

**2017**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**RAIL SAFETY NATIONAL LAW (ACT) AMENDMENT  
REGULATION 2017 (No 1)**

**SL2017-2**

**EXPLANATORY STATEMENT**

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# RAIL SAFETY NATIONAL LAW (ACT) AMENDMENT REGULATION 2017 (No 1)

## Introduction

This explanatory statement relates to the *Rail Safety National Law (ACT) Amendment Regulation 2017 (No 1)* (the regulation). It has been prepared in order to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## Outline

This regulation amends the *Rail Safety National Law (ACT) Regulation 2014* (the RSNL (ACT) Regulation), made under the *Rail Safety National Law (ACT) Act 2014* (the Act).

The Act provides for the adoption of the Rail Safety National Law (RSNL) as a Territory law through the application of section 6 of the Act. The RSNL was enacted as a schedule to the application law of South Australia, as the host jurisdiction for the RSNL and the National Rail Safety Regulator (the Regulator).

The head of power enabling the Regulator to test rail safety workers for the presence of a drug or alcohol is set out in the RSNL, part 3, division 9 (Drug and alcohol testing by Regulator). Details of the procedures relating to breath, blood and oral fluid sampling and evidentiary procedures to be followed are included in Part 3, Alcohol and Drug Testing, of the Act.

This regulation is made under section 15 of the Act (Conduct of breath analysis), which requires a written statement to be provided to a rail safety worker on whom a breath analysis has been carried out, with the statement to include particulars prescribed by regulation.

This regulation amends the RSNL (ACT) Regulation to set out the particulars to be provided, in writing, to a rail safety worker at the time they are tested, including information relating to the outcome of the breath analysis.

The particulars to be provided are consistent with the particulars required to be provided to a motor vehicle driver tested for alcohol under the ACT's drink driving legislation, with a minor adjustment to reflect differences in terminology between the *Road Transport (Alcohol and Drugs) Act 1977* and the Act. The alcohol and drug testing provisions in the Act are similar to the provisions that regulate the testing to detect alcohol and drugs in motor vehicle drivers. The advantage of aligning the procedures for alcohol and drug testing of rail safety workers and motorists in the ACT is that the potential for confusion and errors in processing tests and samples is reduced as police, sample takers and analysts will follow substantially similar procedures under the road transport legislation and the rail safety law.

It is not considered that there are any human rights implications associated with this amendment. The amendment does not broaden the existing alcohol and drug testing scheme. It strengthens the scheme by ensuring that individuals subject to testing are provided with specific details relating to the testing and the reading from the breath analysis instrument. The explanatory statement to the *Rail Safety National Law (ACT) Bill 2014* addressed human rights potentially engaged by that legislation. There are no climate change implications associated with this amendment.

## Notes on clauses

### **Clause 1      Name of regulation**

This is a formal provision that sets out the name of the regulation.

### **Clause 2      Commencement**

This is a formal provision that provides for the commencement of the regulation.

### **Clause 3      Legislation amended**

This clause lists the legislation to be amended by the regulation. This regulation will amend the *Rail Safety National Law (ACT) Regulation 2014*.

### **Clause 4      New section 5A**

Section 15 (6) of the Act requires that an authorised person who carries out a breath analysis must give the rail safety worker on whom the analysis was carried out a signed written statement containing the particulars required by regulation.

Section 15 (7) of the Act requires that where a reading from a breath analysis of a rail safety worker shows the prescribed concentration of alcohol, the authorised person who carried out a breath analysis must give the rail safety worker a signed written notice prescribed by the regulation .

Clause 4 amends the RSNL (ACT) Regulation by inserting new section 5A which sets out the particulars required to be included in a statement mentioned in section 15 (6) of the Act or written notice under section 15 (7) of the Act. The details required to be included in the statement include: specifics of the instrument used; time, date and location of the test; details of the tester and test results.

A statement issued under section 15 (6) is taken to meet the requirements for a written notice under section 15 (7). The intention is that rail safety workers can be issued with one document that satisfies the requirements of section 15 (6) and section 15 (7).