

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF NORTHERN TERRITORY RAIL SAFETY
REGULATIONS

Regulations 2003, No. 56

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 2003, No. 56*

Regulations under the *Northern Territory Rail Safety Act*

I, EDWARD JOSEPH EGAN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Northern Territory Rail Safety Act*.

Dated 19 December 2003.

E. J. EGAN
Administrator

By His Honour's Command

P. R. HENDERSON
Minister for Business and Industry
acting for and on behalf of the
Minister for Transport and Infrastructure

* Notified in the *Northern Territory Government Gazette* on 22 December 2003.

**AMENDMENTS OF NORTHERN TERRITORY RAIL SAFETY
REGULATIONS**

1. Principal Regulations

The Northern Territory Rail Safety Regulations are in these Regulations referred to as the Principal Regulations.

2. Interpretation

Regulation 3 of the Principal Regulations is amended –

- (a) by omitting "In" and substituting "(1) In";
- (b) by omitting the definition of "level crossing" and substituting the following:

" 'level crossing' means –

- (a) a level crossing within the meaning of the Australian Road Rules;
 - (b) a crossing constructed on a part of the corridor, within the meaning of the *AustralAsia Railway (Special Provisions) Act*, that is bordered by land to which is annexed the benefit of an access easement created by section 14A(2) of that Act, whether or not a there is a sign indicating the crossing; or
 - (c) another crossing constructed on a part of a railway where a track or access way (for the passage of persons, vehicles, equipment or animals on private land bordering the railway) and a railway track meet at substantially the same level, whether or not a there is a sign indicating the crossing;"
- (c) by omitting "wheels" from the definition of "vehicle" and substituting "wheels or a device with wheels designed to be pulled by a vehicle"; and
 - (d) by adding at the end the following:

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

3. New regulation

The Principal Regulations are amended by inserting after regulation 4 the following:

"4A. Actions of police etc. do not constitute offence

- "(1) This regulation applies to a person who is or has been –
- (a) a member of the Police Force;
 - (b) a fire control officer or fire warden within the meaning of the *Bushfires Act*;
 - (c) a member of a volunteer bushfire brigade established under section 56 of the *Bushfires Act*;
 - (d) a member of the Northern Territory Emergency Service established under section 17 of the *Disasters Act*; or
 - (e) a member of the Northern Territory Fire and Rescue Service established under section 5 the *Fire and Emergency Act*.

"(2) If, by doing an act or omitting to do an act, the person commits an offence against these Regulations, the person is taken not to have committed the offence if, at the time of doing the act or omitting to do the act, the person was carrying out his or her duties of office mentioned in subregulation (1) and was acting reasonably in the circumstances."

4. Calculation of annual fees

Regulation 7 of the Principal Regulations is amended –

- (a) by omitting from subregulations (2) and (3)(a) "or gross tonne kilometres";
- (b) by omitting from subregulation (4)(a) "subregulations (5) and (6)" and substituting "subregulation (5)";
- (c) by omitting from subregulation (4)(a) "or gross train kilometres" (all references);
- (d) by omitting from subregulation (4)(b) "subregulations (5) and (6)" and substituting "subregulation (5)";
- (e) by inserting in subregulation (5) "or (d)" before "of Schedule 2"; and
- (f) by omitting subregulation (6).

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5. New regulation

The Principal Regulations are amended by inserting after regulation 10 the following:

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

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

6. Conduct generally

Regulation 11 of the Principal Regulations is amended –

- (a) by omitting from subregulation (1)(c) "sleep or";
- (b) by inserting after subregulation (1)(c) the following:

"(ca) sleep;"
- (c) by inserting after subregulation (1) the following:

"(1A) Subregulation (1)(ca) does not apply to –

 - (a) a railway employee between duty shifts or while on a break; or
 - (b) a person lawfully travelling or waiting to travel on a train."; and
- (d) by omitting subregulation (2)(a), (b) and (c) and substituting the following:

"(a) a vehicle carrying a person who is unable to walk;

(b) a railway employee or an inspector carrying out his or her duties;

(c) a member of St John Ambulance Australia (NT) Inc carrying out his or her duties; or

(d) a person who is permitted by the relevant accredited person to ride an animal, drive a vehicle or use a wheeled recreational device or a wheeled toy in or on the area and who does so in accordance with any conditions imposed by the accredited person."

7. Repeal

Regulation 12 of the Principal Regulations is repealed.

8. Persons travelling on trains to remain inside train

Regulation 16 of the Principal Regulations is amended –

- (a) by omitting from subregulation (2)(a) "acting in accordance with his or her duties; or" and substituting "carrying out his or her duties;";
- (b) by omitting from subregulation (2)(b) "inspector." and substituting "inspector; or"; and
- (c) by adding at the end the following:
 - "(c) a person who is permitted by the relevant accredited person to travel on a train or rolling stock in such a manner that all or part of the person is projecting from the train or rolling stock and who does so in accordance with any conditions imposed by the accredited person."

9. Repeal

Regulation 18 of the Principal Regulations is repealed.

10. Control of animals on trains and railway land

Regulation 20 of the Principal Regulations is amended –

- (a) by omitting subregulations (1) and (2) and substituting the following:
 - "(1) A person must not take an animal in or on a train or other rolling stock or railway land unless –
 - (a) the animal is a dog guiding or assisting, or being trained to guide or assist, a person who has a disability;
 - (b) the animal is a dog or horse being used by a railway employee, inspector or other person to carry out security work; or
 - (c) the person is permitted to do so by the relevant accredited person and does so in accordance with any conditions imposed by the accredited person.
 - "(2) In subregulation (1) –
'security work' means –
 - (a) controlling or monitoring the conduct of persons;
 - (b) removing persons because of their conduct;

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- (c) patrolling or guarding property; or
 - (d) searching for or removing unlawful substances or things (including, but not limited to, drugs, firearms, explosives or explosive materials)."; and
- (b) by omitting subregulations (4) and (5) and substituting the following:

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

11. Repeal and substitution

Regulation 21 of the Principal Regulations is repealed and the following substituted:

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

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

"(2) Subregulation (1) does not apply in respect of –

- (a) a vehicle carrying a person who is unable to walk;
- (b) a railway employee or an inspector carrying out his or her duties; or
- (c) a member or employee of St John Ambulance Australia (NT) Inc carrying out his or her duties.

"(3) A person who contravenes or fails to comply with subregulation (1) commits an offence.

Penalty: 2 penalty units."

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

Regulation 22 of the Principal Regulations is amended by inserting in subregulations (1) and (2) "level crossing," before "railway road bridge".

13. Repeal and substitution

Regulation 24 of the Principal Regulations is repealed and the following substituted:

"24. No placing of things on railway tracks

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

Penalty: 100 penalty units.

"(2) Subregulation (1) does not apply if –

- (a) the person has obtained permission to leave, place or deposit a thing on the railway track from the relevant accredited person; and
- (b) if the accredited person's permission is given subject to conditions – the person complies with the conditions."

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

Regulation 25 of the Principal Regulations is amended by omitting from subregulation (1)(c) "gate (including a gate" and substituting "barrier or gate (including a barrier or gate".

15. Crossing railway tracks generally

Regulation 26 of the Principal Regulations is amended by omitting from subregulation (2)(a) "acting in accordance with" and substituting "carrying out".

16. Pedestrians crossing railway tracks

Regulation 27 of the Principal Regulations is amended by omitting from subregulation (6)(a) "acting in the course of".

17. Restriction on certain vehicles crossing railway tracks at level crossings

Regulation 28 of the Principal Regulations is amended –

- (a) by omitting from subregulation (2)(a) "vehicle;" and substituting "vehicle; and";
- (b) by omitting subregulations (2)(b) and (c) and substituting the following:
 - "(b) subregulations (2A), (3) and (4) have been complied with; or

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- (c) the person driving the vehicle is –
- (i) a railway employee or an inspector carrying out his or her duties;
 - (ii) the owner or occupier of land adjoining or adjacent to a railway, an employee or agent of the owner or occupier or any other person acting to protect life or property, control or extinguish a fire or otherwise deal with an emergency; or
 - (iii) a person who is permitted by the relevant accredited person to cross the level crossing without complying with subregulations (2A), (3) and (4).";

- (c) by inserting after subregulation (2) the following:

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

- (d) by omitting from subregulation (3) "Notice" and "(2)(b)" and substituting "Notification" and "(2A)"; and

- (e) by adding at the end the following:

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

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

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

18. New regulation

The Principal Regulations are amended by inserting after regulation 29 the following:

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

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

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Penalty: 100 penalty units.

"(2) The person must, at least 48 hours before driving the herd or mob across the level crossing, notify the accredited person of the person's intention to do so.

"(3) The notification must specify –

- (a) the name and address of the person;
- (b) the level crossing the person wants to cross; and
- (c) the time when the person wants to cross the level crossing.

"(4) Before the time the person intends to drive the herd or mob across the level crossing, the accredited person must notify the person whether the accredited person approves or does not approve the herd or mob crossing the level crossing.

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

"(6) The accredited person must keep a record of receiving the person's notification, the details of the notification, whether the accredited person approves the crossing and, if the accredited person approves the crossing, the time and manner in which the accredited person approves the crossing and any conditions of the approval.

"(7) This regulation does not apply to a person who is permitted by the relevant accredited person to drive a herd or mob of cattle on the hoof across the level crossing without complying with this regulation."

19. Barriers and gates to be closed

Regulation 30 of the Principal Regulations is amended –

- (a) by omitting from subregulation (1) the definition of "gate" and substituting the following:

" 'barrier' does not include a barrier that is electronically operated;

'gate' does not include a gate that is electronically operated.";

- (b) by omitting from subregulation (2) all the words after "railway land, must" and substituting "not depart from the gate without shutting and securely fastening it"; and

(c) by adding at the end the following:

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

Penalty: 10 penalty units."

20. New Part

The Principal Regulations are amended by inserting after regulation 30 the following:

"PART 7 – TESTING FOR ALCOHOL AND DRUGS

"Division 1 – Preliminary

"31. Definitions

"In this Part, unless the contrary intention appears –

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

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

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

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

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

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

'health practitioner' means a medical practitioner, registered nurse or qualified person;

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'prescribed concentration of alcohol' means the concentration of alcohol specified in regulation 10A;

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

'registered nurse' has the same meaning as in the *Nursing Act*;

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

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

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

"32. Actions by medical practitioner

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

"Division 2 – Testing

"33. Inspector may test breath of railway employee

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

- (a) a breath test; or
- (b) a breath analysis.

"(2) The authorised inspector may require a railway employee to submit to a breath test or breath analysis to test whether the employee is carrying out or is

about to carry out railway safety work under the influence of alcohol on a random basis and without suspecting, on reasonable grounds, the employee is doing so under the influence of alcohol.

"(3) The authorised inspector may require a railway employee to submit to testing by a breath test or breath analysis on a non-random basis if the authorised inspector suspects, on reasonable grounds, the employee is carrying out or is about to carry out railway safety work while under the influence of alcohol.

"(4) The authorised inspector may require a railway employee to submit to a breath test to test whether the employee is carrying out or about to carry out railway safety work under the influence of a drug only if the authorised inspector suspects, on reasonable grounds, the employee is doing so under the influence of a drug.

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

"(1) If the railway employee who is required to submit to a breath test or a breath analysis under regulation 33 refuses or fails to do so, the authorised inspector may require the employee to provide a sample of his or her blood or urine.

"(2) If the authorised inspector tests by a breath test and the results of the test lead the authorised inspector to believe that the employee may be under the influence of alcohol or a drug, the inspector must require the employee to –

- (a) submit to a breath analysis; or
- (b) provide a sample of his or her blood or urine.

"(3) If the authorised inspector tests by a breath analysis and the results of the test lead the authorised inspector to believe that the employee may be under the influence of alcohol, the authorised inspector may require the employee to provide a sample of his or her blood or urine.

"(4) The authorised inspector may require the employee to provide a sample of his or her urine for testing if –

- (a) the authorised inspector suspects, on reasonable grounds, the employee is under the influence of a drug; or
- (b) an event or condition resulting from railway ownership or operations has or might have caused a fatality or an injury to a person or damage to property or the environment.

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

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

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

"(1) If an analysis of breath by a breath analysis instrument indicates that a railway employee is under the influence of alcohol, the authorised inspector who operated the instrument must immediately give to the employee a written statement specifying –

- (a) the date the sample of breath was taken and analysed;
- (b) the time of the analysis of the breath; and
- (c) the results of the analysis.

"(2) The employee may, after the analysis, request that a sample of his or her blood or urine be taken.

"37. Taking sample of blood or urine

"(1) If the authorised inspector requires a railway employee to provide a sample of his or her blood or urine under regulation 34 or, under regulation 35 or 36(2), a railway employee requests a sample of his or her blood or urine be taken, the inspector must take the action that is necessary and reasonable for a health practitioner to take a blood or urine sample from the employee.

"(2) Subject to subregulation (3), the health practitioner must be either nominated by the employee or nominated by the authorised inspector and accepted by the employee.

"(3) Subregulation (2) does not apply if –

- (a) the employee does not nominate a health practitioner;
- (b) the health practitioner nominated by the authorised inspector is not accepted by the employee; or
- (c) the health practitioner nominated or accepted by the employee is not available to take the sample within one hour after the employee was required to provide the sample or requested the sample be taken at a place and at a place within 10 kilometres of the place

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where the employee was required to provide the sample or made the request for the sample to be taken.

"(4) If subregulation (2) does not apply, the health practitioner who takes the sample may be any health practitioner who is available.

"(5) The authorised inspector must be present when the health practitioner takes the sample from the employee.

"38. Procedures relating to blood and urine tests – health practitioners

"(1) The health practitioner who takes a sample of blood or urine from a railway employee must divide the sample into 2 approximately equal portions and place each portion into separate containers, seal the containers and mark them with the sample's identification number.

"(2) On complying with subregulation (1), the health practitioner must sign a certificate specifying the following information:

- (a) the identification number marked on the containers;
- (b) the name and address of the employee from whom the sample was taken;
- (c) the name and qualifications of the health practitioner;
- (d) the date and time when, and place where, the sample was taken.

"(3) The health practitioner must then –

- (a) make one of the containers and the certificate available to the authorised inspector (who must give it to or retain it on behalf of the Director); and
- (b) give the other container to the employee or the employee's representative or retain it on behalf of the employee.

"39. Procedures relating to blood and urine tests – analysts

"(1) On completing the analysis of a sample, the analyst who performed or supervised the analysis must sign a certificate specifying the following information:

- (a) the identification number marked on the container of the sample;
- (b) the name and qualifications of the analyst;
- (c) the date the sample was received in the laboratory where the analysis was performed;

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- (d) the concentration of alcohol or drug found present in the sample;
- (e) if a drug is found in the sample – the type of drug;
- (f) any factors relating to the sample or analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
- (g) any other information relating to the sample or analysis the analyst considers appropriate.

"(2) The certificate of the analyst under subregulation (1) must be given to, or retained on behalf of, the Director.

"(3) A copy of the certificate must be made available to the health practitioner and the railway employee.

"Division 3 – Offences

"40. Compliance with requirement to submit to test or give sample

"(1) Subregulations (2) and (3) apply to a railway employee who an authorised inspector requires under this Part to submit to a breath test or breath analysis.

"(2) The employee must not refuse or fail to comply with –

- (a) the requirement; or
- (b) the inspector's reasonable directions for carrying out the breath test or breath analysis.

Penalty: 25 penalty units.

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

Penalty: 25 penalty units.

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

Penalty: 25 penalty units.

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

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

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

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

"41. Alteration of concentration of alcohol or drug in blood

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

Penalty: 25 penalty units.

"Division 4 – Evidence

"42. Presumption as to concentration of alcohol in blood

"(1) If the requirements of this Part relating to breath analysis instruments and the analysis of samples of breath are complied with, it is presumed in proceedings under the Act that a concentration of alcohol indicated as being present in the blood of a person by a breath analysis instrument was present in the blood of the person at the time of analysis and throughout the preceding period of 2 hours.

"(2) The presumption cannot be rebutted unless it is proved on the balance of probabilities that the concentration of alcohol present in the blood of

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the person was not as indicated by the breath analysis instrument by the following evidence:

- (a) evidence of the analysis of a sample of the person's blood taken and dealt with in accordance with this Part;
- (b) evidence that the results of analysis of a sample of the person's blood demonstrate that the breath analysis instrument gave an exaggerated reading of the concentration of alcohol present in the person's blood.

"43. Certificates as evidence

"(1) The following documents are admissible in proceedings relating to an offence against the Act or these Regulations as evidence of the matters stated in them and of the facts on which they are based:

- (a) a document purporting to be signed by the Director certifying that a person named in the certificate is an authorised inspector who is authorised under regulation 45 to carry out breath analyses;
- (b) a document purporting to be signed by an authorised inspector certifying that –
 - (i) the apparatus used by the authorised inspector was a breath analysis instrument;
 - (ii) the breath analysis instrument was in proper order and properly operated; or
 - (iii) the breath analysis instrument was used in a manner that complied with this Part;
- (c) a document purporting to be signed by the Director certifying that the apparatus specified in the certificate is or was at a specified time a breath analysis instrument;
- (d) subject to subregulation (2) – a document purporting to be signed by an authorised inspector certifying that –
 - (i) a sample of the breath of a person named in the certificate was provided for analysis using a breath analysing instrument;
 - (ii) a concentration of alcohol expressed in grams in 100 millilitres was indicated by the breath analysing instrument as being present in the blood of the person on the day and at the time specified in the certificate; and

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(iii) a written statement was given to the person under regulation 36(1).

"(2) A certificate referred to in subregulation (1)(d) cannot be received as evidence in proceedings for an offence against the Act or these Regulations –

- (a) unless a copy of the certificate is served on the person it refers to not less than 7 days before the commencement of the proceedings;
- (b) if the person referred to in the certificate has, not less than 2 days before the commencement of the trial, served written notice on the court requiring the attendance at the trial of the person who signed the certificate; or
- (c) if the court requires the person who signed the certificate to attend at the trial.

"44. Presumptions as to certificates

"(1) Subject to subregulation (2), in proceedings for an offence against the Act or these Regulations, it is presumed unless the contrary is proved on the balance of probabilities that –

- (a) an apparently genuine document purporting to be a certificate, or a copy of a certificate, of a health practitioner or analyst under this Part received in evidence is a certificate of the health practitioner or analyst as to the matters stated in the certificate;
- (b) if a document purporting to be a certificate of a health practitioner and a document purporting to be a certificate of an analyst specify the same identification number for the sample of blood or urine to which each relates are received in evidence – the certificates relate to the same sample of blood or urine; and
- (c) if a document purporting to be a certificate of an analyst is received in evidence –
 - (i) the concentration of alcohol or drug stated in the certificate as having been found to be present in the sample of blood or urine to which the certificate relates was present in the sample when the sample was taken and throughout the preceding 2 hours; or
 - (ii) the type of drug stated in the certificate as having been found to be present in the sample of blood or urine was the type of drug present in the sample of blood or urine.

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"(2) A certificate referred to in subregulation (1) cannot be received as evidence in proceedings for an offence against the Act or these Regulations –

- (a) unless a copy of the certificate is served on the person it refers to not less than 7 days before the commencement of the proceedings;
- (b) if the person referred to in the certificate has, not less than 2 days before the commencement of the trial, served written notice on the court requiring the attendance at the trial of the person who signed the certificate; or
- (c) if the court requires the person who signed the certificate to attend at the trial.

"Division 5 – Miscellaneous

"45. Inspectors who may carry out breath tests or breath analyses

"(1) A member of the Police Force is authorised to carry out a breath test under this Part.

"(2) A member of the Police Force who is an authorised operator under the *Traffic Act* is authorised to carry out a breath analysis under this Part.

"(3) The Director may, in writing, authorise other inspectors to –

- (a) carry out breath tests; or
- (b) carry out breath analyses.

"(4) The Director may not authorise an inspector under subregulation (3)(a) unless, in the opinion of the Director, the inspector –

- (a) is trained to carry out a breath test; and
- (b) is capable of carrying out a breath test correctly.

"(5) The Director may not authorise an inspector under subregulation (3)(b) unless, in the opinion of the Director, the inspector –

- (a) is trained in the use of the breath analysis instrument; and
- (b) is capable of using the instrument correctly.

"46. Use of breath analysis instruments

"(1) An inspector must not use a breath analysis instrument unless he or she is authorised under regulation 45(2) or (3)(b) to carry out breath analyses.

"(2) An authorised inspector must not carry out a breath analysis unless –

- (a) the instrument is turned on and is indicating that it is ready for use; and
- (b) an unused mouth piece is used each time a railway employee provides a sample of his or her breath for analysis.

"(3) The authorised inspector must not carry out a breath analysis of a sample of a railway employee's breath unless satisfied the employee has not consumed alcohol within the 15 minutes before providing the sample.

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

"(1) A person who is an authorized analyst under the *Traffic Act* is authorised to carry out analyses of samples of blood provided under this Part.

"(2) A person approved, in writing, by the Director to analyse samples of urine under this Part is authorised to carry out analyses of samples of urine provided under this Part.

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

"(1) If a railway employee refuses or fails to submit to a breath test or a breath analysis or to provide a sample of his or her blood or urine on being required to do so by an authorised inspector, an inspector must report the employee's refusal or failure to –

- (a) the accredited person for whom the employee performs railway safety work; and
- (b) the Director.

"(2) The inspector who makes the reports must do so as soon as practicable after the employee's refusal or failure (but not later than 24 hours after the employee's refusal or failure).

"49. Duty of health practitioner who takes sample

"It is the duty of the health practitioner who takes a sample of a railway employee's blood or urine to take the measures that are reasonably practicable in the circumstances to ensure the sample is not adulterated and does not deteriorate

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to prevent a proper assessment of the concentration of alcohol or a drug present in the blood or urine of the employee.

"50. Protection from liability of health practitioners and analysts

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

"51. Self-incrimination no excuse

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

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

21. Schedule 1

Schedule 1 to the Principal Regulations is amended by omitting from items 2(d) and 3(d) "an the owner" and substituting "the owner".

22. Repeal and substitution

Schedule 2 to the Principal Regulations is repealed and the following substituted:

"SCHEDULE 2

Regulation 6

ANNUAL FEES

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

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(f) if the accredited person is accredited for a purpose not specified in paragraphs (a) to (e) inclusive	\$5 000
2. Annual fee payable by owner of registered private siding	\$100