

NORTHERN TERRITORY OF AUSTRALIA

RAIL SAFETY REGULATIONS

Subordinate Legislation No. 22 of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 22 of 2010*

Rail Safety Regulations

I, Thomas Ian Pauling, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Rail Safety Act 2010*.

Dated 25 October 2010

T. I. PAULING
Administrator

By His Honour's Command

K. VATSKALIS
Minister for Health
acting for
Minister for Transport

* Notified in the *Northern Territory Government Gazette* on 28 October 2010.

Part 1 Preliminary matters

1 Citation

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

2 Commencement

These Regulations commence on the commencement of the *Rail Safety Act 2010*.

3 Definitions

In these Regulations:

analyst, for Part 8, see regulation 55.

authorised officer, for Part 8, see regulation 55.

blood test, for Part 8, see regulation 55.

breath analysis, see regulation 55.

breath analysis instrument, see regulation 55.

breath test, for Part 8, see regulation 55.

emergency services, see section 64(5) of the Act.

health practitioner, for Part 8, see regulation 55.

in, in relation to a train, railway premises or an area of railway premises, includes on a train, on railway premises and on an area of railway premises.

prescribed concentration, in relation to alcohol, for Part 8, see regulation 55.

prohibited drug means a drug prescribed under regulation 56.

qualified person, for Part 8, see regulation 55.

registered nurse, for Part 8, see regulation 55.

regulating officer means:

- (a) a rail safety officer; or
- (b) a rail safety worker; or

(c) a police officer.

saliva test, for Part 8, see regulation 55.

wheeled recreational device, see the *Australian Road Rules* that form Schedule 3 to the *Traffic Regulations*.

wheeled toy, see the *Australian Road Rules* that form Schedule 3 to the *Traffic Regulations*.

workplace safety officer, see section 4 of the *Workplace Health and Safety Act*.

Part 2 Miscellaneous matters prescribed for the Act

4 Railways to which the Act does not apply

For section 4 of the Act, a railway used solely for static display is prescribed as a railway to which the Act does not apply.

5 Prescribed notifiable occurrences

(1) For the definition **notifiable occurrence** in section 6 of the Act, the following are prescribed as notifiable occurrences:

- (a) category A notifiable occurrences;
- (b) category B notifiable occurrences.

(2) Each of the following is a **category A notifiable occurrence**:

- (a) an accident or incident that caused death, serious injury or significant property damage;
- (b) a running line derailment;
- (c) a running line collision between rolling stock;
- (d) a collision at a railway crossing between rolling stock and either a road vehicle or a person;
- (e) a fire or explosion on or in rail infrastructure or rolling stock that affects the safety of railway operations or that endangered people;
- (f) an incident (including a threat) requiring the implementation of response measures contained in a rail transport operator's security management plan as mentioned in section 63 of the Act;

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- (g) an accident or incident involving a significant failure of a safety management system that could have caused death, serious injury or significant property damage;
 - (h) any other accident or incident likely to generate intense public interest or concern.
- (3) Each of the following is a **category B notifiable occurrence** unless the occurrence is also a Category A notifiable occurrence:
- (a) a derailment other than a running line derailment;
 - (b) a collision involving rolling stock, other than a collision described in subregulation (2)(c) or (d);
 - (c) an incident at a railway crossing, other than a collision described in subregulation (2)(d);
 - (d) the passing of a stop signal, or a signal with no indication, by rolling stock without authority;
 - (e) an accident or incident where rolling stock exceeds the limits of authorised movement given in a proceed authority;
 - (f) a rolling stock run away;
 - (g) a failure of a signalling or communications system that endangers, or that has the potential to endanger, the safe operation of trains or the safety of persons, or that causes or has the potential to cause damage to adjoining property;
 - (h) a slip, trip or fall by a person on or from rolling stock, rail infrastructure or other railway premises directly associated with railway operations;
 - (i) a person being caught in the door of rolling stock;
 - (j) a situation where a load:
 - (i) affects, or could affect, the safe passage of trains or the safety of persons; or
 - (ii) causes or could cause damage to adjoining property;
 - (k) an accident or incident involving dangerous goods that:
 - (i) affects, or could affect, the safety of railway operations or the safety of persons; or
 - (ii) causes or could cause damage to property;

- (l) a breach of a safe working system or procedure, or the detection of any irregularity or deficiency in such a system or procedure;
- (m) other than during normal maintenance activities, the detection of any irregularity in any rail infrastructure (including electrical infrastructure) that could affect the safety of railway operations or the safety of persons;
- (n) other than during normal maintenance activities, the detection of any irregularity in any rolling stock that could:
 - (i) affect train integrity or the safety of persons; or
 - (ii) cause damage to the rolling stock;
- (o) a fire or explosion that causes damage to rail infrastructure or rolling stock, or both, or that causes the disruption or closure of a railway (even if the closure is only a precautionary measure);
- (p) an incident on railway premises where a person inflicts, or is alleged to have inflicted, an injury on another person;
- (q) a suspected attempt to suicide;
- (r) notice that a rail safety worker employed by the rail transport operator has returned a result to a test that suggests the worker was in breach of a relevant safety requirement concerning the use of alcohol or drugs at a relevant time;
- (s) the infliction of wilful or unlawful damage to, or the defacement of, any rail infrastructure or rolling stock that could affect the safety of railway operations or the safety of persons;
- (t) a corridor security incident affecting the safety of railway operations.

6 Occupational health and safety legislation

For the definition ***occupational health and safety legislation*** in section 6 of the Act, the *Occupational Health and Safety Act 1991* (Cth) is prescribed.

7 Private sidings

For the definition ***private siding*** in section 6 of the Act, the following are prescribed not to be a private siding:

- (a) a siding under the control and management of an accredited rail infrastructure manager;
- (b) a balloon loop used for loading or unloading trains.

8 Prescribed concentration of alcohol

- (1) For sections 20(3)(c) and 68(1) of the Act, a concentration of 0.02 grams of alcohol in 100 millilitres of blood is the prescribed level.
- (2) If a person submits to a breath analysis and the breath analysis instrument produces a result expressed as a percentage of alcohol contained in the blood, the number of grams of alcohol per 100 millilitres of blood is to be derived from the result expressed as a percentage in accordance with the method shown by the following example:

Blood alcohol content expressed as a percentage	Grams of alcohol per 100ml of blood
0.02%	0.02

- (3) If a person submits to a breath analysis and the breath analysis instrument produces a result expressed as a number of grams of alcohol in 210 litres of the person's breath, the result is taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

Part 3 Accreditation

9 Application for accreditation

For section 26(2)(d) of the Act, the following information is prescribed for an application for accreditation:

- (a) the following identification details of the applicant:
 - (i) the applicant's name;
 - (ii) the applicant's registered business name, and trading name if that is different to the registered business name;

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- (iii) the applicant's ACN or ABN, if applicable;
 - (iv) if the applicant is an individual, the applicant's residential address or if the applicant is not an individual, the applicant's registered business address;
 - (b) the name and contact details of the person or persons appointed by the applicant:
 - (i) to deal with any queries the Director may have in relation to the application; and
 - (ii) to be responsible for accreditation and to deal with any queries the Director may have in relation to accreditation; and
 - (iii) to be responsible for the implementation and ongoing operation and management of the relevant safety management system and to deal with any queries the Director may have in relation to the safety management system;
 - (c) if the applicant is accredited under a corresponding law – a copy of the notice of accreditation or equivalent document under the corresponding law;
 - (d) in addition to the requirements of section 26(2)(c) of the Act, if the applicant is also seeking accreditation under a corresponding law, details of where, and in respect of what, the application for that accreditation was made;
 - (e) if the applicant is a rail infrastructure manager who does not own the rail infrastructure – documentary evidence that the manager has, or will have, management and control of the rail infrastructure;
 - (f) a description of the operational assets, or classes of operational assets, the applicant intends to use or manage in the operations for which the application is made, including any stations, signal and train control centres, signalling systems and rolling stock for service and maintenance activities;
 - (g) a description of the safe working systems the applicant intends to use in the operations for which the application is made;
 - (h) if the applicant is a rolling stock operator – documentary evidence that the applicant has, or will have, effective management and control of the operation or movement of the rolling stock on rail infrastructure for a particular railway;

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- (i) if electrified railway tracks will be used – details of the electrification;
 - (j) details of the consultation undertaken by the applicant in relation to the applicant's safety management system, including:
 - (i) who was consulted; and
 - (ii) when and how the consultation occurred; and
 - (iii) the results of the consultation;
 - (k) if the applicant is not an individual – evidence that the application has been submitted to and endorsed:
 - (i) if the applicant is a body corporate that is a company within the meaning of the Corporations Act 2001 – by its board of directors; or
 - (ii) if the applicant is a body corporate of any other type – by its governing body; or
 - (iii) if the applicant is a partnership – by each partner; or
 - (iv) if the applicant is an unincorporated association or body – by its governing body;
 - (l) if any activities the applicant intends to carry out under the accreditation are to be carried out by another person on behalf of the applicant:
 - (i) the name and contact details of each other person; and
 - (ii) details of the activities the applicant intends each other person will carry out on behalf of the applicant.

10 Prescribed application fee

For section 26(2)(e) of the Act, the application fee, as set out in item 1 of Schedule 1, is prescribed.

11 Prescribed details of accredited person

- (1) For sections 30(2)(a) and 42(2)(a) of the Act, the following details in relation to an accredited person who is an individual are prescribed:
 - (a) the person's name and registered business name, if any;
 - (b) the person's residential address;

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- (c) the person's ABN.
 - (2) For sections 30(2)(a) and 42(2)(a) of the Act, the following details in relation to an accredited person who is not an individual are prescribed:
 - (a) the person's name;
 - (b) the person's registered business name, if any;
 - (c) the person's ACN or ABN, if applicable;
 - (d) the person's registered business address.

12 Prescribed conditions or restrictions applicable to accreditation

- (1) For section 31 of the Act, the following conditions and restrictions are prescribed as applicable to accreditation granted to a rail transport operator:
 - (a) if the operator is also accredited under a corresponding law:
 - (i) the operator must advise the Director in writing immediately an accreditation under the corresponding law expires, or is suspended, surrendered or revoked; and
 - (ii) if the operator receives a prohibition notice, an improvement notice or an equivalent document under the corresponding law from a corresponding Rail Safety Regulator in relation to the accreditation under the corresponding law, the operator must immediately give the Director a copy of the notice;
 - (b) the operator must notify the Director in writing of any of the proposed decisions, proposed events or changes listed in the following table in accordance with the requirement specified opposite;

Table

Item	Proposed decision or event or change	When notice to be given
1	A decision to design or construct, or to commission the design or construction of, rolling stock or new railway tracks.	As soon as is reasonably practicable after the decision is made.

Item	Proposed decision or event or change	When notice to be given
2	The introduction into service of rolling stock of a type not previously operated by the operator, or the re-introduction into service of rolling stock not currently operated by the operator.	At least 28 days before the date the operator intends to introduce or re-introduce the rolling stock into service.
3	A change to a safety critical element of existing rolling stock.	At least 28 days before the date the operator intends to bring the change into operation.
4	A change to one or more of the classes of rail infrastructure used in the operator's accredited operations.	At least 28 days before the date the operator intends to introduce the new class of rail infrastructure into service.
5	A change to a safety standard for the design of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to adopt the change.
6	The decision to adopt a new safety standard for the design of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to adopt the new standard.
7	A change to the frequency or procedures for the inspection or maintenance of railway infrastructure or rolling stock.	At least 28 days before the date the operator intends to bring the change into effect.
8	A change to any safe working system, rule or procedure relating to the conduct of the operator's railway operations.	At least 28 days before the date the operator intends to bring the change into effect.
9	A decision to introduce a new safe working system, rule or procedure relating to the conduct of the operator's railway operations.	As soon as is reasonably practicable after the decision is made.

Item	Proposed decision or event or change	When notice to be given
10	The replacement or a change in the contact details of any person appointed as mentioned in regulation 9(b).	As soon as is reasonably practicable after it is known that the replacement will occur.
11	A change in the operator's name or residential address, or the operator's business or trading name, or for a body corporate, a change in the registered business address of the corporation.	As soon as is reasonably practicable after the change is made.
12	A change affecting the accuracy of information provided to the Director for the purposes of obtaining accreditation or affecting the accuracy of particulars specified in the accreditation.	As soon as is reasonably practicable after the change is made.

- (c) the operator must ensure the following:
- (i) there is at all times available one of its directors or managers as a contact person in case the Director wishes to communicate with the operator;
 - (ii) the Director is provided with sufficient details so that, at any particular time, the Director knows who the contact person is and how to contact that person;
- (d) the operator must regularly review the adequacy of any public risk insurance arrangements maintained for the Act including by taking into account increases in the cost of living and potential increases in liability;
- (e) unless otherwise required by the Director under section 74 of the Act, the operator must:
- (i) investigate any accident or incident associated with the railway operations carried out by the operator that has caused death or serious injury to a person or significant property damage; and

- (ii) provide a report to the Director about the investigation within 8 weeks after the date of the accident or incident (or a longer period as agreed by the Director on application by the operator);
 - (f) if it is not possible to comply with any other requirement specified in this subregulation because of an emergency, the operator must provide the required information as soon as is reasonably practicable after the decision is made or the event or the change occurs, as the case may be.
- (2) Subregulation (1) does not require an accredited person to notify the Director of any matter the subject of an application for variation of the person's accreditation.

13 Prescribed annual accreditation fee

For section 33(1) of the Act, the annual accreditation fee, as set out in item 2 of Schedule 1, is prescribed.

Note for regulation 13

Regulations 79 and 80 deal with calculation and payment of annual fees.

14 Surrender of accreditation

For section 36 of the Act, an accredited person may surrender the person's accreditation by notifying the Director in writing, not less than 28 days before the proposed date of surrender, about:

- (a) the person's intention to surrender the accreditation; and
- (b) the proposed arrangements for the cessation of the person's railway operations.

15 Documents to be made available for public inspection

For section 39(1)(c) of the Act, each annual safety performance report of the rail transport operator, prepared under section 54 of the Act, is prescribed.

16 Application for variation of accreditation

The following is prescribed as the information to be contained in an application for a variation of an accreditation under section 40 of the Act, or an application for a variation of a condition or restriction under section 44 of the Act:

- (a) the details required by regulation 9(a) and (b);
- (b) details of the scope and nature of the proposed variation;

- (c) details of the changes that will be made to the applicant's safety management system if the proposed variation occurs;
- (d) details of any consultation that has occurred with parties who might be affected by the proposed variation, including:
 - (i) who was consulted; and
 - (ii) when and how the consultation occurred; and
 - (iii) the results of the consultation;
- (e) evidence to demonstrate that the applicant has the competence and capacity to manage the risks to safety associated with the proposed variation.

17 Exemption for private siding

For section 48(1)(b) of the Act, sections 55 and 62(1) of the Act are prescribed as provisions with which a rail infrastructure manager of a private siding must comply.

18 Prescribed annual fee for private sidings

For section 48(2) of the Act, the annual fee for registration of a private siding, as set out in item 3 of Schedule 1, is prescribed.

Note for regulation 18

Regulations 79 and 80 deal with calculation and payment of annual fees.

19 Maintenance and operational conditions

For section 49(2) of the Act, the following conditions are prescribed:

- (a) the rail infrastructure manager must have systems and procedures to ensure the manager complies with the safety duty imposed on the manager by section 20 of the Act in relation to the private siding;
- (b) the rail infrastructure manager must have a document that provides details about how rail infrastructure within the private siding is to be maintained by the manager.

Part 4 Safety management system

20 Safety management system

- (1) For section 50(1)(a) of the Act, the matters listed in Schedule 2 that are relevant to the railway operations for which the rail transport operator is accredited, or seeking to be accredited, are prescribed.
- (2) An operator's safety management system must provide a level of detail with respect to each of those matters that is appropriate having regard to the scope, nature and risks to safety of those operations, and to the operator's duties under section 20 of the Act.

21 Health and fitness management programs

For section 50(1)(e)(iv) of the Act, a rail transport operator's health and fitness program for rail safety workers must comply with Volumes 1 and 2 of the National Standard for Health Assessment of Rail Safety Workers, published by the National Transport Commission, as amended from time to time.

22 Alcohol and drug management program

For section 50(1)(e)(v) of the Act, a rail transport operator's alcohol and drug management program must establish and maintain procedures to ensure, so far as is reasonably practicable, that a rail safety worker about to carry out, carrying out, or attempting to carry out, rail safety work is not impaired by alcohol or drugs.

23 Fatigue management program

For section 50(1)(e)(vi) of the Act, a rail transport operator's fatigue management program must:

- (a) establish and maintain documented procedures to manage, so far as is reasonably practicable, the risks to safety identified under section 50 of the Act that are attributable to the adverse effects of fatigue arising from various factors including (but not limited to) the following:
 - (i) scheduled operations;
 - (ii) extended hours of work, including overtime, call-in and on-call arrangements;
 - (iii) extended wakefulness;
 - (iv) significant physical exertion or high cognitive task demand;

- (v) monotony, boredom or low task demand;
 - (vi) circadian effects and the effects of shift work;
 - (vii) climatic conditions; and
- (b) provide rail safety workers with appropriate training in relation to the identification and management of fatigue that is relevant to the rail safety work being undertaken by those rail safety workers.

24 Review of safety management system

- (1) This regulation prescribes the manner in which a rail transport operator must conduct a review of the operator's safety management system for section 53(1) of the Act.
- (2) In conducting the consultation required by section 50(3) of the Act before carrying out the review, the rail transport operator must ensure those consulted are asked for their opinion on whether and how the safety management system can be improved.
- (3) In conducting the review, the rail transport operator must ensure the following:
 - (a) the effectiveness of the safety management system is assessed (including an examination of the operator's records in relation to notifiable occurrences and breaches of the system);
 - (b) the effectiveness of any revisions that were made as a result of the last review are assessed;
 - (c) any recommendations or issues arising out of any audits or safety investigations that have occurred since the last review are taken into account;
 - (d) any issues arising from any prohibition or improvement notices that have been issued since the last review are taken into account;
 - (e) any deficiencies in the system are identified;
 - (f) methods of remedying any deficiencies are designed and assessed;
 - (g) any opinions provided under subregulation (2) are assessed;
 - (h) any other suggestions for improving the system that arise during the course of the review are assessed;

- (i) if any deficiencies or practicable improvements are identified – a plan is created to remedy those deficiencies or to effect those improvements.
- (4) The outcomes of the review must be summarised and reported in the safety performance report required by section 54 of the Act.

25 Security management plan

For section 63(1)(b) of the Act, the following are prescribed as the requirements for a rail transport operator's security management plan:

- (a) the plan must include a list of the risks arising from the matters specified in section 63(1)(a) of the Act;
- (b) the plan must include a description of the preventative and response measures to be used to manage those risks, including a description of the policies, procedures and equipment and other physical resources it is proposed to use for those measures, and of the training it is proposed to provide;
- (c) if the operator shares a location (for example, a modal interchange or a port) with one or more other transport operators, the plan must include a description of the arrangements made with those other transport operators in relation to the location to prevent or respond to security incidents;
- (d) the plan must include procedures for the recording, reporting and analysis of security incidents;
- (e) the plan must allocate security roles and responsibilities to appropriate persons;
- (f) the plan must provide for liaison, the sharing of information and for joint operations with emergency services and with other transport operators who may be affected by the implementation of the plan;
- (g) the plan must provide for the evaluation, testing and revision (if necessary) of security measures and procedures.

26 Emergency management plan

For section 64(1)(a) of the Act, the following are prescribed as the matters to be addressed by a rail transport operator's emergency management plan:

- (a) the types or classes of foreseeable emergencies;
- (b) the consequences of each type or class of those emergencies, including estimates of the likely magnitude and severity of the effects of each type or class;
- (c) the risks to safety arising from those emergencies;
- (d) methods to mitigate the effects of those emergencies;
- (e) initial response procedures for dealing with those emergencies and the provision of rescue services;
- (f) recovery procedures for the restoration of railway operations and for the assistance of persons affected by the occurrence of those emergencies;
- (g) the allocation of emergency management roles and responsibilities within the operator's organisation, and between the operator and other organisations;
- (h) call-out procedures;
- (i) the allocation of personnel for the on-site management of those emergencies;
- (j) procedures for liaison with relevant emergency services, including information about the circumstances in which the emergency services are to be immediately contacted;
- (k) procedures to ensure emergency services are provided with all the information that is reasonably required to enable them to respond effectively to an emergency;
- (l) procedures for effective communications and cooperation throughout the emergency response;
- (m) procedures for ensuring site security and the preservation of evidence.

27 Preparation of emergency management plan

- (1) For section 64(1)(b)(ii) of the Act, in preparing an emergency management plan, a rail transport operator must consult with, in addition to the persons specified in section 50(3) of the Act, the following:
 - (a) each government Agency with emergency management functions with respect to the area to which the plan relates;
 - (b) any other rail transport operators who may be affected by the implementation of the plan;
 - (c) any of the following that may be required to assist in the implementation of the plan:
 - (i) an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services under the authority of an Act of the Territory or the Commonwealth;
 - (ii) any person who, under the authority of an Act of the Territory, is permitted to own or use a pipeline, or is licensed to construct or operate a pipeline;
 - (iii) any provider of public transport.
- (2) The Director may exempt a rail transport operator from the requirement to consult with a particular person or body under subregulation (1).
- (3) In preparing an emergency management plan, the rail transport operator must, if it is reasonably practicable to do so, determine intervals for testing the plan in conjunction with the emergency services.

28 Keeping, maintaining and testing emergency management plan

- (1) A rail transport operator must ensure, so far as is reasonably practicable, that all employees of the operator, and all contractors engaged by the operator, who may be required to implement any emergency response procedures in the operator's emergency management plan as mentioned in section 64 of the Act:
 - (a) are provided with information about the relevant elements of the plan; and

- (b) are able to do anything that may be required of them under the plan.
- (2) To ensure the emergency management plan remains effective, the operator must test the plan, or elements of the plan:
 - (a) at the intervals set out in the plan; and
 - (b) after any significant change is made to the plan.
- (3) When testing the emergency management plan, or elements of the plan, the operator must, so far as is reasonably practicable, arrange for participation in the testing by the relevant emergency services.
- (4) The operator must ensure that in-house exercises to test the emergency management plan are undertaken as often as the operator considers necessary to ensure the plan will be properly implemented if an emergency arises.
- (5) The operator must ensure the operator's emergency management plan is comprehensible, and is readily accessible at all times, to:
 - (a) all employees of the operator, and all contractors engaged by the operator, who may be required to implement any emergency response procedures in the plan; and
 - (b) all other rail transport operators who may be affected by the plan; and
 - (c) any person or body mentioned in regulation 27(1)(c); and
 - (d) emergency services.

29 Records of competence

For section 65(5) of the Act, the following are prescribed as the records a rail transport operator must maintain in relation to each of the operator's rail safety workers:

- (a) the rail safety training undertaken by each worker, including when, and for how long, the training was undertaken;
- (b) the qualifications of each worker, including, if applicable:
 - (i) the units of competence undertaken to achieve the qualification; and
 - (ii) the level of qualification attained; and
 - (iii) if and when a reassessment of competence is to be conducted; and

- (iv) if and when retraining is due; and
 - (v) the date any retraining was undertaken;
- (c) the name of the organisation conducting the training or retraining;
- (d) the name and qualifications of the person who assessed the competence of each worker.

Part 5 Further matters prescribed for the Act

30 Reporting of notifiable occurrences

- (1) This regulation sets out the prescribed time and manner of reporting for section 73(1) and (3) of the Act.
- (2) If a Category A notifiable occurrence happens in relation to a rail transport operator's railway premises or railway operations, the operator:
 - (a) must report that fact to the Director immediately after becoming aware of the occurrence; and
 - (b) must give the Director a written report of the occurrence within 72 hours after becoming aware of the occurrence.
- (3) If a Category B notifiable occurrence happens in relation to a rail transport operator's railway premises or railway operations, the operator must give the Director a written report of the occurrence within 72 hours after becoming aware of the occurrence.
- (4) If a notifiable occurrence of a type mentioned in section 73(3) of the Act happens in relation to a rail transport operator's railway premises or railway operations, the operator must give the Director a written report of the occurrence within 72 hours after becoming aware of the occurrence.
- (5) A written report under this regulation must be in a form approved by the Director.
- (6) The Director may, on request by the relevant rail transport operator, extend a time limit for this regulation by written notice to the operator.

31 Embargo notices

For section 92(3)(a) of the Act, the following are prescribed as the particulars an embargo notice must contain:

- (a) a description of the record, device or thing to which the notice relates;
- (b) the name of the person on whom the notice is to be served, or a statement that the notice is to be affixed to the record, device or thing;
- (c) the name, signature and business telephone number of the rail safety officer who issued the notice;
- (d) the date on which the notice was served or affixed.

32 Confidentiality

- (1) For section 161(3)(g) of the Act, information obtained in the administration of the Act may be disclosed or communicated to the following:

- (a) Comcare for an investigation under, or enforcement of, the *Occupational Health and Safety Act 1991* (Cth);
- (b) an Agency responsible for administration of any of the following Acts for an investigation under, or enforcement of, that Act:
 - (i) the *Waste Management and Pollution Control Act*;
 - (ii) the *Water Act*;
 - (iii) the *Workplace Health and Safety Act*.

- (2) In addition, the Director may give to a rail transport operator who employs a rail safety worker a copy of a certificate indicating the worker had, or may have had, the prescribed level or more of alcohol in his or her blood, or a prohibited drug in his or her body, while performing rail safety work.

- (3) In this regulation:

Comcare means the body established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

Part 6 Conduct on train or railway premises

33 Direction to leave train or railway premises

- (1) If, a regulating officer suspects, a person in a train or railway premises is committing an offence against these Regulations, the regulating officer may direct the person to leave the train or railway premises.

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

Maximum penalty: 20 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subregulation (2) if the defendant establishes a reasonable excuse.
- (5) Before exercising a power under subregulation (1), the regulating officer must identify himself or herself as a rail safety officer, rail safety worker or police officer.
- (6) A direction under subregulation (1) can not require a person to leave a train other than when it is stationary at a place that is identified as a railway station.

34 Throwing things

- (1) A person who is in a train or railway premises must not throw a thing at, in, on or from a train or railway premises.

Maximum penalty: 20 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

35 Posting bills

- (1) A person must not, in a train or railway premises:

- (a) give out or distribute a handbill; or
- (b) affix a bill or poster, or cause a bill or poster to be affixed, to any infrastructure in a train or railway premises.

Maximum penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

- (3) It is defence to a prosecution for an offence against subregulation (1) if the defendant establishes he or she had the permission of the relevant rail transport operator.

36 Littering

- (1) A person who is in a train or railway premises must not deposit or abandon any litter, belongings, luggage or other material or thing in a train or railway premises other than by placing it in a receptacle or place provided for the deposit of the litter, belongings, luggage or other material or thing.

Maximum penalty: 20 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

37 Vehicles in pedestrian areas

- (1) A person in an area of railway premises set apart for the exclusive use of pedestrians must not do any of the following:

- (a) ride an animal;
- (b) drive a road vehicle;
- (c) use a wheeled recreational device or a wheeled toy.

Maximum penalty: 5 penalty units.

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

- (a) a vehicle carrying a person who is unable to walk;
- (b) a regulating officer or investigator carrying out his or her duties;
- (c) a member of an ambulance service or emergency services, a workplace safety officer or a member of the Australian Federal Police carrying out his or her duties;
- (d) a person who is permitted by the relevant accredited person to ride an animal, drive a road vehicle or use a wheeled recreational device or wheeled toy in or on the area and who does so in accordance with any conditions imposed by the relevant rail infrastructure manager.

- (3) An offence against subregulation (1) is an offence of strict liability.

38 Spitting

- (1) A person who is in a train or railway premises must not spit.

Maximum penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

39 Urinating etc.

- (1) A person who is in a train or railway premises must not urinate or defecate, except in toilets provided for the purpose.

Maximum penalty: 20 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

40 Drinking alcohol on trains and railway premises

- (1) A person in a train or railway premises must not consume any alcoholic drink or possess an opened container of an alcoholic drink unless:

- (a) the alcoholic drink or container was supplied in the train or railway premises; or
- (b) the person consumes the alcoholic drink or possesses the container with the permission of the relevant rail transport operator.

Maximum penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

41 Intoxicated persons

- (1) A regulating officer may direct a person in a train or railway premises to leave the train or railway premises if the regulating officer believes the person:

- (a) is under the influence of alcohol or a drug; and
- (b) is causing or is likely to cause a nuisance or annoyance to, or endanger, other persons on the train or railway premises or endanger himself or herself.

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

Maximum penalty: 20 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is defence to a prosecution for an offence against subregulation (2) if the defendant establishes a reasonable excuse.
- (5) Before exercising a power under subregulation (1), the regulating officer must identify himself or herself as a rail safety officer, rail safety worker or police officer.
- (6) A direction under subregulation (1) can not require a person to leave a train other than when it is stationary at a place that is identified as a railway station.

42 Persons travelling on trains to remain inside train

- (1) A person travelling in a train must, at all times when the train is moving, remain inside the train so no part of the person is projecting from the train.

Maximum penalty: 20 penalty units.

- (2) Subregulation (1) does not apply to or in respect of:
- (a) a regulating officer or investigator carrying out his or her duties; or
 - (b) a person who is acting at the request of or in accordance with a direction of a regulating officer or investigator; or
 - (c) a person who is permitted by the relevant rail transport operator to travel on a train in a manner that all or part of the person is projecting from the train and who does so in accordance with any conditions imposed by the operator.
- (3) An offence against subregulation (1) is an offence of strict liability.
- (4) It is defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

43 No unauthorised commercial activities

- (1) A person must not carry on a commercial activity in a train or railway premises unless the person is authorised to do so in writing by the relevant rail transport operator.

Maximum penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) A person carrying on a commercial activity in a train or railway premises must, if requested to do so by a regulating officer, display to the regulating officer his or her authority to carry on the commercial activity.

Maximum penalty: 5 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.
- (5) In this regulation:

commercial activity means one or more of the following activities:

- (a) selling or hiring, or offering to sell or hire, a thing to a person in a train or railway premises;
 - (b) touting or soliciting custom, hire or employment from a person in a train or railway premises;
 - (c) soliciting money from a person in a train or railway premises, whether by busking or other means;
 - (d) soliciting persons to participate in a survey if the persons solicited are unknown to the person conducting the survey.
- (6) However, it is not a commercial activity for this regulation if:
 - (a) the persons engaging in the activity are known to each other and are willing participants in the activity; or
 - (b) the person engaged in the activity is dealing, by mobile telephone or other electronic means, with another person who is not present on the train or in the railway premises.

44 Control of animals on trains and railway land

- (1) A person must not take an animal in a train or railway premises unless:
 - (a) the animal is a dog guiding or assisting, or being trained to guide or assist, a person with a disability; or
 - (b) the animal is a dog or horse being used by a regulating officer or other person to carry out security work; or

- (c) the person is permitted to do so by the relevant rail transport operator and does so in accordance with any conditions imposed by the operator.

Maximum penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.
- (4) The conditions the rail transport operator may impose, as mentioned in subregulation (1)(c), include, but are not limited to, conditions about the part of the railway premises 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.
- (5) In subregulation (1):

security work means any of the following:

- (a) controlling or monitoring the conduct of persons;
- (b) removing persons because of their conduct;
- (c) patrolling or guarding property;
- (d) searching for or removing unlawful substances or things (including, but not limited to, drugs, firearms, explosives and explosive materials).

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

- (1) A person must not park a vehicle on railway premises of a rail transport operator unless the vehicle is parked:
 - (a) in a place designated for parking vehicles; and
 - (b) in accordance with any conditions imposed by the operator.

Maximum penalty: 5 penalty units.

- (2) Subregulation (1) does not apply in respect of:
 - (a) a vehicle carrying a person who is unable to walk; or
 - (b) a regulating officer or investigator carrying out his or her duties; or

- (c) a member of an ambulance service or emergency services, a workplace safety officer or a member of the Australian Federal Police carrying out his or her duties.

- (3) An offence against subregulation (1) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

46 Trespassing

- (1) A person must not go onto, enter or remain in or on a railway track, level crossing, pedestrian crossing, train or railway premises unless authorised to do so.

Maximum penalty: 20 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.
- (4) In subregulation (1), a reference to an authority to go onto, enter or remain in or on a railway track, level crossing, pedestrian crossing, train or railway premises includes:
 - (a) signage conspicuously erected permitting a person to go onto, enter or remain in or on the railway track, level crossing, pedestrian crossing, train or railway premises; and
 - (b) a request or direction to do so by a regulating officer; and
 - (c) the permission of the relevant rail transport operator.

47 No placing of things on railway tracks

- (1) A person, other than a rail safety worker carrying out his or her duties, must not leave, place or deposit anything of any nature whatever on a railway track.

Fault element: Intentionally leaving, placing or depositing the thing.

Maximum 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 rail transport operator; and

- (b) the person has complied with any conditions on which the permission is given.

Part 7 Using crossings and gates

48 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 the person uses a level crossing, bridge, subway or pedestrian crossing constructed for the purpose.

Maximum penalty: 20 penalty units.

- (2) Subregulation (1) does not apply in relation to:
 - (a) a regulating officer or investigator carrying out his or her duties; or
 - (b) a person who is acting at the request of or in accordance with a direction of a regulating officer or investigator; or
 - (c) a railway track on a road or road-related area.
- (3) An offence against subregulation (1) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.
- (5) Without limiting subregulation (4), the following are reasonable excuses:
 - (a) if crossing the track at that place is authorised by a protocol in place under section 21 of the *AustralAsia Railway (Special Provisions) Act*;
 - (b) if there is no level crossing within a reasonable distance and there is no train in sight when the person crosses the track.

49 Pedestrians crossing railway tracks

- (1) If a bridge, subway or pedestrian crossing is constructed for crossing a railway track at or near a place where there is a level crossing over the railway track, a pedestrian must not cross over the railway track at the level crossing but must use the bridge, subway or pedestrian crossing.

Maximum penalty: 20 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 if:
 - (a) the person is warned not to do so by regulating officer; or
 - (b) a train is in sight and moving towards the level crossing or pedestrian crossing; or
 - (c) 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 audible or visual device).

Maximum 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.

Maximum 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.

Maximum penalty: 20 penalty units.

- (6) An offence against subregulation (1), (3), (4) or (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subregulation (1), (3), (4) or (5) if the defendant establishes a reasonable excuse.
- (8) This regulation does not apply to:
 - (a) a regulating officer or investigator 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 regulating officer or investigator.

50 Restriction on certain vehicles crossing railway tracks at level crossings

- (1) A person must not drive a vehicle across a level crossing if the driver of the vehicle has been directed not to do so by a regulating officer.

Maximum penalty: 100 penalty units.

- (2) A person must not drive a vehicle across a level crossing if any of the following apply:

- (a) the vehicle is carrying a load likely to cause damage to rail infrastructure;
- (b) the vehicle is carrying a load likely to cause an obstruction on the level crossing to:
 - (i) other vehicles or pedestrians crossing the level crossing; or
 - (ii) trains or other rolling stock approaching the level crossing; or
 - (iii) rail safety workers in the vicinity of the level crossing;
- (c) it would be contrary to a sign displayed at the level crossing to drive the vehicle across it.

Maximum penalty: 100 penalty units.

- (3) Subregulation (2) does not apply if the person driving the vehicle is:
- (a) a rail safety worker carrying out his or her duties; or
 - (b) a person acting to protect life or property, control or extinguish a fire or otherwise deal with an emergency.
- (4) Subregulation (2) also does not apply if the driver of the vehicle:
- (a) complies with regulation 51; or
 - (b) is a person who is permitted by the relevant rail infrastructure manager to cross the level crossing without complying with regulation 51.
- (5) An offence against subregulation (1) or (2) is an offence of strict liability.

- (6) It is a defence to a prosecution for an offence against subregulation (1) or (2) if the defendant establishes a reasonable excuse.

51 Oversize etc. vehicles

- (1) The operator of an exempted vehicle must:
- (a) at least 48 hours before it is intended that the vehicle will be driven across a level crossing, notify the relevant rail infrastructure manager about the intended crossing; and
 - (b) ensure the vehicle is not driven across the railway track other than in accordance with the operator's approval.

Maximum penalty: 100 penalty units.

- (2) The driver of an exempted vehicle must not drive the exempted vehicle across a railway track at a level crossing other than in accordance with the approval of the relevant rail transport operator.

Maximum penalty: 100 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subregulation (1) or (2) if the defendant establishes a reasonable excuse.
- (5) Without limiting what may be a reasonable excuse as mentioned in subregulation (4), it is a reasonable excuse if an operator establishes the exempted vehicle was being driven at the time of the alleged offence without his or her express or implied authority.
- (6) A notice mentioned in subregulation (1)(a) must specify:
- (a) the name and address of the operator and driver of the exempted vehicle; and
 - (b) the level crossing it is intended the vehicle will be driven over; and
 - (c) the time it is intended the vehicle will be driven over the level crossing; and
 - (d) details of the exemption under the *Motor Vehicles Act*.

- (7) Before the time it is intended the vehicle will be driven over the level crossing, the relevant rail infrastructure manager must notify the operator whether the manager approves or does not approve the vehicle crossing the level crossing.
- (8) The rail infrastructure manager's approval may be subject to conditions.
- (9) The rail infrastructure manager must keep a record of the following:
 - (a) receiving the operator's notice;
 - (b) the details of the notice;
 - (c) whether or not the rail infrastructure manager approves the crossing;
 - (d) if the rail infrastructure manager approves the crossing:
 - (i) the time at which, and the manner in which, the crossing is approved to take place; and
 - (ii) any conditions of the approval.
- (10) In this regulation:

exempted vehicle means a vehicle the subject of an exemption under the *Motor Vehicles Act*.

exemption under the Motor Vehicles Act means an exemption that permits the vehicle to be used on a public road even though the vehicle exceeds the mass, load or dimension limits set out under the *Motor Vehicle (Standards) Regulations*.

operator, of a vehicle the subject of an exemption under the *Motor Vehicles Act*, means the person to whom the exemption is granted.

52 Driving animals across railway tracks

- (1) 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 regulating officer; or
 - (b) a train is in sight and moving towards the level crossing; or
 - (c) doing so is contrary to a warning of the approach of a train to the level crossing has been given by a warning device (whether an audible or visual device).

Maximum penalty: 20 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

53 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 rail transport operator.

Maximum penalty: 100 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.
- (4) The person must, at least 48 hours before driving the herd or mob across the level crossing, notify the relevant rail infrastructure manager of the person's intention to do so.
- (5) The notice must specify:
 - (a) the name and address of the person; and
 - (b) the level crossing the person wants to cross; and
 - (c) the time when the person wants to cross the level crossing.
- (6) Before the time the person intends to drive the herd or mob across the level crossing, the relevant rail infrastructure manager must notify the person whether the manager approves or does not approve the herd or mob crossing the level crossing.
- (7) The rail infrastructure manager's approval may be subject to conditions.
- (8) The rail infrastructure manager must keep a record of the following:
 - (a) receiving a notice under subregulation (4);
 - (b) the details of such a notice;
 - (c) whether or not the rail infrastructure manager approves the crossing;
 - (d) if the manager approves the crossing:
 - (i) the time at which, and the manner in which, the crossing is approved to take place; and

(ii) any conditions of the approval.

- (9) This regulation does not apply to a person who is permitted by the relevant rail infrastructure manager to drive a herd or mob of animals on the hoof across the level crossing without complying with this regulation.

54 Barriers and gates to be closed

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

Maximum penalty: 20 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) A person who manually raises a barrier (so it is in any position other than the fully closed position) at a level crossing or a pedestrian crossing or elsewhere on railway premises, or on land adjacent to railway premises and opening onto railway premises, must not depart from the barrier without lowering it so it is in the fully closed position.

Maximum penalty: 20 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subregulation (1) or (3) if the defendant establishes a reasonable excuse.
- (6) In this regulation:

barrier does not include a barrier that is electronically operated.

gate does not include a gate that is electronically operated.

Part 8 Testing for alcohol and drugs

Division 1 Preliminary matters

55 Definitions

In this Part:

analyst means a person authorised under regulation 60 of the *Traffic Regulations* to be an analyst for the purposes of the *Traffic Act*.

authorised officer means a police officer authorised under regulation 72, or a rail safety officer authorised under regulation 73, to carry out a breath test, breath analysis or saliva test.

blood test means a test of a sample of a person's blood to ascertain the concentration of alcohol, or the presence of a prohibited drug, in the person's blood.

breath analysis means an analysis of a sample of a person's breath by a breath analysis instrument to ascertain the concentration of alcohol in the 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 assess whether the prescribed concentration of alcohol may be present in the person's blood.

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

prescribed concentration, in relation to alcohol, means the concentration as prescribed under regulation 8.

qualified person means a person who has been trained to take samples of blood from persons by a registered training organisation within the meaning of the Australian Quality Training Framework as approved from time to time under the *Skilling Australian Workforce Act 2005* (Cth).

registered nurse means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and

- (b) in the registered nurses division of the profession.

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

56 Prohibited drugs

- (1) Each of the following is prescribed as a drug that is strictly prohibited for section 68(1) of the Act:
 - (a) delta-9-tetrahydrocannabinol (THC);
 - (b) methylamphetamine;
 - (c) 3,4-methylenedioxymethamphetamine (MDMA);
 - (d) methylenedioxyamphetamine (MDA);
 - (e) monoacetylmorphine (heroin metabolite);
 - (f) benzoylecgonine (cocaine);
 - (g) benzoyllecgonine (cocaine metabolite).
- (2) Each of the following is prescribed as a drug that is prohibited for section 68(1) of the Act, but to which the defence under section 68(3)(b) of the Act applies:
 - (a) morphine;
 - (b) methadone;
 - (c) amphetamine.

Division 2 Testing for alcohol

57 Breath test

- (1) To assess whether a rail safety worker carrying out rail safety work may have alcohol at or above the prescribed concentration in his or her blood, an authorised officer may require the worker to submit to a breath test.
- (2) The authorised officer may require a rail safety worker to submit to a breath test:
 - (a) on a random basis and without suspecting the worker has alcohol at or above the prescribed concentration in his or her blood; or

- (b) on a non-random basis in either or both of the following circumstances:
 - (i) the officer suspects, on reasonable grounds, the worker has alcohol at or above the prescribed concentration in his or her blood;
 - (ii) a notifiable occurrence happens involving, or possibly involving, the worker or rail safety work carried out by the worker.
- (3) However, a rail safety worker who was, or may have been, involved in a notifiable occurrence is not obliged to submit to a breath test if:
 - (a) more than 4 hours has passed since the notifiable occurrence happened; or
 - (b) the rail safety worker:
 - (i) has completed rail safety work for the work shift and departed from his or her work location for the work shift; and
 - (ii) was unaware of the notifiable occurrence when the worker completed rail safety work for the work shift.
- (4) An authorised officer must not require a rail safety worker to submit to a breath test if it appears to the officer that the worker:
 - (a) is injured, and the officer is satisfied it may be detrimental to the worker's medical condition for the worker to submit to the breath test; or
 - (b) has a physical disability that prevents the worker from providing a sufficient sample of breath for the completion of a breath test.
- (5) If an authorised officer requires a rail safety worker to submit to a breath test, the worker must comply with the directions given by the officer, or another authorised officer, about submitting to the breath test.

Maximum penalty: 50 penalty units or imprisonment for
 6 months.
- (6) An offence against subregulation (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subregulation (5) if the defendant establishes a reasonable excuse.

- (8) Without limiting subregulation (7), it is a reasonable excuse if the rail safety worker submits instead to a breath analysis or provides a sample of his or her blood for analysis.

58 Breath analysis

- (1) This regulation applies if an authorised officer requires a rail safety worker to submit to a breath test and:
- (a) the worker fails to provide a sufficient sample of breath for the completion of the test; or
 - (b) the officer suspects, on reasonable grounds, whether as a result of the test or otherwise, that the person may have alcohol at or above the prescribed concentration in his or her blood.
- (2) This regulation also applies if a notifiable occurrence happens involving, or possibly involving, a rail safety worker or rail safety work carried out by the worker.
- (3) An authorised officer may require the rail safety worker to submit to a breath analysis.
- (4) However, a rail safety worker who was, or may have been, involved in a notifiable occurrence is not obliged to submit to a breath analysis if:
- (a) more than 4 hours has passed since the notifiable occurrence happened; or
 - (b) the rail safety worker:
 - (i) has completed rail safety work for the work shift and departed from his or her work location for the work shift; and
 - (ii) was unaware of the notifiable occurrence when the worker completed rail safety work for the work shift.
- (5) An authorised officer must not require a rail safety worker to submit to a breath analysis if it appears to the officer that the worker:
- (a) is injured, and the officer is satisfied it may be detrimental to the worker's medical condition for the worker to submit to the breath analysis; or
 - (b) has a physical disability that prevents the worker from providing a sufficient sample of breath for the completion of a breath analysis.

59 Breath analysis procedures

- (1) An authorised officer must not use a breath analysis instrument under this Part unless the officer is authorised as mentioned in regulation 72(2) or 73(1)(b) to carry out breath analyses under this Part.
- (2) An authorised officer who is to use the breath analysis instrument to carry out a breath analysis of a sample of a rail safety worker's breath must:
 - (a) prepare the instrument for the analysis by ensuring:
 - (i) the instrument is turned on; and
 - (ii) the words "READY TO START" appear on the display panel of the instrument; and
 - (b) provide an unused mouthpiece for use by the worker in providing each sample of breath in each breath analysis.
- (3) However, the authorised officer must not carry out the breath analysis unless satisfied the worker has not consumed alcohol within the period of 15 minutes immediately before the proposed time for carrying out the breath analysis.

60 Further breath analysis

- (1) A rail safety worker who has submitted to a breath analysis (whether or not the sample provided was sufficient) may, subject to regulation 58(4), be required by an authorised officer to submit to one more breath analysis on the same occasion and the worker must provide a sufficient sample of breath for that analysis.
- (2) A rail safety worker who has submitted to a breath analysis (whether or not the sample provided was sufficient) may request a further analysis be carried out on another sample of the worker's breath.
- (3) A request under subregulation (2) must be made without undue delay after the rail safety worker is advised of the outcome in relation to the initial sample.
- (4) If a request is made under subregulation (2), the authorised officer who carried out the initial analysis (or another authorised officer) must, if the sample of breath is sufficient, carry out an analysis on one further sample of the worker's breath.
- (5) Regulation 59 applies to carrying out a breath analysis under this regulation.

61 Offence

- (1) If an authorised officer requires a rail safety worker to submit to a breath analysis, the worker must comply with directions given by the officer, or another authorised officer, about submitting to the breath analysis.

Maximum penalty: 50 penalty units or imprisonment for
6 months.

- (2) An offence against subregulation (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.
- (4) Without limiting subregulation (3), it is a reasonable excuse if the rail safety worker provides a sample of his or her blood for analysis.

62 Breath analysis indicates alcohol at or above prescribed concentration

- (1) If an analysis of breath by a breath analysis instrument indicates a rail safety worker has alcohol at or above the prescribed concentration in his or her blood, the authorised officer who operated the instrument must give to the worker without delay a written statement (or a statement printed by the instrument) stating:
- (a) the date the sample of breath was taken and analysed; and
- (b) the time of the breath analysis; and
- (c) the results of the analysis.
- (2) The rail safety worker may, after the breath analysis and whether or not the analysis was successful, request a sample of his or her blood be taken for analysis.

63 Blood sample

- (1) If a rail safety worker who is required to submit to a breath test under regulation 57, or a breath analysis under regulation 58 or 60(1), refuses, or fails to provide a sufficient sample of breath, the authorised officer may require the worker to provide a sample of his or her blood.
- (2) However, the authorised officer may not require a rail safety worker to provide a sample of his or her blood under subregulation (1) if the worker is not obliged to submit to a breath test as mentioned in regulation 57(3) or is not obliged to submit to a breath analysis as mentioned in regulation 58(4).

- (3) An authorised officer may also require a rail safety worker to provide a sample of his or her blood if, as a result of a breath test under regulation 57, the authorised officer has formed the opinion the worker may have alcohol at the prescribed concentration or more in his or her blood and it is not possible to conduct a breath analysis.

Examples for subregulation (3)

- 1 *There is no authorised person available to operate a breath analysis device.*
- 2 *A breath analysis is attempted but the device malfunctions.*

- (4) A rail safety worker who refuses or fails to submit to a breath test under regulation 57 or a breath analysis under regulation 58 or 60(1) because of a medical or physical condition may request a sample of his or her blood be taken instead.
- (5) If an authorised officer requires a rail safety worker to provide a sample of blood, or a rail safety worker requests a sample of his or her blood be taken for analysis, the worker must comply with the directions given by the officer or another authorised officer about providing the sample.

Maximum penalty: 50 penalty units or imprisonment for
 6 months.

- (6) An offence against subregulation (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subregulation (5) if the defendant establishes a reasonable excuse.

Division 3 Testing for prohibited drug

64 Saliva test

- (1) To ascertain whether a rail safety worker carrying out rail safety work has a prohibited drug in his or her body, an authorised officer may require the worker to submit to a saliva test.
- (2) The authorised officer may require a rail safety worker to submit to a saliva test:
- (a) on a random basis and without suspecting the worker has a prohibited drug in his or her body; or
 - (b) on a non-random basis in either or both of the following circumstances:
 - (i) the officer suspects, on reasonable grounds, the worker has a prohibited drug in his or her body;

- (ii) a notifiable occurrence happens involving, or possibly involving, the worker or rail safety work carried out by the worker.
- (3) However, a rail safety worker who was, or may have been, involved in a notifiable occurrence is not obliged to submit to a saliva test if:
 - (a) more than 4 hours has passed since the notifiable occurrence happened; or
 - (b) the rail safety worker:
 - (i) has completed rail safety work for the work shift and departed from his or her work location; and
 - (ii) was unaware of the notifiable occurrence when the worker completed rail safety work for the work shift.
- (4) An authorised officer must not require a rail safety worker to submit to a saliva test if it appears to the officer that the worker:
 - (a) is injured, and the officer is satisfied it may be detrimental to the worker's medical condition for the worker to submit to the saliva test; or
 - (b) has a physical disability that prevents the worker from providing a sufficient sample of saliva for the saliva test.
- (5) If an authorised officer requires a rail safety worker to submit to a saliva test, the worker must comply with the directions given by the officer, or another rail safety officer, about submitting to a saliva test.

Maximum penalty: 50 penalty units or imprisonment for 6 months.
- (6) An offence against subregulation (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subregulation (5) if the defendant establishes a reasonable excuse.
- (8) Without limiting subregulation (7), it is a reasonable excuse if the rail safety worker provides a sample of his or her blood for analysis.

65 Blood sample

- (1) An authorised officer may require a rail safety worker to provide a sample of the worker's blood in any of the following circumstances:
 - (a) if an authorised officer requires the worker to submit to a saliva test and the worker refuses to submit or fails to provide a sufficient sample for the test;
 - (b) if, as a result of a saliva test, the authorised officer suspects, on reasonable grounds, that the worker may have a prohibited drug in his or her body;
 - (c) if the authorised officer did not require the worker to submit to a saliva test for a reason mentioned in regulation 64(4);
 - (d) if the worker was, or may have been, involved in a notifiable occurrence.
- (2) However, a rail safety worker who was, or may have been, involved in a notifiable occurrence is not obliged to provide a sample of his or her blood if:
 - (a) more than 4 hours has passed since the notifiable occurrence happened; or
 - (b) the rail safety worker:
 - (i) has completed rail safety work for the work shift and departed from his or her work location; and
 - (ii) was unaware of the notifiable occurrence when the worker completed rail safety work for the work shift.

Division 4 Blood sample

66 Taking sample of blood

- (1) If, under Division 2 or 3, an authorised officer requires a rail safety worker to provide a sample of his or her blood or a rail safety worker requests a sample of his or her blood be taken, the authorised officer must take the action necessary and reasonable for a health practitioner to take a sample of blood from the worker.
- (2) The health practitioner must be nominated by:
 - (a) the rail safety worker; or
 - (b) the authorised officer and accepted by the worker.

- (3) However, subregulation (2) does not apply if:
- (a) the rail safety worker does not nominate a health practitioner;
or
 - (b) the health practitioner nominated by the authorised officer is not accepted by the worker; or
 - (c) the health practitioner nominated or accepted by the worker is not available to take the sample within 1 hour after the worker was required to provide the sample or requested the sample be taken; or
 - (d) the health practitioner nominated or accepted by the worker is not available to take the sample at a place within 10 kilometres of the place where the worker was required to provide the sample or made the request for the sample to be taken.
- (4) If subregulation (2) does not apply, any health practitioner who is available may take the sample.
- (5) The authorised officer must be present when the health practitioner takes the sample from the rail safety worker.

67 Compulsory blood testing following a notifiable occurrence

- (1) If a rail safety worker suffers an injury as a result of a notifiable occurrence and, within 4 hours after the notifiable occurrence, the worker attends at, or is admitted to, a hospital or health centre to receive treatment for the injury, the person in charge of the hospital or health centre must ensure a sample of the worker's blood is taken as soon as practicable (even though the worker may be unconscious).
- (2) If a rail safety worker suffers an injury as a result of a notifiable occurrence and the worker is dead on arrival at the hospital or health centre, or dies before a sample of blood has been taken, the medical practitioner who, under section 12 of the *Coroners Act*, reports the death to a coroner must:
- (a) take a sample of blood from the body of the deceased or cause a sample to be taken; or
 - (b) notify the Coroner as soon as practicable that, in view of the circumstances in which the death of the deceased occurred, a sample of blood should be taken from the body.

- (3) The Coroner, on receipt of notice under subregulation (2), may authorise and direct a pathologist to take a sample of blood from the body of the deceased.
- (4) A health practitioner is not obliged to take a sample of blood under this regulation if a sample of blood has previously been taken under this regulation by another health practitioner.

68 Procedures relating to blood analysis – health practitioners

- (1) The health practitioner who takes a sample of blood from a rail safety worker 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:
 - (a) the identification number marked on the containers;
 - (b) the name and address of the rail safety worker from whom the sample was taken (to the extent known);
 - (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 signed certificate available to the authorised officer (who must give it to or retain it on behalf of the Director); and
 - (b) give the other container to the rail safety worker or the worker's representative, or retain it on behalf of the worker.

69 Procedures relating to blood analysis – 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) if the presence of alcohol is detected in the sample – the concentration of alcohol;
 - (e) if the presence of a drug is detected 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 signed certificate must be given to, or retained on behalf of, the Director.
 - (3) A copy of the signed certificate must be made available to the health practitioner and the rail safety worker.
 - (4) The Director may provide a copy of the signed certificate to a rail transport operator who employs a rail safety worker if the certificate indicates the prescribed concentration of alcohol (or greater concentration) or a prohibited drug was present in the rail safety worker's sample of blood.

Division 5 Evidence

70 Use of test result in court proceedings

- (1) This regulation applies:
 - (a) in any proceedings in a court; and
 - (b) even if evidence is given that the person consumed alcohol or a prohibited drug after the relevant time and before the breath analysis was carried out or the sample of saliva or blood was taken.
- (2) If a breath analysis is carried out on a person in accordance with this Part, the blood alcohol content indicated by the analysis is taken to be the blood alcohol content of the person at the relevant time.
- (3) If more than one breath analysis was carried out, the lower of the blood alcohol contents indicated is taken to be the blood alcohol content of the person at the relevant time.

- (4) If a sample of a person's blood is taken under this Part:
- (a) the blood alcohol content indicated by analysis of the sample is taken to be the blood alcohol content of the person at the relevant time; and
 - (b) any prohibited drug detected in the person's blood is taken to have been present in the person's blood at the relevant time.

- (5) In this regulation:

relevant time means:

- (a) the time the rail safety worker was tested for alcohol or prohibited drugs; or
- (b) if the worker was tested for alcohol or prohibited drugs because of a notifiable occurrence – the time the notifiable occurrence happened.

71 Evidence by certificate

- (1) In any proceedings in a court, a certificate in an approved form purporting to be signed by any of the following is prima facie evidence of the matters stated in the certificate and the facts on which they are based:
- (a) the Commissioner of Police – certifying either of the following about a person named in the certificate:
 - (i) the person is a police officer and authorised under regulation 59 of the *Traffic Regulations* to use a prescribed breath analysis instrument within the meaning of the *Traffic Act*;
 - (ii) the person is authorised under regulation 60 of the *Traffic Regulations* to be an analyst for the purposes of the *Traffic Act*;
 - (b) the Director – certifying a person named in the certificate is a rail safety officer who is authorised, under regulation 73, to carry out breath tests, saliva test or breath analyses;
 - (c) an authorised officer – certifying the following:
 - (i) the apparatus used by the authorised officer was a breath analysis instrument;
 - (ii) the breath analysis instrument was in proper order and properly operated;

- (iii) the breath analysis instrument was used in a manner that complied with this Part;
 - (iv) a sample of the breath of a person named in the certificate was provided for analysis using a breath analysing instrument;
 - (v) a concentration of alcohol expressed in grams in 100 millilitres was indicated by the breath analysis instrument as being present in the blood of the person on the day and at the time specified in the certificate;
 - (vi) a written statement was given to the person under regulation 62(1);
 - (d) a member of the staff of a hospital or health centre;
 - (e) an analyst, or a person employed by an analyst.
- (2) A certificate mentioned in subregulation (1)(c), (d) or (e) 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 mentioned in the certificate not less than 7 days before the commencement of the proceedings; or
 - (b) if the person mentioned 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.
- (3) For subregulation (1), the Director may approve forms of certificates to be used by different persons on different occasions.

Division 6 Other matters for this Part

72 Police officers who may carry out breath tests, breath analyses or saliva tests

- (1) Every police officer is authorised to carry out a breath test or saliva test under this Part.
- (2) A police officer who is authorised under regulation 59 of the *Traffic Regulations* to use a prescribed breath analysis instrument within the meaning of the *Traffic Act* is authorised to carry out breath analyses under this Part.

73 Persons, other than police officers, who may carry out breath tests, breath analyses or saliva tests

- (1) The Director may, in writing, authorise rail safety officers who are not police officers:
 - (a) to carry out breath tests and saliva tests under this Part; or
 - (b) to carry out breath analyses under this Part
- (2) The Director may not authorise a rail safety officer under subregulation (1)(a) unless the Director considers the officer:
 - (a) is trained to carry out breath tests and saliva tests; and
 - (b) is capable of carrying out breath tests and saliva tests correctly.
- (3) The Director may not authorise a rail safety officer under subregulation (1)(b) unless:
 - (a) the person is also authorised under subregulation (1)(a); and
 - (b) the Director considers the officer:
 - (i) is trained in the use of a breath analysis instrument; and
 - (ii) is capable of using the instrument correctly.

74 Reports relating to rail safety worker's refusal or failure to be tested

- (1) This regulation applies if a rail safety worker refuses or fails to submit to a breath test, saliva test or breath analysis, or to provide a sample of his or her blood, on being required to do so by an authorised officer.
- (2) The authorised officer or another rail safety officer 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.
- (3) The authorised officer or rail safety officer who makes the report 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).

75 Duty of health practitioner who takes sample

It is the duty of the health practitioner who takes a sample of a rail safety worker's blood to take the measures 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 presence of a drug in the employee's blood.

76 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.

77 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, saliva or blood under this Part on the ground the person:

- (a) would or might, by complying with the requirement or direction, provide evidence that could be used against the person; 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.

Part 9 Miscellaneous matters**78 Periodic information to be supplied**

- (1) A rail transport operator must provide the Director with a monthly return that sets out in respect of the month:
 - (a) the number of employees engaged in railway safety work on, or in relation to, a railway within, or partly within, the Territory; and
 - (b) for a rail infrastructure manager, the length, in kilometres, of track in the Territory over which the manager has effective management and control; and

- (c) for a rolling stock operator:
 - (i) the number of kilometres travelled in the Territory by passenger trains over which the operator has effective management and control; and
 - (ii) the number of kilometres travelled in the Territory by freight trains over which the operator has effective management and control; and
 - (iii) the number of journeys (either estimated or actual) made by passengers in urban areas of the Territory on passenger trains over which the operator has effective management and control; and
 - (iv) the number of journeys (either estimated or actual) made by passengers in non-urban areas of the Territory on passenger trains over which the operator has effective management and control.
- (2) A rail transport operator must also provide an annual return that sets out the following:
 - (a) for a rail infrastructure manager – the length, in kilometres, of track in the Territory over which the manager estimates, for the current financial year, that the manager will have effective management and control;
 - (b) for a rail infrastructure manager that is an accredited person – for the immediately preceding financial year to the current financial year:
 - (i) the location of any private sidings that are connected with, or have access to, the railway to which the accreditation relates; and
 - (ii) the name of the rail infrastructure manager of any such private siding;
 - (c) for a rolling stock operator – the following information for the current financial year:
 - (i) the number of kilometres that the operator estimates will be travelled in the Territory by passenger trains over which the operator has effective management and control;
 - (ii) the number of kilometres the operator estimates will be travelled in the Territory by freight trains over which the operator has effective management and control;

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- (iii) the number of journeys the operator estimates will be made by passengers in urban areas of the Territory on passenger trains over which the operator has effective management and control;
 - (iv) the number of journeys that the operator estimates will be made by passengers in non-urban areas of the Territory on passenger trains over which the operator has effective management and control;
 - (d) the number of employees that the rail transport operator estimates, for the current financial year, will be engaged in railway safety work on, or in relation to, a railway within, or partly within, the Territory.
- (3) The rail transport operator must provide the monthly return required by subregulation (1) to the Director as soon as is practicable after the end of each month, and not later than the 21st day of the following month.

Maximum penalty: 100 penalty units.

- (4) A failure to comply with subregulation (3) is an offence of strict liability.
- (5) For each financial year, the rail transport operator must provide the annual return required by subregulation (2) to the Director before 29 July immediately after the end of the financial year, or before any other date or period that is specified by the Director.

Maximum penalty: 100 penalty units.

- (6) A failure to comply with subregulation (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subregulation (3) or (5) if the defendant establishes a reasonable excuse.

79 Calculation of annual fees

- (1) If the amount of an annual fee is to be determined as specified in item 2(a) or (d) of Schedule 1:
- (a) the annual fee is to be calculated based on the operations of the rail transport operator during the previous year; or

- (b) for a rail transport operator accredited for part only of the previous year – the annual fee is calculated as an estimate based on the operations of the operator during that part of the previous year.
- (2) If an annual fee is payable by a person who becomes accredited during a year, and the fee is to be determined as specified in item 1(a) or (d) of Schedule 1, the fee must be calculated on the basis of the train kilometres the person estimates will be travelled during the part of the year for which the person will be an accredited rail transport operator by trains along the railway track for which the person has become accredited.
- (3) For subregulation (2):
 - (a) a reference in subregulation (4) to train kilometres travelled during the previous year is taken to include a reference to train kilometres the rail transport operator 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 operator is or has become accredited; and
 - (b) a reference in subregulation (4) 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 rail transport operator estimates will travel, or the distance the operator 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 operator is or has become accredited.
- (4) In determining the amount of an annual fee referred to in item 1(a) or (d) of Schedule 1, 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.

80 Payment of annual fees

- (1) Subject to this regulation, an annual fee:
 - (a) is due and payable on 1 September in each year; and
 - (b) must be paid on or before 30 September in the same year.

- (2) If a person becomes an accredited rail transport operator 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 operator 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 rail transport operator or the rail infrastructure manager for a registered private siding that permits the operator or manager to pay the annual fee by instalments and, if so, the operator or manager must pay the annual fee in accordance with the arrangement.

Part 10 Transitional regulations under section 208 of the Act

81 Safety management system

- (1) This regulation applies if a person was accredited as the owner or operator of a railway under the repealed Act and is taken to be accredited as a rail transport operator under section 191 of the Act.
- (2) The safety management plan submitted to the Director under section 13 of the repealed Act is taken to satisfy the requirements of Part 3, Division 4 of the Act as the accredited person's safety management system.
- (3) Subregulation (2) applies until the earlier of:
 - (a) the accredited person establishing a safety management system that complies with Part 3, Division 4 of the Act; or
 - (b) the expiry of this regulation.
- (4) Subregulation (2) does not limit the power of the Director to direct an amendment of the safety management system under section 51 of the Act.
- (5) This Part expires on the expiry of section 208 of the Act.

Schedule 1 Prescribed fees

regulations 10, 13 and 18

Item	Description	Fee
1	Prescribed application fee under regulation 10	
	Prescribed application fee ...	
(a)	for a rolling stock operator	5 750 revenue units
(b)	for a rail infrastructure manager	5 750 revenue units
(c)	for a rolling stock operator and rail infrastructure manager	11 500 revenue units
(d)	for an applicant who is 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 a rolling stock operator, rail infrastructure manager or both)	575 revenue units
2	Prescribed annual accreditation fee under regulation 13	
	Annual fee for accredited persons ...	
(a)	for a rolling stock operator accredited to operate a commercial railway (whether involving freight trains, passenger trains or both)	<p>\$0.028 per train kilometre travelled during the previous year by trains travelling on the railway; or</p> <p>5 750 revenue units;</p> <p>whichever is the greater.</p>
(b)	for a rail infrastructure manager who is accredited for providing train control, signalling or communications systems	<p>\$0.0115 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</p> <p>5 750 revenue units;</p> <p>whichever is the greater.</p>

Item	Description	Fee
(c)	for a rail infrastructure manager who is accredited for constructing a railway	28 750 revenue units (payable each year until completion of construction of the railway)
(d)	for a rail infrastructure manager who has effective management and control of a commercial railway not mentioned in paragraph (b) or (c)	24 revenue units 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 rail infrastructure manager; or 5 750 revenue units; whichever is the greater.
(e)	for a rail infrastructure manager also accredited as a rolling stock operator to operate track maintenance and inspection vehicles and equipment	5 750 revenue units
(f)	for an accredited person who is accredited for a purpose other than as specified in paragraphs (a) to (e)	5 750 revenue units
3	Annual registration fee under regulation 18	
	Annual registration fee for a private siding	115 revenue units

Schedule 2 Content of the safety management system

regulation 20

Part 1 Safety policy

- 1 A safety policy that aligns with other organisational policies of the rail transport operator and that is endorsed by the operator's CEO and board of directors (or any other person or body controlling the operator).
- 2 A safety policy that includes an express commitment to safety, the development and maintenance of a positive safety culture and the continuous improvement of all aspects of the safety management system.

Part 2 Governance and internal control arrangements

- 1 Systems and procedures to ensure that the rail transport operator's CEO and board of directors (or any other person or body controlling the operator), or the persons managing the railway operations, have sufficient knowledge:
 - (a) of the risk profile of the railway operations carried out by the operator to enable the operator to proactively manage the risks arising from those operations; and
 - (b) of the level of compliance by the organisation with its duties and obligations under the Act; and
 - (c) to determine whether:
 - (i) the safety management system is working effectively; and
 - (ii) risks to safety are being identified, assessed and managed so far as is reasonably practicable; and
 - (iii) controls used to monitor safety and to manage risks to safety are being regularly reviewed and revised.
- 2 Systems and procedures to ensure that decisions and directions made by the rail transport operator's CEO and board of directors (or any other person or body controlling the operator), or of the persons managing the railway operations, that affect safety are being implemented effectively.

Part 3 Management, responsibilities, accountabilities and authorities

- 1 Policies that indicate how safety responsibilities, accountabilities, authorities and interrelationships have been determined.
- 2 Documents that describe the responsibilities, accountabilities, authorities and interrelation of the personnel who manage or carry out rail safety work, or who verify such work.
- 3 Procedures for the reporting of risks to safety by personnel with safety responsibilities.
- 4 Documents that describe the authorities given to personnel with safety responsibilities to enable them to meet those responsibilities.

Part 4 Regulatory compliance

- 1 Systems and procedures for the identification of safety requirements under the Act and other safety legislation.
- 2 Systems and procedures to ensure compliance with those requirements.

Part 5 Document control arrangements and information management

Systems and procedures to control and manage all documents and information relevant to the management of risks to safety associated with railway operations of the rail transport operator, including systems and procedures for:

- (a) the identification, creation, maintenance, management, storage and retention of records and documents; and
- (b) ensuring the currency of documents required for operations; and
- (c) the communication of any changes to the document control systems and procedures to rail safety workers and employees of the rail transport operator who rely on those systems and procedures to carry out their work.

Part 6 Review of the safety management system

- 1 Systems and procedures for the review of the safety management system in accordance with section 53 of the Act and regulation 24.
- 2 Documentation of the matters set out in regulation 24(3).

Part 7 Safety performance measures

- 1 Systems and procedures to ensure the safety management system is effective by using key performance indicators to measure safety performance and to determine the effectiveness of the safety management system.
- 2 Systems and procedures to ensure the collection, analysis, assessment and dissemination of safety information held by the rail transport operator.

Part 8 Safety audit arrangements

- 1 An audit program that provides for:
 - (a) the scheduling and frequency of audits; and
 - (b) safety management system audits as part of the audit program; and
 - (c) the giving of priority to those matters representing the greatest safety risk.
- 2 Documented audit procedures to ensure there is a process for the collection of information to determine whether the railway operations comply with the safety management system and to determine the effectiveness of the safety management system.
- 3 Procedures to ensure that auditors:
 - (a) have the skills and knowledge to undertake audits; and
 - (b) are independent from the area being audited to the maximum extent that is practicable.
- 4 Procedures for:
 - (a) communicating the results of audits to those persons who are responsible for the oversight of the railway operations in the area audited for review and, where appropriate, for corrective action; and
 - (b) where appropriate, the registration and effective implementation of recommendations for action identified by the audit; and
 - (c) the review of the effectiveness of the audit program.

Part 9 Corrective action

- 1 Procedures to ensure, so far as is reasonably practicable, that corrective action is taken in response to any safety deficiencies identified following inspections, testing, audits, investigations or notifiable occurrences.
- 2 Procedures for:
 - (a) registering any corrective actions taken; and
 - (b) the review of those corrective actions; and
 - (c) the implementation of corrective action if it is determined corrective action is required; and
 - (d) the assigning of responsibilities for corrective action.
- 3 Procedures for giving priority, when undertaking corrective action, to those matters representing the greatest safety risk.

Part 10 Management of change

Procedures for ensuring changes that may affect the safety of railway operations are identified and managed, including, but not limited to, procedures for ensuring, so far as is reasonably practicable:

- (a) the changes are fully identified and described in the context of the railway operations; and
- (b) affected parties are identified and, if practicable, consulted; and
- (c) the roles and responsibilities of rail safety workers and employees of the rail transport operator are clearly specified with respect to the change; and
- (d) the rail safety workers and employees of the rail transport operator are fully informed and trained to understand and deal with the proposed change; and
- (e) the requirements of section 50(1)(b) of the Act are observed in relation to any risks associated with the proposed change; and
- (f) the change, once implemented, is reviewed and assessed by the rail transport operator to determine whether or not the change has been appropriately managed.

Part 11 Consultation

Systems and procedures to ensure that the consultation required by section 50(3) of the Act occurs when the safety management system is reviewed or varied.

Part 12 Internal communication

Systems and procedures:

- (a) for the dissemination of information about the content of the safety management system to persons who are to participate in the implementation of the system or may be otherwise affected by the implementation; and
- (b) for the communication of the rail transport operator's safety policy and safety objectives to all persons who are to participate in the implementation of the safety management system; and
- (c) for the internal reporting of accidents and incidents involving the operator's railway operations, including accidents and incidents involving contractors and subcontractors; and
- (d) to support communication and the dissemination of information throughout, and between all levels of, the operator's railway operations.

Part 13 Risk management

- 1 Systems and procedures for compliance with the risk management obligations set out in sections 12 and 50(1)(b), (c) and (d) of the Act.
- 2 A risk register that includes:
 - (a) a listing of the risks to safety identified under section 50(1)(b) of the Act; and
 - (b) details of the assessment of those risks (including their likelihood, likely consequences and ranking); and
 - (c) a description of any elimination or risk control to be used to manage, so far as is reasonably practicable, those risks, including, if appropriate:
 - (i) the identification of who is responsible for implementing the measures; and

- (ii) a reference to the general location or locations in the safety management system where more details on the measures can be found.

- 3 Systems and procedures to ensure the details in the register are current, so far as is reasonably practicable.

Part 14 Human factors

Procedures to ensure human factor matters are taken into account during the development, operation and maintenance of the safety management system and for the integration of human factors principles and knowledge into all relevant aspects of operational and business systems.

Part 15 Procurement and contract management

Systems and procedures:

- (a) for the review of tender documents and contracts to ensure safety requirements under the safety management system are adequately defined and documented in those tender documents and contracts; and
- (b) to ensure the terms of any tender documents or contracts do not lead to unsafe work or an activity that may affect the safety of railway operations; and
- (c) for the selection and control of contractors and to ensure the monitoring of the performance of contractors, including conducting or commissioning audits of the contractor's performance in relation to the safety aspects of the contract; and
- (d) to ensure that safety duties under the Act are being met under contracts, and procedures for the taking of remedial action if necessary; and
- (e) to ensure goods and services provided to the railway operation meet the standards and specifications required for the safety of the railway operation.

Part 16 General engineering and operational systems safety requirements

- 1 A documented set of engineering standards and procedures, and operational systems, safety standards and procedures, to cover the following and, if relevant, the interface between any 2 or more of them:
 - (a) rail infrastructure;
 - (b) rolling stock;
 - (c) operational systems.
- 2 Details of the implementation and updating of the documents specified in clause 1.
- 3 Procedures for the control and verification of the design of structures, rolling stock, equipment and systems, in accordance with the engineering standards and procedures, and operational systems, safety standards and procedures, specified in clause 1.
- 4 Systems, procedures and standards for the following in relation to rail infrastructure and rolling stock:
 - (a) engineering design;
 - (b) construction and installation;
 - (c) implementation and commissioning;
 - (d) monitoring and maintenance;
 - (e) system operation;
 - (f) modification;
 - (g) decommissioning or disposal.

Part 17 Process control

- 1 Procedures for the rail transport operator to monitor its compliance with the standards and procedures specified in Part 16, including procedures for the inspection and testing of safety related engineering and operational systems.
- 2 Procedures for the control, calibration and maintenance of all equipment used to inspect or test rail infrastructure or rolling stock.

- 3 Arrangements for the establishment and maintenance of inspection and test records to provide evidence of the condition of rail infrastructure or rolling stock.

Part 18 Asset management

An asset management policy and processes that address all phases of the asset life cycle of the rail infrastructure or rolling stock operations.

Part 19 Safety interface coordination

- 1 Procedures for the identification of interface risks to the safety of railway operations and for the development and implementation of interface coordination plans under sections 55, 56 and 57 of the Act.
- 2 Procedures for monitoring the implementation and effectiveness of interface coordination plans, and compliance with interface agreements.

Part 20 Management of notifiable occurrences

- 1 Systems and procedures for the reporting of notifiable occurrences under regulation 30.
- 2 Procedures for the management of the scene of a notifiable occurrence and for the preservation of evidence to the extent it is reasonably practicable.
- 3 Procedures for the management of all notifiable occurrences, including procedures to enable the determination of which notifiable occurrences are to be investigated, and how investigations are to be conducted.

Part 21 Rail safety worker competence

Procedures, and where necessary standards, to ensure compliance with section 65 of the Act and regulation 29.

Part 22 Security management

- 1 The security management plan required by section 63 of the Act.
- 2 Systems and procedures to ensure compliance with section 63 of the Act and regulation 25.

Part 23 Emergency management

- 1 The emergency management plan required by section 64 of the Act.
- 2 Systems and procedures to ensure compliance with section 64 of the Act and regulations 26, 27 and 28.

Part 24 Fatigue

Systems and procedures to ensure compliance with section 50(1)(e)(vi) of the Act.

Part 25 Alcohol and drugs

Systems and procedures to ensure compliance with sections 50(1)(e)(v) and 70 of the Act.

Part 26 Health and fitness

Systems and procedures to ensure compliance with section 50(1)(e)(iv) of the Act and regulation 21.

Part 27 Resource availability

Systems and procedures for estimating the resources, including persons and equipment, that the rail transport operator will need to operate and maintain its railway operations and to implement, manage and maintain its safety management system, and for the preparation of plans to ensure that it has adequate access to those resources.