

Drug and alcohol: Requirements for Rail Transport Operators

July 2022

To ensure the safety of workers and the general public, rail transport operators carry legal responsibilities for minimising and reporting the risks of drugs and alcohol on their railway operations.

Background

Under the [Rail Safety National Law](#) (RSNL), a rail safety worker 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 (section 128).

To manage this and reduce the risks to workers and the general public, rail transport operators are required to have a Drug and Alcohol Management Program (DAMP) in place, which includes drug and alcohol testing of their workers.

Rail transport operators are also required to:

- > Immediately report Category A notifiable occurrences and conduct mandatory drug and alcohol testing for specified category A occurrences, where ONRSR or the police have not tested
- > Provide monthly drug and alcohol testing information to ONRSR

The purpose of this fact sheet is to provide guidance to rail transport operators on these requirements.

Drug and Alcohol Management Program

The requirements for the DAMP are set out in the RSNL National Regulations 2012 (regulation 28) and include:

- > a drug and alcohol policy
- > systems and procedures for the provision of information and education to rail safety workers in relation to the DAMP
- > systems and procedures to ensure the confidentiality of rail safety workers' personal information in relation to drug or alcohol testing, counselling, treatment or rehabilitation

- > details of the drug and alcohol testing regime, including testing procedures
- > systems and procedures to respond to prescribed incidents
- > measures to be taken by (or on behalf of) the rail transport operator regarding the establishment of rules relating to the use of drugs and alcohol by rail safety workers (including prohibitions and restrictions on use)
- > the identification of rail safety workers who have drug or alcohol related problems and, where appropriate, referral of those workers to assessment, treatment, counselling or rehabilitation
- > the obligations of rail safety workers

Rail transport operators must ensure that rail safety workers are aware of their obligations and responsibilities under the DAMP, such as the requirement to advise the operator if they are concerned that a co-worker is impaired by drugs or alcohol.

The DAMP must be regularly reviewed and the outcomes of the review documented.

How each operator complies with the requirements, including for testing workers, may differ depending on the scope and nature of their operations. An example of this is provided in the ONRSR Drugs and Alcohol: Example of Scalability in the Drug and Alcohol Management Plan fact sheet.

Testing workers for drugs and alcohol

The level and type of drug and alcohol testing that an operator undertakes must be risk-based, as part of their DAMP (note that in NSW there is a required minimum level of testing.)

Many operators test between 25% and 100% of their rail safety workers. ONRSR encourages operators to include random drug and alcohol testing in their programs, as it is agreed by experts to be a significant deterrence.

Every month ONRSR reviews all reports of drug and alcohol testing from operators and, if any concerns are raised, undertakes additional regulatory activities to address these.

Post-incident testing

An operator's DAMP should include post-incident testing arrangements, including provision for mandatory post-incident testing in response to the following Category A notifiable occurrences:

- > Collision (excluding attempted or suspected self-harm incidents)
- > Derailment
- > Proceed Authority Exceeded
- > Runaway
- > Network Rule or Procedure Breach
- > Person / Train Interface.

Category A notifiable occurrences must be verbally reported to ONRSR immediately by calling **1800 430 888**.

ONRSR will endeavour to undertake testing of rail safety workers involved in the incident, but if we cannot and the Police also do not, then the operator is required to undertake this testing, unless:

- > they have been notified by ONRSR that drug and alcohol testing is not required, or
- > they have a reasonable excuse for not doing so.

ONRSR will communicate with the operator to confirm as soon as possible if ONRSR is testing, or if the operator is required to undertake the testing.

Where the operator conducts a drug and alcohol test which requires further analysis, the result of the confirmatory test is to be provided to ONRSR within 7 days of the test being undertaken. Whilst prescribed incident requirements are unchanged in NSW and the above requirements do not apply in Western Australia, ONRSR will continue to undertake post-incident testing following Category A occurrences in these jurisdictions

Written notifiable occurrence reports

Written Category A occurrence reports must be submitted to ONRSR 72 hours after the occurrence.

Drug and alcohol test results for Category A occurrences must be included in the written report. If ONRSR has tested then these results do not have to be reported.

Category A reports must also include the results of any post-incident testing undertaken by the operator or police.

Monthly reporting

Rail transport operators are required to provide information on the drug and alcohol testing undertaken as part of their DAMP, as part of their monthly return (regulation 56). This includes:

- > the number of tests conducted (reported separately for pre and post-sign on)
- > the type of tests conducted
- > the class of rail safety work undertaken by the rail safety workers who were tested
- > the employment type of worker tested to capture worker is a contractor or employee
- > failure of a worker to submit to a test
- > tampering or interference of a sample

The operator is responsible for determining if the worker was in breach of its DAMP. This would include a positive test result for any drug that is not permitted by the operator.

Certain over-the-counter or prescription drugs may be permitted by the DAMP, so the detection of these would not constitute a breach where use was consistent with the DAMP.

Monthly returns are due each month by the 21st of the following month and should be submitted via the ONRSR Portal.

Additional guidance on reporting

Who is responsible for reporting the drug and alcohol test?

The operator under whose DAMP the testing is being undertaken.

For testing following a prescribed incident:

- > If the police have tested, the operator is required to report this.
- > If ONRSR has undertaken testing, the operator does not have to provide information on this.

Class of rail safety worker – what is the meaning of ‘other’?

‘Other’ means rail safety workers whose roles are not listed. This does NOT include people who are not rail safety workers.

Should an operator report a drug test that returns a positive result?

Yes, if a confirmatory drug test result was a breach of the operator’s DAMP.

Should results be reported of initial on-site drug tests, confirmatory laboratory tests or both?

The operator must only report confirmatory laboratory drug test results where there was a breach of the DAMP.

Penalties

Rail transport operators face up to \$500,000 for failing to meet drug and alcohol management requirements under section 115 of the RSNL.

There is a penalty of up to \$20,000 for an individual, or up to \$100,000 for a body corporate who fails to comply with the requirement to immediately report and conduct drug and alcohol testing following prescribed incidents (unless ONRSR or police have tested).

Rail safety workers are subject to the requirements of the operator’s DAMP. This may be their direct employer or through a contract arrangement. The disciplinary actions and penalties for breaching the requirements are determined by the operator as part of the DAMP.

Rail safety workers also have an overall duty to take reasonable care of their own and others’ safety and to follow the instructions of the rail transport operator, including for drug and alcohol management. The maximum penalty for an individual rail safety worker who fails to comply

with a safety duty range from \$50,000 to \$300,000, or 5 years imprisonment (or both).

Further information

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

- > ONRSR’s Drug and Alcohol Testing policy
- > Drugs and Alcohol: Example of Scalability in the Drug and Alcohol Management Plan fact sheet
- > Drugs and Alcohol: ONRSR’s Testing Program fact sheet
- > Duties of Rail Safety Workers fact sheet
- > NSW operators should refer to the Drug and Alcohol: Requirements for Rail Transport Operators (NSW Only) fact sheet.
- > Refer to ONRSR’s Reporting Requirements for Notifiable Occurrences for descriptions of the occurrences.

- > Contact ONRSR via contact@onrsr.com.au or phone (08) 8406 1500 (South Australia)