

NSW Drug and Alcohol Testing Authorised Person Model Training

Module 1 : NSW Rail Transport Operator Requirements

Course overview

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Introduction

- This training material is **not** an official ONRSR guideline.
- This material is made available to assist rail transport operators (RTOs) and third party testing providers in training suitably experienced staff for appointment as ‘authorised persons’ to conduct drug and alcohol (D&A) testing for or on behalf of accredited RTOs in NSW.
- Reference should also be made to the RTO’s drug and alcohol management program (DAMP) and any specific RTO requirements.
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Aims of the course

- To fulfil the training requirements considered by ONRSR to be appropriate for the performance of NSW D&A testing authorised persons
- To ensure that authorised persons have sufficient knowledge and skills to carry out their functions under the *Rail Safety National Law* (RSNL) and the RTO's DAMP
- To promote quality and consistency in D&A testing in the NSW rail industry

Learning outcomes

- To outline the legislative requirements for D&A testing, including the offences under the RSNL
- To describe the respective rights, roles and responsibilities of RTOs, rail safety workers (RSWs) engaged in rail safety work, and those involved in the D&A testing process
- To conduct appropriate testing activities including making the requirement to be tested
- To respond effectively to testing and assessment requirements, including responding to non-negative or positive test results, dealing with refusal or failure to undergo testing, and collecting additional assessment information

Module 1: NSW rail transport operator requirements - Part A: Overview

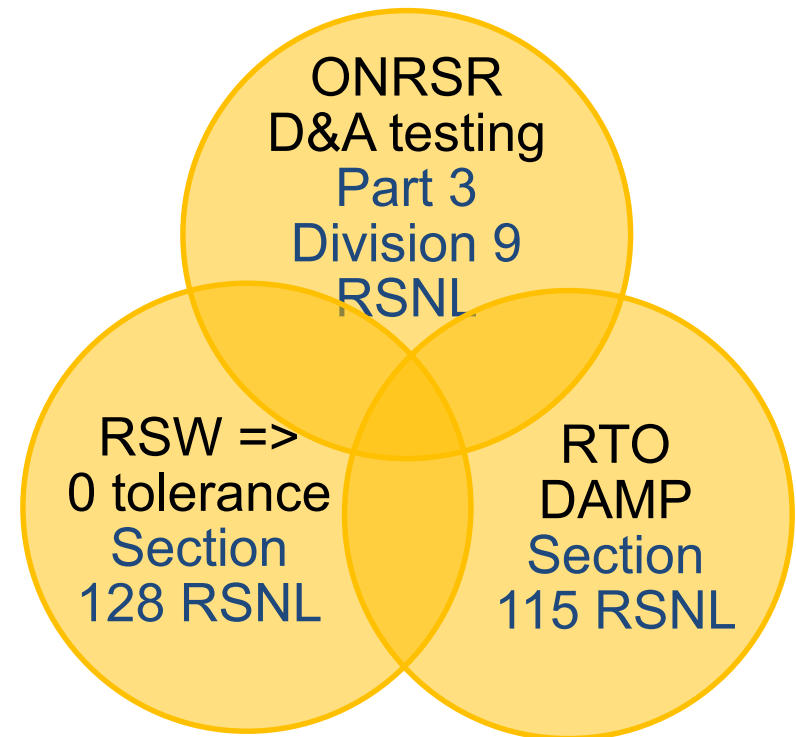
- Legislation
- ONRSR and RTO D&A testing
- What is ONRSR's role in D&A testing?
- Testing methods
- Testing types
- National requirements for RTO DAMPs
- Key requirements for NSW RTO DAMPs
- D&A offences for RSWs carrying out rail safety work

Legislation

- > ONRSR administers the RSNL, which has been adopted in every state and territory.
- > **The RSNL in NSW comprises:**
 - ***Rail Safety National Law (NSW) No 82a (RSNL)***
 - ***Rail Safety National Law National Regulations 2012 (the National Regulations)***
 - ***Rail Safety (Adoption of National Law) Regulation 2018 (the NSW Regulation)***

ONRSR and RTO D&A testing

- RSWs may be tested by an RTO under its D&A, or by ONRSR or police.
- RSWs may be tested on the job or following an incident.
- A RSW is any individual (employee, contractor or volunteer) who carries out rail safety work.



ONRSR and RTO D&A testing cont.

- > ONRSR's D&A testing program
 - ONRSR tests for compliance with the law by the RSW.
 - ONRSR may prosecute where a positive D&A test result is confirmed.
- > RTO testing undertaken as part of the DAMP
 - An RTO undertakes testing in order for the RTO to comply with the law and mitigate risk.
 - An RTO may undertake disciplinary action following a positive D&A test result.
 - **In NSW, ONRSR can also undertake prosecutions following a positive D&A test result from RTO testing.**

What is ONRSR's role in D&A testing?

ONRSR monitors compliance with the law:

- > conducts testing
- > audits implementation of DAMPs
- > enhances rail safety by monitoring:
 - notifications from RTOs of positive test results and refusals
 - monthly returns from RTOs
 - notifications of any breaches of the RSNL
- > pursues prosecutions

In NSW, ONRSR issues sub-delegations (up to three positions) to enable RTOs and third-party providers to appoint authorised persons and issue identity cards.

Testing methods

- Testing may be conducted on a programmed (unannounced, non-incident related) or post-incident basis.
- Programmed testing:
 - intelligence-led risk-based (targeted) testing
 - random testing
- Testing is mandatory for prescribed incidents.
 - **National regulations detail NSW-specific prescribed incidents.**

Testing types

- Alcohol testing
 - breath tests on site
 - breath analysis test if required
- Drug testing
 - oral fluid screening tests on site
 - oral fluid analysis if required
 - blood testing
 - urine screening tests on site
 - urine analysis if required
- ONRSR typically uses oral fluid drug testing.
- **In NSW, specific urine drug testing requirements apply to RTOs for random and post incident testing.**

National requirements for RTO DAMPs

National reg 28

- > The DAMP must include the following:
 - a D&A policy
 - systems and procedures for providing information and education to RSWs on the DAMP
 - systems and procedures to ensure the confidentiality of RSW's personal information in relation to testing, counselling, treatment or rehabilitation
 - details of the testing regime, including testing procedures
 - systems and procedures to respond to prescribed incidents
 - measures to be taken by the RTO for establishing rules relating to D&A use
 - identification of RSWs who have drug or alcohol related problems and referral of RSWs for treatment, counselling or rehabilitation

National requirements for RTO DAMPs cont.

- the obligations of RSWs with respect to the management of alcohol and other drug use, and the actions that may be taken by the RTO if there is a breach of those obligations, e.g.
 - requirement for a RSW to notify the RTO if a RSW may be impaired
 - provision of education and rehabilitation measures for RSWs
 - disciplinary action
 - appeals and grievance mechanisms
 - protocols for fair procedures relating to the operation of the DAMP

Key requirements for NSW RTO DAMPs

- NSW RTOs are subject to specific requirements under reg 28(2) of the *RSNL National Regulations 2012*:
 - annual random testing of at least 25% of RSWs (commercial operators only)
 - mandatory post-incident testing following a NSW prescribed incident
 - testing carried out by an authorised person
 - additional notifiable occurrence reporting as per reg.28(2)(b), e.g. all confirmed drug positives must be reported
- These requirements apply in addition to the national requirements for a DAMP, and testing by ONRSR.
- **The NSW Regulation details further NSW-specific requirements.**

Key requirements for NSW RTO DAMPs cont.

> Post-incident testing:

- D&A testing must be conducted within three hours of a NSW prescribed incident specified under reg 28(2), unless there is a reasonable excuse for not doing so:
 - a collision between rolling stock, with a person or with a road rail vehicle or plant equipment
 - derailment of rolling stock
 - a breach of the rail infrastructure manager's network rules

Key requirements for NSW RTO DAMPs cont.

- > NSW RTOs must use breath or urine testing to randomly test a minimum of 25% of RSWs annually, and breath and urine testing to comply with the requirements for post-incident testing.
- > Oral fluid or blood testing may be used; however they do not form part of the 25% of random testing, or the post-incident testing requirements (unless blood testing is done at a hospital).

D&A offences for RSWs carrying out rail safety work

- Presence of alcohol in blood (RSNL s128)
- Presence of prescribed drugs in oral fluid or blood (RSNL s128)
 - THC / cannabis
 - Methamphetamine / speed
 - MDMA / ecstasy
- Under the influence of alcohol or a drug (RSNL s128)
- Refusing a test (RSNL s126(3) and s127(3))

D&A offences for RSWs carrying out rail safety work cont.

- > Not following the direction of an authorised person (RSNL s126 & s127)
- > Hindering or obstructing an authorised person (RSNL s128A)
- > Assaulting, threatening or intimidating an authorised person (RSNL s128B)
- > Interfering or tampering with, or destroying, samples (RSNL s128C)

Maximum penalty for these offences is \$10,000 (except for assault of an authorised person, which is \$50,000 and/or 2 years imprisonment).\

- > **Additional NSW offences:**
 - **If a RSW fails to provide a sample (NSW reg 21)**
 - **Interfering with test results (NSW reg 22)**

Module 1 Part A: Summary of key points

- > Legislation
- > Key requirements for NSW RTO DAMPs
- > D&A offences for RSWs carrying out rail safety work

Module 1: NSW rail transport operator requirements - Part B: Planning testing

- Minimising D&A risks to railway operations
- Appointment of authorised persons
- When can RSWs be tested?
- Restrictions on testing
- D&A testing equipment and services
- Considerations in planning testing
- Notification to ONRSR
- Principles of good practice

Minimising D&A risks to railway operations

- Under the RSNL, a RSW must not carry out or attempt to carry out rail safety work while there is any presence of alcohol or a 'prescribed drug' in their system, or they are under the influence of alcohol or a drug (s128).
- To manage this and reduce the risks to workers and the general public, RTOs are required to have a DAMP in place, which includes D&A testing of their workers.
- **D&A testing under the RSNL in NSW must be carried out by authorised persons who are appointed by RTOs, or third - party service providers.**

Appointment of authorised persons

- Authorised persons are appointed by an RTO or a third-party testing provider under s124 of the RSNL. Police officers are also authorised persons.
- ONRSR issues sub-delegations (up to three positions) to RTOs and third-party providers for them to appoint authorised persons and issue identity cards.
- Authorised persons must carry their identity cards and produce them on request.
- Authorised persons are not authorised to conduct oral fluid testing as part of the 25% requirement for random testing, or for post-incident testing.

Appointment of authorised persons cont.

- Authorised persons must be trained in line with the NSW Drug and Alcohol Testing Authorised Person Model Training Course published on the ONRSR website.
- RTOs and third-party providers are required to report to ONRSR annually advising:
 - number of authorised persons currently appointed
 - number of appointments made in the year
 - number of appointments terminated in the year
 - current training provider and training arrangements
- RTOs are to include this information as part of their annual safety performance report (SPR), which can be provided via the ONRSR portal.
- Third party providers are to prepare an annual statement.

When can RSWs be tested?

- > RSWs may be required to submit to testing if:
 - they are about to carry out, are carrying out, are attempting to carry out, or are still on railway premises after carrying out rail safety work
 - they are involved in a prescribed notifiable occurrence
 - they are involved in an accident or irregular incident while carrying out rail safety work
 - they are, or are reasonably suspected of being involved in, a prescribed incident
- > Results of testing for a RSW who was about to carry out rail safety work are **not** admissible as an offence under s128 of the RSNL (NSW reg 6).
- > About to carry out rail safety work means the RSW has left home or a temporary residence for work but has not yet commenced work, i.e., pre-sign-on (RSNL s129A).

Restrictions on testing

- Authorised persons (other than police officers) must not arrest or detain RSWs.
- Authorised persons must not require a RSW to undergo a breath test, breath analysis or provide a sample of blood or urine (NSW reg 8):
 - if it appears to the authorised person that it would be dangerous to the worker's medical condition
 - **after 3 hours** from when the worker carried out the rail safety work
 - after a worker, who has not been involved in an accident or irregular incident, has ceased to be on duty
 - at the worker's home, or
 - if the testing is against the advice of a medical practitioner or nurse (NSW reg 13(2))

D&A testing devices

- Breath testing devices must comply with the AS 3547, “*Breath alcohol testing devices*”, or be of a type approved by the Governor by order published in the Gazette for the purposes of the Road Transport Act 2013.
- **Urine samples** must be collected, transported, tested (if tested by a laboratory) and stored in accordance with the requirements of AS/NZS 4308:2008, “*Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*”.
- **On-site urine screening devices** must use an immunoassay technique that meets the screening test cut-off levels listed in Table 1 of AS/NZS 4308:2008.

Note: Approved laboratory for urine samples – a laboratory accredited by NATA for the purposes of AS/NZS 4308:2008

Considerations in planning testing

- Random testing:
 - confirm the workers are RSWs, how they will be selected for testing, and the type of testing (breath or urine) to be conducted
 - whether higher risk job categories may need to be tested more often
 - the impact testing will have on railway operations:
 - the resources available to do the testing i.e. equipment, third party testing service providers, access to breath analysis devices & urine testing
 - the amount of time each test requires
 - the number of RSWs the RTO needs to test per year
- what and how testing information is to be documented

Considerations in planning testing cont.

> Post-incident testing:

- arrangements required to respond to prescribed incidents, including identifying who should be tested
- what and how testing information is to be documented

> Targeted testing:

- arrangements required to respond to a reasonable belief that a RSW is under the influence of alcohol or a drug.
- what and how testing information is to be documented

Notification to ONRSR

- All occurrences of the events prescribed by national regulations 28(2)(b) and 57((1)(b)(xxi) and (xxia)) must be reported using the NSW D&A testing incident notification form.
- A notifiable occurrence report must also be submitted if the testing was undertaken following a notifiable occurrence ('post-incident'), including details of the occurrence as well as:
 - test results (regardless of whether they are positive or negative)
 - any refusal by a worker to undertake testing
- If the results of post-incident testing are negative, then the NSW D&A testing incident notification form isn't required.
- Notifiable occurrence written reports should be submitted via the ONRSR portal and are due within 72 hours of the incident.

Principles of good practice

> Privacy and confidentiality

- The *Privacy Act 1988* (Commonwealth) requires organisations to protect people's privacy in a number of circumstances, including D&A testing results.
- Under s244 of the RSNL, it is an offence to disclose without lawful authority any information or document obtained while exercising any power or function under the RSNL.

> Duty of care

- RTOs and RSWs need to be aware of their responsibility to take reasonable steps to prevent injury and to ensure the safety of railway operations.

Principles of good practice cont.

> Provision of information

- It is important that RSWs are given clear information about the DAMP and how testing occurs, including the consequences of refusing or failing to be tested.
- This should include information about the limits on confidentiality, e.g., RTOs are required to notify the Regulator of positive tests, and this information could ultimately lead to prosecution.

> Fairness

- In the case of a non-negative or positive test, the authorised person should:
 - explain to RSWs what is being alleged
 - listen to the RSW's explanation
 - treat the RSW impartially

> Gender and cultural sensitivity

- DAMPs need to consider religious; cultural and gender issues and authorised persons must conduct their testing in ways that reflect these requirements.

Module 1 Part B: Summary of key points

- > Minimising D&A risks to railway operations
- > Appointment of authorised persons
- > When can RSWs be tested?
- > Notification to ONRSR

Further information



ONRSR's Drug and Alcohol Testing webpage
[Drug & alcohol management](#)



[Drug and Alcohol: Requirements for Rail Transport Operators \(NSW Only\) fact sheet](#)



Drug and Alcohol Testing undertaken in NSW
Notification Form [Notification form - Non-negative or positive drug and alcohol test results](#)



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