

# ONRSR Policy

## Drug and Alcohol Testing

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### Policy changes to version 1.2

- > Section 5.2 updated with introduction of mandated drug and alcohol testing.
- > Document updated in line with the National Data Strategy Category A notifiable occurrences.

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## 1 Purpose

The purpose of this policy is to ensure an appropriate level of transparency with regard to drug and alcohol testing of rail safety workers by the Office of the National Rail Safety Regulator (ONRSR) in accordance with the *Rail Safety National Law (RSNL)*.

## 2 Background

ONRSR has been established under the RSNL to administer a national system of rail safety regulation, including the effective management of rail safety risks through a national scheme for accreditation of rail transport operators in relation to rail operations. The Regulator has established a drug and alcohol testing program under the RSNL. This program is intended to complement rail transport operator and police testing.

There are three primary objectives for the ONRSR drug and alcohol testing program:

- > to improve safety by reducing risks associated with rail safety workers undertaking work while under the influence of drugs and/or alcohol (i.e. by being a deterrent)
- > to monitor compliance with the law
- > to monitor the effectiveness of rail transport operators' drug and alcohol management programs (DAMPs).

In delivering on the above objectives, ONRSR's testing is inherently different to testing undertaken by rail transport operators. ONRSR's focus is on deterrence and compliance with the law, with the ability to prosecute where there has been a breach. Except in NSW, operator testing cannot be used by ONRSR for prosecution purposes.

The drug and alcohol testing program consists of post-incident testing of rail safety workers (in response to Category A notifiable occurrences, and programmed ('non-incident related') testing of rail safety workers.

ONRSR conducts breath and oral fluid (saliva) testing for the presence of alcohol and drugs respectively. The RSNL also includes provision for blood testing and urine testing in some circumstances.

Implementation of ONRSR's drug and alcohol testing program does not remove the obligation for rail transport operators to prepare and implement their own DAMPs.

## 3 Scope

This policy sets out and defines ONRSR's approach to conducting drug and alcohol testing of rail safety workers.

This policy applies to ONRSR and its officers, including those staff operating under service level agreements or any other such agreements or arrangements that require persons to act as an agent of ONRSR.

The document is intended to be read in conjunction with the legislation and other relevant ONRSR policies. The policy itself imposes no legal duty and where actions or requirements are described as mandatory, these reflect requirements in the RSNL or National Regulations. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between this policy and the legislation, the legislation will prevail.

## 4 Definitions

Definitions provided by the RSNL and the National Regulations apply within this policy.

- > **RSNL** – means the *Rail Safety National Law*, which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)* as it applies in each state and territory. In Western Australia, 'RSNL' means the Rail Safety National Law which has been enacted as mirror legislation in the *Rail Safety National Law (WA) Act 2015*.
- > **National Regulations** – means the *Rail Safety National Law National Regulations 2012*; or the *Rail Safety National Law (WA) Regulations 2015* in Western Australia.

Where terms are not defined within the legislation or regulations, the Macquarie Dictionary definition applies.

Use of the word 'should' indicates a recommendation of ONRSR. Use of the word 'must' indicates a legal requirement where compliance is necessary.

## 5 Drug and alcohol testing program framework

The 'D&A testing program' refers to post-incident and programmed testing (intelligence-led risk-based testing, and random testing).

ONRSR provides the framework for the delivery of the D&A testing program by a contractor. The framework specifies:

- > contractor procedures for post-incident and programmed testing
- > programmed testing requirements, including:
  - number of tests to be undertaken
  - type of testing to be undertaken
  - type of rail safety worker to be tested
  - sites where testing will be undertaken
  - time of day when testing will be undertaken
- > contractor reporting requirements.

Neither the intelligence-led risk-based testing nor the random testing will target a specific rail safety worker (i.e. testing may target a type of rail safety work, but not an individual personally).

### 5.1 Status of the authorised persons

The contractor's testers are appointed as ONRSR authorised persons (under section 124 of the RSNL) to undertake D&A testing on ONRSR's behalf. The authorised persons will hold an identification card that states their name and appointment as an authorised person. The authorised persons will not be appointed as rail safety officers.

### 5.2 Post-incident testing

The D&A testing program includes post-incident testing in response to Category A notifiable occurrences

Category A notifiable occurrences that require mandatory testing are specified in the national regulation 28(1b) and carries specific requirements. When an occurrence occurs, the rail transport operator must:

- > immediately report Category A notifiable occurrences to ONRSR

- > conduct drug and alcohol testing following specific Category A notifiable occurrences, unless ONRSR or Police have tested, or there is a reasonable excuse for not doing so.

Rail transport operators also have a duty to do all that is reasonably necessary to facilitate testing by ONRSR (section 127A).

ONRSR authorised persons will not attend on-site if police are attending an incident where it is understood that police will test for both alcohol and drugs. The ONRSR authorised person will attend on-site if it is unlikely that the police will test for both alcohol and drugs (i.e. if it is probable that police will test for alcohol only, the authorised person may attend to undertake drug testing). The authorised person may also be required to test other rail safety workers not at the incident site, e.g. train controllers.

While ONRSR will endeavour to test within the relevant evidentiary timeframe, for some incidents this will not be possible. ONRSR will communicate with the rail transport operator to confirm as soon as possible if ONRSR is testing, or if the operator is required to undertake the testing.

As far as possible, it is intended that the program does not expose rail safety workers to double post-incident testing, however this may arise where the rail transport operator tests and ONRSR also tests.

### **5.3 Programmed testing**

The intelligence-led risk-based testing component of the program enables targeted testing to be undertaken where intelligence questions if full compliance is occurring.

The following inputs inform this component of the D&A testing program:

- > rail safety intelligence, including size and scale of operations, current levels of D&A testing
- > audit and inspection findings
- > monthly reports
- > investigation findings
- > confidential reporting.

In terms of reviewing and analysing this data, consideration is also given to the following:

- > the consequential risk of different types of rail safety work
- > the potential for the D&A testing program to be an effective deterrent for different rail safety worker demographic groups.

The ONRSR's testing framework will form the basis for the contractor's work-plan. However, the testing framework will retain sufficient flexibility to allow for modification where required. The random testing component of the program enables verification testing to be undertaken to identify consistency (or anomalies) in rail transport operators' testing results and to monitor the effectiveness of rail transport operators' DAMPs.

For the purposes of the D&A testing program, 'random testing' does not refer to a recognised statistical sampling method, but simply means it is not post-incident nor intelligence-led risk-based testing. For example, random testing may comprise testing undertaken for a particular type of rail safety work across industry and across jurisdictions, (eg. train drivers or traffic controllers), and thus may be more closely aligned to 'stratified' sampling.

## 5.4 Prosecution

Where a positive drug and/or alcohol test result is received, each case is reviewed to determine if a full investigation should be undertaken. Following any investigation, each case is assessed on its merits and the Regulator will determine whether prosecution action will be taken or not.

## 6 Relevant legislation

Division 9 of the RSNL contains provisions which enable ONRSR to undertake testing of rail safety workers. The RSNL also includes provision for the Regulator to appoint authorised persons to undertake this testing on behalf of ONRSR (section 124).

The offences relating to the prescribed concentration of alcohol or prescribed drug are contained in section 128 of the RSNL. Evidence provisions in relation to D&A testing for a particular jurisdiction are prescribed in the Application Act for that jurisdiction (rather than the RSNL).

Rail transport operators have a duty to do all that is reasonably necessary to facilitate testing by ONRSR (section 127A).

The requirements for an operator's DAMP are set out in the RSNL National Regulations 2012 (regulation 28). Category A notifiable occurrences that require mandatory drug and alcohol testing are specified in regulation 28 (1b).

Nothing in the above sections of the RSNL removes the obligation for a rail transport operator to prepare and implement its own DAMP as described in section 115.