

ONRSR Fact Sheet

FAQs: NSW Drug and Alcohol Testing Authorised Persons

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1. Who appoints drug and alcohol testing authorised persons?

Rail transport operators (operators) and third party service 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 operators and third party service providers to provide training to new authorised persons before they commence any testing work.

Authorised persons must have completed training including the model training material published on ONRSR's website. They must also have appropriate qualifications and experience.

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 operators or third party service providers. Operators need to ensure that they clearly document the arrangements for testing their rail safety workers.

2. What qualifications and experience does a drug and alcohol testing authorised person need?

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

3. What are the different approaches to 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 undertaken by operators in NSW are breath (for alcohol) and oral fluid or urine (for drugs).

Alcohol breath testing is carried out using a device that complies with the Australian Standard AS 3547:2019, *Breath alcohol testing devices*, or is of a type approved by the Governor by order published in the NSW Government 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 testing, making sure the process meets the applicable Australian standards, such as Australian Standard/New Zealand Standard AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*, or Australian Standard/New Zealand Standard AS/NZS 4760:2019, *Procedure for specimen collection and the detection and quantification of drugs in oral fluid*.

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

4. Can an authorised person carry out oral fluid testing?

Authorised persons may conduct oral fluid testing if they have been issued with an instrument of appointment that does not prohibit oral fluid testing, and they have been trained in AS/NZS 4760:2019, *Procedure for specimen collection and the detection and quantification of drugs in oral fluid*, where appropriate.

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

An operator's DAMP should address how rail safety workers will be informed and educated about the DAMP. This should take place before any testing starts and include a description of rights, responsibilities and testing requirements.

Only authorised persons may require a rail safety worker to submit to testing. The authorised person must produce their identity card to the rail safety worker undergoing testing.

Generally, in random testing, no warning is given to the rail safety worker. However, the rail safety worker 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 operator'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 they may be committing an offence and could be subject to disciplinary action or prosecution.

6. Can I test non-rail safety workers?

Yes, provided this is covered in the operator's DAMP. Operators are not required to report the results of this testing to ONRSR. Testing of non-rail safety workers does not count towards the annual requirement to randomly test at least 25% of rail safety workers, or mandatory post-incident testing following a NSW prescribed incident.

7. Can I let a person have a drink before I direct them to undergo a urine test if they have just been to the toilet?

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, rail safety workers in the workplace will likely be aware of your activities. Maintaining confidentiality is important, particularly as a rail safety worker 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. An operator'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 rail safety workers are tested. These things should be set out in the operator'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 operator'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 or oral fluid 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 an operator needs to test per year, noting the requirement to test not less than 25% of an organisation's rail safety workers each 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 there has been a breach of the operator'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, repetitious, 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 does an authorised person need to do 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 the operator'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 rail safety worker in a private and confidential manner
- > arranging for the rail safety worker to discuss their test result with the operator, their manager and/or their HR manager
- > completing the reporting and documentation responsibilities under the DAMP
- > ONRSR's notification requirements.

13. What personal safety issues may arise? e.g. infection control or dealing with aggression or violence?

Third party service providers have procedures to manage and prevent issues like infection control and contamination of test results in accordance with applicable Australian standards such as:

- > Australian Standard/New Zealand Standard, AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*, or
- > Australian Standard/New Zealand Standard AS/NZS 4760:2019, *Procedure for specimen collection and the detection and quantification of drugs in oral fluid*.

An operator is responsible for ensuring any third party service providers contracted to undertake this work have appropriately qualified collectors and the services are performed safely.

An operator'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 legislative and the operator'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 the operator's incident forms.

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

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.

The operator'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 checking 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;

- (l) any other work that is prescribed by the national regulations to be rail safety work.

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