

# Drug and alcohol management requirements for railway operations in NSW (Q & A)

## Fact Sheet 8b – June 2013

### 1. What are the relevant legislative provisions relating to drug and alcohol management in NSW?

#### ***Rail Safety National Law (NSW) No 82a***

- Section 52(2)(c) – duty to ensure that rail safety workers do not carry out rail safety work, and are not on duty, while impaired by alcohol or a drug
- Section 115 – Requirement for drug and alcohol management program as part of SMS
- Sections 123 to 129A – Drug and alcohol testing by the Regulator

#### ***Rail Safety National Law National Regulations 2012 (the National Regulations)***

- Clause 28 – Drug and Alcohol management program requirements

Note that clauses 28(2), (3) and (5) relate specifically to drug and alcohol testing requirements in NSW, such as the requirement for random testing of 25% of rail safety workers (which is not applicable to heritage operators) and the requirement for post-incident testing.

- Clause 56(1)(a)(i) – Periodic information to be supplied
- Clause 57(1)(b)(xxi) – Reporting of notifiable occurrences

#### ***Rail Safety (Adoption of National Law) Regulation 2012***

- Clauses 4 to 30 – drug and alcohol testing procedures
- Clause 35 – rail safety officers and testing officers transitional provisions
- Clause 48 – drug and alcohol transitional provisions

### 2. Is it still a requirement to conduct random breath or urine testing of rail safety workers?

Yes. Rail transport operators accredited in relation to railway operations carried out within New South Wales (NSW operators) that are not heritage operators are required to continue to conduct random breath or urine testing of not less than 25% of their rail safety workers each year – *Clause 28(2) of National Regulations*.

#### **Further information**

Call: 08 8406 1500

Email: [contact@onrsr.com.au](mailto:contact@onrsr.com.au)

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**3. Can NSW operators undertake saliva testing in addition to urine testing?**

Yes. NSW operators may conduct oral fluid testing, but this will not form part of the 25% of random testing.

**4. Is it still a requirement to conduct post-incident testing of rail safety workers?**

Yes. If a rail safety worker is involved, or is reasonably suspected of having been involved, in certain prescribed incidents, the NSW operator must, unless there is a reasonable excuse not to, require the worker to undergo drug and alcohol testing within three hours immediately after the incident – see *clause 28(2)(a)(ii) National Regulations*.

**5. What are the prescribed incidents for post-incident testing?**

Prescribed incident means any of the following that occur on railway premises:

- (a) A collision between rolling stock
- (b) A collision between rolling stock and person
- (c) A collision between rolling stock and a road vehicle or plant equipment
- (d) The derailment of rolling stock
- (e) A breach of the rail infrastructure manager's network rules
- (f) Any other incident that the Regulator may, by notice in writing to a rail transport operator, declare to be a type of prescribed in respect of the operator's railway operations.

*See clause 28(7) of the National Regulations*

**6. What are the rail safety drug and alcohol offences?**

Rail safety drug and alcohol offences under the *Rail Safety National Law* are as follows:

- Section 52(2)(c) – rail transport operator must ensure, so far as reasonably practicable, that rail safety workers do not carry out rail safety work, and are not on duty, while impaired by alcohol or a drug – (Penalties detailed in sections 58, 59 and 60 of *Rail Safety National Law*)
- Section 115 – failure of a rail transport operator to prepare and implement a drug and alcohol management program that complies with the prescribed requirements relating to drug and alcohol management programs – (Maximum penalty in the case of an individual - \$50,000, in the case of a body corporate - \$500,000.)
- Section 125(3) – failure of a person to return an identity card to the Regulator if that person ceases to be an authorised person - (Maximum penalty - \$5,000)
- Section 126(3) – failure to comply with direction given by authorised person for the purpose of requiring the worker to submit to a preliminary breath test or breath analysis - (Maximum penalty - \$10,000).

- Section 127(3) – failure to comply with direction given by authorised person for the purpose of requiring the worker to submit to a drug screening test, urine screening test, oral fluid analysis or blood test (or any combination of these) - (Maximum penalty - \$10,000).
- Section 128(1)(a) - carrying out rail safety work with the prescribed concentration of alcohol in breath or blood (which is zero) - (Maximum penalty - \$10,000)
- Section 128(1)(b) – carrying out rail safety work while a prescribed drug is present in his or her oral fluid or blood - (section 128(5) defines prescribed drug as:
  - delta-9-tetrahydrocannabinol;
  - Methylamphetamine (Methamphetamine)
  - 3,4-Methylenedioxymethylamphetamine (MDMA) - (Maximum penalty - \$10,000)
- Section 128(1)(c) – carrying out rail safety work while under the influence of alcohol or any other drug - (Maximum penalty - \$10,000)
- Clause 21(2) – fails to provide a sample of his or her blood, oral fluid or urine when requested to do so (Maximum penalty – 10 penalty units\*)
- Clause 22 – worker does anything, or causes anything to be done, to introduce, or alter the concentration of, alcohol or any drug in the worker’s or another worker’s breath, blood, oral fluid or urine before the worker or another worker submits to a breath analysis or provides a sample of blood, oral fluid or urine - (Maximum penalty – 25 penalty units\* or imprisonment for 9 months, or both)
- Clause 23(1) – medical practitioner or registered nurse refuses or fails to take a sample (or does not comply with the requirements of clause 16 with respect to blood samples) – (Maximum penalty – 10 penalty units\*)
- Clause 23(3) – any person does not comply with the requirements of clauses 16, 17 or 18 with respect to any blood, oral fluid or urine sample taken – (Maximum penalty – 10 penalty units\*)
- Clause 23(4) – a person must not hinder or obstruct a medical practitioner, nurse or other person in attempting to take a sample of blood or urine – (Maximum penalty – 20 penalty units\*)

However, there are additional NSW drug and alcohol offences under the Rail Safety (Adoption of National Law) Regulation 2012:

- Clause 21(1) – refuses or fails to submit to an assessment of sobriety (Maximum penalty - 10 penalty units\*)

- Clause 23(5) – a person must not hinder or obstruct an authorised person in attempting to take an oral fluid sample or administering an oral fluid drug screening test – (Maximum penalty – 20 penalty units\*)
- Clause 23(6) – a person must not hinder or obstruct an authorised person in attempting to administer a urine screening test - (Maximum penalty – 20 penalty units\*)
- Clause 24 – a person must not interfere or tamper with or destroy a sample of a person's blood, oral fluid or urine except for certain circumstances - (Maximum penalty – 20 penalty units\*)

\* In NSW, One penalty unit is equivalent to \$110.

**7. Has the prescribed concentration of alcohol in breath or blood changed in NSW?**

Yes. The prescribed concentration of alcohol in breath or blood in NSW is now zero. Previously, the limit was 0.02. See *section 128(5) of the Rail Safety National Law (NSW)* and *clause 5 of the Rail Safety (Adoption of National Law) Regulation 2012* for definition of prescribed concentration of alcohol.

**8. Will the drug limits for urine testing continue to be those defined in AS/NZS 4308:2008?**

Yes. The drug limits for urine testing will continue to be as specified in AS/NZS 4308:2008, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*.

The Regulator also has the discretion to direct that additional analysis of samples be carried out in order to determine whether there is present in a sample a drug specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985* – see *clause 19(6) of the Rail Safety (Adoption of National Law) Regulation 2012*.

**9. Can any person conduct drug and alcohol testing?**

No. Drug and alcohol testing must be carried out by an authorised person, appointed under the *Rail Safety National Law (RSNL)* – *section 124(1) of the Rail Safety National Law (NSW)*. However, a person who was a testing officer immediately before the commencement of the RSNL will be taken to be an authorised person for a period of six months after commencement that is, up until 20 July 2013; even if the appointment of an existing testing officer is due to expire before this date. See *clause 35 of the Rail Safety (Adoption of National Law) Regulation 2012*.

**10. What is the process for the appointment of “authorised persons”?**

The process is described in the fact sheet - [Appointment of authorized persons to conduct drug and alcohol testing in NSW \(section 125 of Rail Safety National Law \(NSW\)\)](#) on the ONRSR website.

**11. Do authorised persons need to have an identity card?**

Yes. The National Rail Safety Regulator is required to give each authorised person an identity card that states the person’s name and appointment as an authorised person.

An authorised person must produce their identity card for inspection if requested to do so by a person they have asked to submit to a test or to do any other thing under the Law or the *Rail Safety National Law (NSW)* – see *section 125 of the Rail Safety National Law (NSW)*.

A person who was a testing officer immediately before the commencement of the RSNL will be taken to be an authorised person for a period of six months after commencement (that is, up until 20 July 2013) and their existing identity card will remain valid.

**12. When may an authorised person require a rail safety worker to submit to a drug or alcohol test?**

An authorised person may at any time require a rail safety worker to submit to a preliminary breath test or breath analysis (or

both), or a drug screening test, urine screening test, oral fluid analysis or blood test (or any combination of these) if the worker:

- (a) is about to carry out rail safety work; or
- (b) is carrying out rail safety work; or
- (c) is attempting to carry out rail safety work; or
- (d) is still on railway premises after carrying out rail safety work; or
- (e) without limiting a preceding paragraph – is involved in a prescribed notifiable occurrence
- (e1) without limiting a preceding paragraph – is involved in an accident or irregular incident while carrying out rail safety work.

See *sections 126 and 127 of the Rail Safety National Law (NSW)*.

**13. What does “about to carry out rail safety work” mean?**

A rail safety worker is considered to be “about to carry out rail safety work” if the worker:

- has left home or a temporary residence for work (being rail safety work); and
- has not commenced work after having so left home or the temporary residence.

See *section 129A(1) of the Rail Safety National Law (NSW)*

**14. Can test results be used for an offence where the rail safety worker had not commenced work?**

No. The results of any breath test, breath analysis, drug screening test, oral fluid analysis or blood or urine test conducted on a rail safety worker who was about to carry out rail safety work are not admissible in any proceedings for an offence under *section 128 of the Rail Safety National Law* – See *clause 6 of the Rail Safety (Adoption of National Law) Regulation 2012*.

This provision is designed to draw a distinction between a worker who has not signed on for duty, and a worker who is carrying out rail safety work, or is attempting to carry out rail safety work after signing on for duty.

**15. What drug and alcohol testing incidents require notification to ONRSR?**

There is a requirement to notify the ONRSR as a Category B notifiable occurrence that a rail safety worker has returned a result to a test designed to determine the concentration of drugs or alcohol in a sample of breath, blood, oral fluid or urine that suggests that the worker was in breach of a relevant safety requirement concerning the use of drugs or alcohol (see *clause 57(1)(b)(xxi) of the National Regulations*).

As previously was the case, NSW operators are required to provide additional detail, on the approved form (available on the ONRSR

website) in the event of the following incidents:

- positive alcohol breath tests, breath analysis or blood analysis (where breath or blood analysis confirms the presence of **any** alcohol)
- positive drug tests (where urine or blood analysis confirms the presence of a drug other than alcohol) including:
  - illicit drugs; and
  - prescribed or over-the-counter medication; (the approved form has space for operators to describe if (a) the rail safety worker advised they were taking medication prior to the test and (b) if the results were consistent with the medication declared);
- Failure to undergo tests:
  - Where workers have been unable to provide a urine or blood sample, or fail to undergo a breath test or undergo a breath analysis;

- Tampered tests, where there has been interference with blood or urine samples taken, or interference to alter the concentration of alcohol or any other drug in a rail safety worker's breath, blood or urine before submitting to a breath analysis or providing a blood or urine sample.

For example, the test results may show an abnormal result, such as:

- Low creatinine levels, which may indicate dilution in some individuals;
- Abnormal temperature readings; and
- Synthetic urine samples.

These requirements are specified in *clause 28(2)(b) of the National Regulations*.

**NOTE:** A positive breath test indicating the presence of the prescribed concentration of alcohol must still be reported to the ONRSR under clauses 28(2)(b)(iv) and 57(1)(b)(xxi) of the *National Regulations*, even if a subsequent breath test or analysis falls below the cut-off.

The approved forms are available on the NRSR website at [www.onrsr.com.au](http://www.onrsr.com.au)

Notifications should be emailed to [occurrences@onrsr.com.au](mailto:occurrences@onrsr.com.au) or faxed to 08 8406 1501.

**16. Other than drug and alcohol testing incidents, what other reporting to the ONRSR is required?**

Rail transport operators must include the number of drug and alcohol tests they conduct (including any oral fluid tests) in their monthly returns to the ONRSR (see clause 56(1)(a)(i) of the *National Regulations*).

Note that, previously, the requirement in NSW was to provide quarterly reports.

The approved forms are available on the ONRSR website at [www.onrsr.com.au](http://www.onrsr.com.au)

Monthly returns should be emailed to [occurrences@onrsr.com.au](mailto:occurrences@onrsr.com.au) or faxed to 08 8406 1501.

**17. Have the notification requirements changed for heritage operators?**

Yes. All rail transport operators, including heritage operators, are now required to provide a monthly return on the number of drug and alcohol tests conducted by the rail transport operator (see clause 56(1)(a)(i) – *National Regulations*) as outlined in question 16 above.