

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

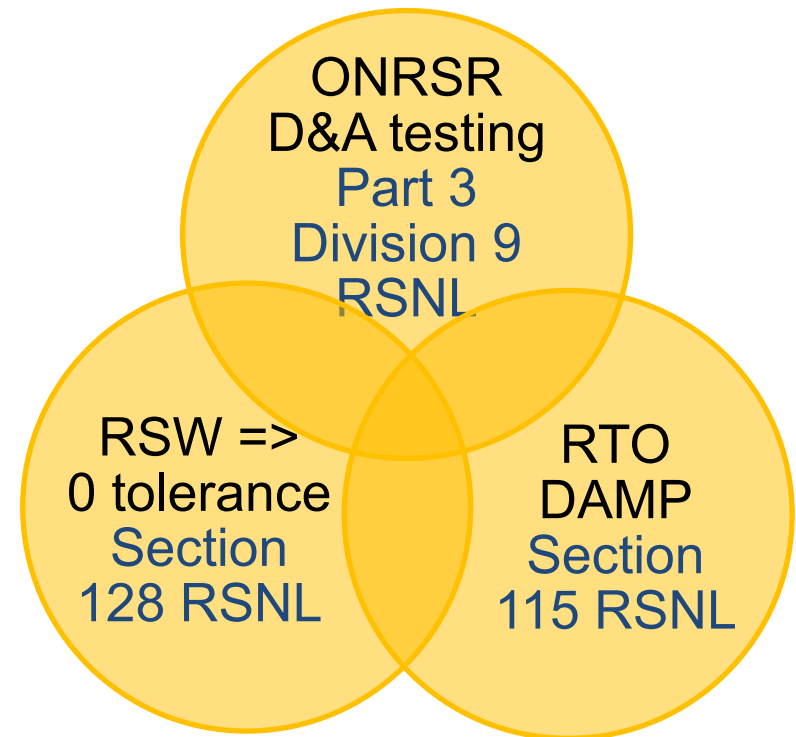
- Legislation
- ONRSR and RTO D&A testing
- What is ONRSR's role in D&A testing?
- RTOs to facilitate testing by authorised persons
- Testing methods
- Testing types
- National requirements for RTO DAMPs
- Key requirements for NSW RTO DAMPs
- D&A offences for RSWs carrying out rail safety work

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 DAMP, 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.

RTOs to facilitate testing by authorised persons

An RTO must do all that is reasonably necessary to facilitate an authorised person undertaking testing (RSNL s127A), including:

- > allowing the authorised person entry to the railway premises
- > making the RSW available for such testing
- > making any other person at the premises available to assist the authorised person

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
- Post-incident testing:
 - Operator testing is mandatory for Category A incidents.
 - **NSW operators must undertake testing following NSW-specific prescribed incidents specified in the National Regulations.**

Testing types

- Alcohol testing
 - breath tests on site
 - breath analysis test at a police station 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.

National requirements for RTO DAMPs

National regulation 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 a 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 regulation 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 regulation 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 National regulation 28(7), 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 drug testing to randomly test a minimum of 25% of RSWs annually, and breath and drug testing to comply with the requirements for post-incident testing.
- RTOs may use different types of drug testing including oral fluid testing.
- Blood testing may be done at a hospital after an accident.

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 regulation 21)**
- **Interfering with test results (NSW regulation 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 NSW 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 NSW 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.
- RTOs wishing to use different types of drug testing must ensure the authorised persons have been issued with an instrument of appointment which does not prohibit the use of oral fluid testing.

Appointment of NSW 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 email an annual statement to ONRSR.

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

Additional NSW provisions:

- **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 while carrying out rail safety work within NSW (National regulation 28(2)(a)(ii))**
- > **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).**
 - > **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 regulation 6).**

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 drug screening test or provide a sample of blood, oral fluid or urine (NSW regulation 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 blood or urine testing in a hospital is against the advice of a medical practitioner or nurse (NSW regulation 13(2)).

D&A testing devices

- > Breath testing devices must comply with the AS 3547: 2019, *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*.
- > **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, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*.
- > The **approved oral fluid testing device** is the Medvet Oral7, or an approved device specified in Schedule 3 to the *Road Transport Act 2013*.

Note: Approved laboratory for urine samples – a laboratory accredited by NATA for the purposes of AS/NZS 4308:2008; for oral fluid samples – Racing Analytical Services Ltd at Flemington, Victoria; for blood samples – NSW Health Pathology Forensic & Analytical Science Service (FASS) at Lidcombe or North Ryde.

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 drug) 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 providers, access to breath analysis instruments and drug 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 NSW 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

- RTOs in NSW must report the events prescribed by National regulation 28(2)(b) using the *D&A testing undertaken in NSW notification form*.
- A notifiable occurrence report must also be submitted if the testing was undertaken following a notifiable occurrence ('post-incident', National regulation 57), 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 *D&A testing undertaken in NSW notification form* isn't required.
- The *D&A testing undertaken in NSW notification form* and Category A notifiable occurrence written reports should be submitted via the ONRSR portal within 7 days 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., NSW 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 NSW authorised persons
- > When can RSWs be tested?
- > Notification to ONRSR

Further information available on the ONRSR website



ONRSR's Drug and Alcohol Testing webpage



Drug & Alcohol: Requirements for Rail Transport Operators (NSW Only) fact sheet



Notification form – Drug and Alcohol Testing undertaken in NSW



Contact ONRSR via contact@onrsr.com.au or phone 1800 572 077 (Sydney)