

Policy

Drug and Alcohol testing

Document reference number: A373045

Version No.	Approved by	Publication date
1.0	Executive Director - Policy, Communications and Planning	20 August 2013
1.1	Format review	July 2016

Policy changes to version 1.1

- > minor formatting changes

Copyright information

© Office of the National Rail Safety Regulator 2016

This material may be reproduced in whole or in part, provided the meaning is unchanged and the source is acknowledged.

Level 1, 75 Hindmarsh Square, ADELAIDE SA 5000

PO Box 3461, Rundle Mall, ADELAIDE SA 5000

Phone: 08 8406 1500

Fax: 08 8406 1501

E: contact@onrsr.com.au

W: www.onrsr.com.au

Table of contents

1. Purpose.....	4
2. Background	4
3. Scope	4
4. Definitions	4
5. Legislative framework	5
6. Drug and alcohol testing program framework.....	5
6.1 Status of the contractor.....	5
6.2 Post-incident testing	5
6.3 Programmed testing	6
6.4 Prosecution.....	6

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

The 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 the power under the RSNL to establish a drug and alcohol (D&A) testing program.

In May 2012, the Standing Council on Transport and Infrastructure (SCOTI) agreed to allocate funding to the ONRSR for delivery of the D&A testing program. This program is intended to complement rail transport operator and police testing.

The D&A testing program consists of post-incident testing of rail safety workers in response to Category A incidents, and programmed ('non-incident related') testing of rail safety workers.

There are three primary objectives for the ONRSR D&A 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; and
- > to monitor the effectiveness of rail transport operators' drug and alcohol management programs (DAMP).

Implementation of the ONRSR's D&A 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 the ONRSR's approach to conducting drug and alcohol testing of rail safety workers.

This policy applies to the 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 the 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 the ONRSR. Use of the word 'must' indicates a legal requirement where compliance is necessary.

5. Legislative framework

Division 9 of the RSNL contains provisions which enable the ONRSR to undertake drug and alcohol testing of rail safety workers. The RSNL also includes provision for the Regulator to appoint authorised persons to undertake this testing on behalf of the 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 drug and alcohol testing for a particular jurisdiction are prescribed in the Application Act for that jurisdiction (rather than the RSNL).

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.

6. 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).

The ONRSR will provide the framework for the delivery of the D&A testing program by a contractor. The framework for the D&A testing program for the contractor will specify:

- > contractor procedures for post-incident and programmed testing
- > programmed test 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

Based on information provided to SCOTI in May 2012, post-incident testing will account for a significant portion of the D&A testing program. An effective balance is required between the other two programmed components of the D&A testing program identified above. The focus will be on those areas identified as 'high risk', while maintaining coverage for the 'verification' function.

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).

6.1 Status of the contractor

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

6.2 Post-incident testing

The D&A testing program includes post-incident testing in response to Category A incidents.

The contractor 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 contractor 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 contractor will attend to undertake drug testing). The contractor may also be required to test other rail safety workers not at the incident site, e.g. train controllers.

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

6.3 Programmed testing

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

The following inputs will 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 will also be 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 as part of monthly reviews, as information is reported via the above channels.

The random testing component of the program will enable 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.

6.4 Prosecution

Where a positive drug and / or alcohol test result is received, each case will be reviewed to determine if a full investigation should be undertaken. Following any investigation, each case will be assessed individually by the Executive Director, National Operations and the Executive Director, Technical in consultation with Corporate Counsel. The Executive Director, National Operations and the Executive Director, Technical will then provide the Regulator with a recommendation.

The Regulator will determine whether prosecution action will be taken or not.