



Rail Safety National Law (Queensland) Act 2017

Rail Safety National Law (Queensland) Regulation 2017

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Queensland

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Rail Safety National Law (Queensland) Regulation 2017

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Rail Safety National Law (Queensland) Regulation 2017*.

2 Commencement

This regulation commences at the end of 30 June 2017.

3 Definitions

The dictionary in schedule 1 defines particular words used in this regulation.

Part 2 Drug and alcohol testing

Division 1 Testing procedures and evidentiary matters

4 Analyst's laboratory—Act, s 15

For section 15 of the Act, definition *analyst*, a laboratory approved by the chief executive under section 18A(1)(a) for carrying out an analysis or laboratory test is prescribed for the analysis or test.

5 Device for preliminary breath test—Act, s 15

(1) For section 15 of the Act, definition *preliminary breath test*, a device that complies with AS 3547 is approved.

- (2) In this section—

AS 3547 means the Australian Standard as in force from time to time under that designation (regardless of the edition or year of publication of the standard).

6 Device for preliminary saliva test—Act, s 15

For section 15 of the Act, definition *preliminary saliva test*, a device approved by the chief executive under section 18A(1)(b) for testing saliva is approved.

7 Laboratory test—Act, s 15

- (1) For section 15 of the Act, definition *saliva analysis*, a laboratory test that uses mass spectrometry to identify the presence of a prescribed drug is approved.
- (2) In this section—
- prescribed drug* see section 15 of the Act.

8 Requirements for how to provide specimen of breath or saliva for analysis—Act, s 34

- (1) For section 34 of the Act, a rail safety worker who is directed by an authorised person under section 28 or 29 of the Act to provide a specimen of the worker's breath for analysis must do so by—
- (a) placing the worker's mouth over the mouthpiece of the breath analysing instrument when, and in the manner, directed by the instrument operator; and
 - (b) blowing directly and continuously (and without escape of breath otherwise) through the mouthpiece into the instrument until told to stop by the instrument operator.
- (2) For section 34 of the Act, a rail safety worker who is directed by an authorised person under section 28 or 29 of the Act to provide a specimen of the worker's saliva for analysis must do so by—

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- (a) placing a collection unit, or allowing a collection unit to be placed, into or adjacent to the worker's mouth when, and in the manner, directed by the instrument operator; and
 - (b) providing the specimen until told to stop by the instrument operator.
- (3) In this section—
- collection unit* means a device for collecting a specimen of saliva for analysis that is approved by the chief executive under section 18A(1)(c).

9 Blood specimens

- (1) In taking a specimen of a rail safety worker's blood for a laboratory test, a health care professional must—
- (a) take the specimen from any vein selected by the health care professional; and
 - (b) not use a substance that the health care professional believes on reasonable grounds to be or to contain alcohol or ether when cleaning—
 - (i) the site of the venipuncture; or
 - (ii) a needle or syringe used for taking the specimen; and
 - (c) take a sufficient quantity of blood for the laboratory test; and
 - (d) place the specimen in a specimen tube; and
 - (e) place on the specimen tube an identifying number; and
 - (f) sign a certificate (a *specimen certificate*) stating—
 - (i) the name of the rail safety worker from whom the specimen was taken; and
 - (ii) the date on which, and the place and time at which, the specimen was taken; and

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- (iii) the identifying number the health care professional placed on the specimen tube containing the specimen; and
 - (iv) the name of the authorised person who directed the rail safety worker to provide the specimen.
- (2) A copy of the specimen certificate is to be given to an analyst with the specimen of blood.
- (3) The copy of the specimen certificate given to the analyst is sufficient authority for the analyst to issue an analyst's certificate for the specimen.
- (4) A specimen certificate is admissible in evidence and is, unless the contrary is proved, conclusive evidence of the matters stated in the certificate.
- (5) In a proceeding for an offence against the national law, part 3, it is to be conclusively presumed that no substance containing alcohol or ether was used by a health care professional in cleaning the site of a venipuncture, or a needle or syringe used for taking a specimen, unless he or she gives evidence on oath that he or she did so.
- (6) If a health care professional gives evidence on oath that a substance containing alcohol or ether was used by him or her in cleaning the site of a venipuncture, or a needle or syringe used for taking a specimen, it is to be conclusively presumed that the use of the substance did not affect the result of an analysis of a specimen taken by him or her unless the contrary is proved.
- (7) If, in a certificate issued by an analyst for the purposes of the Act in relation to a specimen of blood, the analyst states there was a sufficient quantity of blood for the purposes of analysis and that the specimen was capable of analysis, the certificate is sufficient evidence of those matters unless the contrary is proved.

10 Dealing with blood specimens

- (1) A duplicate specimen of blood given to a rail safety worker from whom a specimen of blood for a laboratory test was obtained must be dealt with by the health care professional in the same manner as if the duplicate specimen were a specimen of blood for a laboratory test.
- (2) In this section—
duplicate specimen see section 33(4) of the Act.

11 Delivery of specimen to laboratory—Act, s 38

For section 38 of the Act, the following ways are prescribed—

- (a) personally;
- (b) a way provided for under the International Air Transport Association Dangerous Goods Regulations.

12 Authority for analyst to issue certificate of an analysis for specimen of saliva

A copy of a certificate under section 41(2) of the Act, for a specimen of saliva, given to an analyst is sufficient authority for the analyst to issue an analyst's certificate for the specimen.

13 Evidence—authorised persons

- (1) Evidence by an authorised person that the authorised person used a device for carrying out a preliminary test on a specimen provided by a rail safety worker is, unless the contrary is proved, sufficient evidence that the device was a device approved by regulation for the purposes of the test.
- (2) In this section—
preliminary test see section 15 of the Act.

14 Evidence—breath analysing instruments

- (1) This section applies to a certificate purporting to be signed by an analyst or an approved supplier (each the *supplier*) that states—
 - (a) the supplier prepared a quantity of a solution consisting of ethyl alcohol and distilled water; and
 - (b) the solution was suitable for use with a breath analysing instrument; and
 - (c) the supplier sealed the solution in a number of containers; and
 - (d) the supplier wrote a control number on each container.
- (2) On its production in evidence, the certificate is, unless the contrary is proved, conclusive evidence that a container, bearing a control number mentioned in subsection (1)(d), contained standard alcohol solution.
- (3) In this section—

approved supplier means an entity the police commissioner—

- (a) is satisfied is competent to prepare, certify and supply standard alcohol solution; and
- (b) has approved under the *Traffic Regulation 1962*, section 173, to perform those activities.

standard alcohol solution means a solution of ethyl alcohol and distilled water prepared by an analyst or approved supplier and certified by the analyst or approved supplier as suitable for use with a breath analysing instrument.

15 Evidence—authority to operate breath analysing instrument

- (1) In any proceeding—
 - (a) it is not necessary for a police officer to produce in evidence a certificate of authority issued by the police commissioner that the police officer is authorised to

operate a breath analysing instrument for the purposes of section 37(2) of the Act; and

- (b) evidence by a police officer that he or she is so authorised to operate a breath analysing instrument for the purposes of section 37(2) of the Act is sufficient evidence of that fact until the contrary is proved.
- (2) If a person intends to dispute at a hearing that a particular police officer is authorised to operate a breath analysing instrument for the purposes of section 37(2) of the Act, the person must give the police commissioner written notice of the intention at least 14 days before the day fixed for the hearing.

16 Evidence—certificates about breath, saliva and blood specimens

- (1) This section applies if an authorised person, health care professional or instrument operator is required under the Act to sign a certificate relating to a specimen of breath, saliva or blood.
- (2) If the authorised person, health care professional or instrument operator certifies that he or she has given all necessary directions in connection with the provision of the specimen, and that a copy of the certificate was given to each person to whom the Act requires it to be given, the certificate is, until the contrary is proved, conclusive evidence of all matters stated in the certificate.

17 Evidence—certificates

Section 52(2) of the Act applies to all certificates made under this regulation that are or purport to be signed by—

- (a) a health care professional; or
- (b) an analyst; or
- (c) an approved supplier within the meaning of section 14.

18 Evidence—failure to comply with provisions

Unless it is proved that a failure to comply with a provision of this regulation substantially affected an analysis of breath or saliva, or the result of a laboratory test of a specimen of saliva or blood, it is to be presumed the failure did not in any way affect the result of the analysis or test.

Division 2 Approval of particular matters

18A Approval of laboratory or particular devices

- (1) The chief executive may approve—
 - (a) for section 4—a laboratory for carrying out an analysis or laboratory test; or
 - (b) for section 6—a device for testing saliva; or
 - (c) for section 8(3), definition *collection unit*—a device for collecting a specimen of saliva for analysis.
- (2) The chief executive must publish notice of the approval on the department’s website.
- (3) The notice must state—
 - (a) for an approval under subsection (1)(a)—the name of the laboratory; and
 - (b) for an approval under subsection (1)(b) or (c)—details of the device; and
 - (c) the day, not earlier than the day the notice is published, the approval takes effect.
- (4) The approval takes effect on the day stated in the notice under subsection (3)(c).

18B Revocation of approvals under s 18A

- (1) The chief executive may revoke an approval under section 18A.

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- (2) The chief executive must publish notice of the revocation on the department's website.
 - (3) The notice must state—
 - (a) details of the approval being revoked; and
 - (b) the day, not earlier than the day the notice is published, the revocation takes effect.
 - (4) The revocation takes effect on the day stated in the notice under subsection (3)(b).

18C Register of approvals under s 18A

- (1) The chief executive must keep a register of approvals given under section 18A.
- (2) The register must include the following information for each approval—
 - (a) details of the approval;
 - (b) the day the approval took effect;
 - (c) if the approval has been revoked under section 18B—the day the revocation took effect.
- (3) The chief executive may keep the register in the way the chief executive considers appropriate.
- (4) However, the chief executive must publish the register on the department's website.

Part 3 Rail safety investigation fee

19 Accredited persons for rail safety investigation fee—Act, s 59

For section 59(1) of the Act, an accredited person is prescribed, in relation to a period prescribed for that section, if the person is a rolling stock operator with effective control and management of the operation or movement of trains that

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travelled, in total, more than 1.5 million km within Queensland in the previous calendar year.

20 Period for rail safety investigation fee—Act, s 59

For section 59(1) of the Act, the period is a financial year.

21 Rail safety investigation fee—Act, s 59

- (1) For section 59(1) of the Act, the rail safety investigation fee payable by an accredited person prescribed for that section is the amount worked out using the following formula—

$$\frac{A}{B} \times C$$

where—

A means—

- (a) for the financial year ending on 30 June 2018—the rate of \$750,000; or
- (b) for each later financial year—the rate worked out under subsections (2) and (3).

B means the number of kilometres travelled, in total, within Queensland in the previous calendar year by the trains of all accredited persons prescribed for section 59(1) of the Act.

C means the number of kilometres travelled, in total, within Queensland in the previous calendar year by the trains of the accredited person by whom the fee is payable.

- (2) The rate for each financial year after the financial year ending on 30 June 2018 is to be adjusted using the following formula—

$$\frac{D}{E} \times F$$

where—

D means the rate for the previous financial year.

E means the CPI number for the March quarter in the previous calendar year.

F means the CPI number for the March quarter in the current calendar year.

- (3) However, if in a particular financial year the adjustment of the rate under subsection (2) would reduce the rate, the rate must not be adjusted for that year.
- (4) This section applies subject to section 23(4).
- (5) In this section—

CPI number, for a quarter, means the all groups consumer price index that is the weighted average of the 8 capital cities, as published by the Australian Statistician for that quarter.

current calendar year, in relation to a financial year for which the rail safety investigation fee is being worked out, means the calendar year that ends during the financial year.

22 Date for payment of rail safety investigation fee—Act, s 59

For section 59(2) of the Act, the date is 31 August of the financial year for which the rail safety investigation fee is payable.

23 Invoice for rail safety investigation fee

- (1) The chief executive must give an accredited person prescribed for section 59(1) of the Act an invoice for the rail safety investigation fee payable by the person for a financial year.
- (2) The chief executive must give the accredited person the invoice on or before 31 July in the financial year.
- (3) If, based on information subsequently received by the chief executive, the chief executive decides the amount of the invoice was incorrect, the chief executive may, within 30 days after receiving the information, give the accredited person a notice stating the corrected amount.

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- (4) If the chief executive gives the accredited person a notice under subsection (3)—
 - (a) the rail safety investigation fee payable by the accredited person for the financial year is taken to be the amount of the invoice; and
 - (b) the rail safety investigation fee payable by the accredited person for the next financial year must be adjusted by taking the corrected amount into account.

24 Information to be given to chief executive—Act, s 60

- (1) For section 60(1) of the Act, the information, in relation to an accredited person, is the number of kilometres travelled, in total, within Queensland in the previous calendar year by trains the operation or movement of which were effectively controlled and managed by the accredited person.
- (2) For section 60(2)(a) of the Act, the way is in writing given to the chief executive.
- (3) For section 60(2)(b) of the Act, the period is the period, of at least 28 days, stated by the chief executive in the chief executive's request for the information.

Schedule 1 Dictionary

section 3

analysis see section 15 of the Act.

analyst see section 15 of the Act.

analyst's certificate see section 15 of the Act.

authorised person see section 15 of the Act.

breath analysing instrument see section 15 of the Act.

health care professional see section 15 of the Act.

instrument operator—

- (a) for a specimen of breath—see section 15 of the Act; or
- (b) for a specimen of saliva—means the person operating the collection unit under section 8(2).

previous calendar year, in relation to a financial year, for part 3, means the calendar year most recently ended before the start of the financial year.

train, for part 3, means a train that transports passengers or freight (or both), but does not include a light rail vehicle or tram.