



Western Australia

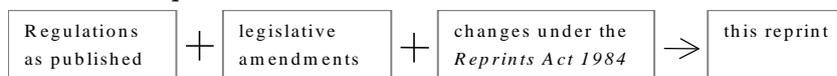
Rail Safety Act 1998

# **Rail Safety Regulations 1999**

**Reprint 2: The regulations as at 21 February 2008**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Rail Safety Regulations 1999

---

### CONTENTS

---

#### **Part 1 — Preliminary**

- |    |              |   |
|----|--------------|---|
| 1. | Citation     | 1 |
| 2. | Commencement | 1 |

#### **Part 2 — General**

- |     |  |    |
|-----|--|----|
| 3.  | Australian Rail Safety Standard  | 2  |
| 4.  | Notifiable occurrences   | 2  |
| 5.  | Act not to apply in certain cases — section 4(2)(d)  | 3  |
| 6.  | Prescribed conditions — section 14(1)(b)   | 4  |
| 7.  | Dispute resolution   | 5  |
| 8.  | Periodical returns   | 6  |
| 9.  | Regulation of lights   | 8  |
| 10. | Prescribed place for public inspection of<br>investigator's report and codes, standards etc. | 9  |
| 11. | Service of documents or notice   | 9  |
| 12. | Form of warrant  | 10 |
| 13. | Fees   | 10 |

#### **Part 3 — Testing for use of alcohol or other drugs**

- |     |  |    |
|-----|--|----|
| 14. | Terms used in this Part  | 11 |
| 15. | Approval of equipment for the purposes of breath<br>analysis and preliminary tests | 12 |

Contents

---

16.	Prescribed concentration of alcohol in blood of railway employee	12
17.	Appointment of person to test breath	12
18.	Railway employee may be required to submit to preliminary test or breath analysis	13
19.	Railway employee may be required to provide sample of blood or urine	13
20.	Railway employee to be given results of breath analysis, and may request blood or urine sample to be taken	14
21.	Medical practitioner to take blood or urine sample	14
22.	Procedures relating to blood or urine tests	15
23.	Offences	17
24.	Defences	18
25.	Evidence	19
26.	Outside the metropolitan area tests may be taken by a nurse	21
27.	Protection of medical practitioners from liability	22
	<b>Part 4 — Transitional</b>	
28.	Transitional	23
	<b>Schedule 1 — Notifiable occurrences</b>	
	<b>Part 1 — Category A notifiable occurrences</b>	
	<b>Part 2 — Category B notifiable occurrences</b>	
	<b>Schedule 2 — Prescribed fees</b>	
	<b>Schedule 3 — Form of warrant</b>	
	<b>Notes</b>	
	Compilation table	30
	<b>Defined Terms</b>	



Reprinted under the  
*Reprints Act 1984* as  
at 21 February 2008

Western Australia

Rail Safety Act 1998

## **Rail Safety Regulations 1999**

### **Part 1 — Preliminary**

**1. Citation**

These regulations may be cited as the *Rail Safety Regulations 1999*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on the day on which the *Rail Safety Act 1998* comes into operation<sup>1</sup>.

## **Part 2 — General**

### **3. Australian Rail Safety Standard**

For the purpose of the definition of “Australian Rail Safety Standard” in section 3(1) of the Act, *AS 4292 Rail safety management Part 1: General and interstate requirements* published by the Standards Association of Australia<sup>2</sup> is prescribed as the Australian Rail Safety Standard.

### **4. Notifiable occurrences**

- (1) For the purpose of the definition of “notifiable occurrence” in section 3(1) of the Act, an occurrence listed in Schedule 1 is prescribed as a notifiable occurrence.
- (2) Immediately after a notifiable occurrence set out in Part 1 of Schedule 1 (“Category A notifiable occurrences”) has happened, the accredited person who is to report the occurrence under section 38 of the Act is to notify the Director General of the occurrence.
- (3) For the purpose of section 38(1) of the Act —
  - (a) a person who gives notice of an occurrence to the Director General under subregulation (2) is to report in writing on the occurrence to the Director General within 72 hours of it happening; and
  - (b) if a notifiable occurrence set out in Part 2 of Schedule 1 (“Category B notifiable occurrences”) has happened, the accredited person who is to report the occurrence under section 38 of the Act is to report in writing on the occurrence to the Director General within 72 hours of it happening.
- (4) A report on a notifiable occurrence referred to in item 21 of Part 2 of Schedule 1 must include the following information —
  - (a) the name of the railway employee and a description of the work being carried out by the railway employee at the time of the occurrence;

- (b) the date and time when, and the place where, the railway employee was found to have the relevant concentration of alcohol in his or her blood, or to be under the detrimental influence of a drug;
- (c) if the case involves alcohol — the concentration of alcohol found in the railway employee's blood;
- (d) if the case involves a drug — the degree to which the railway employee was affected by the drug;
- (e) the action taken in relation to the railway employee by the person who holds owner accreditation or operator accreditation in the circumstances of the case; and
- (f) any other information required by the Director General, by notice in writing to owners and operators, to be included in such a report.

**5. Act not to apply in certain cases — section 4(2)(d)**

- (1) Under section 4(2)(d) of the Act, the following railways are railways to which the Act does not apply —
  - (a) a railway used solely by horse-drawn trams;
  - (b) a railway used solely for a static display;
  - (c) a railway used solely for a fairground amusement;
  - (d) an established Pilbara iron ore railway as defined in subregulation (2);
  - (e) any extensions to, or alterations of, an established Pilbara iron ore railway that were made after the commencement of the *Rail Safety Amendment Regulations 2000*<sup>1</sup>.
- (2) For the purposes of subregulation (1), a railway is an established Pilbara iron ore railway if —
  - (a) it is located wholly or substantially in one or more of the local government districts of Ashburton, East Pilbara, Port Hedland and Roebourne;
  - (b) it was in operation at the time of commencement of the *Rail Safety Amendment Regulations 2000*<sup>1</sup>;

- (c) it was, at that time, and continues to be, operated by a person who mines iron ore; and
- (d) it was, at that time, and continues to be, used wholly or substantially for the transportation of iron ore mined by or on behalf of that person.

*[Regulation 5 amended in Gazette 1 Feb 2000 p. 383-4.]*

**6. Prescribed conditions — section 14(1)(b)**

- (1) An accreditation is subject to the following conditions prescribed under section 14(1)(b) of the Act —
  - (a) an accredited person must inform the Director General of any changes —
    - (i) in the person's name or residential address or, in the case of a body corporate, of a change in the name of the body corporate, or in the registered office or principal office of the body corporate;
    - (ii) in the person's business name or trading name;
    - (iii) affecting the accuracy of information furnished to the Director General for the purpose of gaining accreditation;
    - (iv) affecting the accuracy of particulars specified in the accreditation; and
    - (v) in the person who is responsible for the implementation and management of the accredited person's safety management plan, within 7 days of the change occurring; and
  - (b) a person who holds owner accreditation must, at least 28 days before each anniversary of the accreditation, give to the Director General the location of, and the name of, the owner of any private siding that is connected with, or has access to, the railway to which the accreditation relates.
- (2) Information to be provided under subregulation (1) must be provided in the manner and form approved.

**7. Dispute resolution**

- (1) The scheme in this regulation is prescribed under section 20(1)(d) of the Act.
- (2) An applicant for a matter to be dealt with by conciliation or mediation is to —
  - (a) make the application in writing to the Director General;
  - (b) in the application, elect whether the matter is to be dealt with by conciliation or by mediation; and
  - (c) in the application, give information about the matter and the grounds on which the application is made.
- (3) The Director General, after consultation with the applicant for conciliation or mediation, is to appoint a suitable person to act as a conciliator or a mediator.
- (4) For the purpose of conciliation proceedings —
  - (a) the conciliator is to call a conference of the parties to the dispute and at that conference seek to identify the issues and the possibilities of resolving the matter by agreement;
  - (b) the parties are to attend a conference under paragraph (a);
  - (c) a conference may be adjourned from time to time by the conciliator;
  - (d) the conciliator may at any time interview the parties separately or together; and
  - (e) the conciliator may at any time bring the proceedings to an end if the conciliator considers that the proceedings will not result in an agreed settlement between the parties.

**r. 8**

---

- (5) For the purposes of mediation proceedings —
  - (a) the parties are to attend before the mediator at a time and place determined by the mediator;
  - (b) the mediator must hear the parties and seek to make relevant determinations and recommendations about what would be an acceptable outcome in the matter;
  - (c) the mediator may adjourn any proceedings from time to time;
  - (d) the mediator may at any time interview the parties separately or together; and
  - (e) the mediator may at any time bring the proceedings to an end if the mediator considers that the proceedings will not result in a resolution of the matter between the parties.
- (6) A conciliator or mediator may inform himself or herself on a matter in any way as the conciliator or mediator thinks fit.
- (7) Evidence of anything said or done in an attempt to resolve a matter by conciliation or mediation under this regulation must not be disclosed in subsequent proceedings.
- (8) Costs and expenses associated with the appointment and work of a conciliator or a mediator under this regulation will be shared equally between the parties unless otherwise determined by the Director General.

**8. Periodical returns**

- (1) Returns made under section 24 of the Act are to be lodged —
  - (a) monthly, as soon as practicable after the end of each month and not later than the 21st day of the following month; and
  - (b) annually, at least 28 days before the anniversary of the person's accreditation.

- (2) A monthly return is to contain the following information in respect of the relevant month —
- (a) the number of notifiable occurrences which happened;
  - (b) in the case of an accredited owner, the length, in kilometres, of track in the State owned by that person;
  - (c) in the case of an accredited operator, the number of kilometres travelled in the State by passenger trains operated by that person;
  - (d) in the case of an accredited operator, the number of kilometres travelled in the State by freight trains operated by that person;
  - (e) in the case of an accredited operator, the number of journeys made by passengers in urban areas of the State on passenger trains operated by that person;
  - (f) in the case of an accredited operator, the number of journeys made by passengers in non-urban areas of the State on passenger trains operated by that person;
  - (g) the number of employees of the person making the return engaged in railway safety work on or in relation to a railway within, or partly within, the State.
- (3) An annual return is to contain the following information —
- (a) in the case of an accredited owner, an estimate of the length of track, in kilometres, in the State that will be owned by that person within the next year;
  - (b) in the case of an accredited operator, an estimate of the number of kilometres that will be travelled in the State by passenger trains operated by that person within the next year;
  - (c) in the case of an accredited operator, an estimate of the number of kilometres that will be travelled in the State by freight trains operated by that person within the next year;
  - (d) in the case of an accredited operator, an estimate of the number of journeys that will be made by passengers in

**r. 9**

---

- urban areas of the State on passenger trains operated by that person within the next year;
- (e) in the case of an accredited operator, an estimate of the number of journeys that will be made by passengers in non-urban areas of the State on passenger trains operated by that person within the next year;
  - (f) an estimate of the number of employees of the person making the return engaged in railway safety work on or in relation to a railway within, or partly within, the State within the next year.
- (4) An annual return or a monthly return is to be made in such form as the Director General may approve.
  - (5) An annual return or a monthly return is to be verified by the signature of the person making the return or by the common seal of a corporation making an annual return or a monthly return being affixed to the return.

**9. Regulation of lights**

- (1) In this regulation —
  - “**light**” includes any fire, lamp, light, illuminated sign, street light, or other mechanical, manufactured, or constructed illumination, and also the glow from any such light;
  - “**owner**” means the person who owns or is in control of a light or the land on which a light is erected or installed.
- (2) Where in the Director General’s opinion any light is likely to confuse or create circumstances or conditions likely to interfere adversely with or to cause risk of danger to the operation of a railway, the Director General may by notice in writing require the owner of the light within a time specified in the notice to —
  - (a) extinguish the light;
  - (b) remove the light;
  - (c) modify the light or to alter its character or colour, or to screen the light to such an extent and in such manner as specified by the Director General in the notice;

- (d) refrain from using, keeping, burning, or exhibiting the light either entirely or for such period or during such hours as specified by the Director General in the notice; or
  - (e) do or refrain from doing such other act, matter, or thing in relation to using, keeping, burning, or exhibiting the light as the Director General specified in the notice.
- (3) A notice under subregulation (2) may be served in accordance with section 76 of the *Interpretation Act 1984* or by affixing it to the light or in some conspicuous place on or near the place or premises where the light is located.
- (4) A person served with a notice under this regulation is to comply with the notice within the time specified in the notice unless the person proves that he or she had good reason not to do so.
- Penalty: \$5 000 and, in addition, a daily penalty of \$250 for every day or part of a day during which the notice is not complied with.

**10. Prescribed place for public inspection of investigator's report and codes, standards etc.**

For the purposes of section 43(3) and section 62(2) of the Act, the prescribed place is Department for Planning and Infrastructure, 441 Murray Street, Perth, Western Australia.

*[Regulation 10 amended in Gazette 18 Mar 2003 p. 808.]*

**11. Service of documents or notice**

- (1) Without limiting sections 75 and 76 of the *Interpretation Act 1984*, a notice or other document under the Act or these regulations may be served on a person —
- (a) by facsimile transmission to a facsimile number provided by the person; or
  - (b) by electronic mail to an address provided by the person.
- (2) If a notice or other document is served by facsimile transmission or electronic mail, the notice or other document is to be taken to

**r. 12**

---

have been served at the time it was sent by the person serving the notice or document.

**12. Form of warrant**

A warrant under section 47(1) of the Act is to be in the form set out in Schedule 3 to these regulations.

**13. Fees**

- (1) The fees in Schedule 2 are the prescribed fees payable in respect of the matters specified in that Schedule.
- (2) If an annual fee is not paid on or before the anniversary of the person's accreditation for a particular railway or the registration of a private siding the person shall be liable to pay in addition to the annual fee a late payment fee of 5% of the annual fee payable.

---

## Part 3 — Testing for use of alcohol or other drugs

### 14. Terms used in this Part

- (1) In this Part —
  - “**analyst**” has the same definition as it has in section 65 of the *Road Traffic Act 1974*;
  - “**breath analysis**” means an analysis of breath by breath analysing equipment;
  - “**drugs analyst**” has the same definition as it has in section 65 of the *Road Traffic Act 1974*;
  - “**medical practitioner**” has the same definition as it has in the *Medical Act 1894*;
  - “**nurse**” has the same definition as it has in the *Nurses and Midwives Act 2006*<sup>3</sup>;
  - “**preliminary test**” has the same definition as it has in section 65 of the *Road Traffic Act 1974*.
- (2) In this Part, a reference to an “**authorised person**” means —
  - (a) an authorised officer;
  - (b) a person appointed under regulation 17;
  - (c) a police officer.
- (3) In this Part, a reference to “**breath analysing equipment**” means —
  - (a) apparatus of a type approved by the Minister under the *Road Traffic Act 1974* for ascertaining the percentage of alcohol present in a person’s blood, by analysis of a sample of the person’s breath; or
  - (b) apparatus approved by the Minister in writing under regulation 15(a) as breath analysing equipment.
- (4) In this Part, a reference to a “**railway employee**” is a reference to a railway employee who —
  - (a) has been involved in a notifiable occurrence or an incident which is to be reported under the Act; or

- (b) is about to carry out, or is carrying out, railway safety work.

**15. Approval of equipment for the purposes of breath analysis and preliminary tests**

The Minister may —

- (a) approve an apparatus of a specified kind as breath analysing equipment for the purposes of these regulations; or
- (b) approve apparatus of a specified kind for the purpose of conducting preliminary tests for the purposes of these regulations.

**16. Prescribed concentration of alcohol in blood of railway employee**

For the purposes of section 31 of the Act, the prescribed concentration is 0.02 g of alcohol contained in 100 mL of blood.

**17. Appointment of person to test breath**

- (1) The Director General may, in writing, appoint a suitable person to be a person authorised to test breath under this Part.
- (2) An appointment may be subject to such conditions or limitations as are imposed in writing by the Director General including limiting the appointment so that it applies only —
  - (a) to a specified part of the State;
  - (b) to a specified railway;
  - (c) to specified railway employees.
- (3) The Director General is to issue a person appointed under subregulation (1) with an identity card —
  - (a) containing a photograph of the person;
  - (b) certifying that the person is a person authorised to test breath under this Part; and

- (c) stating any conditions or limitations on the person's powers imposed under subregulation (2).
- (4) A person appointed under this regulation must produce the identity card referred to in subregulation (3) whenever required to do so by any person in respect of whom the appointed person has exercised, or is about to exercise, any of the powers of an authorised person under this Part.
- (5) On ceasing to be appointed under this regulation, the person is to return the identity card to the Director General.  
Penalty: \$500.

**18. Railway employee may be required to submit to preliminary test or breath analysis**

- (1) An authorised person may, on reasonable grounds, require a railway employee to submit to —
  - (a) a preliminary test;
  - (b) breath analysis.
- (2) If, after carrying out a preliminary test, an authorised person is of the opinion that the concentration of alcohol in a railway employee's blood is equal to, or greater than the concentration prescribed under regulation 16, the authorised person may require the employee to submit to breath analysis.

**19. Railway employee may be required to provide sample of blood or urine**

An authorised person may require a railway employee to provide a sample of the employee's blood or urine for analysis if —

- (a) the authorised person is empowered to require the person to submit to a preliminary test or breath analysis under subregulation 18(1), but the apparatus required to do so is not available;
- (b) the authorised person, after carrying out a preliminary test or breath analysis under subregulation 18(1), is of

**r. 20**

---

the opinion that the employee is under the influence of a drug other than alcohol; or

- (c) on being requested under regulation 18(1) to submit to a preliminary test or breath analysis, the employee offers to provide a blood or urine sample instead because the employee is unable to submit to a preliminary test or breath analysis because of a physical or medical condition.

**20. Railway employee to be given results of breath analysis, and may request blood or urine sample to be taken**

- (1) If —
  - (a) a railway employee has submitted to breath analysis; and
  - (b) the concentration of alcohol indicated as being present in the employee's blood by the breath analysing equipment is equal to or greater than the concentration prescribed under regulation 16,

the authorised person operating the apparatus must immediately deliver to the employee a written notice setting out the date, time, and result of the breath analysis, and advise the employee that the employee may request that a sample of the employee's blood or urine be taken.

- (2) If a railway employee who has received a notice under subregulation (1) makes a request to an authorised person that a sample of the employee's blood or urine be taken, the authorised person is to arrange for a sample of blood or urine to be taken.

**21. Medical practitioner to take blood or urine sample**

- (1) An authorised person is to arrange for a blood or urine sample required to be provided by a railway employee under regulation 19, or to be taken at the request of a railway employee under regulation 20, to be taken by —
  - (a) a medical practitioner requested or agreed to by the employee; or

- (b) any other medical practitioner, if it appears to the authorised person that a medical practitioner nominated by the employee will not be able to take the sample within 4 hours of the request being made at a place within 40 kms of the place where the request is made.
- (2) A blood or urine sample taken by a medical practitioner under this regulation is to be taken in the presence of an authorised person.

**22. Procedures relating to blood or urine tests**

- (1) A medical practitioner who takes a blood or urine sample under regulation 21 must place it, in approximately equal proportions, in 2 separate containers and —
  - (a) must make available to an authorised person —
    - (i) one of the containers marked with an identification number distinguishing the sample from other samples taken under these regulations; and
    - (ii) a certificate signed by the medical practitioner containing the information required under subregulation (3);
  - and
  - (b) must cause the other container to be delivered to, or retained on behalf of, the employee from whom the sample was taken.
- (2) A medical practitioner who takes a sample under regulation 21 must take such measures as are reasonably practicable in the circumstances to ensure that a sample of blood or urine taken under these regulations is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of alcohol or of the existence of a drug in the blood or urine.

- (3) The certificate referred to in subregulation (1)(a) must be signed by the medical practitioner by whom the sample was taken and contain the following information —
  - (a) the identification number of the sample marked on the container referred to in subregulation (1)(a);
  - (b) the name and address of the railway employee from whom the sample was taken;
  - (c) the name of the medical practitioner who took the sample; and
  - (d) the date, time, and place at which the sample was taken.
- (4) An authorised person may arrange for a portion of a sample of a railway employee's blood or urine provided under subregulation (1)(a) to be submitted for analysis by —
  - (a) an analyst to determine the concentration of alcohol in the blood; or
  - (b) a drugs analyst to determine whether the blood or urine contains a drug.
- (5) After analysing the sample, the analyst or drugs analyst, as the case may be, must sign a certificate containing the following information —
  - (a) the identification number of the sample marked on the container;
  - (b) the name and professional qualifications of the analyst or drugs analyst;
  - (c) the date the sample was received in the laboratory in which the analysis was performed;
  - (d) the concentration of alcohol or drug found to be present in the sample;
  - (e) any factors relating to the sample or the analysis that might, in the opinion of the analyst or drugs analyst, adversely affect the accuracy or validity of the analysis; and

- (f) any other information relating to the sample or analysis that the analyst or drugs analyst thinks fit to include.
- (6) After a sample is analysed, the certificate of the medical practitioner by whom the sample was taken and the certificate of the analyst or drugs analyst who performed or supervised the analysis must be sent to the Director General or retained on behalf of the Director General and —
- (a) a copy of the certificate of the analyst or drugs analyst must be sent by the analyst or drugs analyst to the medical practitioner by whom the sample was taken; and
  - (b) copies of the certificates must be sent by the analyst or drugs analyst to the railway employee from whom the sample was taken.
- (7) If copies of the certificates are not to be sent under subregulation (6)(b) because the whereabouts of the railway employee is unknown, copies of the certificates must be provided by the Director General on application made within 3 years of the date of the analysis by the railway employee from whom the sample was taken or a relative (including a de facto partner) or personal representative of that person.

*[Regulation 22 amended in Gazette 30 Jun 2003 p. 2627.]*

## **23. Offences**

- (1) A railway employee who is required to submit to a preliminary test or breath analysis under regulation 18 is to —
- (a) comply with all reasonable directions of an authorised person; and
  - (b) exhale into the apparatus by which the preliminary test or breath analysis is conducted in accordance with the directions of an authorised person.

Penalty: \$2 500.

**r. 24**

---

- (2) If required to do so under regulation 19 a railway employee must —
- (a) provide a sample of blood or urine; or
  - (b) submit to procedures necessary to provide a sample of blood or urine under these regulations.

Penalty: \$5 000.

- (3) A railway employee must not, before submitting to a preliminary test, breath analysis, or providing a sample of blood or urine for analysis under these regulations —
- (a) do anything to introduce or cause to be introduced alcohol or a drug into his or her breath, blood, or urine; or
  - (b) alter or cause to be altered the concentration of alcohol or a drug in his or her breath, blood, or urine.

Penalty: \$5 000.

**24. Defences**

- (1) It is a defence to a prosecution under regulation 23 that —
- (a) the requirement or direction to which the prosecution relates was not lawfully made; or
  - (b) there was, in the circumstances of the case, good cause for the failure of the defendant to comply with the requirement or direction.
- (2) For the purpose of subregulation (1)(b), a physical or medical condition of the defendant is not a good cause for the failure of the defendant to comply with a requirement or direction unless —
- (a) a sample of the defendant's blood or urine was taken in accordance with regulation 21;
  - (b) the defendant offered to provide a blood or urine sample under regulation 19(c); but —
    - (i) the authorised person failed to arrange for the sample to be taken; or

- (ii) a medical practitioner was not reasonably available to take the sample;
  - or
  - (c) the taking of a sample of the defendant's blood or urine under regulation 21 was not possible, reasonably advisable, or practicable in the circumstances by reason of a physical or medical condition of the person.
- (3) It is not a defence to a charge under regulation 23 of failing to comply with a requirement or direction that —
- (a) the defendant may, by complying with that requirement or direction, furnish evidence that could be used against the defendant; or
  - (b) the defendant consumed alcohol or a drug after the defendant last performed railway safety work and before the requirement was made or the direction given.

## **25. Evidence**

- (1) In any proceedings, a certificate purporting to be signed by the Director General certifying that a person named in the certificate is an authorised officer or a person appointed under regulation 17 constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (2) Subject to subregulation (4), in any proceedings, a certificate purporting to be signed by an authorised person certifying that —
  - (a) the apparatus used by the authorised person was breath analysing equipment within the meaning of the regulation 14(3);
  - (b) the breath analysing equipment was in proper order and was properly operated;
  - (c) equipment referred to in the certificate is or was of a kind approved under regulation 15(b) for the purpose of performing a preliminary test;

- (d) a railway employee named in the certificate submitted to a preliminary test on a specified day and at a specified time and that the preliminary test indicated that the concentration of alcohol prescribed under regulation 16 may then have been present in the employee's blood,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

- (3) Subject to subregulation (4), a certificate purporting to be signed by an authorised person certifying that —

- (a) a sample of the breath of a railway employee named in the certificate was furnished for analysis in breath analysing equipment;
- (b) a concentration of alcohol expressed in grams in 100 mL was indicated by that breath analysing equipment as being present in the blood of that person on the day and at the time stated in the certificate; and
- (c) a written notice required by regulation 20(1) was delivered to the railway employee in accordance with that regulation,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

- (4) A certificate referred to in subregulation (2), (3), or (5) may be used as evidence only if —

- (a) a copy of the certificate has, not less than 7 days before the commencement of the trial, been served on the person to whom the certificate relates;
- (b) the person on whom a copy of the certificate has been served has not, not less than 2 days before the commencement of the trial, served written notice on the complainant or informant requiring the attendance at the trial of the person by whom the certificate was signed; or
- (c) the court does not require the person by whom the certificate was signed to attend at the trial.

- (5) Subject to subregulation (4), an apparently genuine document purporting to be a certificate, or copy of a certificate, of a medical practitioner, analyst, or drugs analyst under these regulations is admissible in any proceedings and constitutes proof, in the absence of proof to the contrary, of the matters stated in the certificate.
- (6) Certificates of a medical practitioner, analyst, or drugs analyst which refer to the same identification number for a sample of blood or urine constitute proof, in the absence of proof to the contrary, that the certificates relate to the same sample of blood or urine.
- (7) The concentration of alcohol indicated in a notice given under regulation 20 as being present in a railway employee's blood constitutes proof that that was the concentration of alcohol in that employee's blood at the time of the breath analysis and in the 5 hours before the analysis unless it is proved from an analysis of a blood sample under these regulations that the concentration indicated in the notice could not have been correct at the relevant time.
- (8) The concentration of alcohol or another drug certified in a certificate of an analyst or drug analyst under regulation 22(5) as being present in a railway employee's blood or urine constitutes proof, in the absence of proof to the contrary, that that was the concentration of alcohol or the other drug in that employee's blood at the time that the blood or urine sample was taken and in the 5 hours before the sample was taken.

**26. Outside the metropolitan area tests may be taken by a nurse**

- (1) In this regulation —  
“**metropolitan area**” means the part of the State that comprises the region that was, as at 1 January 1999, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959*<sup>4</sup>.

**r. 27**

---

- (2) Outside the metropolitan area, a sample of a railway employee's blood or urine to be taken under this Part may be taken by a nurse if a medical practitioner is not available.
- (3) For the purpose of subregulation (2), the functions conferred on a medical practitioner under this Part are to be conferred on a nurse.

**27. Protection of medical practitioners from liability**

Proceedings do not lie against a medical practitioner or a nurse, or a person acting under the supervision or direction of a medical practitioner or a nurse, in respect of anything done in good faith and in compliance, or purported compliance, with these regulations.

## **Part 4 — Transitional**

### **28. Transitional**

- (1) Subject to subregulation (2), the prescribed time for the purposes of clause 1(1) and (3) of Schedule 2 of the Act is the day that is 12 months after the day on which the Act commences.
- (2) If an owner or operator of a railway holds an accreditation in another State or by the Commonwealth under a corresponding law in force in that State or the Commonwealth, the prescribed time for the purposes of clause 1(1) of Schedule 2 of the Act is the day that is 6 months after the day on which the Act commences.

## **Schedule 1 — Notifiable occurrences**

[r. 4]

### **Part 1 — Category A notifiable occurrences**

1. An accident or incident involving the death of a person. The requirement to notify applies in respect of the death of any person (including a passenger, other member of the public, railway employee or trespasser) and in respect of any cause of death (including accident, suicide or ill health).
2. An accident or incident involving serious personal injury to a person (including a passenger, other member of the public, railway employee or trespasser) that results in admission to hospital.
3. A derailment of a train or rolling stock on a running line.
4. A collision, including —
  - (a) a collision between trains, other rolling stock, vehicles or obstructions or buffer stops on running lines (including a collision as a result of a vehicle loading irregularity or an unsecured door); and
  - (b) a collision involving a train with either a road vehicle or a person at a level crossing, including a pedestrian crossing.
5. A fire affecting rail infrastructure or rolling stock that endangers or could endanger the safe operation of a railway.
6. An explosion affecting rail infrastructure or rolling stock.

### **Part 2 — Category B notifiable occurrences**

7. An occurrence, other than an occurrence referred to in item 1 or 2, in which a person —
  - (a) falls off a railway platform, bridge or structure;
  - (b) falls between a train and a platform;
  - (c) falls from a train during the running, starting or stopping of a train;
  - (d) is struck by a train or a unit of rolling stock;
  - (e) is struck by an object thrown at or from a train;

- (f) is struck or affected by dangerous goods, or affected by gases or fumes, on a railway or rolling stock; or
  - (g) is struck by, or receives a shock from electricity on a railway or on railway premises.
8. A derailment of a train or rolling stock on a line other than a running line.
  9. A collision other than a collision referred to in paragraph 4(a) or (b) including a collision that causes damage such as a collision in a depot or shunting yard.
  10. An unauthorised passing of a signal displaying a stop indication.
  11. A significant unauthorised departure from safe working procedures that could compromise safety.
  12. A failure of items of signalling or other safe working equipment in a way that endangers or could endanger the safe operation of a railway.
  13. An accident or incident at or in the immediate vicinity of a level crossing that compromises safe operation of railway traffic or the safety of the public.
  14. A failure of a tunnel, bridge or elevated structure or a part of a tunnel, bridge or elevated structure so that the failure endangers or could endanger the safe operation of a railway.
  15. Rolling stock runaway.
  16. An accident or incident that could result in an explosion, fire or pollution caused by dangerous goods.
  17. An accident or incident involving rolling stock as follows —
    - (a) hot box such as overheated axle bearings which could cause catastrophic axle failure;
    - (b) dragging equipment;
    - (c) a wagon loading defect or out of gauge fouling;
    - (d) a door defect or an accidental opening of doors;
    - (e) train parting;
    - (f) a pantograph defect likely to cause dewirement;
    - (g) a wheel or axle failure;

**Rail Safety Regulations 1999**

**Schedule 1** Notifiable occurrences

**Part 2** Category B notifiable occurrences

---

- (h) a major braking system failure; or
  - (i) any other rolling stock failure that has the potential to cause a serious accident.
- 18. An accident or incident where an animal large enough to damage a vehicle is —
  - (a) struck by a train; or
  - (b) on a track or in the vicinity of a track.
- 19. A track defect that has the potential to cause derailment, including —
  - (a) a track defect involving horizontal misalignment;
  - (b) a track defect involving vertical misalignment;
  - (c) a broken rail, including a broken rail joint.
- 20. The appearance or occurrence of —
  - (a) a defect (including a defect caused by an external agent) in a civil or electrical infrastructure item that has the potential to cause an accident unless urgent corrective action is taken;
  - (b) a defect (including a defect caused by an external agent) in electrical supply or overhead wiring sufficient to cause an electrical fault or dewirement; or
  - (c) any other defect (including a defect caused by an external agent) with the potential to cause an accident unless urgent corrective action is taken.
- 21. A case where a railway employee is found to be carrying out railway safety work —
  - (a) while there is present in his or her blood a concentration of .02 g or more of alcohol in 100 mL of blood; or
  - (b) while under the detrimental influence of a drug.

## Schedule 2 — Prescribed fees

[r. 13]

Type of fee	Provision of Act	Fee \$
1. Application for accreditation as an operator or owner for —	s. 21(1)	
(a) an operator or owner accredited in another State or a Territory or by the Commonwealth		1 200
(b) a commercial enterprise		5 000
(c) a heritage, not-for-profit organization		
(i) with trains travelling more than 15 000 km per annum		1 200
(ii) with trains travelling 15 000 km or less per annum		500
2. Application for interim accreditation. Fee for processing application (per hour) up to a maximum fee for a —	s. 21(1)	85.03
(a) commercial enterprise		5 000
(b) heritage, not-for-profit organization		
(i) with trains travelling more than 15 000 km per annum		1 200
(ii) with trains travelling 15 000 km or less per annum		
<i>[3. deleted]</i>		
4. Annual private siding registration fee, per siding	s. 22(1)	50
5. Annual fee for an owner (per kilometre of track or part thereof) with the minimum fee prescribed in item 9	s. 22(1)	35.5442
6. Annual fee for an operator (per train/tram kilometre) with the minimum fee prescribed in item 9	s. 22(1)	0.0264

**Rail Safety Regulations 1999**  
**Schedule 2** Prescribed fees

Type of fee	Provision of Act	Fee \$
7. Additional annual fee for an owner if an accreditation is varied (per kilometre of track or part thereof)	s. 22(2)	35.5442
8. Additional annual fee for an operator if an accreditation is varied (per train/tram kilometre)	s. 22(2)	0.0264
9. Minimum Annual Accreditation fee for an operator or owner for a — (a) commercial enterprise (b) heritage, non-profit organization (i) with trains travelling more than 15 000 km per annum (ii) with trains travelling 15 000 km or less per annum	s. 22(1)	5 000   1 200  500

*[Schedule 2 amended in Gazette 19 May 2000 p. 2438-9; 13 Jul 2001 p. 3476; 25 Jun 2004 p. 2291; 24 Jun 2005 p. 2790; 23 Jun 2006 p. 2224; 8 Dec 2006 p. 5393; 12 Jun 2007 p. 2737-8.]*

**Schedule 3 — Form of warrant**

[r. 12]

WESTERN AUSTRALIA

*Rail Safety Act 1998*  
(Section 47(1))

**WARRANT TO ENTER PLACE**

I, <sup>1</sup> .....  
of <sup>2</sup> .....  
in the State of Western Australia, Justice of the Peace, being satisfied that —

(a) entry and inspection on or into the place, namely, <sup>3</sup> .....  
.....  
is reasonably required by an authorised person for the purpose of <sup>4</sup>

.....; and  
(b) entry to the place has been refused or is opposed or prevented;\*

OR

(c) entry cannot be obtained;\*

OR

(d) notice of the required entry under section 46(2) of the *Rail Safety Act 1998*  
cannot be given without unreasonable difficulty, unreasonably delaying  
entry or defeating the purposes for which it is intended to enter the place,\*  
(\* delete whichever does not apply)

hereby authorise you <sup>5</sup> .....  
to enter on or into the place named above for the purpose set out above.

Given under my hand this ..... day of .....

.....  
Justice of the Peace

Insert:

1. name of Justice of the Peace;
2. address of Justice of the Peace;
3. description of the place;
4. purpose of the entry and the legislative provision by which that purpose is authorised;
5. name of authorised person.

=====

## Notes

- <sup>1</sup> This reprint is a compilation as at 21 February 2008 of the *Rail Safety Regulations 1999* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Rail Safety Regulations 1999</i>	2 Feb 1999 p. 375-95	3 Feb 1999 (see r. 2 and <i>Gazette</i> 2 Feb 1999 p. 351)
<i>Rail Safety Amendment Regulations 2000</i>	1 Feb 2000 p. 383-4	1 Feb 2000
<i>Rail Safety Amendment Regulations (No. 2) 2000</i>	19 May 2000 p. 2438-9	1 Jul 2000 (see r. 2)
<i>Rail Safety Amendment Regulations 2001</i>	13 Jul 2001 p. 3475-6	1 Aug 2001 (see r. 2)
<i>Rail Safety Amendment Regulations 2003</i>	18 Mar 2003 p. 807-8	18 Mar 2003
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 33</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<b>Reprint 1: The Rail Safety Regulations 1999 as at 18 Jun 2004</b> (includes amendments listed above)		
<i>Rail Safety Amendment Regulations 2004</i>	25 Jun 2004 p. 2290-1	1 Jul 2004 (see r. 2)
<i>Rail Safety Amendment Regulations 2005</i>	24 Jun 2005 p. 2790	1 Jul 2005 (see r. 2)
<i>Rail Safety Amendment Regulations 2006</i>	23 Jun 2006 p. 2223-4	1 Jul 2006 (see r. 2)
<i>Rail Safety Amendment Regulations (No. 2) 2006</i>	8 Dec 2006 p. 5392-3	8 Dec 2006
<i>Rail Safety Amendment Regulations 2007</i>	12 Jun 2007 p. 2737-8	1 Jul 2007 (see r. 2)
<b>Reprint 2: The Rail Safety Regulations 1999 as at 22 Feb 2008</b> (includes amendments listed above)		

- <sup>2</sup> The Standards Association of Australia has changed its corporate status and its name. It is now Standards Australia International Limited (ACN 087 326 690). It also trades as Standards Australia.

- <sup>3</sup> Under the *Interpretation Act 1984* s. 16, a reference to the *Nurses Act 1992* may be read as a reference to the *Nurses and Midwives Act 2006*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).
- <sup>4</sup> Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 4.

**Defined Terms**

---

**Defined Terms**

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

<b>Defined Term</b>	<b>Provision(s)</b>
analyst .....	14(1)
authorised person .....	14(2)
breath analysing equipment .....	14(3)
breath analysis.....	14(1)
drugs analyst .....	14(1)
light .....	9(1)
medical practitioner .....	14(1)
metropolitan area .....	26(1)
nurse.....	14(1)
owner .....	9(1)
preliminary test .....	14(1)
railway employee .....	14(4)