

Scoping Paper: Review the legislative framework for drug and alcohol management

Purpose

This attachment sets out the objectives and scope for the Office of the National Rail Safety Regulator (ONRSR) review of the legislative framework for drug and alcohol (D&A) management with a view to achieving nationally consistent legislation.

Background

During the development of the Rail Safety National Law (RSNL), the then Australian Transport Council (ATC) commissioned an Independent Expert Panel on Some Rail Safety Policy Issues (Expert Panel) to investigate and make recommendations in relation to the unresolved policy issues relating to D&A and fatigue management.

The Standing Council of Transport and Infrastructure (SCOTI) considered the Expert Panel's report in relation to D&A management at its meeting in May 2011 and agreed to the recommendations, subject to resolution of the following outstanding D&A issues:

- The National Regulator being required to have a drug and alcohol testing program funded by industry
- Rail operators being required to undertake specified post incident testing, by direction of the regulator

Subsequently, at the meeting in May 2012, SCOTI agreed to the funding arrangements for the National Rail Safety Regulator's D&A testing program. SCOTI also agreed that NSW could continue with its existing requirements for rail operator testing, subject to a review within three years from the commencement of the ONRSR, as per the following minute:

NOTED that the national regulations will allow NSW to continue to require rail operators in NSW to undertake random or targeted urine testing for drugs consistent with existing arrangements, and AGREED to a further review by the Regulator within three years from commencement date of the National Regulator.

In May 2014, the Transport and Infrastructure Council (Ministerial Council) agreed to consider the review recommendations in 2017 (instead of 2016 as previously agreed) given the ongoing progressive transition of jurisdictions to the ONRSR.

Objectives of review

The objectives of the review are to assess and compare the effectiveness, in terms of safety and rail operators' productivity, of the differing D&A management legislative arrangements in the RSNL; and to compare the effectiveness against other industries in Australia and the rail industry internationally in terms of both detecting drugs and alcohol, and providing a deterrent for rail safety workers in this regard.

This encompasses assessing the value and purpose of the ONRSR's drug and alcohol testing program and operators' testing regimes under the RSNL; the NSW-specific provisions for operators in NSW; and the level of regulatory burden placed on operators.

Scope of review

The scope of the review includes:

- Analysis of the effectiveness of current testing regimes (undertaken by ONRSR; operators nationally; and operators in NSW) to manage risks associated with D&A use, and analysis of available data, including:
 - D&A tests (undertaken by industry, police and the ONRSR)
 - D&A positives and non-negatives (where 'positives' are confirmed test results and 'non-negatives' are screening test results)
 - Numbers of Rail Safety Workers (RSWs) and percentages tested
 - Incidents involving D&A.
- Consideration of appropriate respective roles of the regulator and operators in a D&A risk management framework
- Assessment of the effectiveness, including sanctions currently applied, of rail transport operators in managing the risk of RSW's undertaking RSW whilst under the influence of drugs or alcohol, operating under both the national law and NSW's specific provisions

- Analysis of ONRSR's ability to take prosecution action when a positive D&A test result is returned and the results of such prosecution action
- Review of current and innovative D&A management frameworks and research from other industries in Australia and the rail industry internationally (including testing methods and reliability)
- Consideration of the value of testing for presence and/or impairment of a drug in the rail safety context and methods for such testing
- Consideration as to the requirement of a Regulatory Impact Statement (RIS).

In undertaking the review, consideration will also be given to relevant COAG principles established to guide the development of the national rail safety regulator, and the research and recommendations of the ATC appointed Expert Panel. The review will also recognise the ONRSR's Regulatory Approach, Compliance and Enforcement policy and Safety Improvement policy.

The final report detailing the findings and recommendations of the review will be submitted to Ministerial Council in 2017.

Out of scope for the review

The review may recommend legislative change, which will be addressed following a Ministerial Council decision.

Stakeholder engagement

Stakeholder engagement is to occur at two primary levels. The first is a D&A reference group, which will be established in the coming months and will comprise representatives from industry (nominated by the ARA), governments, unions and independent expertise. It is envisaged this group will input significantly to the review process and deliverables.

Broader consultation with industry, unions and governments will also take place once the draft report has been prepared.