

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY RAIL SAFETY REGULATIONS

As in force at 27 October 2004

Table of provisions

Part 1 Preliminary

| | | |
|----|--|---|
| 1 | Citation | 1 |
| 2 | Commencement | 1 |
| 3 | Interpretation | 1 |
| 4 | Prescribed railway safety work | 2 |
| 4A | Actions of police etc. do not constitute offence | 3 |

Part 2 Fees

| | | |
|---|----------------------------------|---|
| 5 | Prescription of fees..... | 3 |
| 6 | Payment of annual fees..... | 4 |
| 7 | Calculation of annual fees | 4 |

Part 3 Railway employees and inspectors

| | | |
|-----|--|---|
| 8 | Functions of railway employee | 6 |
| 9 | General power to give directions to leave trains or railway land | 6 |
| 10 | Removal of persons from trains or railway land..... | 6 |
| 10A | Prescribed concentration of alcohol – sections 49 and 50 of Act | 6 |

Part 4 Conduct on railway land

| | | |
|----|---|----|
| 11 | Conduct generally..... | 7 |
| 13 | Eating and drinking on trains and railway land | 8 |
| 14 | Drinking alcohol on trains and railway land | 8 |
| 15 | Intoxicated persons | 9 |
| 16 | Persons travelling on trains to remain inside train | 9 |
| 17 | No unauthorised commercial activities | 10 |
| 19 | Lost property..... | 10 |
| 20 | Control of animals on trains and railway land | 11 |
| 21 | Vehicles not to be left on certain parts of railway land | 11 |
| 22 | Restriction on vehicles that may be driven on level crossings and other structures on railway land..... | 12 |

Part 5 Trespassing and other dangerous activities

| | | |
|----|--|----|
| 23 | Trespassing..... | 13 |
| 24 | No placing of things on railway tracks | 13 |

| | | |
|----|--|----|
| 25 | Unauthorised use of communications systems, safety equipment, barriers, gates and fences | 14 |
|----|--|----|

Part 6 Using crossings and gates

| | | |
|-----|--|----|
| 26 | Crossing railway tracks generally | 14 |
| 27 | Pedestrians crossing railway tracks..... | 15 |
| 28 | Restriction on certain vehicles crossing railway tracks at level crossings | 16 |
| 29 | Driving animals across railway tracks | 17 |
| 29A | Driving herd or mob of animals on hoof across railway tracks | 18 |
| 30 | Barriers and gates to be closed..... | 19 |

Part 7 Testing for alcohol and drugs

Division 1 Preliminary

| | | |
|----|---------------------------------------|----|
| 31 | Definitions..... | 19 |
| 32 | Actions by medical practitioner | 20 |

Division 2 Testing

| | | |
|----|---|----|
| 33 | Inspector may test breath of railway employee | 20 |
| 34 | Circumstances when inspector able to require provision of sample of blood or urine | 21 |
| 35 | Railway employee may request blood or urine testing in place of breath test | 22 |
| 36 | Procedure after test by breath analysis indicates railway employee under influence of alcohol | 22 |
| 37 | Taking sample of blood or urine | 22 |
| 38 | Procedures relating to blood and urine tests – health practitioners | 23 |
| 39 | Procedures relating to blood and urine tests – analysts | 24 |

Division 3 Offences

| | | |
|----|--|----|
| 40 | Compliance with requirement to submit to test or give sample | 24 |
| 41 | Alteration of concentration of alcohol or drug in blood | 25 |

Division 4 Evidence

| | | |
|----|---|----|
| 42 | Presumption as to concentration of alcohol in blood | 26 |
| 43 | Certificates as evidence | 26 |
| 44 | Presumptions as to certificates..... | 27 |

Division 5 Miscellaneous

| | | |
|----|--|----|
| 45 | Inspectors who may carry out breath tests or breath analyses | 28 |
| 46 | Use of breath analysis instruments | 29 |

| | | |
|----|---|----|
| 47 | Authorisation of analysts to carry out analyses of blood or urine | 29 |
| 48 | Reports relating to railway employee's refusal or failure to be tested..... | 30 |
| 49 | Duty of health practitioner who takes sample | 30 |
| 50 | Protection from liability of health practitioners and analysts | 30 |
| 51 | Self-incrimination no excuse..... | 30 |

Schedule 1 Fees

Schedule 2 Annual fee

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 27 October 2004

NORTHERN TERRITORY RAIL SAFETY REGULATIONS

Regulations under the *Northern Territory Rail Safety Act*

Part 1 Preliminary

1 Citation

These Regulations may be cited as the *Northern Territory Rail Safety Regulations*.

2 Commencement

These Regulations come into operation on 1 September 2002.

3 Interpretation

(1) In these Regulations, unless the contrary intention appears:

annual fee means an annual fee payable under regulation 6.

commercial railway means a railway other than a railway operated by a non-profit organisation or an organisation whose principle areas of activity involve the natural or cultural heritage of the Territory.

level crossing means:

- (a) a level crossing within the meaning of the *Australian Road Rules*;
- (b) a crossing constructed on a part of the corridor, within the meaning of the *AustralAsia Railway (Special Provisions) Act*, that is bordered by land to which is annexed the benefit of an access easement created by section 14A(2) of that Act, whether or not there is a sign indicating the crossing; or
- (c) another crossing constructed on a part of a railway where a track or access way (for the passage of persons, vehicles, equipment or animals on private land bordering the railway) and a railway track meet at substantially the same level, whether or not there is a sign indicating the crossing.

pedestrian crossing means a crossing at substantially the same level as a railway track that is used by pedestrians to cross the railway track.

previous year, in relation to a year for which an annual fee is payable, means the 12 month period immediately preceding the year.

railway land means a railway or a place or building adjacent or near to a railway that is used in connection with the railway (including for the construction of the railway and the storage of rolling stock).

road has the same meaning as in the *Australian Road Rules*.

road-related area has the same meaning as in the *Australian Road Rules*.

vehicle means a conveyance with wheels or a device with wheels designed to be pulled by a vehicle.

wheeled recreational device has the same meaning as in the *Australian Road Rules*.

wheeled toy has the same meaning as in the *Australian Road Rules*.

year means 12 months commencing on 1 September and ending on 31 August.

- (2) A reference in these Regulations to the permission of an accredited person, or being permitted by an accredited person, to do an act is a reference to being given permission or being permitted to do the act in any manner whatever, including (but not limited to) orally or in writing given by the accredited person's agent or employee, by an agreement entered into with the accredited person and by wording on a sign erected conspicuously on a train, rolling stock or railway land of the accredited person.

4 Prescribed railway safety work

The following work is railway safety work:

- (a) work that involves or relates to controlling the conduct of persons who are in or on a train or other rolling stock or railway land;

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- (b) work that involves holding, collecting or disposing of belongings, luggage or other property of persons or other materials or things that are left in or on a train or other rolling stock or railway land;
 - (c) work that relates to controlling, destroying or removing things that may endanger persons in or on a train or other rolling stock or railway land.

4A Actions of police etc. do not constitute offence

- (1) This regulation applies to a person who is or has been:
 - (a) a member of the Police Force;
 - (b) a fire control officer or fire warden within the meaning of the *Bushfires Act*;
 - (c) a member of a volunteer bushfire brigade established under section 56 of the *Bushfires Act*;
 - (d) a member of the Northern Territory Emergency Service established under section 17 of the *Disasters Act*; or
 - (e) a member of the Northern Territory Fire and Rescue Service established under section 5 the *Fire and Emergency Act*.
- (2) If, by doing an act or omitting to do an act, the person commits an offence against these Regulations, the person is taken not to have committed the offence if, at the time of doing the act or omitting to do the act, the person was carrying out his or her duties of office mentioned in subregulation (1) and was acting reasonably in the circumstances.

Part 2 Fees

5 Prescription of fees

The fee to be paid for or in relation to a matter under the Act described in column 1 of Schedule 1 is the fee specified opposite in column 2 of that Schedule.

6 Payment of annual fees

- (1) Subject this regulation:
 - (a) the annual fee payable by an accredited person or owner of a registered private siding referred to in column 1 of Schedule 2 is the amount specified, or determined as specified, opposite in column 2 of that Schedule; and
 - (b) an annual fee:
 - (i) is due and payable on 1 September in each year; and
 - (ii) is to be paid on or before 30 September in the same year.
- (2) If a person becomes an accredited person or registers a private siding, during a year the person must pay the portion of the annual fee that is proportionate to the number of days for which the person will be an accredited person or for which the private siding will be registered during the year.
- (3) The portion of an annual fee payable under subregulation (2):
 - (a) is due and payable on the person being granted accreditation or the siding being registered; and
 - (b) subject to subregulation (4) – is to be paid within 28 days after the person is granted accreditation or the siding is registered.
- (4) The Director may make an arrangement with an accredited person or the owner of a registered private siding that permits the accredited person or owner to pay the annual fee payable by the accredited person or owner by instalments and, if so, the accredited person or owner must pay the annual fee in accordance with the arrangement.

7 Calculation of annual fees

- (1) If the amount of an annual fee is to be determined as specified in item 1(a) or (d) of Schedule 2:
 - (a) the annual fee is to be calculated based on the operations of the accredited person during the previous year; or
 - (b) where the accredited person was accredited for part only of the previous year – the annual fee is calculated as an estimate based on the operations of the accredited person during that part of the previous year.

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- (2) If an annual fee is due and payable by an accredited person on 1 September 2002 and the amount of the annual fee payable by the accredited person is to be determined as specified in item 1(a) or (d) of Schedule 2, it is calculated as an estimate based on the train kilometres the accredited person estimates will be travelled during that year by trains along the railway track in respect of which the accredited person is accredited.
- (3) If an annual fee is due and payable by a person who becomes accredited during a year:
- (a) where the amount of the annual fee payable by the accredited person is to be determined as specified in item 1(a) or (d) of Schedule 2 – it is calculated as an estimate based on the train kilometres the accredited person estimates will be travelled during the part of that year for which the person is an accredited person by trains along the railway track in respect of which the accredited person has become accredited; or
 - (b) where the amount of the annual fee payable by the accredited person is to be determined as specified in item 1(c) of Schedule 2 – it is calculated as the proportion of \$35 per kilometre of railway track of which the accredited person is, at the time of being granted the accreditation, the accredited owner that is proportionate to the number of days in that year for which the person will be an accredited person.
- (4) For the purposes of subregulation (2) and (3)(a):
- (a) a reference in subregulation (5) to train kilometres travelled during the previous year is taken to include a reference to train kilometres that the accredited person estimates will be travelled during the year or part of the year referred to in subregulation (2) along a railway track in respect of which the accredited person is or has become accredited; and
 - (b) a reference in subregulation (5) to the number of trains that travelled along, or the distance travelled by a train along, a railway track during the previous year is taken to include a reference to the number of trains the accredited person estimates will travel, or the distance the accredited person estimates will be travelled by a train, during the year or part of the year referred to in subregulation (2) along a railway track in respect of which the accredited person is or has become accredited.

- (5) In determining the amount of an annual fee referred to in item 1(a) or (d) of Schedule 2, train kilometres travelled during the previous year by trains along a railway track are calculated in accordance with the formula $365 \times N \times D$, where:

- N is the average number of trains that travelled each day of the previous year along the railway track; and
- D is the average distance in kilometres travelled each day along the railway track by each train that travelled along the railway track during the previous year.

Part 3 Railway employees and inspectors

8 Functions of railway employee

A railway employee has the following functions:

- (a) to carry out railway safety work as directed by the accredited person or owner of a private siding who employs him or her;
- (b) the functions imposed on him or her by these Regulations.

9 General power to give directions to leave trains or railway land

- (1) If, in the opinion of a railway employee or an inspector, a person is committing an offence against these Regulations, the railway employee or inspector may direct the person to leave the train or other rolling stock or railway land concerned.
- (2) The person must comply with a direction given under subregulation (1).

Penalty: 5 penalty units.

10 Removal of persons from trains or railway land

If a person fails to comply with a direction to leave a train or other rolling stock or railway land given under regulation 9 by a railway employee or an inspector, the railway employee or inspector may, with the force that is reasonable and necessary, remove the person from the train, rolling stock or railway land.

10A Prescribed concentration of alcohol – sections 49 and 50 of Act

A concentration of 0.02 grams of alcohol in 100 millilitres of blood is the prescribed concentration of alcohol for sections 49(c)(i) and 50(a) of the Act.

Part 4 Conduct on railway land

11 Conduct generally

- (1) A person who is in or on a train or other rolling stock or railway land must conduct himself or herself in such a way so that he or she does not do any of the following acts:
- (a) use offensive language or otherwise behave offensively;
 - (b) do an indecent act;
 - (c) erect a tent or other shelter or arrange gear or equipment for the purpose of sleeping or camping;
 - (ca) sleep;
 - (d) throw a thing at, in, on or from a train or other rolling stock or railway land;
 - (e) interfere with a facility or equipment, or obstruct or interfere with another person's use of a facility or equipment, in or on a train or other rolling stock or railway land;
 - (f) do anything that might endanger a person or damage property in or on a train or other rolling stock or railway land;
 - (g) remove from a train or other rolling stock or railway land any property that does not belong to him or her;
 - (h) write, draw or affix a word, representation, character or poster on or onto any infrastructure in or on a train or other rolling stock or railway land;
 - (i) deposit or abandon any litter, belongings, luggage or other material or thing in or on a train or other rolling stock or railway land other than by placing it in a receptacle or place provided for the deposit of the litter, belongings, luggage or other material or thing;
 - (j) if the person is in or on an area of railway land set apart for the exclusive use of pedestrians – ride an animal or drive a vehicle or use a wheeled recreational device or a wheeled toy;
 - (k) spit;
 - (l) urinate or defecate, except in toilets provided for the purpose.

- (1A) Subregulation (1)(ca) does not apply to:
- (a) a railway employee between duty shifts or while on a break; or
 - (b) a person lawfully travelling or waiting to travel on a train.
- (2) Subregulation (1)(j) does not apply to or in respect of:
- (a) a vehicle carrying a person who is unable to walk;
 - (b) a railway employee or an inspector carrying out his or her duties;
 - (c) a member of St John Ambulance Australia (NT) Inc carrying out his or her duties; or
 - (d) a person who is permitted by the relevant accredited person to ride an animal, drive a vehicle or use a wheeled recreational device or a wheeled toy in or on the area and who does so in accordance with any conditions imposed by the accredited person.
- (3) A person who, without reasonable excuse, contravenes or does not comply with subregulation (1) commits an offence.

Penalty: 5 penalty units

13 Eating and drinking on trains and railway land

- (1) A person in or on a train or other rolling stock or railway land must not eat or drink if signs conspicuously erected in or on the train, rolling stock, railway land or an area of railway land prohibit eating or drinking in or on the train, rolling stock, railway land or area.

Penalty: 2 penalty units.

- (2) Subregulation (1) does not apply to a person:
- (a) who is permitted to eat or drink by a railway employee; or
 - (b) who is eating or drinking for medical reasons.

14 Drinking alcohol on trains and railway land

- (1) A person in or on a train or other rolling stock or railway land may drink intoxicating liquor only if the liquor was supplied in or on the train, rolling stock or railway land by or with the permission of an accredited person who is the owner or operator of the relevant railway.

- (2) A person who contravenes or does not comply with subregulation (1) commits an offence.

Penalty: 5 penalty units.

- (3) In this regulation:

drink includes being in possession of an opened container of intoxicating liquor.

15 Intoxicated persons

- (1) If, in the opinion of a railway employee or an inspector, a person in or on a train or other rolling stock or railway land:

- (a) is under the influence of intoxicating liquor or a drug; and
- (b) is causing or is likely to cause a nuisance or annoyance to, or endanger, other persons on the train, damage rolling stock or railway land or endanger himself or herself,

the railway employee or inspector may direct the person to leave the train, rolling stock or railway land.

- (2) A person must comply with a direction given under subregulation (1).

Penalty: 5 penalty units.

16 Persons travelling on trains to remain inside train

- (1) A person travelling on a train or other rolling stock must, at all times when the train or rolling stock is moving, remain inside the train or rolling stock in such a manner so that no part of the person is projecting from the train or rolling stock.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not apply to or in respect of:

- (a) a railway employee or inspector carrying out his or her duties;
- (b) a person who is acting at the request of or in accordance with a direction of a railway employee or an inspector; or
- (c) a person who is permitted by the relevant accredited person to travel on a train or rolling stock in such a manner that all or part of the person is projecting from the train or rolling stock and who does so in accordance with any conditions imposed by the accredited person.

17 No unauthorised commercial activities

- (1) A person may carry on a commercial activity in or on a train or other rolling stock or railway land only if the person is authorised to do so in writing by an accredited person who is the owner or operator of the relevant railway.
- (2) A person referred to in subregulation (1) must, if requested to do so by a railway employee or an inspector, display to the railway employee or inspector his or her authorisation to carry on the commercial activity.
- (3) A person who contravenes or does not comply with subregulation (1) or (2) commits an offence.

Penalty: 5 penalty units.

- (4) In this regulation:

commercial activity means one or more of the following activities:

- (a) selling, hiring or offering to sell or hire any thing to a person in or on the train, rolling stock or railway land other than by means of a mobile phone call to a person who is not present in or on the train, rolling stock or railway land;
- (b) touting or soliciting custom, hire or employment from a person in or on a train, rolling stock or railway land other than by means of a mobile phone call to a person who is not present in or on the train, rolling stock or railway land;
- (c) distributing handbills to one or more persons in or on a train, rolling stock or railway land;
- (d) soliciting money from a person in or on a train, rolling stock or railway land, whether by busking or any other means.

19 Lost property

A person who finds an article on a train or other rolling stock or railway land that belongs to another person must:

- (a) return it to its owner; or
- (b) give it, or report its location, to a railway employee.

Penalty: 5 penalty units.

20 Control of animals on trains and railway land

- (1) A person must not take an animal in or on a train or other rolling stock or railway land unless:
- (a) the animal is a dog guiding or assisting, or being trained to guide or assist, a person who has a disability;
 - (b) the animal is a dog or horse being used by a railway employee, inspector or other person to carry out security work; or
 - (c) the person is permitted to do so by the relevant accredited person and does so in accordance with any conditions imposed by the accredited person.

- (2) In subregulation (1):

security work means:

- (a) controlling or monitoring the conduct of persons;
 - (b) removing persons because of their conduct;
 - (c) patrolling or guarding property; or
 - (d) searching for or removing unlawful substances or things (including, but not limited to, drugs, firearms, explosives or explosive materials).
- (3) A person who contravenes or does not comply with subregulation (1) commits an offence.

Penalty: 5 penalty units.

- (4) The conditions that the accredited person may impose include, but are not limited to, conditions about the part of the railway land where a person may take the animal, the degree of control the person must be capable of exercising over the animal and the manner in which the animal may be transported on a train or other rolling stock.

21 Vehicles not to be left on certain parts of railway land

- (1) A person may only park a vehicle on railway land in a place designated for parking vehicles, and in accordance with any conditions imposed on parking vehicles, by the relevant accredited person.

- (2) Subregulation (1) does not apply in respect of:
- (a) a vehicle carrying a person who is unable to walk;
 - (b) a railway employee or an inspector carrying out his or her duties; or
 - (c) a member or employee of St John Ambulance Australia (NT) Inc carrying out his or her duties.
- (3) A person who contravenes or fails to comply with subregulation (1) commits an offence.

Penalty: 2 penalty units.

22 Restriction on vehicles that may be driven on level crossings and other structures on railway land

- (1) If there is on railway land a level crossing, railway road bridge or other structure that is provided for the purpose of enabling vehicles to cross a running line, the accredited person who is the owner of the relevant railway may, by signs erected conspicuously on or near the road bridge or structure, fix a vehicle's maximum loaded mass, maximum axle load or other load limit in respect of the road bridge or structure.
- (2) A person must not drive on or over a level crossing, railway road bridge or other structure referred to in subregulation (1) in a vehicle whose loaded mass, axle load or other load exceeds the maximum limit fixed under subregulation (1) unless:
- (a) the person has obtained permission in writing to do so from the accredited person who is the owner of the relevant railway; and
 - (b) if the accredited person's permission is given subject to conditions – the person complies with those conditions.

Penalty: 20 penalty units.

Part 5 Trespassing and other dangerous activities

23 Trespassing

- (1) A person must not, without reasonable excuse, go on to or remain on railway land or a part of railway land, railway track, a level crossing, a pedestrian crossing or a train or other rolling stock unless he or she is authorised to do so.

Penalty: 20 penalty units.

- (2) In subregulation (1), a reference to an authorisation to enter or remain on railway land, railway track, a level crossing, a pedestrian crossing or a train or other rolling stock includes:
- (a) signage conspicuously erected permitting a person to go on to or remain on the railway land, railway track, level crossing, pedestrian crossing, train or rolling stock concerned;
 - (b) a request or direction to do so by a railway employee or an inspector; and
 - (c) the permission of an accredited person or the owner of a private siding.

24 No placing of things on railway tracks

- (1) A person who is not a railway employee or an inspector carrying out his or her duties must not leave, place or deposit anything of any nature whatever on a railway track.

Penalty: 100 penalty units.

- (2) Subregulation (1) does not apply if:
- (a) the person has obtained permission to leave, place or deposit a thing on the railway track from the relevant accredited person; and
 - (b) the person has complied with any conditions on which the accredited person's permission is given.

25 Unauthorised use of communications systems, safety equipment, barriers, gates and fences

- (1) A person must not, without reasonable excuse:
- (a) use for a purpose other than the purpose for which it is provided, or damage, any communications system or information system on a train or other rolling stock or railway land;
 - (b) use for a purpose other than the purpose for which it is provided, or damage, any emergency or safety equipment on a train or other rolling stock or railway land; or
 - (c) interfere with or damage a barrier or gate (including a barrier or gate that is electronically operated) or fence on railway land.

Penalty: 40 penalty units.

- (2) In subregulation (1):

emergency or safety equipment includes emergency breakdown equipment, alarms, stretchers, fire extinguishers, fire hydrants and the like.

Part 6 Using crossings and gates**26 Crossing railway tracks generally**

- (1) A person must not cross (whether on foot or by driving or riding a vehicle, animal, bicycle, wheeled recreational device or wheeled toy) a railway track unless he or she uses a level crossing, bridge, subway or pedestrian crossing constructed for that purpose.

Penalty: 2 penalty units.

- (2) Subregulation (1) does not apply to or in respect of:
- (a) a railway employee or an inspector carrying out his or her duties;
 - (b) a person who is acting at the request of or in accordance with a direction of a railway employee or an inspector; or
 - (c) a railway track that is on a road or road-related area.

27 Pedestrians crossing railway tracks

- (1) If a bridge, subway or pedestrian crossing is constructed for the purpose of crossing a railway track at or near a place where there is a level crossing over the railway track, a pedestrian must not, without reasonable excuse, cross over the railway track at the level crossing but must use the bridge, subway or pedestrian crossing.

Penalty: 2 penalty units.

- (2) Subregulation (1) does not apply to a pedestrian who is in charge of an animal.
- (3) A pedestrian must not cross over a railway track at a level crossing or a pedestrian crossing:
- (a) if the person is warned not to do so by a railway employee or an inspector;
 - (b) if a train is in sight and moving towards the level crossing or pedestrian crossing; or
 - (c) if doing so is contrary to a warning of the approach of a train to the level crossing or pedestrian crossing given by a warning device (whether an audio or visual device).

Penalty: 20 penalty units.

- (4) A pedestrian must not cross over a railway track at a level crossing or a pedestrian crossing at which barriers are installed while those barriers are in any position other than the fully open position.

Penalty: 20 penalty units.

- (5) A pedestrian must not cross over a railway track at a level crossing or pedestrian crossing at which a bell, alarm, red light or other warning device is installed (whether or not barriers are installed) while a bell, alarm, red light or other warning device is operating.

Penalty: 20 penalty units.

- (6) This regulation does not apply to:
- (a) a railway employee or inspector carrying out his or her duties; or
 - (b) a person who is acting at the request of or in accordance with a direction given by a railway employee or inspector.

28 Restriction on certain vehicles crossing railway tracks at level crossings

- (1) A person must not drive a vehicle across a level crossing if:
- (a) the height of the vehicle exceeds:
 - (i) where the vehicle is a trailer with double deck cattle crates or is constructed for the sole purpose of carrying motor vehicles – 4.6 metres; or
 - (ii) in any other case – 4.4 metres;
 - (b) the width of the vehicle, including its load and equipment (if any), exceeds 2.5 metres;
 - (c) the vehicle is carrying a load that is likely to cause damage to railway property or to cause an obstruction on the level crossing to other vehicles or pedestrians crossing, or trains or other rolling stock approaching or railway employees in the vicinity of, the level crossing;
 - (d) doing so is contrary to a sign displayed at the level crossing; or
 - (e) directed by a railway employee or an inspector not to do so.

Penalty: 100 penalty units.

- (2) Subregulation (1)(a), (b), (c) or (d) does not apply if:
- (a) the vehicle and its load (if any) comply with the *Motor Vehicles Act* and the Regulations made under that Act or an exemption under section 59 of *Motor Vehicles Act* is in force in respect of the vehicle; and
 - (b) either of the following applies:
 - (i) subregulations (2A), (3) and (4) have been complied with;
 - (ii) the person driving the vehicle is:
 - (A) a railway employee or inspector carrying out his or her duties;
 - (B) the owner or occupier of land adjoining or adjacent to a railway, an employee or agent of the owner or occupier or any other person acting to protect life or property, control or extinguish a fire or otherwise

deal with an emergency; or

- (C) a person who is permitted by the relevant accredited person to cross the level crossing without complying with subregulations (2A), (3) and (4).

(2A) The driver of the vehicle must, at least 48 hours before crossing the level crossing, notify the relevant accredited person of the driver's intention to drive over the level crossing.

(3) Notification referred to in subregulation (2A) is to specify:

- (a) the name and address of the owner of the vehicle to be driven over the level crossing;
- (b) the level crossing the person wants to drive over;
- (c) the time when the person wants to drive over the level crossing; and
- (d) if the vehicle is the subject of an exemption under section 59 of the *Motor Vehicles Act* – details of the exemption.

(4) Before the time the driver intends to drive the vehicle over the level crossing, the accredited person must notify the driver whether the accredited person approves or does not approve the driver crossing the level crossing.

(5) The accredited person's approval may be subject to conditions.

(6) The accredited person must keep a record of receiving the driver's notification, the details of the notification, whether the accredited person approves the crossing and the time, manner in which the accredited person approves or does not approve the crossing and, if the accredited person approves the crossing, the conditions of the approval (if any).

29 Driving animals across railway tracks

A person must not drive, whether by using a vehicle or otherwise, an animal across a railway track at a level crossing if:

- (a) the person is warned not to do so by a railway employee or an inspector;
- (b) a train is in sight and moving towards the level crossing; or

- (c) warning of the approach of a train to the level crossing has been given by a warning device (whether an audio or visual device).

Penalty: 20 penalty units.

29A Driving herd or mob of animals on hoof across railway tracks

- (1) A person must not drive a herd or mob of animals on the hoof across a railway track at a level crossing other than in accordance with the approval of the relevant accredited person under this regulation.

Penalty: 100 penalty units.

- (2) The person must, at least 48 hours before driving the herd or mob across the level crossing, notify the accredited person of the person's intention to do so.
- (3) The notification must specify:
 - (a) the name and address of the person;
 - (b) the level crossing the person wants to cross; and
 - (c) the time when the person wants to cross the level crossing.
- (4) Before the time the person intends to drive the herd or mob across the level crossing, the accredited person must notify the person whether the accredited person approves or does not approve the herd or mob crossing the level crossing.
- (5) The accredited person's approval may be subject to conditions.
- (6) The accredited person must keep a record of receiving the person's notification, the details of the notification, whether the accredited person approves the crossing and, if the accredited person approves the crossing, the time and manner in which the accredited person approves the crossing and any conditions of the approval.
- (7) This regulation does not apply to a person who is permitted by the relevant accredited person to drive a herd or mob of cattle on the hoof across the level crossing without complying with this regulation.

30 Barriers and gates to be closed

- (1) In this regulation:

barrier does not include a barrier that is electronically operated.

gate does not include a gate that is electronically operated.

- (2) A person who opens a gate that is at a level crossing or a pedestrian crossing or elsewhere on railway land, or that is on land adjacent to railway land and that opens on to the railway land, must not depart from the gate without shutting and securely fastening it.

Penalty: 10 penalty units.

- (3) A person who manually raises a barrier (so that it is in any position other than the fully closed position) that is at a level crossing or a pedestrian crossing or elsewhere on railway land, or that is on land adjacent to railway land and that opens onto railway land, must not depart from the barrier without lowering it so that it is in the fully closed position.

Penalty: 10 penalty units.

Part 7 Testing for alcohol and drugs

Division 1 Preliminary

31 Definitions

In this Part, unless the contrary intention appears:

analyst means an analyst authorised under regulation 47 to carry out analyses for this Part.

authorised inspector means an inspector who is authorised under regulation 45 to carry out a breath test or breath analysis.

blood test means a test of a sample of a person's blood to ascertain the concentration level (if any) of alcohol or a drug present in the person's blood.

breath analysis means an analysis of a sample of a person's breath by a breath analysis instrument to assess the concentration of alcohol in that person's blood.

breath analysis instrument means an apparatus that is a prescribed breath analysis instrument under regulation 56 of the *Traffic Regulations*.

breath test means a test of a sample of a person's breath to ascertain whether the prescribed concentration of alcohol or a drug is present in the person's blood.

health practitioner means a medical practitioner, registered nurse or qualified person.

prescribed concentration of alcohol means the concentration of alcohol specified in regulation 10A.

qualified person means a person who has been trained to take samples of blood or urine from persons by a registered training organisation within the meaning of the "Australian Quality Training Framework – Standards for Registered Training Organisations", published by the Australian National Training Authority established under section 5 of the *Australian National Training Authority Act 1992* of the Commonwealth, as in force from time to time.

registered nurse has the same meaning as in the *Nursing Act*.

under the influence, of alcohol or a drug, in relation to a railway employee, means:

- (a) for alcohol – the employee has at least the prescribed concentration of alcohol present in his or her blood; or
- (b) for a drug – the employee is affected by the drug in a way that his or her ability to perform railway safety work is detrimentally affected.

urine test means a test of a sample of person's urine to ascertain whether a drug is present in the person's urine.

32 Actions by medical practitioner

A requirement under this Part that an action be done by a medical practitioner is taken to be complied with if it is done under the direct supervision of a medical practitioner.

Division 2 Testing

33 Inspector may test breath of railway employee

- (1) For ascertaining whether a railway employee carrying out, or about to carry out, railway safety work is under the influence of alcohol or a drug, an authorised inspector may, subject to subregulation (4), require the employee to submit to:
 - (a) a breath test; or

(b) a breath analysis.

- (2) The authorised inspector may require a railway employee to submit to a breath test or breath analysis to test whether the employee is carrying out or is about to carry out railway safety work under the influence of alcohol on a random basis and without suspecting, on reasonable grounds, the employee is doing so under the influence of alcohol.
- (3) The authorised inspector may require a railway employee to submit to testing by a breath test or breath analysis on a non-random basis if the authorised inspector suspects, on reasonable grounds, the employee is carrying out or is about to carry out railway safety work while under the influence of alcohol.
- (4) The authorised inspector may require a railway employee to submit to a breath test to test whether the employee is carrying out or about to carry out railway safety work under the influence of a drug only if the authorised inspector suspects, on reasonable grounds, the employee is doing so under the influence of a drug.

34 Circumstances when inspector able to require provision of sample of blood or urine

- (1) If the railway employee who is required to submit to a breath test or a breath analysis under regulation 33 refuses or fails to do so, the authorised inspector may require the employee to provide a sample of his or her blood or urine.
- (2) If the authorised inspector tests by a breath test and the results of the test lead the authorised inspector to believe that the employee may be under the influence of alcohol or a drug, the inspector must require the employee to:
 - (a) submit to a breath analysis; or
 - (b) provide a sample of his or her blood or urine.
- (3) If the authorised inspector tests by a breath analysis and the results of the test lead the authorised inspector to believe that the employee may be under the influence of alcohol, the authorised inspector may require the employee to provide a sample of his or her blood or urine.
- (4) The authorised inspector may require the employee to provide a sample of his or her urine for testing if:
 - (a) the authorised inspector suspects, on reasonable grounds, the employee is under the influence of a drug; or

- (b) an event or condition resulting from railway ownership or operations has or might have caused a fatality or an injury to a person or damage to property or the environment.

35 Railway employee may request blood or urine testing in place of breath test

A railway employee who refuses or fails to submit to testing under regulation 33 because of a medical or physical condition may request that a sample of his or her blood or urine be taken instead.

36 Procedure after test by breath analysis indicates railway employee under influence of alcohol

- (1) If an analysis of breath by a breath analysis instrument indicates that a railway employee is under the influence of alcohol, the authorised inspector who operated the instrument must immediately give to the employee a written statement specifying:
 - (a) the date the sample of breath was taken and analysed;
 - (b) the time of the analysis of the breath; and
 - (c) the results of the analysis.
- (2) The employee may, after the analysis, request that a sample of his or her blood or urine be taken.

37 Taking sample of blood or urine

- (1) If the authorised inspector requires a railway employee to provide a sample of his or her blood or urine under regulation 34 or, under regulation 35 or 36(2), a railway employee requests a sample of his or her blood or urine be taken, the inspector must take the action that is necessary and reasonable for a health practitioner to take a blood or urine sample from the employee.
- (2) Subject to subregulation (3), the health practitioner must be either nominated by the employee or nominated by the authorised inspector and accepted by the employee.
- (3) Subregulation (2) does not apply if:
 - (a) the employee does not nominate a health practitioner;
 - (b) the health practitioner nominated by the authorised inspector is not accepted by the employee; or
 - (c) the health practitioner nominated or accepted by the employee is not available to take the sample within one hour

after the employee was required to provide the sample or requested the sample be taken at a place and at a place within 10 kilometres of the place where the employee was required to provide the sample or made the request for the sample to be taken.

- (4) If subregulation (2) does not apply, the health practitioner who takes the sample may be any health practitioner who is available.
- (5) The authorised inspector must be present when the health practitioner takes the sample from the employee.

38 Procedures relating to blood and urine tests – health practitioners

- (1) The health practitioner who takes a sample of blood or urine from a railway employee must divide the sample into 2 approximately equal portions and place each portion into separate containers, seal the containers and mark them with the sample's identification number.
- (2) On complying with subregulation (1), the health practitioner must sign a certificate specifying the following information:
 - (a) the identification number marked on the containers;
 - (b) the name and address of the employee from whom the sample was taken;
 - (c) the name and qualifications of the health practitioner;
 - (d) the date and time when, and place where, the sample was taken.
- (3) The health practitioner must then:
 - (a) make one of the containers and the certificate available to the authorised inspector (who must give it to or retain it on behalf of the Director); and
 - (b) give the other container to the employee or the employee's representative or retain it on behalf of the employee.

39 Procedures relating to blood and urine tests – analysts

- (1) On completing the analysis of a sample, the analyst who performed or supervised the analysis must sign a certificate specifying the following information:
 - (a) the identification number marked on the container of the sample;
 - (b) the name and qualifications of the analyst;
 - (c) the date the sample was received in the laboratory where the analysis was performed;
 - (d) the concentration of alcohol or drug found present in the sample;
 - (e) if a drug is found in the sample – the type of drug;
 - (f) any factors relating to the sample or analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
 - (g) any other information relating to the sample or analysis the analyst considers appropriate.
- (2) The certificate of the analyst under subregulation (1) must be given to, or retained on behalf of, the Director.
- (3) A copy of the certificate must be made available to the health practitioner and the railway employee.

Division 3 Offences

40 Compliance with requirement to submit to test or give sample

- (1) Subregulations (2) and (3) apply to a railway employee who an authorised inspector requires under this Part to submit to a breath test or breath analysis.
- (2) The employee must not refuse or fail to comply with:
 - (a) the requirement; or
 - (b) the inspector's reasonable directions for carrying out the breath test or breath analysis.

Penalty: 25 penalty units.

- (3) The employee must provide a sample of his or her breath that is sufficient to complete the breath test or breath analysis.

Penalty: 25 penalty units.

- (4) A railway employee who is required under this Part to provide a sample of his or her blood or urine must submit to the procedures necessary to provide the sample in accordance with this Part.

Penalty: 25 penalty units.

- (5) It is a defence to a prosecution for an offence against this regulation that:

- (a) the requirement or direction to which the offence relates was not lawfully made; or
- (b) subject to subregulation (6) – the employee had good cause to refuse or fail to comply with the requirement or direction.

- (6) The employee may not raise the defence that he or she had good cause to refuse or fail to comply with a requirement or direction because of his or her physical or medical condition unless:

- (a) a sample of the employee's blood or urine was taken in accordance with regulation 34;
- (b) the employee requested that a sample of his or her blood or urine be taken under regulation 35 but the authorised inspector failed to facilitate the taking of the sample or a health practitioner was not reasonably available to take the sample; or
- (c) because of the employee's physical or medical condition, it was not possible or reasonably advisable or practicable in the circumstances to take the sample.

41 Alteration of concentration of alcohol or drug in blood

A person must not do anything to introduce, or alter the concentration of, alcohol or a drug in the person's blood or urine before submitting to a breath analysis, or providing a sample of blood or urine for analysis, to prevent or restrict the use of the results of the analysis in proceedings.

Penalty: 25 penalty units.

Division 4 Evidence

42 Presumption as to concentration of alcohol in blood

- (1) If the requirements of this Part relating to breath analysis instruments and the analysis of samples of breath are complied with, it is presumed in proceedings under the Act that a concentration of alcohol indicated as being present in the blood of a person by a breath analysis instrument was present in the blood of the person at the time of analysis and throughout the preceding period of 2 hours.
- (2) The presumption cannot be rebutted unless it is proved on the balance of probabilities that the concentration of alcohol present in the blood of the person was not as indicated by the breath analysis instrument by the following evidence:
 - (a) evidence of the analysis of a sample of the person's blood taken and dealt with in accordance with this Part;
 - (b) evidence that the results of analysis of a sample of the person's blood demonstrate that the breath analysis instrument gave an exaggerated reading of the concentration of alcohol present in the person's blood.

43 Certificates as evidence

- (1) The following documents are admissible in proceedings relating to an offence against the Act or these Regulations as evidence of the matters stated in them and of the facts on which they are based:
 - (a) a document purporting to be signed by the Director certifying that a person named in the certificate is an authorised inspector who is authorised under regulation 45 to carry out breath analyses;
 - (b) a document purporting to be signed by an authorised inspector certifying that:
 - (i) the apparatus used by the authorised inspector was a breath analysis instrument;
 - (ii) the breath analysis instrument was in proper order and properly operated; or
 - (iii) the breath analysis instrument was used in a manner that complied with this Part;

- (c) a document purporting to be signed by the Director certifying that the apparatus specified in the certificate is or was at a specified time a breath analysis instrument;
 - (d) subject to subregulation (2) – a document purporting to be signed by an authorised inspector certifying that:
 - (i) a sample of the breath of a person named in the certificate was provided for analysis using a breath analysing instrument;
 - (ii) a concentration of alcohol expressed in grams in 100 millilitres was indicated by the breath analysing instrument as being present in the blood of the person on the day and at the time specified in the certificate; and
 - (iii) a written statement was given to the person under regulation 36(1).
- (2) A certificate referred to in subregulation (1)(d) cannot be received as evidence in proceedings for an offence against the Act or these Regulations:
- (a) unless a copy of the certificate is served on the person it refers to not less than 7 days before the commencement of the proceedings;
 - (b) if the person referred to in the certificate has, not less than 2 days before the commencement of the trial, served written notice on the court requiring the attendance at the trial of the person who signed the certificate; or
 - (c) if the court requires the person who signed the certificate to attend at the trial.

44 Presumptions as to certificates

- (1) Subject to subregulation (2), in proceedings for an offence against the Act or these Regulations, it is presumed unless the contrary is proved on the balance of probabilities that:
- (a) an apparently genuine document purporting to be a certificate, or a copy of a certificate, of a health practitioner or analyst under this Part received in evidence is a certificate of the health practitioner or analyst as to the matters stated in the certificate;
 - (b) if a document purporting to be a certificate of a health practitioner and a document purporting to be a certificate of

an analyst specify the same identification number for the sample of blood or urine to which each relates are received in evidence – the certificates relate to the same sample of blood or urine; and

- (c) if a document purporting to be a certificate of an analyst is received in evidence:
 - (i) the concentration of alcohol or drug stated in the certificate as having been found to be present in the sample of blood or urine to which the certificate relates was present in the sample when the sample was taken and throughout the preceding 2 hours; or
 - (ii) the type of drug stated in the certificate as having been found to be present in the sample of blood or urine was the type of drug present in the sample of blood or urine.
- (2) A certificate referred to in subregulation (1) cannot be received as evidence in proceedings for an offence against the Act or these Regulations:
 - (a) unless a copy of the certificate is served on the person it refers to not less than 7 days before the commencement of the proceedings;
 - (b) if the person referred to in the certificate has, not less than 2 days before the commencement of the trial, served written notice on the court requiring the attendance at the trial of the person who signed the certificate; or
 - (c) if the court requires the person who signed the certificate to attend at the trial.

Division 5 Miscellaneous

45 Inspectors who may carry out breath tests or breath analyses

- (1) A member of the Police Force is authorised to carry out a breath test under this Part.
- (2) A member of the Police Force who is an authorised operator under the *Traffic Act* is authorised to carry out a breath analysis under this Part.
- (3) The Director may, in writing, authorise other inspectors to:
 - (a) carry out breath tests; or
 - (b) carry out breath analyses.

- (4) The Director may not authorise an inspector under subregulation (3)(a) unless, in the opinion of the Director, the inspector:
 - (a) is trained to carry out a breath test; and
 - (b) is capable of carrying out a breath test correctly.
- (5) The Director may not authorise an inspector under subregulation (3)(b) unless, in the opinion of the Director, the inspector:
 - (a) is trained in the use of the breath analysis instrument; and
 - (b) is capable of using the instrument correctly.

46 Use of breath analysis instruments

- (1) An inspector must not use a breath analysis instrument unless he or she is authorised under regulation 45(2) or (3)(b) to carry out breath analyses.
- (2) An authorised inspector must not carry out a breath analysis unless:
 - (a) the instrument is turned on and is indicating that it is ready for use; and
 - (b) an unused mouth piece is used each time a railway employee provides a sample of his or her breath for analysis.
- (3) The authorised inspector must not carry out a breath analysis of a sample of a railway employee's breath unless satisfied the employee has not consumed alcohol within the 15 minutes before providing the sample.

47 Authorisation of analysts to carry out analyses of blood or urine

- (1) A person who is an authorized analyst under the *Traffic Act* is authorised to carry out analyses of samples of blood provided under this Part.
- (2) A person approved, in writing, by the Director to analyse samples of urine under this Part is authorised to carry out analyses of samples of urine provided under this Part.

48 Reports relating to railway employee's refusal or failure to be tested

- (1) If a railway employee refuses or fails to submit to a breath test or a breath analysis or to provide a sample of his or her blood or urine on being required to do so by an authorised inspector, an inspector must report the employee's refusal or failure to:
 - (a) the accredited person for whom the employee performs railway safety work; and
 - (b) the Director.
- (2) The inspector who makes the reports must do so as soon as practicable after the employee's refusal or failure (but not later than 24 hours after the employee's refusal or failure).

49 Duty of health practitioner who takes sample

It is the duty of the health practitioner who takes a sample of a railway employee's blood or urine to take the measures that are reasonably practicable in the circumstances to ensure the sample is not adulterated and does not deteriorate to prevent a proper assessment of the concentration of alcohol or a drug present in the blood or urine of the employee.

50 Protection from liability of health practitioners and analysts

A health practitioner or an analyst, or a person acting under the supervision of a health practitioner or analyst, is not criminally liable for an act done or omitted to be done by the health practitioner, analyst or person in good faith for this Part.

51 Self-incrimination no excuse

A person is not entitled to refuse or fail to comply with a requirement or direction relating to the taking of a sample of the person's breath, blood or urine under this Part on the ground that the person:

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

Schedule 1 Fees

regulation 5

| Column 1 | Column 2 |
|---|---|
| 1. Exemption under section 8 of the Act | \$500 |
| 2. Application under section 12 of the Act for permanent accreditation, whether as the owner of a railway or the operator of a railway: <ul style="list-style-type: none"> (a) if the application is for accreditation as the owner of a railway (b) if the application is for accreditation as the operator of a railway (c) if the application is for accreditation as the owner and operator of a railway (d) if the application is made by a non-profit organisation or an organisation whose principal areas of activity involve the natural or cultural heritage of the Territory (whether for accreditation as the owner or operator or owner and operator of a railway) | \$5 000 \$5 000 \$10 000 \$500 |
| 3. Application under section 12 of the Act for temporary accreditation, whether as the owner of a railway or the operator of a railway: <ul style="list-style-type: none"> (a) if the application is for temporary accreditation as the owner of a railway (b) if the application is for temporary accreditation as the operator of a railway (c) if the application is for temporary accreditation as the owner and operator of a railway (d) if the application is made by a non-profit organisation or an organisation whose principal areas of activity involve the natural or cultural heritage of the Territory (whether for temporary accreditation as the owner or operator or owner and operator of a railway) | \$2 000 \$2 000 \$4 000 \$200 |
| 4. Registration of a private siding under section 29 of the Act | \$200 |

Schedule 2 Annual fee

Regulation 6

| Column 1 | Column 2 |
|--|---|
| <p>1. Annual fee payable by accredited person:</p> <p>(a) if the accredited person is an owner of a railway who is accredited for providing train control, signalling or communication systems</p> <p>(b) if the accredited person is an owner of a railway who is accredited for constructing the railway</p> <p>(c) if the accredited person is the owner of a commercial railway who is not referred to in paragraph (a) or (b)</p> <p>(d) if the accredited person is the accredited operator of a commercial railway (whether to operate freight trains, passenger trains or both)</p> <p>(e) if the accredited person is the owner of a railway who is accredited for operating track maintenance and inspection vehicles and equipment</p> <p>(f) if the accredited person is accredited for a purpose not specified in paragraphs (a) to (e) inclusive</p> | <p>\$0.01 per train kilometre travelled during the previous year by trains along the railway track for which the accredited person is accredited to provide train control, signalling or communication systems or \$5 000, whichever is the greater</p> <p>\$25 000 (payable each year until completion of the construction of the railway)</p> <p>\$21 per kilometre of railway track for which the accredited person is, on the day the accredited person's annual fee is due and payable, the accredited owner or \$5 000, whichever is the greater</p> <p>\$0.025 per train kilometre travelled during the previous year by trains travelling on the railway or \$5 000, whichever is the greater</p> <p>\$5 000</p> <p>\$5 000</p> |

| | |
|--|-------|
| 2. Annual fee payable by owner of registered private siding | \$100 |
|--|-------|

ENDNOTES

1**KEY**

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = <i>Gazette</i> | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2**LIST OF LEGISLATION*****Northern Territory Rail Safety Regulations (SL No. 31, 2002)***

| | |
|-----------|------------------------|
| Notified | 30 August 2002 |
| Commenced | 1 September 2002 (r 2) |

Amendments of Northern Territory Rail Safety Regulations (SL No. 56, 2003)

| | |
|-----------|------------------|
| Notified | 22 December 2003 |
| Commenced | 22 December 2003 |

Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)

| | |
|-------------|---|
| Assent date | 15 September 2004 |
| Commenced | 27 October 2004 (Gaz G43, 27 October 2004, p 3) |

3**LIST OF AMENDMENTS**

| | |
|-------|---|
| r 3 | amd No. 56, 2003, r 2 |
| r 4A | ins No. 56, 2003, r 3 |
| r 7 | amd No. 56, 2003, r 4 |
| r 10A | ins No. 56, 2003, r 5 |
| r 11 | amd No. 56, 2003, r 6 |
| r 12 | rep No. 56, 2003, r 7 |
| r 16 | amd No. 56, 2003, r 8 |
| r 18 | rep No. 56, 2003, r 9 |
| r 20 | amd No. 56, 2003, r 10 |
| r 21 | sub No. 56, 2003, r 11 |
| r 22 | amd No. 56, 2003, r 12 |
| r 24 | sub No. 56, 2003, r 13 |
| | amd Act No. 54, 2004, s 6 |
| r 25 | amd No. 56, 2003, r 14 |
| r 26 | amd No. 56, 2003, r 15 |
| r 27 | amd No. 56, 2003, r 16 |
| r 28 | amd No. 56, 2003, r 17; Act No. 54, 2004, s 6 |
| r 29A | ins No. 56, 2003, r 18 |

ENDNOTES

| | |
|------------|------------------------|
| r 30 | amd No. 56, 2003, r 19 |
| pt 7 hdg | ins No. 56, 2003, s 20 |
| pt 7 | |
| div 1 hdg | ins No. 56, 2003, s 20 |
| rr 31 – 32 | ins No. 56, 2003, s 20 |
| pt 7 | |
| div 2 hdg | ins No. 56, 2003, s 20 |
| rr 33 – 39 | ins No. 56, 2003, s 20 |
| pt 7 | |
| div 3 hdg | ins No. 56, 2003, s 20 |
| rr 40 – 41 | ins No. 56, 2003, s 20 |
| pt 7 | |
| div 4 hdg | ins No. 56, 2003, s 20 |
| rr 42 – 44 | ins No. 56, 2003, s 20 |
| pt 7 | |
| div 5 hdg | ins No. 56, 2003, s 20 |
| rr 45 – 51 | ins No. 56, 2003, s 20 |
| sch 1 | amd No. 56, 2003, s 21 |
| sch 2 | sub No. 56, 2003, s 22 |