a drug
29 screening test under the *Rail Safety National Law (ACT)*,
30 section 126—if more than 2 hours has passed since the drug
31 screening test was carried out; or

- 1 (b) in any other case—
- 2 (i) if the worker was involved in a prescribed notifiable
- 3 occurrence and—
- 4 (A) the worker was taken to hospital—if more than
- 5 8 hours has passed since the worker's arrival at the
- 6 hospital; or
- 7 (B) the worker was not taken to hospital—if more than 8
- 8 hours has passed since the prescribed notifiable
- 9 occurrence happened; or
- 10 (ii) if the worker was not involved in a prescribed notifiable
- 11 occurrence—if more than 8 hours has passed since the
- 12 worker stopped carrying out rail safety work.
- 13 (3) A sample of a rail safety worker's oral fluid for oral fluid analysis
- 14 may only be taken by—
- 15 (a) a police officer; or
- 16 (b) for an authorised person other than a police officer—an
- 17 authorised person authorised to do so by the Regulator.
- 18 (4) A regulation may provide for the following:
- 19 (a) the conditions for carrying out oral fluid analysis;
- 20 (b) the procedures to be followed in relation to carrying out oral
- 21 fluid analysis;
- 22 (c) the circumstances in which the result of oral fluid analysis
- 23 must be disregarded for this part and the testing provisions.

- 1 (5) If, because of a regulation made for subsection (4) (c), the result of
2 oral fluid analysis must be disregarded, the authorised person may,
3 if another oral fluid analysis instrument is available at the place
4 where the requirement under subsection (1) is made, require the rail
5 safety worker to give, in accordance with the authorised person's
6 reasonable directions, another sufficient sample of the worker's oral
7 fluid for oral fluid analysis using another oral fluid analysis
8 instrument.

9 **20 Oral fluid—sample taken by authorised person**

- 10 (1) This section applies if an authorised person other than a police
11 officer takes a sample of oral fluid for oral fluid analysis from a rail
12 safety worker under section 19.
- 13 (2) If oral fluid analysis is not to be disregarded for this part and the
14 testing provisions because of a regulation made for
15 section 19 (4) (c), the authorised person must—
- 16 (a) place the sample into a container; and
- 17 (b) attach a label to the container that includes the following
18 information:
- 19 (i) the authorised person's name;
- 20 (ii) the name of the rail safety worker who gave the sample;
- 21 (iii) the date and time the sample was given; and
- 22 (c) ensure that the container is sealed with a tamper-evident seal
23 that has a unique identifying number marked on it.
- 24 (3) The authorised person must ensure that the sample is taken to an
25 approved laboratory as soon as practicable after it is stored and
26 sealed.

21 Oral fluid—sample taken by police officer from worker in custody—preliminary analysis

- (1) This section applies if—
- (a) a rail safety worker has been taken into custody under section 18 for oral fluid analysis; and
 - (b) a police officer takes a sample of oral fluid for oral fluid analysis from the worker under section 19.
- (2) An authorised operator must carry out oral fluid analysis on a part of the sample.
- (3) If oral fluid analysis is not to be disregarded for this part and the testing provisions because of a regulation made for section 19 (4) (c), the authorised operator must—
- (a) place the part of the sample not analysed under this section into a container; and
 - (b) attach a label to the container that includes the following information:
 - (i) the authorised operator's name;
 - (ii) the name of the rail safety worker who gave the sample;
 - (iii) the date and time the sample was given; and
 - (c) ensure that the container is sealed with a tamper-evident seal that has a unique identifying number marked on it.

- 1 (4) As soon as practicable after oral fluid analysis has been carried out,
2 the authorised operator who carried out the analysis must give the
3 rail safety worker a written statement, signed by the authorised
4 operator, containing the particulars required by regulation to be
5 included in the statement.

6 **Example—written statement**

7 a print-out from the oral fluid analysis instrument

8 *Note* An example is part of the Act, is not exhaustive and may extend, but
9 does not limit, the meaning of the provision in which it appears (see
10 [Legislation Act](#), s 126 and s 132).

- 11 (5) The chief police officer must ensure that the sample is taken to an
12 approved laboratory as soon as practicable after it is stored and
13 sealed under subsection (3).

- 14 (6) In this section:

15 *authorised operator* means a police officer who has been authorised
16 under the [Road Transport \(Alcohol and Drugs\) Act 1977](#), section 5
17 to carry out oral fluid analysis for that Act.

18 **22 Precautions for privacy—oral fluid analysis**

- 19 (1) An authorised person carrying out oral fluid analysis for a rail safety
20 worker must take all practicable steps to ensure that it is not readily
21 apparent to members of the public that the oral fluid analysis is
22 being carried out.
- 23 (2) Subsection (1) does not apply if the oral fluid analysis is carried out
24 at a police station.

25 **23 Oral fluid—confirmatory analysis**

- 26 (1) This section applies if a sample of oral fluid is taken to an approved
27 laboratory under—
- 28 (a) section 20 (3) (Oral fluid—sample taken by authorised person);
29 or

- 1 (b) section 21 (5) (Oral fluid—sample taken by police officer from
2 worker in custody—preliminary analysis).
- 3 (2) An analyst at the approved laboratory must, as soon as practicable,
4 arrange for the analysis of the sample at the laboratory or another
5 approved laboratory to work out whether a prescribed drug is
6 present in the sample.
- 7 (3) An analyst responsible for testing the sample must take reasonable
8 care to ensure that a part of the sample (the *preserved part*)
9 sufficient for analysis to be carried out for the rail safety worker
10 who gave the sample (the *tested worker*) is protected and preserved
11 until—
- 12 (a) if a request is made under subsection (5)—the preserved part is
13 sent to the laboratory nominated by the tested worker; or
- 14 (b) in any other case—
- 15 (i) 1 year has passed since the sample was taken from the
16 tested worker; or
- 17 (ii) if a request is made by the DPP under section 32
18 (Keeping of samples—request by DPP)—the proceeding
19 to which the sample relates has finally been decided
20 (including any appeals).
- 21 (4) However, subsection (3) does not apply if the amount of the sample
22 remaining after analysis under subsection (2) is insufficient for
23 further analysis.
- 24 (5) Before the end of the period mentioned in subsection (3) (b), the
25 tested worker may ask that the preserved part of the sample be sent,
26 at the tested worker's expense, to a laboratory nominated by the
27 worker.
- 28 (6) If a request is made under subsection (5), the analyst must ensure
29 that the preserved part of the sample is sent to the nominated
30 laboratory as soon as practicable.

24 Oral fluid analysis statement

(1) As soon as practicable after an analysis of a sample of a rail safety worker's oral fluid is carried out under section 23, the authorised person must ensure the worker is given a written statement that includes the following information:

- (a) the date and time the oral fluid sample was taken;
- (b) the unique identifying number on the tamper-evident seal;
- (c) the result of the analysis;
- (d) the address where the preserved part of the oral fluid sample is being held;
- (e) that the person will be notified, in writing, of a request (if any) by the DPP under section 32 (Keeping of samples—request by DPP);
- (f) that the person may, before the end of the period mentioned in section 23 (3) (b), ask the analyst to send the preserved part of the oral fluid sample to a laboratory nominated by the worker, at the worker's expense.

(2) In this section:

preserved part—see section 23 (3).

Subdivision 3.2.3 Alcohol and drugs—blood test

25 Conduct of blood test

(1) This section applies if an authorised person requires a rail safety worker to submit to a blood test under the *Rail Safety National Law (ACT)*, section 127 (Authorised person may require drug screening test, oral fluid analysis and blood test).

(2) A blood test may only be carried out by a sample taker.

- 1 (3) An authorised person must not require a rail safety worker to submit
2 to a blood test—
- 3 (a) if the rail safety worker was required to submit to an alcohol
4 screening test or a drug screening test under the *Rail Safety*
5 *National Law (ACT)*, section 126 or section 127—if more than
6 4 hours have passed since the test was carried out; or
- 7 (b) in any other case—
- 8 (i) if the worker was involved in a prescribed notifiable
9 occurrence and—
- 10 (A) the worker was taken to hospital—if more than
11 2 hours has passed since the worker's arrival at the
12 hospital; or
- 13 (B) the worker was not taken to hospital—if more than 8
14 hours has passed since the prescribed notifiable
15 occurrence happened; or
- 16 (ii) if the worker was not involved in a prescribed notifiable
17 occurrence—if more than 8 hours has passed since the
18 worker stopped carrying out rail safety work.

19 **26 Detention for blood test**

- 20 (1) This section applies if a rail safety worker is required by an
21 authorised person to submit to a blood test under the *Rail Safety*
22 *National Law (ACT)*, section 127 (Authorised person may require
23 drug screening test, oral fluid analysis and blood test).

24 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- 25 (2) A police officer may take the rail safety worker into custody for the
26 worker to undertake a blood test.
- 27 (3) The police officer must take the rail safety worker, as soon as
28 practicable, to a hospital or sampling facility for the worker to
29 undertake a blood test.

- 1 (4) A sample of a rail safety worker's blood must be taken as soon as
2 practicable after the arrival of the worker at hospital or at the
3 sampling facility and must not be taken more than 2 hours after the
4 arrival of the worker at hospital or at the facility.
- 5 (5) The sample taker taking a sample of blood from a rail safety worker
6 must take the sample in the presence of a police officer.
- 7 (6) The rail safety worker must not be held in custody after the earlier
8 of the following:
- 9 (a) the sample of the worker's blood of the person has been taken;
- 10 (b) the end of whichever of the periods mentioned in section 25 (3)
11 applies in relation to the worker.

12 **27 Requirement to take blood test in hospital after**
13 **prescribed notifiable occurrence**

- 14 (1) This section applies if—
- 15 (a) a rail safety worker is injured as a result of a prescribed
16 notifiable occurrence; and
- 17 (b) not longer than 8 hours after the occurrence, the worker attends
18 at or is admitted to hospital to receive treatment for the injury.
- 19 (2) A doctor or nurse (the *sample taker*) who treats the rail safety
20 worker must within 2 hours after the worker arrives at the hospital
21 take a sample of the worker's blood.
- 22 (3) The rail safety worker must give a sample of the worker's blood in
23 accordance with the directions of the sample taker.

24 *Note* A rail safety worker is taken to have committed an offence against the
25 *Rail Safety National Law (ACT)*, s 127 (3) if the worker fails to comply
26 with s (3) (see s 37).

28 Taking blood samples

- (1) This section applies if a sample of blood is taken under this part or the testing provisions by a sample taker.
- (2) The sample taker taking a sample of blood from a rail safety worker must—
- (a) place the sample into a container; and
 - (b) attach a label to the container that includes the following information:
 - (i) the sample taker's name;
 - (ii) the worker's name;
 - (iii) the date and time the sample was taken; and
 - (c) ensure that the container is sealed with a tamper-evident seal that has a unique identifying number marked on it; and
 - (d) put the sealed container into a one-way box.
- (3) The chief police officer must, as soon as practicable, arrange for the container to be collected from the one-way box by an analyst.

29 Analysis of blood samples

- (1) This section applies if, under section 28—
- (a) a sample of blood is taken from a rail safety worker for analysis; and
 - (b) an analyst has collected the sealed container containing the sample from a one-way box.
- (2) The analyst must, as soon as practicable, arrange for the analysis of the sample of blood at an approved laboratory to work out, as far as practicable—
- (a) the concentration of alcohol in the blood; or

- 1 (b) whether a prescribed drug is present in the blood.
- 2 (3) If an authorised person has reasonable cause to suspect that the rail
3 safety worker has a drug other than a prescribed drug or alcohol in
4 the worker's body, or that the worker's behaviour may be affected
5 by the presence of a drug other than a prescribed drug or alcohol in
6 the worker's body, the authorised person may ask the analyst to
7 work out the following:
- 8 (a) whether 1 or more drugs other than a prescribed drug or
9 alcohol are present in the sample;
- 10 (b) if a drug other than a prescribed drug or alcohol is present in
11 the sample—the concentration, quantity or other measurement
12 of the drug.
- 13 (4) The analyst must, as far as practicable, comply with the authorised
14 person's request.
- 15 (5) The analyst must take reasonable care to ensure that a part of the
16 sample sufficient for analysis to be carried out for the rail safety
17 worker (the *preserved part*) is protected and preserved until—
- 18 (a) if a request is made under subsection (7)—the preserved part is
19 sent to the laboratory nominated by the worker; or
- 20 (b) in any other case—
- 21 (i) 1 year has passed since the sample was taken from the
22 worker; or
- 23 (ii) if a request is made by the DPP under section 32
24 (Keeping of samples—request by DPP)—the proceeding
25 to which the sample relates has finally been decided
26 (including any appeals).
- 27 (6) However, subsection (5) does not apply if the amount of the sample
28 remaining after analysis under subsection (2) is insufficient for
29 further analysis.

(7) Before the end of the period mentioned in subsection (5) (b), the rail safety worker may ask that the preserved part of the sample be sent, at the worker's expense, to a laboratory nominated by the person.

(8) If a request is made under subsection (7), the analyst must ensure that the preserved part of the sample is sent to the nominated laboratory as soon as practicable.

30 Blood analysis statement

(1) As soon as practicable after an analysis of a sample of a rail safety worker's blood is carried out under section 29, the authorised person must ensure the worker is given a written statement that includes the following information:

(a) the date and time the blood sample was taken;

(b) the unique identifying number on the tamper-evident seal;

(c) the place where the blood sample was taken;

(d) the result of the analysis;

(e) the address where the preserved part of the blood sample is being held;

(f) that the worker will be notified, in writing, of a request (if any) by the DPP under section 32 (Keeping of samples—request by DPP);

(g) that the worker may, before the end of the period mentioned in section 29 (5) (b), ask the analyst to send the preserved part of the blood sample to a laboratory nominated by the worker, at the worker's expense.

(2) In this section:

preserved part—see section 29 (5).

**Subdivision 3.2.4 Alcohol and drug testing and analysis—
miscellaneous**

31 Power to search rail safety worker in custody

(1) A police officer may search a rail safety worker who is taken into custody under the following sections and may take possession of anything found in the worker's possession:

(a) section 14 (Detention for breath analysis);

(b) section 18 (Detention for oral fluid analysis);

(c) section 26 (Detention for blood test).

(2) For the search, the police officer may request the assistance of another police officer of the same sex as the rail safety worker being searched.

(3) A rail safety worker is entitled to the return of anything taken from the worker under this section when the worker ceases to be in custody, other than—

(a) a seizable item; or

(b) an item that may otherwise be seized or retained under another territory law.

(4) In this section:

search means a search of a rail safety worker or of anything in the worker's possession, and may include—

(a) requiring the worker to remove only the worker's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves or headwear; and

(b) an examination of them.

seizable item means a seizable item under the *Crimes Act 1900*, part 10.

Note A *seizable item* means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody (see *Crimes Act 1900*, pt 10).

32 Keeping of samples—request by DPP

(1) This section applies if—

(a) a blood or an oral fluid sample was taken from a rail safety worker under this part or the testing provisions for analysis; and

(b) the preserved part of the sample—

(i) is being kept at the approved laboratory where the analysis was carried out; and

(ii) has not been sent to a nominated laboratory under section 23 (6) (Oral fluid—confirmatory analysis) or section 29 (8) (Analysis of blood samples); and

(c) a proceeding against the worker—

(i) has not begun; or

(ii) has begun but not been finally decided (including any appeals).

(2) The DPP may ask the approved laboratory to keep the preserved part of the sample until the proceeding has finally been decided (including any appeals).

(3) If the DPP makes a request under subsection (2), the DPP must tell the rail safety worker about the request as soon as practicable.

(4) In this section:

preserved part—

(a) in relation to an oral fluid sample—see section 23 (3); or

1 (b) in relation to a blood sample—see section 29 (5).

2 **33 Destruction of samples**

3 (1) This section applies to the part of a sample preserved under
4 section 23 (3) (Oral fluid—confirmatory analysis) or section 29 (5)
5 (Analysis of blood samples).

6 (2) An analyst must arrange for the preserved part to be destroyed after
7 the end of the period for which the preserved part must be kept
8 under section 23 (3) (b) or section 29 (5) (b).

9 **Division 3.3 Offences—alcohol and drug testing**
10 **and analysis**

11 **34 Failure to submit to alcohol screening test or breath**
12 **analysis**

13 (1) This section applies if—

14 (a) an authorised person requires the worker to submit to an
15 alcohol screening test or breath analysis under the *Rail Safety*
16 *National Law (ACT)*, section 126 (Authorised person may
17 require preliminary breath test or breath analysis); and

18 (b) the worker fails to comply with the requirement or a reasonable
19 direction in relation to the requirement.

20 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

21 (2) The rail safety worker is taken to have committed an offence against
22 the *Rail Safety National Law (ACT)*, section 126 (3).

23 (3) It is a defence to a prosecution for an offence against the *Rail Safety*
24 *National Law (ACT)*, section 126 (3) if the defendant proves that the
25 refusal or failure was based on medical grounds.

35 Failure to submit to drug screening test, oral fluid analysis

(1) This section applies if—

(a) an authorised person requires the worker to submit to a drug screening test or oral fluid analysis under the *Rail Safety National Law (ACT)*, section 127 (Authorised person may require drug screening test, oral fluid analysis and blood test); and

(b) the worker fails to comply with the requirement or a reasonable direction in relation to the requirement.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

(2) The rail safety worker is taken to have committed an offence against the *Rail Safety National Law (ACT)*, section 127 (3).

(3) It is a defence to a prosecution for an offence against the *Rail Safety National Law (ACT)*, section 127 (3) if the defendant proves that the refusal or failure was based on medical grounds.

36 Failure to stay for drug screening test

(1) This section applies if the worker—

(a) is required by an authorised person to submit to a drug screening test under the *Rail Safety National Law (ACT)*, section 127 (Authorised person may require drug screening test, oral fluid analysis and blood test); and

(b) fails to stay at the place where the test is being carried out for the time (not exceeding 30 minutes from the time the worker starts the test) reasonably necessary for the test to be completed in accordance with the authorised person's directions.

Note **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

(2) The rail safety worker is taken to have committed an offence against the *Rail Safety National Law (ACT)*, section 127 (3).

1 **37 Failure to submit to blood test etc**

- 2 (1) Subsection (3) applies if—
- 3 (a) the following applies:
- 4 (i) an authorised person requires the worker to submit to a
- 5 blood test under the *Rail Safety National Law (ACT)*,
- 6 section 127 (Authorised person may require drug
- 7 screening test, oral fluid analysis and blood test);
- 8 (ii) the worker refuses to comply with the requirement or a
- 9 reasonable direction in relation to the requirement; or
- 10 (b) the worker fails to comply with section 27 (3) (Requirement to
- 11 take blood test in hospital after prescribed notifiable
- 12 occurrence).

13 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

- 14 (2) Also, subsection (3) applies if—
- 15 (a) a doctor or nurse is required under section 27 (2) (Requirement
- 16 to take blood test in hospital after prescribed notifiable
- 17 occurrence) to take a blood sample from the worker; and
- 18 (b) the worker behaves in a way that makes it impossible or
- 19 impractical for the sample to be taken.
- 20 (3) The rail safety worker is taken to have committed an offence against
- 21 the *Rail Safety National Law (ACT)*, section 127 (3).
- 22 (4) It is a defence to a prosecution for an offence against the *Rail Safety*
- 23 *National Law (ACT)*, section 127 (3) if the defendant proves that the
- 24 failure was based on—
- 25 (a) religious or other conscientious grounds; or
- 26 (b) medical grounds.

Division 3.4 Evidence

Subdivision 3.4.1 Application—div 3.4

38 Application—div 3.4

- (1) This division applies to a proceeding in a court.
- (2) A certificate under this division—
 - (a) is evidence of the matters stated in it; and
 - (b) is not inadmissible only because of the fact that the certificate relates to 1, or some only, of the matters mentioned in the provision of this division that applies to the certificate.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this division is taken to be a certificate.

Subdivision 3.4.2 Evidentiary certificates

**39 Evidentiary certificate—authorised person—
alcohol-related test**

- (1) An authorised person may give a signed certificate stating—
 - (a) that the person was on a stated date an authorised person; and
 - (b) that, on the date, at a stated time and in a stated place, a named rail safety worker was required by the authorised person to provide a sample of the worker's breath for a breath analysis using a breath analysis instrument; and
 - (c) the model number, patent number and serial number of the instrument used; and
 - (d) that the instrument was in proper working order; and

1 (e) that the worker named in the certificate—

2 (i) provided a sample of the worker's breath for a test or
3 analysis in accordance with the directions of the
4 authorised person who made the requirement; or

5 (ii) failed to provide a sample of the worker's breath for the
6 test or analysis; and

7 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

8 (f) the steps that were taken to ensure that it was not readily
9 apparent to members of the public that the breath analysis was
10 being carried out; and

11 (g) if the worker provided a sample—

12 (i) the procedures followed immediately before, during and
13 immediately after the alcohol screening test or breath
14 analysis; and

15 (ii) the concentration of alcohol in the worker's blood or
16 breath as shown from the reading from the alcohol
17 screening device or breath analysis instrument; and

18 (iii) that, as soon as practicable after the alcohol screening test
19 or breath analysis was carried out, the authorised person
20 gave the worker the written statement mentioned in
21 section 15 (6) (Conduct of breath analysis); and

22 (h) if the worker failed to provide a sample—the procedures
23 followed immediately before the worker was required to
24 provide a sample.

25 (2) A written statement mentioned in section 15 (6) that is a print out
26 from a breath analysis instrument is evidence of the matters stated in
27 the statement.

1 **40 Evidentiary certificate—authorised person—drug-related**
2 **test**

- 3 (1) An authorised person may give a signed certificate stating—
- 4 (a) that the person was on a stated date an authorised person; and
- 5 (b) that, on the date, at a stated time and in a stated place, a named
- 6 rail safety worker was required by the authorised person to
- 7 provide a sample of the worker's oral fluid or blood for a drug
- 8 or alcohol test; and
- 9 (c) the model number, patent number and serial number of the
- 10 instrument used; and
- 11 *Note* An authorised person other than a police officer does not carry
- 12 out oral fluid analysis (see s 21). Accordingly, an evidentiary
- 13 certificate given by the person may not include a statement about
- 14 par (c) and (d).
- 15 (d) that the instrument was in proper working order; and
- 16 (e) that the worker named in the certificate—
- 17 (i) provided a sample of the worker's oral fluid or blood for
- 18 analysis in accordance with the directions of the
- 19 authorised person who made the requirement; or
- 20 (ii) failed to provide a sample for analysis; and
- 21 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).
- 22 (f) the steps that were taken to ensure that it was not readily
- 23 apparent to members of the public that the oral fluid analysis
- 24 was being carried out; and
- 25 (g) if the worker provided a sample—
- 26 (i) the procedures followed immediately before, during and
- 27 immediately after the drug or alcohol test; and

- 1 (ii) whether the drug or alcohol test showed that a drug or
2 alcohol was present in the worker's blood or oral fluid;
3 and
- 4 (iii) that, as soon as practicable after the drug or alcohol test
5 was carried out, the authorised person gave the worker the
6 written statement mentioned in—
- 7 (A) for an oral fluid analysis—section 24; and
8 (B) for an analysis of a blood sample—section 30; or
- 9 (h) if the worker failed to provide a sample—the procedures
10 followed immediately before the worker was required to
11 provide a sample.
- 12 (2) A written statement mentioned in section 24 that is a print out from
13 an oral fluid analysis instrument is evidence of the matters stated in
14 the statement.
- 15 (3) In this section:
- 16 *drug or alcohol test* means—
- 17 (a) for a sample of oral fluid—an oral fluid analysis; or
18 (b) for a sample of blood—a blood test.
- 19 **41 Evidentiary certificate—sample taker**
- 20 A sample taker may give a signed certificate stating that—
- 21 (a) the sample taker is a doctor or nurse; and
22 (b) the sample taker attended a named rail safety worker at a stated
23 hospital or sampling facility, on a stated day and at a stated
24 time; and

- 1 (c) either—
- 2 (i) the sample taker was told by an authorised person that the
- 3 authorised person intended to require the worker to
- 4 submit to an oral fluid analysis or blood test under the
- 5 *Rail Safety National Law (ACT)*, section 127 (Authorised
- 6 person may require drug screening test, oral fluid analysis
- 7 and blood test); or
- 8 (ii) if the worker has been taken into custody under section 26
- 9 (Detention for blood test)—a police officer has asked the
- 10 sample taker to take a sample of the worker's blood; and
- 11 (d) the sample taker took the required sample from the worker; and
- 12 (e) the sample taker placed the sample into a container; and
- 13 (f) the sample taker attached a label to the container that contained
- 14 the following information:
- 15 (i) the sample taker's name;
- 16 (ii) the worker's name;
- 17 (iii) the date and time the sample was taken; and
- 18 (g) the sample taker sealed the container with a tamper-evident
- 19 seal that had a stated unique identifying number marked on it;
- 20 and
- 21 (h) the sample taker put the sealed container into a one-way box;
- 22 and
- 23 (i) whether the sample taker was of the opinion, at the time the
- 24 sample taker was told, that complying with the requirement
- 25 would, or would not, be detrimental to the worker's medical
- 26 condition.

**42 Evidentiary certificate—blood sample not taken by
sample taker**

A sample taker may give a signed certificate stating that—

- (a) the sample taker is a doctor or nurse; and
- (b) the sample taker attended a named rail safety worker at a stated hospital or sampling facility, on a stated day and at a stated time; and
- (c) if the worker is a person mentioned in section 26 (Detention for blood test)—a police officer has asked the sample taker to take a sample of the worker's blood; and
- (d) if the worker is a person mentioned in section 27 (1) (Requirement to take blood test in hospital after prescribed notifiable occurrence)—the sample taker believed that—
 - (i) the worker was injured as a result of a prescribed notifiable occurrence and had attended the hospital for examination or treatment because of the injury; and
 - (ii) the prescribed notifiable occurrence had happened not longer than 8 hours before the worker arrived at the hospital; and
- (e) whether the sample taker was of the opinion that—
 - (i) taking the sample would, or would not, be detrimental to the worker's medical condition; or
 - (ii) a sample of blood had, or had not, been taken from the worker mentioned in section 26 (1) or section 27 (1).

43 Evidentiary certificates—analysts

An analyst may give a signed certificate stating—

- (a) that the person is an analyst; and

- 1 (b) that a sample of blood or oral fluid was analysed at a stated
2 approved laboratory; and
- 3 (c) that the sample was in a container—
- 4 (i) labelled in accordance with—
- 5 (A) for an oral fluid sample—section 20 (2) (b) (Oral
6 fluid—sample taken by authorised person) or
7 section 21 (3) (b) (Oral fluid—sample taken by
8 police officer from worker in custody—preliminary
9 analysis); and
- 10 (B) for a blood sample—section 28 (2) (b) (Taking
11 blood samples); or
- 12 (ii) sealed with a tamper-evident seal marked with a stated
13 unique identifying number; and
- 14 (d) that the tamper-evident seal did not appear to have been
15 interfered with; and
- 16 (e) the analysis of the sample that was undertaken; and
- 17 (f) the results of the analysis; and
- 18 (g) if a request was made by an authorised person under
19 section 29 (3) (Analysis of blood samples)—whether a
20 prescribed drug, or a drug other than a prescribed drug, or
21 alcohol was present in the sample; and
- 22 (h) that the analysis was accurate.

23 **Subdivision 3.4.3 Other provisions about evidence**

24 **44 Meaning of *this Act*—subdiv 3.4.3**

25 In this subdivision:

26 *this Act* means this part and the testing provisions.

1 **45 Effect of noncompliance—analysis of breath or blood**

- 2 (1) This section applies if the court hearing a charge for an offence
3 against the *Rail Safety National Law (ACT)*, section 128 arising out
4 of the carrying out of a breath analysis or the taking and analysis of
5 a sample of blood of a rail safety worker is not satisfied that there
6 has been compliance with every provision (a ***rail safety testing***
7 ***provision***) of this Act relating to the carrying out of the breath
8 analysis or the taking and analysis of the sample of blood.

9 *Note* A reference to this Act includes a reference to the statutory instruments
10 made or in force under this Act, including a regulation (see [Legislation](#)
11 [Act](#), s 104).

- 12 (2) The court must dismiss the charge unless satisfied that despite the
13 failure to comply with a rail safety testing provision the result
14 obtained in the breath analysis, or the blood sample analysis, would
15 have been the prescribed concentration for the rail safety worker.

16 **46 Effect of noncompliance—analysis of oral fluid**

- 17 (1) This section applies if the court hearing a charge for an offence
18 against the *Rail Safety National Law (ACT)*, section 128 arising out
19 of the carrying out of oral fluid analysis for a rail safety worker is
20 not satisfied that there has been compliance with every provision (a
21 ***rail safety testing provision***) of this Act relating to the carrying out
22 of the analysis.

23 *Note* A reference to an Act includes a reference to the statutory instruments
24 made or in force under the Act, including regulations (see [Legislation](#)
25 [Act](#), s 104).

- 26 (2) The court must dismiss the charge unless satisfied that despite the
27 failure to comply with a rail safety testing provision the result
28 obtained in the oral fluid analysis would have indicated the presence
29 of a prescribed drug in the rail safety worker's body.

47 Effect of noncompliance—failure to give sample of breath

- (1) This section applies if the court hearing a charge for an offence against the *Rail Safety National Law (ACT)*, section 126 (3) in relation to a rail safety worker's failure to submit to breath analysis is not satisfied that there has been compliance with every provision (a ***rail safety testing provision***) of this Act relating to that part of the carrying out of breath analysis that is required to be carried out before the sample of breath is given by the worker.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation (see [Legislation Act](#), s 104).

- (2) The court must dismiss the charge unless satisfied that despite the failure to comply with a rail safety testing provision the result obtained in breath analysis, if it had taken place, would have been the prescribed concentration for the rail safety worker.

48 Effect of noncompliance—failure to give sample of oral fluid

- (1) This section applies if the court hearing a charge for an offence against the *Rail Safety National Law (ACT)*, section 127 (3) in relation to a rail safety worker's failure to submit to oral fluid analysis is not satisfied that there has been compliance with every provision (a ***rail safety testing provision***) of this Act relating to that part of the carrying out of an oral fluid analysis that is required to be carried out before the sample of oral fluid is given by the worker.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see [Legislation Act](#), s 104).

- (2) The court must dismiss the charge unless satisfied that despite the failure to comply with a rail safety testing provision the result obtained in an oral fluid analysis, if it had taken place, would have indicated the presence of a prescribed drug in the rail safety worker's body.

1 **49 Oral evidence about evidentiary certificate**

- 2 (1) A rail safety worker who has been charged with an offence against
3 the *Rail Safety National Law (ACT)*, section 126 (3) or
4 section 127 (3) may give written notice to the Regulator that the
5 worker will require the attendance, for the purpose of giving
6 evidence orally, at court on the hearing of the charge of each or any
7 person by whom a certificate mentioned in subdivision 3.4.2 is
8 given.
- 9 (2) The notice may be given by posting it to the Regulator, or leaving it
10 for the Regulator, at the Regulator's office—
- 11 (a) for a certificate mentioned in section 39 (Evidentiary
12 certificate—authorised person—alcohol-related test)—not less
13 than 7 days before the date fixed for the hearing of the charge;
14 or
- 15 (b) for a certificate mentioned in section 40 (Evidentiary
16 certificate—authorised person—drug-related test)—not less
17 than 21 days before the date fixed for the hearing of the charge;
18 or
- 19 (c) if the court orders a shorter period for service—not less than
20 the shorter period.
- 21 (3) Even if a notice has been given under subsection (2) and the people
22 mentioned in the notice give evidence relating to the matters stated
23 in the certificates, the certificates—
- 24 (a) are admissible in evidence; and
- 25 (b) are evidence of the matters stated in the certificates and of the
26 facts on which they are based; and
- 27 (c) have the probative value that the court determines consistently
28 with the other evidence before the court.

50 Evidence about presence of alcohol and prescribed drugs

In a proceeding for an offence against the *Rail Safety National Law (ACT)*, section 128, evidence may be given—

- (a) of the concentration of alcohol in the rail safety worker's blood or breath based on—
 - (i) for proof of the concentration of alcohol in the worker's blood or breath—an analysis of a sample of the worker's breath carried out in accordance with this part and the testing provisions; or
 - (ii) for proof of the concentration of alcohol in the worker's blood—an analysis of a sample of the worker's blood carried out at an approved laboratory and certified as accurate by an analyst; and
- (b) that a rail safety worker has a prescribed drug in the worker's oral fluid or blood based on—
 - (i) for proof of the presence of a prescribed drug in the worker's oral fluid—an analysis of a sample of the worker's oral fluid under section 23 (Oral fluid—confirmatory analysis) that shows that a prescribed drug is present in the sample; or
 - (ii) for proof of the presence of a prescribed drug in the worker's blood—an analysis of a part of a sample of the worker's blood under section 29 (Analysis of blood samples) that shows that a prescribed drug is present in the sample.

Division 3.5 Miscellaneous

51 How alcohol concentration may be expressed

(1) For this part and the testing provisions, an analysis of a concentration of alcohol in a rail safety worker's blood or breath may be expressed as follows:

(a) the amount of alcohol, in grams, in 100mL of blood if the analysis is based on—

(i) a sample of blood; or

(ii) a sample of breath measured by an alcohol screening device or a breath analysis instrument;

(b) the amount of alcohol, in grams, in 210L of breath if the analysis is based on a sample of breath measured by an alcohol screening device or a breath analysis instrument.

(2) For this part and the testing provisions, an amount of alcohol measured in grams as part of 210L of breath is equivalent to the same amount of alcohol in grams as part of 100mL of blood.

52 Protection of police officers and medical staff

(1) Subsection (2) applies to—

(a) a police officer who in the exercise or intended exercise of a power given by this part or the testing provisions, takes a rail safety worker into custody and takes the worker to a place for this part or the testing provisions; and

(b) any other police officer (a *receiving officer*) who accepts custody of a worker from the police officer mentioned in paragraph (a), if the receiving officer believes on reasonable grounds that the worker is liable to be taken into custody.

- 1 (2) The police officer is not liable, only because of the taking into
2 custody of the worker and the holding of the worker in custody, in
3 an action arising out of the worker's custody.
- 4 (3) The Territory indemnifies a sample taker who exercises a function
5 under this part or the testing provisions in relation to any damages
6 that the sample taker becomes liable to pay as a result of the
7 exercise of those functions.
- 8 (4) Subsection (3) applies whether the rail safety worker from whom a
9 sample is taken was or was not capable, because of the worker's
10 mental condition, of giving or refusing consent to the taking of a
11 sample.

Part 4 Miscellaneous

53 Provision of information and assistance to Regulator

(1) Despite any other territory law, a person exercising a function under the local application provisions of this Act or the *Rail Safety National Law (ACT)* is authorised, on the person's own initiative or at the request of the Regulator, to give the Regulator—

(a) the information (including information given in confidence) in the person's possession or control that the Regulator reasonably requires for the local application provisions of this Act or the *Rail Safety National Law (ACT)*; and

(b) any other assistance that the Regulator reasonably requires to exercise a function under the local application provisions of this Act or the *Rail Safety National Law (ACT)*.

(2) This section authorises the disclosure of the information by the Regulator to someone else for the exercise of the Regulator's functions under the local application provisions of this Act or the *Rail Safety National Law (ACT)*.

54 Regulation-making power

(1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

(2) A regulation may modify a national regulation.

(3) For part 3 (Alcohol and drug testing) and the testing provisions, a regulation may make provision in relation to the following:

(a) conducting drug and alcohol screening tests;

(b) conducting breath and oral fluid analyses, including storing and destroying samples;

- 1 (c) taking, storing, analysing and destroying blood samples;
- 2 (d) how results from testing or analysis may be used;
- 3 (e) information to be given to people who are required to
- 4 undertake testing or analysis or provide a sample;
- 5 (f) evidentiary certificates and evidence for a proceeding.

Part 5 Consequential amendment

55 Crimes Act 1900, new section 187 (2) (c) and (d)

insert

(c) an offence against the *Rail Safety National Law (ACT) Act 2014*, part 3 (Alcohol and drug testing) or the *Rail Safety National Law (ACT)*, part 3, division 9 (Drug and alcohol testing by Regulator); or

(d) an infringement penalty offence for the *Rail Safety National Law (ACT)*, part 9 (Infringement notices) if a police officer—

(i) intends to serve an infringement notice under that Act for the offence on an offender; or

(ii) intends to take no further action against the offender in relation to the offence.

1 **Part 10 Transitional**

2 **120 Transitional regulations**

- 3 (1) A regulation may prescribe transitional matters necessary or
4 convenient to be prescribed because of the enactment of this Act.
- 5 (2) A regulation may modify this part (including in relation to another
6 territory law) to make provision in relation to anything that, in the
7 Executive's opinion, is not, or is not adequately or appropriately,
8 dealt with in this part.
- 9 (3) A regulation under subsection (2) has effect despite anything
10 elsewhere in this Act or another territory law.

11 **121 Expiry—pt 10**

12 This part expires 2 years after the day this section commences.

13 *Note* Transitional provisions are kept in the Act for a limited time. A
14 transitional provision is repealed on its expiry but continues to have
15 effect after its repeal (see [Legislation Act](#), s 88).

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to the local application provisions of this Act (see s 8 (4)).

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- ACT
- chief police officer
- Criminal Code
- doctor
- DPP
- Magistrates Court
- nurse
- proceeding
- State
- territory law.

alcohol screening device, for part 3 (Alcohol and drug testing) and the testing provisions—see section 10 (1).

alcohol screening test, for a person, for part 3 (Alcohol and drug testing) and the testing provisions—see section 10 (1).

analyst, for part 3 (Alcohol and drug testing) and the testing provisions—see section 10 (1).

approved laboratory, for part 3 (Alcohol and drug testing) and the testing provisions—see section 10 (1).

blood test, for a person, for part 3 (Alcohol and drug testing) and the testing provisions—see section 10 (1).

breath analysis, for a person, for part 3 (Alcohol and drug testing) and the testing provisions—see section 10 (1).

- 1 ***breath analysis instrument***, for part 3 (Alcohol and drug testing)
 2 and the testing provisions—see section 10 (1).
- 3 ***drug screening device***, for part 3 (Alcohol and drug testing) and the
 4 testing provisions—see section 10 (1).
- 5 ***drug screening test***, for a person, for part 3 (Alcohol and drug
 6 testing) and the testing provisions—see section 10 (1).
- 7 ***local application provisions of this Act*** means the provisions of this
 8 Act other than the *Rail Safety National Law (ACT)*.
- 9 ***oral fluid analysis***, for a person, for part 3 (Alcohol and drug
 10 testing) and the testing provisions—see section 10 (1).
- 11 ***oral fluid analysis instrument***, for part 3 (Alcohol and drug testing)
 12 and the testing provisions—see section 10 (1).
- 13 ***preliminary breath test***, for part 3 (Alcohol and drug testing) and
 14 the testing provisions—see section 10 (1).
- 15 ***prescribed concentration of alcohol***, for part 3 (Alcohol and drug
 16 testing) and the testing provisions—see section 10 (1).
- 17 ***prescribed drug***, for part 3 (Alcohol and drug testing) and the
 18 testing provisions—see section 10 (1).
- 19 ***Rail Safety National Law (ACT)*** means the provisions applying
 20 because of section 6.
- 21 ***sample taker***, for part 3 (Alcohol and drug testing) and the testing
 22 provisions—see section 10 (1).
- 23 ***South Australian Act*** means the *Rail Safety National Law (South*
 24 *Australia) Act 2012* (SA).
- 25 ***Note*** A reference to a law (including the South Australian Act) includes a
 26 reference to the law as originally made and as amended (see [Legislation](#)
 27 [Act](#), s 102).

