

# Drug and Alcohol: Requirements for Rail Transport Operators (NSW Only)

October, 2022

**Railway operations in New South Wales are subject to additional requirements for drug and alcohol testing.**

## Background

Rail transport operators accredited for operations in NSW are subject to specific requirements for drug and alcohol testing under the *Rail Safety National Law* (RSNL), which include:

- > Annual random testing of at least 25% of rail safety workers (commercial operators only)
- > Mandatory post-incident testing following a NSW prescribed incident
- > Additional reporting of certain events

These requirements are specified under regulation 28(2) of the RSNL *National Regulations 2012* and apply in addition to the national requirements for a drug and alcohol management program (DAMP), and testing by the Office of the National Rail Safety Regulator (ONRSR).

The NSW *Rail Safety (Adoption of National Law) Regulation 2018* details further NSW-specific requirements.

The purpose of this fact sheet is to provide guidance to rail transport operators accredited for railway operations in NSW.

## Risk-based testing

As is the case nationally, operators in NSW must determine what level of testing and type of testing is appropriate for their particular operating conditions, and the risks of the tasks undertaken by their rail safety workers.

In NSW, testing must include at least 25% of rail safety workers. The level and type of testing should be consistent with the DAMP and demonstrate that the operator is mitigating their risks to safety effectively. Compliance with the requirements of regulation 28(2), without a risk-based justification, would not meet the requirements of the RSNL or regulations.

## Type of testing

To comply with requirements for post-incident testing and to test a minimum of 25% of rail safety workers, NSW operators must use breath or urine testing. Oral fluid or blood testing may be used however it does not form part of the 25% or the requirements for post-incident testing.

## NSW prescribed incidents

These are specified under regulation 28(7) for operations within NSW and include:

- > 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

Within 3 hours of a prescribed incident, the rail transport operator must undertake drug and alcohol testing of any rail safety worker suspected of being involved, unless there is a reasonable excuse not to.

Supporting systems and procedures for responding to these incidents must also form part of the DAMP (regulation 28(1)(d)).

## Heritage railways

Operators in NSW that are recognised as tourist and heritage operators by ONRSR must also have a DAMP and must conduct post-incident testing for NSW prescribed incidents.

However, the requirement to test at least 25% of rail safety workers does not apply. It is up to the heritage operator to assess and control risk as part of their safety management system, and the level of testing should be consistent with this.

## Authorisation to undertake testing

Drug and alcohol testing in NSW (random, targeted and post-incident testing) must be carried out by an authorised person, appointed under section 124 of the RSNL.

Authorised persons are appointed by rail transport operators or third party service providers who have been sub-delegated the power from ONRSR (refer to the Nomination of NSW Drug and Alcohol Sub-Delegated Position form). These are referred to as 'sub-delegates'.

Once a person is appointed as an authorised person, they may conduct drug and alcohol testing for other rail transport operators or third parties. As such, not all rail transport operators need to have a sub-delegate.

Authorised persons must carry their identity card and produce it upon request when conducting testing.

An authorised person may at any time require a rail safety worker to submit to drug and alcohol testing. In NSW, however, if testing is undertaken pre-sign on then the test results will not be subject to prosecution (section 6 of the Rail Safety (Adoption of National Law) Regulation 2018).

Penalties may apply to a worker who refuses to undergo testing or interferes/ tampers with a sample taken by an authorised person, regardless of whether the test was pre-sign on or not.

## Appointment of authorised persons

In appointing authorised persons, the sub-delegate must be satisfied that each appointee:

- > has successfully completed training based on the model drug and alcohol testing training course published on the ONRSR website
- > is competent in the use of breath testing devices that comply with the requirements of AS 3547, Breath alcohol testing devices, or of a type approved by Gazette for the purposes of the Road Transport Act 2013
- > if the organisation does not use a collecting agency, the person has knowledge of AS/NZS 4308:2008, Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine, including knowledge of the operator's procedures that comply with this standard.

There is a template Instrument of Appointment of Authorised Persons as Drug and Alcohol Testing Persons by Sub-Delegate on ONRSR's website.

Identity cards issued by ONRSR remain valid until they expire, or if a person ceases to be authorised. These cards must be returned to ONRSR upon expiration using the form for reporting lost or stolen, damaged or illegible or revoked cards (refer to the Drug and Alcohol Identity Card Notification (NSW) form).

Cards that are produced by rail transport operators or third party providers are returned to the operator or third party provider when they expire, or when an individual ceases to be an authorised person.

Rail transport operators 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.

Rail transport operators 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.

### Testing by ONRSR

ONRSR also undertakes programmed and post-incident drug and alcohol testing of rail safety workers.

Testers are also authorised persons and have been contracted through AusHealth Work. All AusHealth Work testers carry ONRSR-issued identity cards.

ONRSR may also test rail safety workers following a NSW prescribed incident, in addition to operator testing, and will advise the operator if this testing will be undertaken.

### Multi-jurisdictional operators

The requirements to have a DAMP and to comply with ONRSR testing apply nationally.

For operations in NSW, testing must be required by an authorised person and must comply with regulation 28(2), except for oral fluid testing.

In all other jurisdictions, operator testing is not undertaken by an authorised person and must be in accordance with the operator's DAMP.

### Penalties for non-compliance

In addition to penalties under the RSNL, rail safety workers in NSW may also face penalties for non-compliance under the Rail Safety (Adoption of National Law) Regulation 2018 of up to \$3,300 or 9 months imprisonment (Part 2, Division 3).

### Drug and alcohol testing reporting

Nationally, all operators are required to report details of drug and alcohol testing and results as part of their monthly returns. Refer to the Monthly Activity Reporting Guideline on ONRSR's website.

Operators in NSW must also report the following under regulation 28(2)(b):

- > Any positive breath tests, or breath analysis or blood analysis or drug tests confirming the presence of any amount of drugs or alcohol
- > Failure of a rail safety worker to undergo a test (refusal)
- > Test tampering or interference.

An indication of tampering (regulation 28(2)(b)) may be an abnormal urine test result, such as:

- > Low creatinine levels, which may indicate dilution in some individuals
- > Abnormal temperature readings
- > Low urea levels
- > Lack of odour

All the events prescribed by regulation 28(2)(b) must be reported using the *NSW drug and alcohol testing incident notification form*. The form should be submitted via the ONRSR portal and is required within 7 days, or before any other date or period specified by the Regulator.

If testing was undertaken following a notifiable occurrence ('post-incident'), the occurrence report must include:

- > 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 drug and alcohol testing incident notification form* isn't required.

## Further information

Further information is available on ONRSR's website, including the following documents:

- > *ONRSR's Drug and Alcohol Testing policy*
- > *Drug and Alcohol: ONRSR's Testing Program fact sheet*
- > *Drug and Alcohol Testing undertaken in NSW Notification Form*
- > *Nomination of NSW Drug and Alcohol Sub-Delegated Position form*
- > *Instrument of Appointment of Authorised Persons as Drug and Alcohol Testing Persons by Sub-Delegate template*
- > *Drug and Alcohol Authorised Persons ID Card Photo Guide*
- > *Drug & Alcohol: NSW Authorised Person Appointment Process and issue of identity cards fact sheet*
- > *Drug and Alcohol Identity Card Notification (NSW) form*

The ONRSR Portal is accessible via the ONRSR Portal link on the ONRSR homepage

Contact ONRSR via [contact@onrsr.com.au](mailto:contact@onrsr.com.au) or phone (08) 8406 1500 (South Australia)