

ONRSR Fact Sheet

FAQs: NSW Drug and Alcohol Testing Authorised Persons

July 2021



1. Who appoints drug and alcohol testing authorised persons?

Rail transport operators (RTOs) and third party testing providers may appoint authorised persons and issue identity cards, once they have been issued with a sub-delegation from ONRSR for this purpose.

ONRSR requires RTOs and third party providers to provide training to new authorised persons before they commence any testing work. Authorised persons must have completed training in accordance with qualifications or experience considered appropriate by ONRSR, including the model training material published on ONRSR's website.

Once appointed as an authorised person, the Rail Safety National Law (NSW) requires you to produce your identity card on request to a person you require to submit to testing.

Authorised persons may conduct drug and alcohol testing for other RTOs or third party providers. In this case, RTOs need to ensure that they clearly set out the arrangements for the other party's authorised persons to test their workers.

2. What does a drug and alcohol testing authorised person need to know in terms of knowledge and skills?

You should know the RTO's drug and alcohol management program (DAMP) requirements and the relevant sections of the Rail Safety National Law (NSW), as you need to be able to give correct and appropriate answers when you are in the field and when possibly challenged about the process or the lawfulness of testing. You also need good communication skills to explain testing and have the ability to understand and communicate with rail safety workers at all levels and from different backgrounds.

3. What are the different methods of testing?

There are three testing methods an authorised person can undertake: random testing; targeted

(or "for cause/on suspicion") testing and post-incident testing.

The primary types of testing required to be undertaken by RTOs in NSW are breath (for alcohol) and urine (for drugs).

Alcohol breath testing is carried out using a device that complies with the Australian Standard AS3547 *Breath alcohol testing devices*, or is of a type approved by the Governor by order published in the Gazette for the purposes of the Road Transport Act 2013 (NSW). Breath analyses are undertaken at police stations following a positive result on a breath test.

For drug testing, you may be required to coordinate or to actually carry out drug urine testing, making sure the process meets the Australian Standard/New Zealand Standard AS/NZS 4308:2008, Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine.

In some cases, an RTO may have in-house authorised persons conducting breath testing and contracted third party testing service providers undertaking drug testing.

4. As an authorised person, can I carry out oral fluid testing?

Authorised persons appointed by NSW RTOs to conduct drug and alcohol testing in NSW are authorised to conduct urine testing for drugs, not oral fluid testing.

While such a person may carry out oral fluid testing, they do not do this in their capacity as an authorised person and it will not count towards any testing required under the Rail Safety National Law (NSW), including the requirement to randomly test 25% of rail safety workers annually.

5. How do you explain testing requirements to rail safety workers?

Your RTO's DAMP should address how rail safety workers will be informed of the DAMP. In general, when an RTO implements its DAMP, the RTO should tell their rail safety workers what the

program is about and what it means in terms of everyone's rights, responsibilities and testing requirements. This should happen well before any testing commences.

Only authorised persons may require a rail safety worker to submit to testing. The Rail Safety National Law (NSW) requires the authorised person to produce their identity card on request to a person they require to submit to testing.

Generally, in random testing, no prior warning is given to the rail safety worker, however, they should be told they have been selected randomly, and given a formal direction to undergo testing, which is mandatory under the law and required by the RTO's DAMP.

Usually, if a rail safety worker is the subject of a targeted 'for cause/on suspicion' test, then that rail safety worker is informed of the allegation and is given a formal directive to undergo the test.

The rail safety worker should be told that if they fail or refuse to comply with the directions given by the authorised person, then that rail safety worker is committing an offence and could be subject to disciplinary action or prosecution.

6. Can I test non-rail safety workers at a worksite?

Yes, provided this is covered in the operator's drug and alcohol management policy. However, it is not required to report the results of this testing to ONRSR. Testing of non-rail safety workers does not count towards any testing required under the Rail Safety National Law (NSW).

7. A person has just been to the toilet before I direct them to undergo a urine test and they ask if they can go and get a drink. Can I let them?

Yes, a worker may consume a small drink before testing, but it is recommended that the drink be consumed in the presence of the authorised person.

8. What confidentiality and privacy provisions do I need to follow?

When doing random drug or alcohol testing, most rail safety workers in the workplace may be aware of your activities. Maintaining confidentiality is important, particularly as a rail safety worker to be tested may wish to disclose the use of prescription drugs. Also, if you receive a positive breath test, the result and the instruction to undergo breath analysis should be given to the rail safety worker in a discrete way, then reported to the worksite manager. During a 'for cause/on suspicion' test, the rail safety worker should be approached in a tactful and discrete manner so as not to cause public embarrassment.

When taking urine samples for any form of drug testing, a private room is always used.

In terms of recording information, all documentation should be securely locked away in a filing system and only viewed by those in the organisation who lawfully need to know. Your RTO's DAMP will provide you with guidance on how to approach the confidentiality and privacy requirements of your role.

9. How is the random testing program planned?

There are many things that dictate who, where, when, and how many are tested. These things should be set out in the RTO's DAMP. For example:

- > how rail safety workers will be selected, e.g. either by worksite, by random numbers or by occupation
- > whether higher risk job categories may need to be tested more often than lower risk job categories in accordance with the RTO's risk analysis
- > the impact of testing on railway operations
- > the resources you have available to do the testing, i.e. breath alcohol testing equipment; access to third party service providers for urine sample collection in drug testing; access to breath analysis equipment in the case of a positive breath test;
- > the amount of time each test requires

- > the number of rail safety workers your RTO needs to test per year, noting the Rail Safety National Law National Regulations 2012 require not less than 25% of an organisation's rail safety workers who perform rail safety work to be tested per year (excluding heritage operators)

10. What indicators are used for targeted or 'for cause / on suspicion' testing?

There are numerous indicators for 'for cause/on suspicion' testing. Some of the common ones include:

- > where a rail safety worker has deliberately left a site where rail safety workers are being or will be tested
- > where a rail safety worker is undertaking rail safety work and they smell of alcohol or appear to be under the influence of a substance
- > where a complaint has been made alleging drug use, either by another rail safety worker or a member of the public
- > where a manager/supervisor has strong suspicions
- > where there has been a breach of the RTO's DAMP

11. What are the characteristics of being under the influence of drugs and alcohol?

Breath	Smell of intoxicating liquor
Face & Skin	Pale, flushed
Attitude	Cooperative, talkative, anxious, excited, dreamy, relaxed, sedated, antagonistic, hostile, irritable, cocky, unable to follow instructions, depressed, aggressive, difficulty staying awake, restless, alert, responsive, vague, argumentative, agitated
Actions	Swearing, hiccupping, belching, vomiting, fighting, drooling, restless, runny nose, loss of emotional control, itching, scratching, repetitive behaviours, disorganised, chaotic

Eyes	Watery, glazed, bloodshot, eyelids drooping, pupils pinpointed, pupils wider than normal, glassy
Breathing	Normal, short, jerky, shallow, slow
Speech	Incoherent, unclear, slurred, confused, fast, slow, repetitive, difficulty with pronunciation or forming sentences
Balance	Unsteady, swaying, sagging, falling, staggering, needing support, stumbling
Movements	Clumsy, jerky, sluggish, tremor, running or jumping around, slow, fidgeting
Sobriety	Slightly, moderately or well affected by alcohol or other substances

12. What are the procedures the authorised person may be involved in if there is a non-negative test result?

Failure to follow the correct procedures may jeopardise the success of any future prosecution. The procedures for dealing with a positive alcohol or drug test will be determined by your RTO's DAMP.

Some of the matters to be aware of are:

- > what your role and responsibilities are when a positive test occurs
- > informing the appropriate manager/supervisor at that location
- > notifying the RSW in a private and confidential manner
- > arranging for the RSW to discuss their test result with the RTO, their manager and/or their HR manager
- > completing the reporting and documentation responsibilities under the DAMP
- > how to fulfil ONRSR's notification requirements

13. What personal safety issues may an authorised person sometimes need to contend with in testing, e.g. infection control or dealing with aggression or violence?

Third party testing service providers have procedures to manage and prevent issues like infection control and contamination of test results in accordance with the Australian Standard/New Zealand Standard, AS/NZS 4308:2008, Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine. Your RTO is responsible for ensuring any services contracted to undertake this work have appropriately qualified collectors and the services are performed safely.

Your RTO's DAMP should address the risk of workplace violence associated with testing and have a procedure in place for you to follow.

Aggressive people can often be dealt with by a full explanation of the legislation's and your RTO's requirements. If the rail safety worker continues to be aggressive or becomes violent, stop the testing process. Do not place your own safety at risk. Report the incident to the appropriate on-site manager for possible future action, and record the incident using your RTO's incident forms.

14. What records do I need to maintain of testing activities?

You need to maintain a record of:

- > the names of rail safety workers
- > locations where testing has been undertaken
- > details of the test results and process followed

Your RTO's DAMP will give you direction on how these records are to be kept.

15. What is rail safety work?

The Rail Safety National Law identifies a rail safety worker (s.4) as any individual who has carried out, is carrying out, or is about to carry out rail safety work (s.8(1)), which includes:

(a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock;

(b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;

(c) coupling or uncoupling rolling stock;

(d) constructing, maintaining, repairing, modifying, monitoring, inspecting or testing –

(i) rolling stock, including checking that the rolling stock is working properly before being used; or

(ii) rail infrastructure, including that the rail infrastructure is working properly before being used;

(e) installation of components in relation to rolling stock;

(f) work on or about rail infrastructure or associated works or equipment that places, or may place, the person performing the work at risk of exposure to moving rolling stock;

(g) installation or maintenance of –

(i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure; or

(ii) the means of supplying electricity directly to rail infrastructure, any rolling stock using rail infrastructure or a telecommunications system;

(h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;

(i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;

(j) work involving the development, management or monitoring of safe working systems for railways;

(k) work involving the management or monitoring of passenger safety on, in or at any railway

Refer to the ONRSR Guideline: Identifying Rail Safety Work under the Rail Safety National Law for further information.