



Western Australia

Rail Safety National Law Application Act 2024

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Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Act binds Crown	3

Part 2 — Rail Safety National Law

Division 1 — Application of Rail Safety National Law

5.	Application of National Law as law of the State	4
6.	Commencement of National Law as law of the State	4
7.	Tabling amending Acts	4
8.	Disallowance of amending Acts	5
9.	Commencement of provisions of amending Acts	6
10.	Amending Acts enacted after 20 June 2023 but before commencement day	6
11.	Tabling of amending Act taken to be publication for Standing Orders	7

Division 2 — Application of Rail Safety National Regulations

12.	Application of National Regulations as subsidiary legislation	7
13.	National Regulations made under amending Act provision	8
14.	National Regulations made under or for purposes of amending Act	8

Contents

15.	Publication of National Regulations	9
16.	Tabling and disallowance of National Regulations	9
17.	<i>Interpretation Act 1984</i> s. 41 and 42 do not apply to <i>Rail Safety National Regulations (WA)</i>	11
	Division 3 — Miscellaneous	
18.	Meaning of generic terms in <i>Rail Safety National Law (WA)</i> for purposes of this jurisdiction	11
19.	No double jeopardy	12
20.	Exclusion of legislation of this jurisdiction	13
	Part 3 — Local provisions for alcohol and drug testing	
	Division 1 — Preliminary	
21.	Terms used	14
22.	Using breath sample to work out blood alcohol content	17
	Division 2 — Alcohol testing	
23.	Power to require rail safety worker to submit to preliminary breath test or breath analysis	17
24.	When preliminary breath test or breath analysis may be required	17
25.	When rail safety worker is not obliged to comply with requirement	18
26.	When authorised person must not require rail safety worker to submit to breath test	19
27.	Conduct of breath analysis	19
28.	Further breath analysis	19
29.	Breath analysis indicates prescribed BAC	20
	Division 3 — Drug testing	
30.	Power to require rail safety worker to submit to drug test	20
31.	When drug screening test or oral fluid analysis may be required	20
32.	When rail safety worker not obliged to comply with requirement to submit to drug test	21
33.	When authorised person must not make drug testing requirement	22
34.	Conduct of drug screening test or oral fluid analysis	22

	Division 4 — Blood tests	
35.	Power to require rail safety worker to submit to blood test	23
36.	When blood test may be required after preliminary breath test or breath analysis	23
37.	When blood test may be required after drug test or notifiable occurrence or as alternative to drug test	24
38.	Blood test may be required if breath test, breath analysis or drug test fails to explain conduct, condition or appearance	25
39.	When rail safety worker is not obliged to comply with requirement to submit to blood test	25
40.	Authorisation to take blood sample: injured rail safety worker treated at hospital after notifiable occurrence	26
41.	Authorisation to take blood sample: rail safety worker deceased after notifiable occurrence	27
	Division 5 — Evidence	
42.	Term used: relevant time	28
43.	Use of test or analysis result in court proceedings	28
44.	No evidence of breath or blood alcohol content obtained from particular breath tests	29
45.	Evidence by certificate	29
	Division 6 — Other matters	
46.	Delegation by Commissioner of Police	32
47.	Local regulations	32
	Part 4 — Repeals and transitional provisions	
	Division 1 — Repeals	
48.	Written laws repealed	34
	Division 2 — Transitional provisions	
49.	Terms used	34
50.	Application of <i>Interpretation Act 1984</i>	35
51.	References to the Law and this Law	35
52.	Existing applications for accreditation or registration	36
53.	Existing right of review	36
54.	Existing right of appeal	37

Contents

55.	Undecided review or appeal	37
56.	Transitional regulations	38

Part 5 — Consequential amendments

57.	<i>Government Railways Act 1904</i> amended	40
2A.	Relationship of this Act to <i>Rail Safety National Law (WA)</i>	40
58.	Various references to “ <i>Rail Safety National Law (WA) Act 2015</i> ” amended	40

Defined terms



Western Australia

Rail Safety National Law Application Act 2024

No. 7 of 2024

An Act —

- to apply the Rail Safety National Law (with modifications) as a law of the State; and
- to repeal the *Rail Safety National Law (WA) Act 2015*, the *Rail Safety National Law (WA) (Alcohol and Drug Testing) Regulations 2015* and the *Rail Safety National Law (WA) Regulations 2015*; and
- to make consequential amendments to various other Acts; and
- for related purposes.

[Assented to 26 March 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Rail Safety National Law Application Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

- (1) In this Act —

amending Act means a South Australian Act that receives the Royal Assent after 20 June 2023 and —

- (a) amends the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (South Australia); or
- (b) amends the Rail Safety National Regulations;

commencement day means the day on which section 5 comes into operation;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

local regulations means regulations made under section 47;

Rail Safety National Law (WA) means the provisions applying in the State because of section 5;

Rail Safety National Regulations has the meaning given in section 12(1);

Rail Safety National Regulations (WA) means the provisions applying as subsidiary legislation for the purposes of the *Rail Safety National Law (WA)* because of section 12.

- (2) A reference in this Act to regulations made under a South Australian Act is a reference to regulations to the extent the regulations are made or amended by a provision of the South Australian Act.
- (3) If a term used in this Act is given a meaning in the *Rail Safety National Law (WA)*, it has the same meaning in this Act.

4. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 — Rail Safety National Law

Division 1 — Application of Rail Safety National Law

5. Application of National Law as law of the State

(1) In this section —

Rail Safety National Law means the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (South Australia) as in force on 20 June 2023, as amended by —

- (a) the *Rail Safety National Law (South Australia) (Fees) Amendment Act 2023* (South Australia); and
- (b) each provision that —
 - (i) is in an amending Act that has effect for the purposes of this Part under section 8; and
 - (ii) has come into operation for the purposes of this Part under section 9.

(2) The Rail Safety National Law —

- (a) applies as a law of the State; and
- (b) as so applying, may be referred to as the *Rail Safety National Law (WA)*; and
- (c) so applies as if it were an Act.

6. Commencement of National Law as law of the State

For the purposes of the *Rail Safety National Law (WA)* section 2, the Law as it applies in the State because of section 5 comes into operation on the commencement day.

7. Tabling amending Acts

An amending Act must be laid before each House of Parliament within 18 sitting days of the House after the day on which the Act receives the Royal Assent.

8. Disallowance of amending Acts

- (1) In this section —
- disallowance period***, in relation to a disallowance resolution of which notice is given in a House of Parliament, means the period of 30 sitting days of the House after the day on which the notice is given;
- disallowance resolution*** means a resolution that an amending Act be disallowed;
- notice period***, in relation to an amending Act laid before a House of Parliament under section 7, means the period of 14 sitting days of the House after the day on which the amending Act is laid before it.
- (2) An amending Act has effect for the purposes of this Part if the amending Act is laid before each House of Parliament under section 7 and either —
- (a) no notice of a disallowance resolution is given in either House within the notice period; or
 - (b) at least 1 notice of a disallowance resolution is given in a House within the notice period and, for each such notice, 1 of the following applies —
 - (i) the notice is withdrawn or discharged within the disallowance period;
 - (ii) the disallowance resolution is lost in the House or not agreed to within the disallowance period.
- (3) For the purposes of this section and section 7 —
- (a) the period specified in section 7, a notice period or a disallowance period continues to run even though a House of Parliament is prorogued or dissolved or expires; and

- (b) notice of a disallowance resolution given in a House of Parliament, or a motion that an amending Act be disallowed in the House, does not lapse even though the House is prorogued or dissolved or expires.

9. Commencement of provisions of amending Acts

- (1) If an amending Act has effect for the purposes of this Part under section 8, the Governor must declare that fact by proclamation as soon as practicable.
- (2) If a provision of the amending Act has come into operation in South Australia before the proclamation is published —
 - (a) the proclamation must fix a day on which the provision comes into operation for the purposes of this Part, which must be after the day on which the proclamation is published; and
 - (b) the provision comes into operation for the purposes of this Part on that day.
- (3) If a provision of the amending Act has not come into operation in South Australia before the proclamation is published, the provision comes into operation for the purposes of this Part when the provision comes into operation in South Australia.

10. Amending Acts enacted after 20 June 2023 but before commencement day

If an amending Act receives the Royal Assent after 20 June 2023, but before the commencement day, sections 7 to 9 apply to the amending Act as if it received the Royal Assent on the commencement day.

11. Tabling of amending Act taken to be publication for Standing Orders

- (1) In this section —
parliamentary committee means a committee established by either or both of the Houses of Parliament.
- (2) If a Standing Order of a House of Parliament provides that on the publication of an instrument under a written law the instrument is referred to a parliamentary committee for consideration, the laying of an amending Act before the House under section 7 is taken to be publication of the amending Act for the purposes of the Standing Order.
- (3) This section does not apply if the Standing Orders of the House provide specifically for an amending Act to be considered by a parliamentary committee.

Division 2 — Application of Rail Safety National Regulations

12. Application of National Regulations as subsidiary legislation

- (1) In this section —
Rail Safety National Regulations means regulations made under —
- (a) section 264 of the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (South Australia); or
 - (b) a South Australian Act for the purposes of the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (South Australia).
- (2) The Rail Safety National Regulations, as in force from time to time —
- (a) apply as subsidiary legislation for the purposes of the *Rail Safety National Law (WA)*, subject to sections 13, 14 and 16; and

- (b) as so applying —
 - (i) may be referred to as the *Rail Safety National Regulations* (WA); and
 - (ii) are the ***national regulations*** for the purposes of the *Rail Safety National Law* (WA), despite the definition of ***national regulations*** in section 4(1) of that Law.

13. National Regulations made under amending Act provision

Rail Safety National Regulations made under a provision of an amending Act have effect for the purposes of their application under section 12 if —

- (a) the amending Act has effect for the purposes of this Part under section 8; and
- (b) the provision has come into operation for the purposes of this Part under section 9.

14. National Regulations made under or for purposes of amending Act

- (1) This section applies to a provision of the Rail Safety National Regulations (the ***subsidiary provision***) if the provision is made —
 - (a) on or after the commencement day; and
 - (b) under or for the purposes of a provision of the Schedule to the *Rail Safety National Law* (South Australia) *Act 2012* (South Australia) that is amended, or inserted into that Schedule, by a provision of an amending Act (the ***amending Act provision***).
- (2) The subsidiary provision does not have effect for the purposes of its application under section 12 until the later of —
 - (a) the day on which the amending Act provision comes into operation for the purposes of this Part under section 9; or

- (b) the day on which the subsidiary provision comes into operation in South Australia.
- (3) However, if the amending Act does not have effect for the purposes of this Part under section 8, the subsidiary provision does not apply as subsidiary legislation under section 12.

15. Publication of National Regulations

- (1) This section applies to Rail Safety National Regulations made under section 264 of the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (South Australia) after 20 June 2023.
- (2) The Rail Safety National Regulations must be published on the WA legislation website no later than 18 days after the day on which the regulations are made.
- (3) If Rail Safety National Regulations are made on or after 20 June 2023 but before the commencement day, subsection (2) applies as if the regulations were made on the commencement day.

16. Tabling and disallowance of National Regulations

- (1) Rail Safety National Regulations published under section 15 must be laid before each House of Parliament within 6 sitting days of the House after the day on which the regulations are published.
- (2) Rail Safety National Regulations cease to have effect as subsidiary legislation for the purposes of their application under section 12 if —
 - (a) the regulations are not published under section 15; or
 - (b) the regulations are not laid before each House of Parliament under subsection (1); or

- (c) the regulations are laid before each House of Parliament under subsection (1) and —
 - (i) notice of a resolution to disallow the regulations is given in a House of Parliament within 14 sitting days after the day on which the regulations are laid before the House under subsection (1); and
 - (ii) the resolution to disallow the regulations is agreed to by the House.
- (3) Rail Safety National Regulations that cease to have effect under subsection (2) cease to have effect at the end of the day on which the circumstance in subsection (2)(a), (b) or (c) occurs.
- (4) If a resolution is agreed to under subsection (2)(c), notice of the resolution must be published in the *Gazette* or on the WA legislation website within 21 days after the day on which the resolution is agreed.
- (5) If Rail Safety National Regulations (the ***disallowed regulations***) cease to have effect under subsection (2), other Rail Safety National Regulations that were amended or repealed by the disallowed regulations revive, for the purposes of their application under section 12, on the day after the day on which the disallowed regulations cease to have effect.
- (6) For the purposes of this section —
 - (a) the period specified in subsection (1) or (2)(c)(i) continues to run even though a House of Parliament is prorogued or dissolves or expires; and
 - (b) notice of a resolution to disallow Rail Safety National Regulations given in a House of Parliament does not lapse even though the House is prorogued or dissolved or expires.

17. *Interpretation Act 1984* s. 41 and 42 do not apply to *Rail Safety National Regulations (WA)*

The *Interpretation Act 1984* sections 41 and 42 do not apply to the *Rail Safety National Regulations (WA)*.

Division 3 — Miscellaneous

18. Meaning of generic terms in *Rail Safety National Law (WA)* for purposes of this jurisdiction

(1) In the *Rail Safety National Law (WA)* —

court means the following —

- (a) for the purposes of Part 5 Division 6 — the State Administrative Tribunal constituted by at least 1 judicial member;
- (b) for the purposes of Part 7 — the State Administrative Tribunal, however constituted;
- (c) for the purposes of Part 10 Division 6 — the Magistrates Court;

emergency services means each of the following —

- (a) the Police Force of Western Australia;
- (b) the department of the Public Service principally assisting in the administration of the *Fire and Emergency Services Act 1998*;
- (c) another body or organisation prescribed by local regulations to be an emergency service;

Gazette means the *Government Gazette* of Western Australia;

Health Practitioner Regulation National Law means the *Health Practitioner Regulation National Law (Western Australia)*;

magistrate has the meaning given in the *Magistrates Court Act 2004* section 3;

Minister means the Minister administering this Act;

police officer has the meaning given in the *Interpretation Act 1984* section 5;

public sector auditor means the Auditor-General as defined in the *Public Finance and Audit Act 1987* (South Australia) section 4;

road vehicle means a motor vehicle as defined in the *Road Traffic (Administration) Act 2008* section 4;

shared path means an area that —

- (a) is open to or used by the public; and
- (b) is developed for, or has as 1 of its main uses, use by both pedestrians and riders of bicycles;

the jurisdiction or this jurisdiction means Western Australia.

- (2) For the purposes of the *Rail Safety National Law (WA)* and any other Act or law —
 - (a) the Office of the National Rail Safety Regulator is not an agency as defined in the *Public Sector Management Act 1994* section 3(1); and
 - (b) an employee of the Office of the National Rail Safety Regulator is not a public service officer as defined in the *Public Sector Management Act 1994* section 3(1).

19. No double jeopardy

A person is not liable to be punished for an offence against the *Rail Safety National Law (WA)* if —

- (a) the act or omission that constitutes the offence also constitutes an offence against a law of another participating jurisdiction; and
- (b) the person has been punished for the offence under the law of the other jurisdiction.

20. Exclusion of legislation of this jurisdiction

- (1) The *Interpretation Act 1984* does not apply to the *Rail Safety National Law (WA)*.

Note for this subsection:

See the *Rail Safety National Law (WA)* section 5.

- (2) The following Acts of this jurisdiction do not apply to the *Rail Safety National Law (WA)* or to the instruments made under the Law (except as applied under the Law) —

- (a) the *Auditor General Act 2006*;
- (b) the *Financial Management Act 2006*;
- (c) the *Freedom of Information Act 1992*;
- (d) the *Parliamentary Commissioner Act 1971*;
- (e) the *Public Sector Management Act 1994*;
- (f) the *State Records Act 2000*.

- (3) An Act mentioned in subsection (2) applies to a public sector body as defined in the *Public Sector Management Act 1994* section 3(1), and an employee of the body, performing a function under the *Rail Safety National Law (WA)*.

Part 3 — Local provisions for alcohol and drug testing

Division 1 — Preliminary

21. Terms used

(1) In this Part —

analyst means an analyst or drugs analyst, as those terms are defined in the *Road Traffic Act 1974* section 65, as the case requires;

blood alcohol content means the concentration of alcohol in a person's blood, expressed in grams of alcohol per 100 ml of blood;

breath analysis means the analysis of a person's breath using a breath analysis instrument to determine the person's blood alcohol content;

breath analysis instrument means —

- (a) breath analysing equipment as defined in the *Road Traffic Act 1974* section 65; or
- (b) an instrument that —
 - (i) analyses a sample of a person's breath to determine the person's blood alcohol content; and
 - (ii) is prescribed by local regulations for the purposes of this definition;

drug screening device means a device that —

- (a) provides an indication of the presence of a prescribed drug in a sample of a person's oral fluid; and
- (b) is prescribed by local regulations for the purposes of this definition;

drug screening test —

- (a) means a test of a sample of a person's oral fluid using a drug screening device; and

- (b) includes a preliminary oral fluid test as defined in the *Road Traffic Act 1974* section 65;

drug test means a drug screening test, oral fluid analysis or urine test;

hospital has the meaning given in the *Health Services Act 2016* section 6;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

oral fluid analysis means the analysis of a sample of a person's oral fluid to determine whether a prescribed drug is present, whether the sample is analysed —

- (a) by an authorised person using an oral fluid analysis device; or
- (b) by an analyst in a laboratory;

oral fluid analysis device means a device that —

- (a) analyses a sample of a person's oral fluid to determine whether a prescribed drug is present; and
- (b) is prescribed by local regulations for the purposes of this definition;

preliminary breath test means —

- (a) a preliminary test as defined in the *Road Traffic Act 1974* section 65; or
- (b) a test of a sample of a person's breath using a preliminary testing device;

preliminary testing device means a device that —

- (a) provides an indication of any of the following —
 - (i) a person's blood alcohol content;
 - (ii) whether a person's blood alcohol content is of or above a particular level;

(iii) whether or not alcohol is present in the person's blood;

or

(b) is prescribed by local regulations for the purposes of this definition;

prescribed BAC, in relation to a rail safety worker, means the prescribed concentration of alcohol in the worker's blood;

Note for this definition:

See the *Rail Safety National Law (WA)* section 128(5) for the meaning of **prescribed concentration of alcohol**.

registered nurse means a person —

- (a) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession; and
- (b) whose name is entered as a registered nurse on Division 1 of the Register of Nurses kept under that Law;

sample taker means —

- (a) a medical practitioner; or
- (b) a registered nurse; or
- (c) an appropriately qualified person prescribed by local regulations for the purposes of this definition;

urine test, in relation to a rail safety worker, means a test of the worker's urine to determine whether a prescribed drug is present.

- (2) For the purposes of this Part and the *Rail Safety National Law (WA)* Part 3 Division 9, anything done by a person acting under the supervision or direction of an analyst, medical practitioner or sample taker is taken to have been done by the analyst, medical practitioner or sample taker.

22. Using breath sample to work out blood alcohol content

- (1) This section applies for the purposes of this Part and the *Rail Safety National Law (WA)* section 128.
- (2) A concentration of alcohol in a person's breath of a number of grams per 210 litres of breath is taken to be a concentration in the person's blood of that number of grams of alcohol per 100 ml of blood.
- (3) A breath analysis instrument is taken to be an instrument that determines a person's blood alcohol content by analysing a sample of the person's breath, whether the instrument gives the blood alcohol content directly or allows it to be worked out under subsection (2).
- (4) A device used to conduct a preliminary breath test is taken to be a device that indicates a person's blood alcohol content, or indicates whether or not the person has the prescribed BAC, whether the device gives the indication directly or allows it to be worked out under subsection (2).

Division 2 — Alcohol testing

23. Power to require rail safety worker to submit to preliminary breath test or breath analysis

An authorised person's power under the *Rail Safety National Law (WA)* section 126(1) to require a rail safety worker to submit to testing is subject to this Division.

24. When preliminary 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) under the *Rail Safety National Law (WA)* section 126(1) —
 - (a) on a random basis, without suspecting the worker has the prescribed BAC; or

- (b) on a non-random basis, if —
 - (i) a notifiable occurrence involving the worker happens; or
 - (ii) the authorised person suspects, on reasonable grounds, that the worker has the prescribed BAC.
- (2) This section is subject to sections 25 to 27.

25. When rail safety worker is not obliged to comply with requirement

- (1) A rail safety worker who is on railway premises after carrying out rail safety work is not obliged to comply with a requirement made under the *Rail Safety National Law (WA)* section 126(1) if —
 - (a) the worker is not involved in a notifiable occurrence; and
 - (b) more than 12 hours have passed since the worker finished carrying out the work.
- (2) A rail safety worker who is involved in a notifiable occurrence is not obliged to comply with a requirement made under the *Rail Safety National Law (WA)* section 126(1) if —
 - (a) more than 12 hours have passed since the worker was involved in the occurrence; or
 - (b) the worker —
 - (i) has finished a shift during which the worker carried out rail safety work; and
 - (ii) has left the place where the worker finished the shift; and
 - (iii) was unaware of the occurrence when the worker finished the shift.

26. When authorised person must not require rail safety worker to submit to breath test

An authorised person must not require a rail safety worker to submit to a preliminary breath test or breath analysis under the *Rail Safety National Law (WA)* section 126(1) if the authorised person suspects, on reasonable grounds, that —

- (a) complying with the requirement would be detrimental to the worker's health; or
- (b) the worker is incapable of providing a sample of breath that is sufficient to comply with the requirement —
 - (i) because of an injury or disability; or
 - (ii) for another reason.

27. Conduct of breath analysis

- (1) An authorised person must not conduct a breath analysis for the purposes of a requirement made under the *Rail Safety National Law (WA)* section 126(1) unless the authorised person is —
 - (a) a police officer certified by the Commissioner of Police under subsection (2); or
 - (b) authorised by the Regulator to operate a breath analysis instrument.
- (2) The Commissioner of Police may certify that a police officer is competent to operate a breath analysis instrument.
- (3) An authorised person conducting a breath analysis for the purposes of a requirement made under the *Rail Safety National Law (WA)* section 126(1) must use a breath analysis instrument.

28. Further breath analysis

- (1) An authorised person may require a rail safety worker to submit to 1 or more breath analyses under the *Rail Safety National Law (WA)* section 126(1), whether or not the worker has provided a

sample that is sufficient to comply with an earlier requirement to submit to a preliminary breath test or breath analysis.

- (2) A requirement referred to in subsection (1) —
 - (a) may be made only if it is reasonable in the circumstances; and
 - (b) is subject to sections 25 to 27.

29. Breath analysis indicates prescribed BAC

- (1) This section applies if a breath analysis indicates a rail safety worker has the prescribed BAC.
- (2) The authorised person who operated the breath analysis instrument used for the breath analysis must immediately give the rail safety worker a written statement, or a statement printed by the instrument, stating —
 - (a) the day and time the breath sample was taken; and
 - (b) the day and time the sample was analysed; and
 - (c) the result of the analysis.

Division 3 — Drug testing

30. Power to require rail safety worker to submit to drug test

An authorised person's power under the *Rail Safety National Law (WA)* section 127(1) to require a rail safety worker to submit to a drug test is subject to this Division.

31. 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 under the *Rail Safety National Law (WA)* section 127(1) —
 - (a) on a random basis, without suspecting a prescribed drug is present in the worker's body; or

- (b) on a non-random basis, if —
 - (i) a notifiable occurrence involving the worker happens; or
 - (ii) the authorised person suspects, on reasonable grounds, that a prescribed drug is present in the worker's body.
- (2) A rail safety worker complies with a requirement to submit to a drug screening test or oral fluid analysis if the worker, in accordance with the instructions of an authorised person, provides a sample of the worker's oral fluid that is sufficient for the drug screening device or oral fluid analysis device used to conduct the test or analysis to operate.
- (3) This section is subject to sections 32 and 33.

32. When rail safety worker not obliged to comply with requirement to submit to drug test

- (1) A rail safety worker who is on railway premises after carrying out rail safety work is not obliged to comply with a requirement to submit to a drug test made under the *Rail Safety National Law (WA)* section 127(1) if —
 - (a) the worker is not involved in a notifiable occurrence; and
 - (b) more than 12 hours have passed since the worker carried out the work.
- (2) A rail safety worker who is involved in a notifiable occurrence is not obliged to comply with a requirement to submit to a drug test made under the *Rail Safety National Law (WA)* section 127(1) if —
 - (a) more than 12 hours have passed since the worker was involved in the occurrence; or

- (b) the worker —
 - (i) has finished a shift during which the worker carried out rail safety work; and
 - (ii) has left the place where the worker finished the shift; and
 - (iii) was unaware of the occurrence when the worker completed the shift.

33. When authorised person must not make drug testing requirement

An authorised person must not require a rail safety worker to submit to a drug test under the *Rail Safety National Law (WA)* section 127(1) if the authorised person suspects, on reasonable grounds, that —

- (a) complying with the requirement would be detrimental to the worker's health; or
- (b) the worker is incapable of providing a sample of oral fluid or urine that is sufficient to comply with the requirement —
 - (i) because of an injury or disability; or
 - (ii) for another reason.

34. Conduct of drug screening test or oral fluid analysis

- (1) An authorised person must not conduct an oral fluid analysis for the purposes of a requirement made under the *Rail Safety National Law (WA)* section 127(1) unless the authorised person is —
 - (a) a police officer certified by the Commissioner of Police under subsection (2); or
 - (b) authorised by the Regulator to operate an oral fluid analysis device.

- (2) The Commissioner of Police may certify that a police officer is competent to operate an oral fluid analysis device.
- (3) An authorised person must use —
 - (a) if the person is conducting a drug screening test for the purposes of a requirement made under the *Rail Safety National Law (WA)* section 127(1) — a drug screening device; or
 - (b) if the person is conducting an oral fluid analysis for the purposes of a requirement made under the *Rail Safety National Law (WA)* section 127(1) — an oral fluid analysis device; or
 - (c) if the person is collecting a sample of oral fluid to be analysed by an analyst in a laboratory for the purposes of a requirement made under the *Rail Safety National Law (WA)* section 127(1) — a prescribed device for collecting an oral fluid sample.

Division 4 — Blood tests

35. Power to require rail safety worker to submit to blood test

An authorised person's power under the *Rail Safety National Law (WA)* section 127(1) to require a rail safety worker to submit to a blood test is subject to this Division.

36. When blood test may be required after preliminary breath test or breath analysis

- (1) An authorised person may require a rail safety worker to submit to a blood test under the *Rail Safety National Law (WA)* section 127(1) if —
 - (a) an authorised person requires the worker to submit to a preliminary breath test or breath analysis referred to in section 24 or a further breath analysis referred to in section 28; and

- (b) the worker refuses, or fails, to provide a sufficient sample of breath for the test or analysis.
- (2) However, the authorised person cannot make a requirement referred to in subsection (1) if the rail safety worker is not obliged to submit to a preliminary breath test or breath analysis under section 25.
- (3) Also, an authorised person may require a rail safety worker to submit to a blood test under the *Rail Safety National Law (WA)* section 127(1) if —
 - (a) as a result of a preliminary breath test referred to in section 24, the authorised person forms the opinion that the worker might have the prescribed BAC; and
 - (b) either of the following applies —
 - (i) it is not possible to conduct a breath analysis;
 - (ii) the authorised person does not require the worker to submit to a breath analysis under the *Rail Safety National Law (WA)* section 126(1) for a reason mentioned in section 26.

Examples for this subsection:

For the purposes of paragraph (b)(i) — it may be not possible to conduct a breath analysis if there is no authorised person available to operate a breath analysis instrument or a breath analysis instrument malfunctions.

- (4) This section is subject to section 39.

37. When blood test may be required after drug test or notifiable occurrence or as alternative to drug test

- (1) An authorised person may require a rail safety worker to submit to a blood test under the *Rail Safety National Law (WA)* section 127(1) in any of the following circumstances —
 - (a) an authorised person requires the worker to submit to a drug test referred to in section 31 and the worker

refuses, or fails, to provide a sufficient sample for the test;

- (b) as a result of a drug test referred to in section 31, the authorised person has formed the suspicion, on reasonable grounds, that a prescribed drug is present in the worker's body;
- (c) the authorised person does not require the worker to submit to a drug test for a reason mentioned in section 33;
- (d) the worker is involved in a notifiable occurrence.

(2) This section is subject to section 39.

38. Blood test may be required if breath test, breath analysis or drug test fails to explain conduct, condition or appearance

An authorised person may require a rail safety worker to submit to a blood test under the *Rail Safety National Law (WA)* section 127(1) if —

- (a) the authorised person reasonably suspects that the worker is affected by alcohol or a prescribed drug because of the worker's conduct, condition or appearance; and
- (b) either of the following applies —
 - (i) a preliminary breath test or breath analysis does not indicate that the worker has the prescribed BAC;
 - (ii) a drug test does not indicate that a prescribed drug is present in the worker's body.

39. When rail safety worker is not obliged to comply with requirement to submit to blood test

- (1) A rail safety worker who is on railway premises after carrying out rail safety work is not obliged to comply with a requirement

made under the *Rail Safety National Law (WA)* section 127(1) to submit to a blood test if —

- (a) the worker is not involved in a notifiable occurrence; and
 - (b) more than 12 hours have passed since the worker finished carrying out the work.
- (2) A rail safety worker who is involved in a notifiable occurrence is not obliged to comply with a requirement made under the *Rail Safety National Law (WA)* section 127(1) to submit to a blood test if —
 - (a) more than 12 hours have passed since the worker was involved in the occurrence; or
 - (b) the worker —
 - (i) has finished a shift during which the worker carried out rail safety work; and
 - (ii) has left the place where the worker finished the shift; and
 - (iii) was unaware of the occurrence when the worker finished the shift.

40. Authorisation to take blood sample: injured rail safety worker treated at hospital after notifiable occurrence

- (1) This section applies if —
 - (a) a rail safety worker is injured as a result of a notifiable occurrence; and
 - (b) the worker is treated for the injury at a hospital within 12 hours after the occurrence; and
 - (c) an authorised person requires the worker to submit to a blood test under the *Rail Safety National Law (WA)* section 127(1).

- (2) The authorised person may ask a sample taker at the hospital to ensure that a sample of the rail safety worker's blood is taken as soon as practicable, even if the worker is unconscious.
- (3) A sample taker at the hospital is authorised to take the sample.
- (4) The sample taker is not obliged to take the sample if it is not reasonably practicable to do so in the circumstances.

41. Authorisation to take blood sample: rail safety worker deceased after notifiable occurrence

- (1) This section applies if —
 - (a) a rail safety worker is injured as a result of a notifiable occurrence; and
 - (b) the worker is dead on arrival at a hospital or dies in a hospital before a sample of the worker's blood is taken.
- (2) The medical practitioner who reports the death under the *Coroners Act 1996* section 17(3) may —
 - (a) take a sample of blood from the body of the rail safety worker; or
 - (b) as soon as practicable after reporting the death, notify the coroner that a sample of blood should be taken from the worker's body because of the circumstances of the worker's death.
- (3) If the coroner is notified under subsection (2)(b), the coroner may direct and authorise a pathologist to take a sample of blood from the rail safety worker's body.
- (4) A person is not obliged to take a sample of blood under this section if another sample of blood has previously been taken from the rail safety worker's body under this section or section 40.

Division 5 — Evidence

42. Term used: relevant time

In this Division —

relevant time, in relation to a rail safety worker, means —

- (a) if the worker is required to submit to testing or analysis under the *Rail Safety National Law (WA)* section 126(1) or 127(1) because the worker was involved in a notifiable occurrence — the time the notifiable occurrence happened; or
- (b) otherwise — the time the worker last carried out rail safety work.

43. Use of test or analysis result in court proceedings

- (1) This section applies to any court proceedings that relate to a rail safety worker, even if evidence is given in the proceedings that the worker consumed alcohol or a prescribed drug —
 - (a) after the relevant time; and
 - (b) before the worker submitted to a preliminary breath test, breath analysis, drug test or blood test.
- (2) In the absence of evidence to the contrary, the rail safety worker's blood alcohol content at the relevant time is presumed to be —
 - (a) if a breath analysis of the worker was conducted under this Part — the blood alcohol content indicated by the analysis; or
 - (b) if more than 1 breath analysis of the worker was conducted under this Part — the lower of the blood alcohol contents indicated by the analyses; or
 - (c) if a sample of the worker's blood was taken under this Part — the blood alcohol content indicated by an analysis of the blood.

- (3) No evidence to rebut the presumption created under subsection (2)(a) or (b) can be adduced except evidence that an analysis of a sample of the rail safety worker's blood taken under this Part indicates —
 - (a) the worker's blood alcohol content; and
 - (b) that the breath analysis instrument used for the breath analysis referred to in subsection (2)(a) or (b) gave an exaggerated indication of the worker's blood alcohol content.
- (4) If a sample of the rail safety worker's oral fluid, urine or blood was taken under this Part, a prescribed drug detected by an analysis of the sample is presumed to have been present in the worker's body at the relevant time, in the absence of evidence to the contrary.

44. No evidence of breath or blood alcohol content obtained from particular breath tests

No evidence can be adduced about the concentration of alcohol in a rail safety worker's breath or blood indicated by a test of the rail safety worker's breath if any of the following apply —

- (a) the test was conducted using a sample of the worker's breath that was not taken in accordance with this Part;
- (b) the test was conducted using a device that is not a breath analysis instrument, including, for example, a coin-operated breath testing machine installed in a hotel or other licensed premises (as defined in the *Liquor Control Act 1988* section 3(1));
- (c) the test was conducted by a person who is not an authorised person.

45. Evidence by certificate

- (1) In any court proceedings, a certificate in a form approved by the Minister purporting to be signed by any of the following

persons is evidence of the matters stated in the certificate and the facts on which the matters are based —

- (a) the Commissioner of Police — certifying that a person named in the certificate is a police officer and whether or not the person is competent to operate a breath analysis instrument or oral fluid analysis device;
- (b) the chief executive officer of the Chemistry Centre (WA) — certifying any or all of the following matters about a person named in the certificate —
 - (i) the person is an analyst;
 - (ii) the person is competent to determine the concentration of alcohol in bodily substances;
 - (iii) the person is competent to determine whether, and to what extent, drugs are present in bodily substances;
- (c) the Regulator — certifying that a person named in the certificate is an authorised person and whether or not the person is authorised to operate a breath analysis instrument or oral fluid analysis device;
- (d) an authorised person — certifying any or all of the following matters —
 - (i) a device used by the person was a breath analysis instrument or oral fluid analysis device;
 - (ii) a breath analysis instrument or oral fluid analysis device used by the person was in proper order and was properly operated;
 - (iii) the person used a breath analysis instrument or oral fluid analysis device in a way that complied with this Part and the local regulations;
 - (iv) that, using a breath analysis instrument, the rail safety worker named in the certificate provided a sample of breath for analysis;

- (v) that, using a prescribed device for collecting an oral fluid sample, the rail safety worker named in the certificate provided a sample of oral fluid for analysis;
 - (vi) a breath analysis instrument indicated the concentration of alcohol, expressed in grams of alcohol per 210 litres of breath, stated in the certificate was present in the breath of the rail safety worker named in the certificate on the day and at the time specified in the certificate;
 - (vii) an oral fluid analysis device indicated that the prescribed drug stated in the certificate was present in the oral fluid of the rail safety worker named in the certificate on the day and at the time specified in the certificate;
 - (viii) the authorised person complied with a requirement imposed on the person by the local regulations;
 - (e) a member of staff of a hospital — certifying something arising out of the member's occupation;
 - (f) the chief executive officer of the Chemistry Centre (WA), an analyst or a person acting under the supervision of an analyst — certifying something arising out of the chief executive officer's, analyst's or person's occupation.
- (2) A certificate certifying a matter mentioned in subsection (1)(c), (d) or (e) cannot be used as evidence against a person (the ***defendant***) in proceedings for an offence against the *Rail Safety National Law (WA)* Part 3 Division 9 if —
- (a) a copy of the certificate is not served on the defendant at least 7 days before the proceedings start; or
 - (b) at least 2 days before the start of the trial, the defendant gives the court written notice requiring the person who signed the certificate to attend the trial; or

- (c) the court requires the person who signed the certificate to attend the trial.
- (3) For the purposes of subsection (1), the Minister may approve forms of certificates to be used by different persons for different purposes.

Division 6 — Other matters

46. Delegation by Commissioner of Police

- (1) The Commissioner of Police may delegate the Commissioner's power under section 27(2), 34(2) or 45(1)(a) to a member of the Police Force of or above the rank of Inspector.
- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) A person to whom the power is delegated under this section cannot delegate that power.
- (4) A person performing the power that has been delegated to the person is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner of Police to exercise the power through an officer or agent.

47. Local regulations

- (1) The Governor may make regulations prescribing matters that are —
 - (a) required or permitted under this Part or the *Rail Safety National Law (WA)* Part 3 Division 9 to be prescribed; or
 - (b) necessary or convenient to be prescribed for giving effect to this Part or the *Rail Safety National Law (WA)* Part 3 Division 9.

- (2) Without limiting subsection (1), regulations may be made for or in relation to —
- (a) the procedures for, or equipment to be used in —
 - (i) conducting a preliminary breath test, breath analysis, drug screening test, oral fluid analysis or urine test; or
 - (ii) taking a blood sample;
 - or
 - (b) the destruction of a sample, or other forensic material, taken under this Part or the *Rail Safety National Law* (WA) Part 3 Division 9.

Part 4 — Repeals and transitional provisions

Division 1 — Repeals

48. Written laws repealed

- (1) The *Rail Safety National Law (WA) Act 2015* is repealed.
- (2) These regulations are repealed:
 - (a) the *Rail Safety National Law (WA) (Alcohol and Drug Testing) Regulations 2015*;
 - (b) the *Rail Safety National Law (WA) Regulations 2015*.

Division 2 — Transitional provisions

49. Terms used

- (1) In this Division —

former Law means the provisions applying in this State as the *Rail Safety National Law (WA)* because of section 4 of the repealed Act;

new Law means the provisions applying in this State as the *Rail Safety National Law (WA)* because of section 5 of this Act;

repealed Act means the *Rail Safety National Law (WA) Act 2015*.
- (2) Also, in this Division —
 - (a) a provision of this Act **corresponds** to a provision of the repealed Act, and vice versa, if the 2 provisions are substantially the same; and
 - (b) a provision of the new Law **corresponds** to a provision of the former Law, and vice versa, if the 2 provisions are substantially the same.

50. Application of *Interpretation Act 1984*

- (1) A provision of the *Interpretation Act 1984* about the repeal of enactments and the substitution of other enactments applies as if —
 - (a) the provisions of the repealed Act and the former Law were repealed by this Act; and
 - (b) a provision of the repealed Act were re-enacted as the corresponding provision of this Act; and
 - (c) a provision of the former Law were re-enacted as the corresponding provision of the new Law.
- (2) Despite subsection (1), the *Interpretation Act 1984* sections 36(d) (to the extent to which it applies to subsidiary legislation) and 38 do not apply in relation to the repealed Act or the former Law.
- (3) Except to the extent that this Division or regulations made for the purposes of this Division provide differently, the *Interpretation Act 1984* applies to and in relation to the repeals effected by section 48.

51. References to the Law and this Law

- (1) In the *Rail Safety National Law (WA)*, unless the context otherwise requires —
 - (a) a reference to the Law or this Law includes a reference to the former Law; and
 - (b) a reference to something done under the Law includes a reference to the thing being done under the corresponding provision of the former Law.
- (2) This section does not limit, and is not limited by, another provision in this Division.

52. Existing applications for accreditation or registration

- (1) This section applies if any of the following applications, made under a provision of the former Law, are not decided or withdrawn before the commencement day —
 - (a) an application for accreditation;
 - (b) an application for variation of accreditation;
 - (c) an application for registration;
 - (d) an application for variation of registration.
- (2) The application is taken to have been made under the corresponding provision of the new Law.
- (3) If the Regulator, under a provision of the former Law, made a requirement of, or gave a direction to, the rail transport operator or rail infrastructure manager who made the application, the Regulator is taken to have made the requirement or given the direction under the corresponding provision of the new Law.
- (4) The Regulator must consider, or continue to consider, and determine the application under the new Law.

53. Existing right of review

- (1) This section applies if, immediately before the commencement day —
 - (a) a person could have, but had not, applied to the Regulator for a review of a reviewable decision made under a provision of the former Law; and
 - (b) the period within which the person could apply for the review had not ended.
- (2) The person may, within the period referred to in subsection (1)(b), apply for the review, and the Regulator may hear and decide the review, under the new Law section 216 as if the reviewable decision had been made under the corresponding provision of the new Law.

54. Existing right of appeal

- (1) This section applies if —
 - (a) a person had a right under the former Law section 217 to appeal to the court against a decision of the Regulator;
and
 - (b) on the commencement day, the period within which the person could start an appeal had not ended.
- (2) The person may, within the period referred to in subsection (1)(b), start an appeal against the decision and the court must hear and decide the appeal under the new Law section 217 as if the decision appealed against had been made under the corresponding provision of the new Law.

55. Undecided review or appeal

- (1) This section applies if —
 - (a) before the commencement day, a person —
 - (i) applied, under the former Law section 216, for a review of a reviewable decision made under a provision of the former Law; or
 - (ii) appealed to the court, under the former Law section 217, against a decision of the Regulator;
and
 - (b) immediately before the commencement day, the review or appeal has not been decided or withdrawn.
- (2) The entity hearing or deciding the review or appeal, or any proceeding relating to the review or appeal, must continue to hear, and decide, the review or appeal under the new Law section 216 or 217 as if the reviewable decision, or the decision appealed against, had been made under the corresponding provision of the new Law.

56. Transitional regulations

- (1) In this section —

publication day, in relation to transitional regulations, means the day on which the transitional regulations are published in accordance with the *Interpretation Act 1984* section 41;

transitional matter —

- (a) means a matter or issue of a transitional nature that arises as a result of the repeal of the repealed Act and the former Law, the enactment of this Act and the coming into operation of the new Law; and
- (b) includes a matter or issue of a savings or application nature;

transitional regulations means local regulations made for the purposes of subsection (2).

- (2) If there is not sufficient provision in this Division for dealing with a transitional matter, local regulations may prescribe anything required, necessary or convenient to be prescribed in relation to that matter.
- (3) Without limiting subsection (2), transitional regulations may provide that a specified provision of this Act or the new Law —
 - (a) does not apply in relation to a matter; or
 - (b) applies with specified modifications to or in relation to a matter.
- (4) Transitional regulations cannot be made after the end of the period of 2 years beginning on the commencement day.
- (5) If transitional regulations provide that a state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the publication day, but not earlier than the commencement day, the regulations have effect according to their terms.

- (6) If transitional regulations contain a provision referred to in subsection (5), the provision does not operate so as to —
- (a) affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the publication day; or
 - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the publication day.

Part 5 — Consequential amendments

57. Government Railways Act 1904 amended

- (1) This section amends the *Government Railways Act 1904*.
- (2) Delete section 2A and insert:

2A. Relationship of this Act to Rail Safety National Law (WA)

If there is a conflict or inconsistency between a provision of this Act and a provision of the *Rail Safety National Law (WA)*, the provision of that Law prevails to the extent of the conflict or inconsistency.

- (3) Delete section 13(1a)(d) and insert:

(d) the *Rail Safety National Law (WA)*.

- (4) In section 61(5) delete “*Rail Safety National Law (WA) Act 2015*.” and insert:

Rail Safety National Law (WA).

58. Various references to “*Rail Safety National Law (WA) Act 2015*” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “*Rail Safety National Law (WA) Act 2015*” and insert:

Rail Safety National Law (WA)

Table

<i>Mines Safety and Inspection Act 1994</i>	s. 7(2)
<i>Personal Property Securities (Commonwealth Laws) Act 2011</i>	s. 17(1) def. of relevant State property law par. (d)
<i>Public Transport Authority Act 2003</i>	s. 3 def. of train s. 4(1)(a)
<i>Rail Freight System Act 2000</i>	s. 9(1)(a)
<i>Railways (Access) Act 1998</i>	s. 8

Note: The heading to amended *Railways (Access) Act 1998* section 8 is to read:

Code is subject to Rail Safety National Law (WA)

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
amending Act.....	3(1)
amending Act provision.....	14(1)
analyst.....	21(1)
blood alcohol content.....	21(1)
breath analysis.....	21(1)
breath analysis instrument.....	21(1)
commencement day.....	3(1)
Commissioner of Police.....	3(1)
corresponds.....	49(2)
court.....	18(1)
defendant.....	45(2)
disallowance period.....	8(1)
disallowance resolution.....	8(1)
disallowed regulations.....	16(5)
drug screening device.....	21(1)
drug screening test.....	21(1)
drug test.....	21(1)
emergency services.....	18(1)
former Law.....	49(1)
Gazette.....	18(1)
Health Practitioner Regulation National Law.....	18(1)
hospital.....	21(1)
local regulations.....	3(1)
magistrate.....	18(1)
medical practitioner.....	21(1)
Minister.....	18(1)
national regulations.....	12(2)
new Law.....	49(1)
notice period.....	8(1)
oral fluid analysis.....	21(1)
oral fluid analysis device.....	21(1)
parliamentary committee.....	11(1)
police officer.....	18(1)
preliminary breath test.....	21(1)
preliminary testing device.....	21(1)
prescribed BAC.....	21(1)
publication day.....	56(1)
public sector auditor.....	18(1)
Rail Safety National Law.....	5(1)

Rail Safety National Law (WA).....	3(1)
Rail Safety National Regulations.....	3(1), 12(1)
Rail Safety National Regulations (WA).....	3(1)
registered nurse	21(1)
relevant time	42
repealed Act	49(1)
road vehicle.....	18(1)
sample taker	21(1)
shared path	18(1)
subsidiary provision	14(1)
the jurisdiction	18(1)
this jurisdiction	18(1)
transitional matter	56(1)
transitional regulations.....	56(1)
urine test.....	21(1)

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