

NSW Drug and Alcohol Testing Authorised Person Model Training

Module 2: NSW Authorised Person Requirements

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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 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 2: NSW authorised person requirements

Part A - Conducting testing

- > Authorised persons: Powers under the RSNL
- > Communicating about testing
- > RSWs' rights and obligations
- > Self-disclosure of medications in the workplace
- > Authorised persons and third-party testing providers
- > Authorised persons: Testing process
- > Authorised persons: Breath testing/drug testing/blood testing
- > After a non-negative on-site breath or drug test result
- > Certificates of evidence
- > Why is record-keeping important for D&A testing?
- > Additional record-keeping requirements for 'for cause/on suspicion' targeted testing

Authorised persons: Powers under the RSNL

- > Authorised persons are appointed under the RSNL: The Regulator sub-delegates to the RTO or third party provider, who then appoints the authorised person.
- > Authorised persons may direct RSWs to:
 - submit to a preliminary breath test
 - submit to a breath analysis at a police station
 - submit to an oral fluid drug screening test or urine screening test, or oral fluid analysis, urine test or blood test
 - provide blood or urine samples at a hospital
 - undergo testing by a third party testing provider, e.g., a collecting agency, or an authorised sample taker (including a medical practitioner or registered nurse) at a hospital

Authorised persons: Powers under the RSNL cont.

- > The authorised person must make the requirement for testing in person, regardless of who collects the sample.
- > Authorised persons are protected from liability for ‘anything properly and necessarily done in the exercise of their functions under the RSNL’ (NSW regulation 20(2)).

Communicating about testing

- Authorised persons should communicate with RSWs about testing, including the consequences of refusing or failing to be tested, and any non-negative or positive test results, in a respectful and non-adversarial way.
- In the case of a non-negative or positive test, the authorised person should:
 - explain the test result to the RSW
 - listen to the RSW's explanation
 - treat the RSW impartially
- Authorised persons should not engage with a RSW who threatens them or becomes violent towards them. If this happens, authorised persons should withdraw immediately and document what occurred.
- Hindering, obstructing or assaulting an authorised person are offences under the RSNL.

RSWs' rights and obligations

- RSWs have the right to be advised of:
 - the consequences of failure or refusal to undergo testing
 - the outcomes of testing

- RSWs should be informed of:
 - the requirement to disclose their use of prescription drugs
 - the availability of counselling, treatment and rehabilitation

Self-disclosure of medications in the workplace

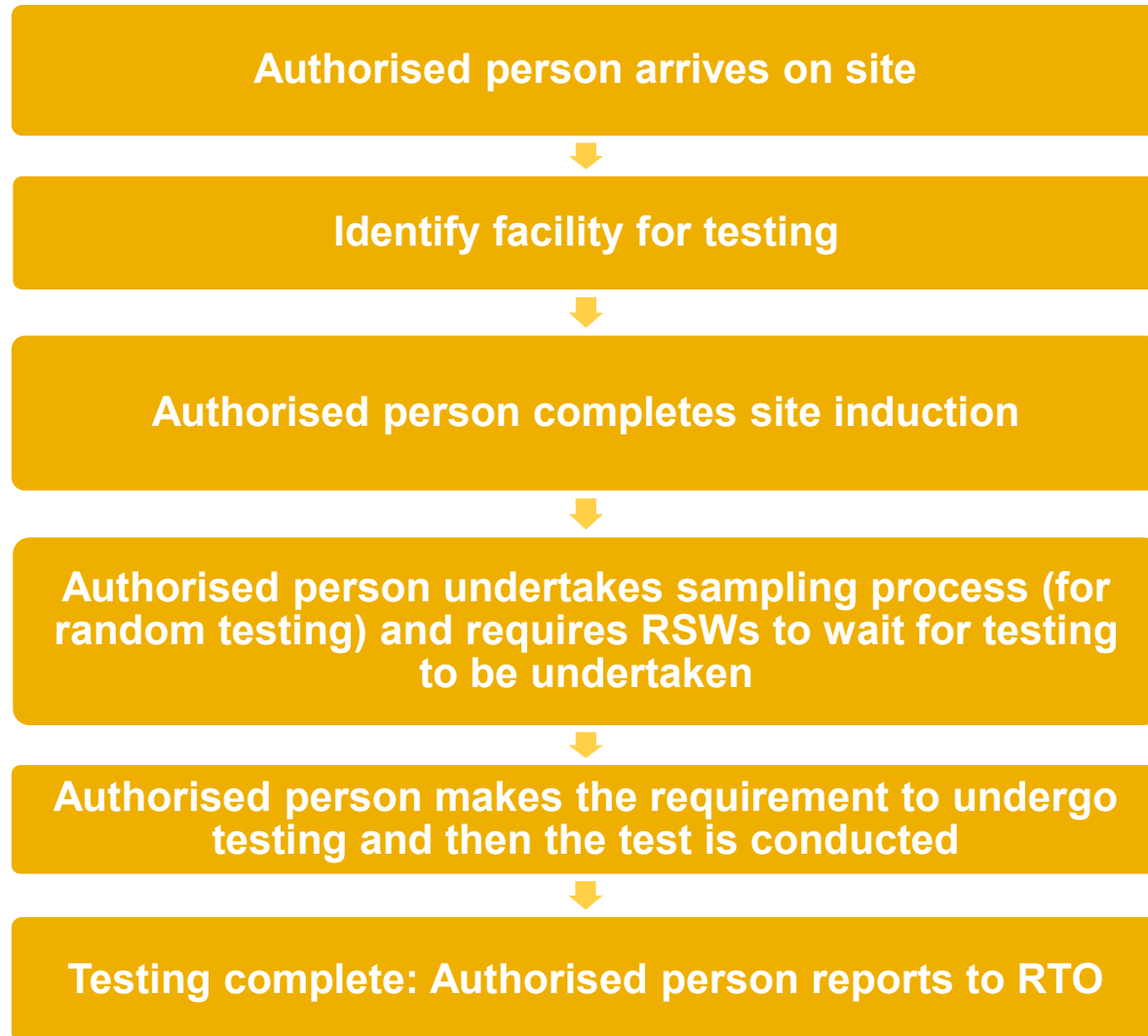
- RSWs should:
 - advise their manager/supervisor if they are taking prescribed or over-the-counter medication prior to commencing rail safety work or becoming affected while undertaking rail safety work
 - take advice on whether to cease rail safety work immediately

- Authorised persons should ask the RSW:
 - if they are taking prescription medication or over-the-counter medication
 - if they have informed their manager/supervisor
 - document and proceed with testing as planned

Authorised persons and third party testing providers: Who can do what?

- > The authorised person must make the requirement for testing in person, regardless of who collects the sample.
- > Samples may be collected by:
 - **Breath test:** authorised person or police officer
 - **Breath analysis:** authorised person who is a police officer
 - **Oral fluid sample collected on-site:** authorised person, or collecting agency under direction of an authorised person
 - **Urine sample collected on-site:** authorised person, or collecting agency under direction of an authorised person
 - **Blood or urine sample taken at a hospital after an accident:** medical practitioner or registered nurse required by an authorised person or police officer
 - **Urine screening:** on-site urine screening device operated by an authorised person or collecting agency, or screening by an analyst at an approved laboratory
 - **Blood/urine/oral fluid analysis:** analyst at an approved laboratory

Authorised persons: Testing process



Sample scripts provided at end of section.

Authorised persons: Breath testing

NSW regulation 11

Authorised person makes requirement to undergo testing and undertakes breath test



If non-negative result, make requirement to attend police station for breath analysis, and not ingest any food or liquid



Make assessment of whether to take RSW immediately to station, or continue to test, as BA must be done within 3 hours of the work to which the requirement to undergo testing relates



If there is a second authorised person, they may be able to continue testing other RSWs



The priority is to get the RSW to the station within the evidentiary timeframe of 3 hours

Sample scripts are provided at end of section.

Authorised persons: Urine testing

NSW regulation 18

- > The collection, transportation, laboratory testing and storage of urine samples must comply with AS/NZS 4308:2008.
- > Screening testing may be carried out by an authorised person or collecting agency using an on-site urine screening device, or by an analyst at an approved laboratory.
- > Confirmatory testing must be conducted at an approved laboratory.
- > Analysis of samples:
 - To determine presence of drug/s
 - RSW may, within 3 months, arrange for a portion of the sample to be analysed at their own expense at an approved laboratory

Note: An approved laboratory is a laboratory accredited by NATA for the purposes of AS/NZS 4308:2008.

Authorised persons: Oral fluid testing

NSW regulation 17

- > The collection, transportation, laboratory testing and storage of oral fluid samples must comply with AS/NZS 4760:2019, *Procedure for specimen collection and the detection and quantification of drugs in oral fluid*.
- > Screening testing may be carried out by an authorised person or collecting agency using an approved oral fluid testing device. (The Medvet Oral7 is the approved device used by ONRSR).
- > Confirmatory testing must be conducted at an approved laboratory.
- > Analysis of samples:
 - To determine presence of drug/s
 - RSW may, within 6 months, arrange for a portion of the sample to be analysed at their own expense by a medical practitioner or an approved laboratory
- **Note:** The approved laboratory used by ONRSR is the laboratory at Racing Analytical Services Ltd at Flemington, Victoria.

Authorised persons: Blood or urine samples taken at a hospital after an accident

NSW regulation 13

- If directed by an authorised person, a medical practitioner or registered nurse must take a blood or urine sample (not both) from a RSW admitted to hospital for treatment after being involved in an accident.
- The requirement for the RSW to provide the sample need not be made directly to the RSW but may be made through the medical practitioner or nurse.
- It is standard practice to take a blood sample.
- If a urine sample is taken, the authorised person is responsible for ensuring that the sample is dealt with in accordance with AS/NZS 4308:2008.

Authorised persons: Blood testing

NSW regulations 16, 23

- > If directed by an authorised person, an authorised sample taker at a hospital must:
 - place blood sample into container
 - fasten and seal container
 - mark or label container for future identification
 - provide RSW with identification certificate
 - hand sample over to authorised person/police officer asap

- > Authorised person/police officer must:
 - place sample in security box and lock the box
 - submit sample to approved laboratory for analysis by an analyst

Authorised persons: Blood testing

NSW regulations 16, 23 cont.

- > An authorised sample taker who refuses or fails to take a blood sample is guilty of an offence-unless taking a sample would be prejudicial to the RSW's proper care, it is precluded by the RSW's behaviour or there was other reasonable cause not to take the sample.
- > Analysis of samples:
 - To determine the concentration of alcohol or drugs in the blood
 - Approved laboratory – the NSW Health Pathology Forensic and Analytical Science Service at Lidcombe or North Ryde
 - RSW may, within 12 months, arrange for a portion of the sample to be analysed at their own expense by a medical practitioner or laboratory.

After a non-negative on-site breath or drug test result

- > Obtain full details and documentation of the test result.
- > Notify those who need to know within the organisation of the test result, in accordance with the DAMP.
- > Notify the RSW in a private and confidential manner.
- > Following a non-negative breath test, direct the RSW to attend breath analysis at a police station.
- > Following a breath analysis, provide RSW with a statement signed by the authorised person or police specifying the Breath Alcohol Concentration or Blood Alcohol Concentration (NSW reg. 11). The RSW may ask the authorised person or police for a blood test at their own expense.
- > Advise the RSW of the right to have any urine or oral fluid sample independently analysed at their own expense: urine samples within 3 months at a laboratory, oral fluid samples within 6 months by a medical practitioner or laboratory.
- > Arrange for the RSW to discuss their test result with the RTO, their manager and/or HR manager.
- > Maintain appropriate records of the test result and document details of the process followed. This documentation may later be used to prepare a formal statement.

RTO will notify ONRSR in accordance with the DAMP. The authorised person may be contacted in the event of an investigation into the test result.

Certificates of evidence

A certificate of evidence is given to certify:

- concentration of alcohol in breath or blood determined by breath analysis (NSW reg. 28)
 - *issued by police and given to authorised person*
- concentration of alcohol in blood determined by analysis of blood sample (NSW reg. 29)
 - *issued by laboratory and given to RTO*
- presence of drugs in blood, oral fluid or urine determined by analysis of blood, oral fluid or urine samples (NSW reg. 29)
 - *issued by laboratory and given to RTO*

Why is record keeping important for D&A testing?

- The RTO must be able to demonstrate it is complying with its DAMP.
- ONRSR requires positive tests and refusals or failures to undergo testing to be reported by the RTO under whose DAMP the testing is being undertaken.
- A clear “chain of custody” for oral fluid or urine samples tested in accordance with the Australian Standard is difficult to challenge legally.
- The records may be relied upon as part of a prosecution against a RSW for an offence under the *Rail Safety National Law*.

Additional record-keeping requirements for ‘for cause/on suspicion’ targeted testing

- There needs to be more than a hunch or hearsay before a RSW can be required to undergo “for cause/on suspicion” testing.
- The most common ways of forming a reasonable belief or a suspicion is through observations of behaviour that may indicate being under the influence, and from disclosures or allegations made.
- In recording testing results, the focus should be on recording how or why an authorised person formed a reasonable belief that a RSW was under the influence of alcohol or a drug, e.g., by their observations, and information provided by the informant.

Module 2 Part A: Summary of key points

- Authorised persons: Powers under the RSNL
- Authorised persons: Testing process (including making the requirement to undergo testing)
- Authorised persons: Breath testing
- After a non-negative on-site breath or drug test result

Module 2: NSW authorised person requirements - Part B - Sample scripts

- > Making the requirement to wait to undergo D&A testing
- > Making the requirement to undergo breath testing
- > Making the requirement to attend a police station for breath analysis
- > Making the requirement to remain at the police station for breath analysis
- > Making the requirement to undergo drug testing
- > Responding to refusal to undergo drug testing
- > Responding to refusal to undergo breath testing
- > Responding to refusal to attend a police station for breath analysis

Authorised persons: Sample scripts

- Failure to use the correct words may jeopardise the success of any future prosecution.
- The sample scripts provided on the following slides may be used when testing, or if a RSW refuses a test.
- Refer to your RTO's DAMP to identify procedures for testing, including procedures for refusal or failure to submit to testing, and documenting any refusals.

Script for requiring a RSW to wait to undergo D&A testing

- > *I am an authorised person authorised under the Rail Safety National Law to conduct D&A testing. Here is my ID card.*
- > *I require you to wait here for the purpose of undergoing D&A testing.*
- > *If you refuse, it is an offence under the Rail Safety National Law. Do you understand?*

Script for requiring a RSW to undergo breath testing

- > I require you to undergo a breath test in accordance with the Rail Safety National Law for the purpose of indicating the concentration of alcohol present in your breath or blood.*
- > I now direct you to provide a sample of breath.*
- > If you refuse, it is an offence under the Rail Safety National Law. Do you understand?*

Script for requiring a RSW with a non-negative breath test result to attend a police station for breath analysis

- > *You have undergone a breath test by an approved device and this indicates that there may be present in your blood the prescribed amount of alcohol.*
- > *I require you to accompany me to the police station to undergo breath analysis.*
- > *If you refuse, it is an offence under the Rail Safety National Law. Do you understand?*

Script for requiring a RSW with a non-negative breath test result to remain at a police station for breath analysis

- > *In accordance with the Rail Safety National Law, I direct you to remain at the police station until the breath analysis has been conducted and you have received a certificate of analysis.*
- > *If you refuse, it is an offence under the Rail Safety National Law. Do you understand?*

Note: The authorised person must show their ID card to the police, and request that they conduct the breath analysis under the *Rail Safety National Law*.

Script for requiring a RSW to undergo drug testing

- > *I require you to undergo a drug test which involves providing a sample of oral fluid/urine in accordance with the Rail Safety National Law.*
- > *I now direct you to provide a sample of oral fluid/urine.*
- > *If you refuse, it is an offence under the Rail Safety National Law. Do you understand?*

Script for when a RSW is refusing to undergo drug testing

- > *You have refused (or failed) to undergo a drug test in accordance with my directions.*
- > *Do you understand that it is an offence under the Rail Safety National Law, if you refuse (or fail) to comply with my direction, which can be subject to prosecution?*
- > *If a drug test is not undertaken, as directed, I will be reporting the refusal (or failure) to comply to management, and you may also be subject to disciplinary action.*
- > *Do you understand?*
- > *I again direct you to provide a sample of oral fluid/urine.*

Script for when a RSW is refusing to undergo breath testing

- > *You have refused (or failed) to undergo a breath test by an approved device in accordance with my directions.*
- > *Do you understand that it is an offence under the Rail Safety National Law if you refuse (or fail) to comply with my direction, which can be subject to prosecution?*
- > *If a breath test is not undertaken, as directed, I will be reporting the refusal (or failure) to comply to management, and you may also be subject to disciplinary action.*
- > *Do you understand?*
- > *I again direct you to provide a sample of breath.*

Script for when a RSW is refusing to attend a police station for breath analysis

- > *It is an offence under the Rail Safety National Law to refuse to comply with a direction from an authorised person for the purposes of breath testing and you could be fined as a consequence.*
- > *Do you understand?*
- > *I again direct you to attend a police station with me for the purpose of submitting to a breath analysis.*

Module 2 Part B: Summary of key points

- > Failure to use the correct words may jeopardise the success of any future prosecution.
- > Refer to your RTO's DAMP to identify procedures for testing, including procedures for refusal or failure to submit to testing, and documenting any refusals.

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)