

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

January, 2025

**Rail transport operators carrying out railway operations in New South Wales are subject to additional requirements for drug and alcohol testing.**

## Background

Rail transport operators (operators) accredited for operations in NSW are subject to additional 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 relating to the process and standards that apply to drug and alcohol testing.

## Risk-based testing

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

The testing must be consistent with the operator's DAMP. Each operator must demonstrate that it is mitigating its risks to safety effectively.

In NSW, random testing must include at least 25% of rail safety workers each year. Compliance with the random testing requirements alone, without a risk-based justification, would not meet the requirements of the RSNL or regulations.

## Type of testing

To comply with random testing requirements, NSW operators must require rail safety workers to undergo a preliminary breath test, breath analysis or testing for the presence of a drug, and to comply with post-incident testing requirements, workers must undergo breath and drug testing. Operators can use different types of drug testing, including oral fluid testing.

## NSW prescribed incidents

An operator must require a rail safety worker who is involved in a prescribed incident to undergo drug and alcohol testing.

Prescribed incidents in NSW include:

- > a collision between rolling stock
- > a collision between rolling stock and a person
- > a collision between rolling stock and 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 operator must undertake drug and alcohol testing of any rail safety worker unless there is a reasonable excuse not to.

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

### Heritage railways

Tourist and heritage operators in NSW must have a DAMP and must conduct post-incident testing for NSW prescribed incidents.

However, the requirement for operators to test at least 25% of rail safety workers each year does not apply. It is up to the heritage operator to assess and control risk as part of their DAMP and safety management system. The level and method of testing, including random and targeted testing, should be determined based on the operator's level of risk.

### Authorisation to undertake testing

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

Operators and third party service providers may request ONRSR to sub-delegate the authority to appoint an authorised person to conduct drug and alcohol testing. These people are referred to as 'sub-delegates'.

Once a person is appointed as an authorised person by a sub-delegate, they may conduct drug and alcohol testing in NSW. Not all operators need to have a sub-delegate. Operators may enter commercial or other arrangements for another organisation's authorised persons to test their rail safety workers.

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, 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 rail safety worker who refuses to undergo testing, or interferes or 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 3547:2019, *Breath alcohol testing devices*, or are 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)
- > if the operator does not use a third party service provider, the person has knowledge of applicable Australian standards for collecting and testing samples, such as AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*, or AS/NZS 4760:2019, *Procedure for specimen collection and the detection and quantification of drugs in oral fluid*, including knowledge of the operator's procedures that comply with these standards.

Authorised persons should be employees of the organisation appointing them. 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 should be returned to the operator or third party service provider when they expire, or when an individual ceases to be an authorised person.

Operators and third party service 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.

Operators are to include this information as part of their annual safety performance report, which can be provided via the ONRSR portal. Third party service providers are to prepare an annual statement and email it to ONRSR at

[DrugandAlcohol@onrsr.com.au](mailto:DrugandAlcohol@onrsr.com.au)

### Testing by ONRSR

ONRSR engages a third party service provider to undertake programmed and post-incident drug and alcohol testing of rail safety workers. Programmed testing includes intelligence-led risk-based testing and random testing.

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).

In all other jurisdictions, operator testing is not required to be undertaken by an authorised person but 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*.

If an operator's DAMP does not comply with the requirements of the RSNL and regulations a maximum court-imposed penalty of \$500,000 may apply.

### 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. For further information 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 *Drug and Alcohol Testing Undertaken in NSW 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 *Drug and Alcohol Testing Undertaken in NSW Notification Form* is not 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*

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).