



**RTBU**

# Drug and Alcohol Management Review

Office of the National Rail Safety Regulator

August 2017

# Introduction

The Rail, Tram and Bus Industry Union (RTBU) is an all-grades union representing around 35,000 workers in the national rail, tram and bus industries. Our members are involved in all aspects of the rail industry – from driving training to maintenance, infrastructure, operations and administration.

The RTBU thanks ONRSR for the opportunity to make a submission on the consultation paper regarding Drug and Alcohol Management in addition to our verbal contributions during feedback sessions conducted by the ONRSR.

The RTBU shares the view that industry must remain vigilant against the use of alcohol and drugs on the rail network.

Drug and alcohol management is an extremely important safety issue for the rail industry, and for the women and men who work in it. Given the extreme risks that can come with work in the rail industry, the prospect of working alongside people who are under the influence of alcohol or drugs is always extremely concerning. That is why our members have always been very supportive of a strict and robust approach to managing drugs and alcohol in our workplace.

**To put it simply, the right of an individual to partake of alcohol or drugs in the private or personal time does not outweigh the rights of workers to have a safe working environment, free from the risk of being killed by a colleague who is impaired by drugs or alcohol.**

For this reason, the RTBU's starting point on any discussion about drug and alcohol management is one of zero tolerance. To that end, our Union has consistently provided in-principle support for a national approach to drug and alcohol-management.

The RTBU advocates its position with the knowledge that its members do not want to be at work with co-workers who may be impaired. It is those workers who bear the biggest brunt of an unsafe workplace, and while an impaired worker may cause inconvenience to an operator, they are putting the lives of other workers at risk.

The RTBU recognises, however, that any approach to drug and alcohol management must be practical and pragmatic if it is to be fully effective. It must also recognise the prevalence of drugs and alcohol in the broader community, and understand that rail workers are subject to the same environmental and cultural influences as every one else.

That is why the RTBU has consistently argued that drug and alcohol testing regimes must always focus on genuine impairment, rather than punitive approaches that punish workers for simply the presence of drugs and alcohol.

For further information about any matter contained in this submission, please do not hesitate to contact me on 02 8203 6099.

Yours sincerely,



**Bob Nanva**  
National Secretary

# Recommendation 1

ONRSR and operators should have access to all testing methods in the law and the flexibilities to apply the most appropriate method of drug testing based on the organisation's identified risk.

The RTBU strongly disagrees with this recommendation. This would be a retrograde step.

The ONRSR discussion paper clearly states that the most common testing methods, oral fluid and urine testing, have specific advantages and disadvantages. The paper asserts that oral fluid testing:

- can detect recent use of drugs;
- is less invasive of a rail worker's privacy; and
- involves less need for appropriate collection facilities;

Urine testing, however:

- requires further indicia to prove impairment;
- may not detect very recent use;
- is more invasive of a rail safety worker's privacy; and
- needs appropriate collection facilities.

Most importantly, the paper states that:

*"A urine test result that indicates the presence of those three [prescribed] drugs by itself is not sufficient to indicate impairment, and further indicia (such as observations of the rail safety worker's behaviour) are required to prove impairment. Urine is not typically used to test for an offence of presence of a drug because urine indicates past use (via metabolites) and the presence of a drug in urine may be completely independent of impairment due to the length of time since the drugs were consumed."*

In other words, the discussion paper clearly outlines why oral fluid testing is superior in testing for impairment. This is why the RTBU strongly believes that oral fluid testing must be the default method, and only method, for initial drug and alcohol tests of rail safety workers.

In a purported defence of urine testing the paper states that urine testing may be appropriate in four particular circumstances:

- If greater flexibility in the timeframe is needed for post-incident testing;
- If there are visible signs indicating impairment
- If a complaint is received about a workgroup or a work location (for example through REPCON)
- If intelligence is extracted from data that indicates a concern (ie an operator with testing program that only uses one method of testing and is reporting irregular test results).

## Urine v. Swab Testing

The RTBU contests these assertions. Moreover, we argue that none of these so-called benefits of urine testing outweigh the fundamental superiority of oral testing for determining impairment.

The RTBU has still not been presented with a rational, quantitative analysis demonstrating the greater utility of urine testing. Independent research has consistently criticised urine testing: as an unreliable and inaccurate method of determining an individual's fitness for work; as an invalid method of detecting impairment; and for failing to address the legislative policy objectives of reducing drug related risk in the workplace.

We note the following conclusions from Dr Ken Pidd<sup>1</sup>:

*“The most popular form of workplace testing (urinalysis) is particularly problematic as it detects past, rather than current use. More importantly, drug use that occurs in the immediate four to eight hours prior to sample collection can remain undetected by urinalysis; and*

*“Due to the inability of drug testing to detect workplace impairment, employers who utilise testing in the workplace are rightly perceived by workers as taking on a policing role in a moral/legal issue, rather than a management role in a workplace safety and productivity issue.”*

Given the concerns about the efficacy of urine testing, the RTBU submits that the case has not been made for the use of urine testing other than for a further confirmatory test. The RTBU believes there needs to be further articulation of the evidentiary justifications for urine, rather than swab testing, to be used in any circumstances.

## Ramifications for Workers

For rail safety workers, the rail transport operator's Drug and Alcohol Management Plan (DAMP) is where the framework for issues drug and alcohol management is centred.

The DAMP is where disciplinary action procedures, whether fair or otherwise, are set out. The impacts of disciplinary action taken under a DAMP can far outweigh the implications of action taken in a prosecution by a regulator.

Action can include dismissal, regression or restrictions in duties which can mean a loss of income in the thousands of dollars.

Given the significance of these consequences on workers, the RTBU is vehemently opposed to an approach to drug and alcohol testing which affords an operator the utmost flexibility in determining how to achieve compliance in this key area of rail safety – including, but not limited to, choosing the method of testing.

There is no space for virtual self-regulation through a DAMP in this context.

Given the significant consequences on the workforce, the RTBU firmly believes that any disciplinary action for safety breaches must turn on the issue of impairment, rather than presence, and as a corollary, this would require the mandating of swab tests in the first instance.

<sup>1</sup> Pidd, K 'Drugs and Alcohol Abuse' and Testing of Workers for the Presence of Drugs and Alcohol', National Centre for Education and Training on Addiction.

To do otherwise will often result in testing procedures that do not achieve what they are supposed to do. Any latitude to allow for urine testing in the first instance will be more effective at exposing people who either use recreational drugs, or simply take prescription drugs, in their private time - rather than identifying workers who are genuinely impaired when they show up for duty.

If we want to encourage workers to become more engaged in the safety process, then they have to believe the system is fair and works in their interests.

That is why it's important to have a robust system which mandates testing for genuine drug and alcohol impairment which is both fair, and respectful of the privacy and dignity of employees.

Mandating saliva swabs is proven to be a more effective way to test for drug and alcohol

impairment. Not only are saliva swabs more effective than urine samples, they are also more dignified for workers than urine testing.

### **National Consistency**

We finally note that the recommended drive to complete self-regulation in this context will not produce national consistency which ought to be a priority for the ONRSR.

Such latitude will produce variable outcomes and can cause confusion as rail safety workers change employers. It also provides too much flexibility for operators to apply invasive and largely ineffective testing regimes designed to discipline employees - rather than improve railway safety.

The RTBU therefore suggests the recommendation be amended as follows:

**ONRSR and operators should be required to use oral fluid or other non-invasive testing that targets impairment all initial tests. Urine and blood testing should only be used for confirmatory tests.**

## Recommendation 2

The level of random testing conducted by rail transport operators should be determined using a risk-based approach. ONRSR will issue guidance material outlining their expectations in relation to managing the risk of drug and alcohol use.

In principle, the RTBU agrees with this recommendation. The RTBU has long held concerns that the level of random testing in NSW has been onerous, and unnecessary. A more targeted approach is more likely to be effective, and to engender the support of rail safety workers.

The devil, however, is always in the detail, and the RTBU looks forward to seeing a draft of the guidance material to see how this recommendation is to be implemented.

More broadly, the RTBU has never endorsed the need for any random drug and/or alcohol testing regimes. We note that there is scant empirical research or statistical evidence provided which demonstrates drugs and/or alcohol are a workplace problem which justifies such a heavy handed approach.

The RTBU believes that the discussion should go back one step and ask the question as to whether there is an identifiable problem with drugs and alcohol in the industry in the first place – before allowing tacit or explicit approval of a random testing regime.

We remain concerned as to how any stakeholder can legitimately assess whether a regulatory framework, including a risk-based approach, is adequate to address an issue if one doesn't really know if there is a problem.

Furthermore, no evidence has been presented to demonstrate the utility of effectiveness of random testing regimes in jurisdictions where they have already existed.

The RTBU believes that random testing regimes are a solution in search of a problem.

Nonetheless, should a regime be instituted under a risk-based model, the RTBU suggests consideration be given in guidance material to schemes whereby the proportion of the workforce tested randomly be reduced where positive returns on testing are low.

## Recommendation 3

Rail transport operators should not be required under the RSNL to conduct drug and alcohol testing to evidentiary standards for use by the Regulator for prosecution purposes. Note the Regulator will increase their [sic] testing program.

In principle, the RTBU agrees with this recommendation. Our Union agrees that it is unnecessary and counter-productive to expect operators to conduct tests to evidentiary standards.

The RTBU has some concerns, however, over the standard and consistency of Drug and Alcohol Management Programs (DAMPs) across operators. In particular, as we have noted, we believe that the DAMPs of some operators are well below best practice, and take a punitive approach that targets workers for presence of drugs and alcohol rather than impairment.

As we have also noted, the DAMP is where disciplinary action procedures, whether fair or otherwise, are set out. The impacts of such procedures often far outweigh the implications of action taken in a prosecution by a regulator.

Thus, even before a rail safety worker is prosecuted by a regulator, the rail safety worker could have already been dismissed by an operator – often for spurious reasons including activities undertaken by a worker during their own time which do not affect their work performance.

Given the range of consequences, sanctions and penalties for workers – flowing on from testing conducted by operators - the standards that are applied in such tests are not an insignificant consideration.

The discussion around testing focuses on evidentiary testing and whether the employer should be required to do so. Once again, the RTBU argues that this is too narrowly focussed. It should have also included a discussion about the development of model DAMPs that encourage operators to apply best practices in their workplaces – including a focus on impairment, education of employees, rehabilitation programs, and competency based training for testers – among other items.

Furthermore, it should have also included a discussion about the testing standards to be required if non-evidentiary testing is to be pursued. The RTBU argues that, given the consequences for workers, testing standards should, at the minimum, be based on Australian Standards.

Regardless, the RTBU believes that the collection, analysis, and evaluation of drug and/or alcohol tests must be highly rigorous. To ensure such testing is of a sufficient standard also requires the associated requirements – such as of personnel, training, equipment, laboratory resources and protocols - to be of a consistently high standard.

# Recommendation 4

## 4a Drug and alcohol testing following a prescribed incident to be mandatory in legislation.

The RTBU supports this recommendation, and notes that it reflects current practice.

## 4b Post incident drug and alcohol testing to be undertaken following those prescribed incidents listed in Table 10.

The RTBU notes this recommendation, and will consult further with its members.

## 4c Rail transport operators to undertake drug and alcohol testing following a prescribed incident if this testing is not undertaken by police or ONRSR.

The RTBU supports this recommendation, and notes that it reflects current practice.

## 4d ONRSR to endeavour to undertake drug and alcohol testing to an evidentiary standard unless undertaken by police, recognising that there will be circumstances where it will not be possible for ONRSR to undertake testing.

The RTBU notes this recommendation.

It remains the RTBU's view that powers for police to conduct drug and alcohol tests in these circumstances must be strictly confined to fatal incidents, critical incidents or incidents involving significant property damage.

The RTBU maintains reservations with respect to police involvement in drug and alcohol testing in light of the fact that police:

- may not be aware of the railway industry context, rights and obligations (including within safety management systems and DAMPS); and
- could be perceived to be introducing a more adversarial approach focussed overwhelmingly on deterrence, testing and penalties – at the expense of a range of other issues that are more effectively addressed in a co-operative environment including system improvements and health considerations.



## Recommendation 5

Include in the RSNL nationally-consistent offence provisions for tampering or interfering with a sample.

The RTBU notes this recommendation.

## Recommendation 6

Continue in researching the possibility of aligning drug and alcohol testing requirements under the national law, to be consistent across the Australia.

The RTBU notes this recommendation.

We further note that the consequences of recommendation 1 in this review may inadvertently complicate, stall or provide an impediment to the aspiration in this recommendation.



# RTBU

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