

Compliance and Enforcement Policy

September 2022

Revision history

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Compliance and Enforcement

Purpose

The National Heavy Vehicle Regulator's (NHVR) Compliance and Enforcement Policy outlines the principles that guide the NHVR's compliance monitoring and enforcement activities when identifying, preventing, or managing contraventions of the *Heavy Vehicle National Law Act 2012* (the HVNL).

This policy describes the NHVR's intervention options, including circumstances where it may be appropriate to utilise certain punitive and non-punitive intervention options to manage and deter non-compliance with the law.

Through this Policy, the NHVR acknowledges that an appropriate and effective approach to compliance monitoring and enforcement assists both the Regulator and regulated entities by applying resources where they will be most effective and address the greatest safety risk. In undertaking its statutory role, the NHVR is committed to implementing its *Statement of Regulatory Approach* and *Regulatory Intervention Strategy*.

Scope

This policy applies to NHVR authorised officers and other NHVR staff, as well as authorised officers employed by jurisdictional partner agencies, who undertake activities related to compliance monitoring and enforcement.

Out of scope

Police officers, who are also authorised officers, are required to comply with the HVNL, as well as with legislation that regulates police powers and responsibilities. This legislation may provide for police officers to have different or additional enforcement powers and responsibilities. Police officers are also responsible for enforcing other laws, including road rules, and will determine the necessary action arising from any compliance or enforcement activity.

This Policy is not intended to affect the exercise of any applicable discretion by police officers exercising powers under the HVNL or any other law.

All persons with obligations under the HVNL may be subject to compliance monitoring and investigation by the NHVR. Where appropriate, they may also be subject to intervention measures to enforce the HVNL (including prosecution).

Policy statement

The NHVR monitors compliance across the heavy vehicle industry through a range of activities designed to encourage and support voluntary compliance, deter non-compliance, and enforce contraventions of the HVNL through intervention responses.

The NHVR is committed to finding the optimal balance between encouraging industry to voluntarily comply with the law and the need to deter unlawful behaviour. To achieve this, the NHVR utilises a range of tailored and targeted intervention responses, ranging from education to prosecution, to promote safety and secure compliance across the heavy vehicle industry.

In order to achieve a risk-based allocation of regulatory effort, the NHVR adopts a proportionate approach to intervention options in light of a reported or detected contravention, or potential contravention, of the HVNL. This ensures that all intervention responses are proportionate to the compliance behaviour of the industry participant as well as appropriate to the nature of the risk being managed.

Note:	The term industry participant has been used throughout this document in reference to any person, company or party in the chain of responsibility who interacts with or within the heavy vehicle industry.
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The NHVR utilises the following intervention responses:

Non-punitive measures:

- Provision of information
- Education and engagement
- Formal warnings
- Conditions placed on accreditation or permit

Punitive measures:

- Defect notices
- Improvement notices
- Infringement notices
- Prohibition notices
- Suspending or cancelling an authority, accreditation, or permit
- Enforceable undertakings
- Prosecution
- Supervisory intervention orders
- Prohibition orders
- Compensation orders
- Commercial benefits orders

Note: Each reported or detected contravention is assessed based on the individual circumstances, the level of risk, and the compliance behaviour of the industry participant where possible. All intervention responses are undertaken in line with the NHVR's operational work procedures.

Principles

The application of the Policy will be guided by the following principles:

Proportionate

The NHVR will undertake compliance monitoring and enforcement activities that are proportionate to the identified risks to safety, public amenity and infrastructure, and will take into account the compliance history and behaviour of the industry participant(s).

Risk-based

The NHVR will ensure that compliance monitoring and enforcement activities are based on (and inform) an analysis of risk as outlined in the *NHVR's Regulatory Intervention Strategy*. This will ensure that compliance monitoring and enforcement activities are targeted and effective in managing safety.

Data-driven

The NHVR will utilise data analysis to develop risk profiles that identify emerging safety trends and compliance focus areas.

Responsive

The NHVR will remain responsive and agile to new and existing data, intelligence, technology, and any resulting change in identified safety risks. The NHVR will react appropriately to emerging priorities, whilst continuing to carry out compliance monitoring and intervention activities.

Consistent

The NHVR will apply a consistent compliance monitoring and enforcement approach (including the assessment of risk and application of intervention options) in order to seek the same outcome in the same circumstances.

Collaborative

The NHVR will seek to build, maintain, and enhance collaborative partnerships with the heavy vehicle industry in order to apply regulatory effort where it will achieve the greatest outcomes.

Fair

The NHVR will conduct compliance monitoring and enforcement activities in a consistent manner, based on the principles of fairness and accountability.

Monitoring Compliance

The NHVR monitors and supports compliance across the heavy vehicle industry by undertaking a number of on-road and off-road activities in line with the NHVR's *Regulatory Intervention Strategy*:

On-road Activities

- mobile road patrols (conducting heavy vehicle intercepts)
- inspections at static sites (e.g. heavy vehicle checking stations)
- leading and participating in local and national operations targeting identified key safety risks and trends, including joint operations with partner agencies and police, and
- informing and educating industry participants at the roadside, including the provision of information at roadside interventions where appropriate.

Off-road Activities

- providing information and education for industry participants on their safety and compliance responsibilities through a range of communication channels (including Safety Campaigns and Regulatory Advice)
- undertaking investigations into alleged incidents detected through data analysis, camera networks and other technologies (including electronic work diaries (EWDs))
- undertaking primary duties investigations into alleged contraventions of the HVNL, particularly in relation to high-risk activities with a focus on parties in the chain of responsibility
- inspecting heavy vehicles under ad hoc or periodic inspection schemes
- developing risk profiles and refining the NHVR's risk methodology through the collection and analysis of data

- monitoring compliance behaviour and adherence to enforceable undertakings and court-imposed orders, and
- monitoring compliance with specific access conditions via approved telematics through intelligent access programs (IAP).

Intervention Options

The NHVR utilises a range of punitive and non-punitive intervention options to encourage and support voluntary compliance, assist industry participants to return to compliance, and deter future non-compliance where necessary.

The HVNL provides certain offences where the driver or a party in the chain of responsibility can be held accountable. The NHVR may consider a party in the chain to be the liable party, except in specific circumstance where there is clear evidence to suggest that the decision to contravene the HVNL was at the discretion of the driver. In these circumstances, the party in the chain would be held accountable, and any intervention responses will be directed towards that party.

When determining the appropriate intervention response for the liable person or party, the NHVR takes into account the severity of the risk and pattern of behaviour of the industry participant. The following section outlines the circumstances when the NHVR may choose to utilise an intervention option.

Note: These measures do not need to be used in sequential order. For example, it is not necessary to give a formal warning or issue a notice prior to taking prosecutorial action, if such action is appropriate given the circumstances. The NHVR may also chose to use a combination of intervention measures to facilitate compliance. For detailed information on the NHVR's approach to compliance and enforcement, see the *NHVR's Regulatory Intervention Strategy*.

Education and Engagement

The NHVR acknowledges the importance of engaging with industry and educating industry participants who have obligations under the HVNL. The NHVR encourages and supports voluntary compliance by providing education resources, regulatory guidance, and undertaking targeted safety campaigns. The NHVR also takes a consultative approach with industry by listening,

responding, and providing information to assist them in complying.

Circumstances where formal warnings may be appropriate

Provision of a formal warning may be appropriate where an offence has been committed, but where circumstances exist including that:

- the offence is of a minor nature
- the person has done, as far as reasonably practicable, all that could be expected of them to do in the circumstances
- the person was reasonably unaware that an offence had been committed and did not deliberately commit an offence, and
- there is no identifiable risk to safety as a result of the offence.

Formal warnings are not appropriate when the person has committed, or allegedly committed, multiple offences of a similar nature, or where the offender has failed to take any steps to ensure compliance with the HVNL. Some offences of a certain severity categorisation are ineligible for a formal warning.

Circumstances where administrative action to place conditions on accreditation or a permit may be appropriate

It may be appropriate for the NHVR to place conditions on an industry participant's accreditation under the National Heavy Vehicle Accreditation Scheme (NHVAS), or permit (i.e. network access permit, fatigue permit) in response to non-compliance. This administrative action may be escalated to a suspension or cancellation of accreditation or a permit as a result of systemic reoffending (see *Circumstances where administrative action to suspend or cancel an authority, accreditation or permit may be appropriate* below).

Circumstances where issuing a defect notice may be appropriate

Defect notices may be issued to the registered operator of a heavy vehicle that:

- does not comply with the heavy vehicle standards, or
- has a part that does not perform its intended function or has deteriorated to an extent that it cannot be reasonably relied upon to perform its intended function.

A defect notice will specify the faults identified, the period of time to have the faults repaired, as well as any conditions of use the authorised officer considers appropriate for its continued use on a road. The time provided for operators to repair the vehicle will vary depending on the safety risk posed by the continued use of the vehicle on the road. For faults that pose a major safety risk. The vehicle must be moved to the stated location in the specific manner described in the defect notice (i.e., towed to a depot).

Failure to comply with a defect notice, including non-compliance with any of the conditions stated in the notice, is an offence under the HVNL, which may result in further enforcement action.

Circumstances where improvement notices may be appropriate

Improvement notices may be used to address systemic failures or deficiencies in processes that have allowed (or will continue to allow) a breach to occur.

It may be appropriate for an improvement notice to be issued when an authorised officer:

- believes that a minor breach of the HVNL has occurred or is occurring, and
- that the breach is likely to continue or be repeated.

Improvement notices may be issued at the roadside or as a result of an investigation where evidence has been collected to suggest the contravention has been ongoing, and where there has been a lack of compliance action on the part of the industry participant.

Improvement notices must specify the date by which compliance must be achieved. Non-compliance with an improvement notice may lead to further enforcement action.

Circumstances where administrative action to suspend or cancel an authority, accreditation or permit may be appropriate

It may be appropriate for the NHVR to suspend or cancel an industry participant's accreditation under the National Heavy Vehicle Accreditation Scheme (NHVAS) or suspend or cancel an industry participant's authority (i.e. as a PBS certifier) or their permit (i.e. network access permit) as an additional sanction in response to systematic non-compliance. Jurisdictional partner agencies may also choose to suspend or cancel an industry participant's licence or registration in addition to other forms of intervention outlined in this policy.

These administrative actions may be appropriate where there is evidence of reoffending of a systemic and/or high-risk nature. They are usually undertaken in addition to more serious punitive intervention options.

Circumstances where prohibition notices may be appropriate

Prohibition notices are used to achieve cessation of an activity that is constituting an immediate or imminent safety risk.

Issuing a prohibition notice may be appropriate when:

- an authorised officer reasonably believes that an activity involving a heavy vehicle is occurring, and
- this activity involves (or will involve or may involve) an immediate or imminent risk to safety, and
- prohibiting this activity is the most effective and efficient manner to ensure safety under the circumstances.

Non-compliance with a prohibition notice is a serious contravention of the HVNL and may lead to further enforcement action. A prohibition notice ceases when an authorised officer gives notice that they are satisfied that adequate action has been taken to remove the immediate or imminent safety risk.

Circumstances where infringement notices (or expiation notice/penalty notice) may be appropriate

Infringement notices are fines issued under the HVNL for contraventions of the legislation.

It may be appropriate to issue an infringement notice under the HVNL when:

- an authorised officer reasonably believes a person has committed an offence
- sufficient evidence exists to prove the non-compliance
- there is a benefit in providing immediacy to the consequences for non-compliance
- the act is not ongoing or can be rectified quickly, and
- the risk to safety from the act is less than that which would warrant stronger intervention options.

If a person wishes to dispute an infringement notice, they may request an internal review from the relevant

jurisdictional authority. In response to (or in place of) this review, they may elect to be prosecuted.

Circumstances where the NHVR may commence court proceedings (prosecution)

The NHVR may commence court proceedings in light of breaches of the HVNL in line with its *Prosecution Policy*. The NHVR may consider commencing proceedings when:

- there is sufficient evidence
- there is a reasonable prospect of conviction, and
- it is in the public interest to proceed when considering any relevant discretionary factors.

Generally, the more serious an offence is, the more likely it is to proceed to prosecution.

If the NHVR initiates court proceedings, a summons (or court attendance notice) will be issued to the defendant or co-defendants.

Note: Priority is given to the consideration and prosecution of primary duty offences and offences committed by executives of legal entities that owe such duties. Priority is then given to the consideration and prosecution of prescriptive offences by operators, and then drivers.

Circumstances where accepting an enforceable undertaking may be appropriate

Enforceable undertakings are high-level sanctions offered by an alleged offender (once prosecution has commenced) that may be accepted by the NHVR.

Accepting an enforceable undertaking may be appropriate when:

- the actions proposed to be undertaken by the alleged offender will address the matters which have given rise to the alleged breach of the HVNL (i.e. firm future actions to change behaviour that will prevent a reoccurrence of the breach)
- the proposed actions are described with sufficient clarity and specificity to enable compliance to be established
- the undertaking will provide an overall benefit to the heavy vehicle industry and community in general, not just to the alleged offender, and
- the public interest would be better served by an acceptance of the proposed undertaking than proceeding with prosecution.

If an alleged offender completes the undertaking, the NHVR cannot take prosecutorial action for the occurrence of the breach that gave rise to the undertaking. If the alleged offender fails to complete the undertaking, the NHVR may apply to the court to have the undertaking enforced. Alternatively, the NHVR may rescind acceptance of the undertaking and proceed with other appropriate enforcement action.

Note: While the terms of an enforceable undertaking are put forward by the alleged offender (or their solicitor), it is an outcome that can still be proposed by the prosecution.

Post-prosecutorial Orders

If a court makes a finding of guilt, the NHVR may apply to the court to impose orders on an industry participant in addition to any financial penalties.

Supervisory Intervention Order

A supervisory intervention order (SIO) may be made by a court to order a convicted individual or company, at their own expense and for a stated period of time up to 12 months, to do one or more things as stated within the order. Requirements in an SIO the order may relate to the appointment, dismissal, training, or supervision of staff, obtaining expert advice about compliance with the HVNL, implementing practices, systems, and procedures to ensure future compliance with the HVNL or other similar matters.

A supervisory intervention order may be deemed appropriate by a court if:

- the court convicts an industry participant of an offence and considers the person to be (or likely to become) a systematic or persistent offender of the HVNL, and
- the court is satisfied that the order is capable of improving the convicted person's ability or willingness to comply with the HVNL.

The NHVR monitors the activities of the industry participant over the course of the time period to ensure compliance with the order. If an order is breached, the original suspended penalty and additional court-imposed penalties may apply.

Prohibition Orders

A prohibition order prohibits a convicted industry participant from having a stated role or responsibility associated within road transport for a period of up to 12 months.

A court may make a prohibition order only if:

- the court is not satisfied that a supervisory intervention order is capable of improving the convicted person/company's ability or willingness to comply with the HVNL.

If a prohibition order is breached, the original suspended penalty and additional court-imposed penalties may apply.

Compensation Orders:

A compensation order is a court-imposed order that requires a convicted industry participant to pay the relevant road manager an amount the court deems appropriate for damage caused to road infrastructure as a result of the offence.

Commercial Benefits Orders

A commercial benefits order may be recommended to the court by the NHVR in relation to any charge where a commercial benefit was gained. In these circumstances, the industry participant would be required to pay a fine as well as a compensation payment for any benefits received through the original offence.

Internal review of decisions

In some circumstances, a person affected by a decision of the NHVR can ask for an internal review of the decision. Certain intervention responses can be reviewed, including (but not limited to):

- the issuing of an infringement notice
- the issuing of, or refusal to amend, a notice (i.e. prohibition or improvement notice)
- the application of conditions on accreditation or a permit, as well as
- suspending or cancelling accreditation, a permit, or an authority.

The NHVR undertakes internal reviews in line with the principles of fairness and the relevant state-based legislation and policies, and will notify the applicant with a notice of the decision and any appeal rights available through external bodies.

Further information on internal reviews can be found on the NHVR's website.

Definitions

Term	Definition
Compliance	Adherence to obligations, whether in primary legislation, regulations, standards, or policies.
Compliance monitoring	A systematic process of collecting, analysing and using information to track and assess compliance with the law.
Enforcement	The process by which non-compliance with a law, rule, or obligation (i.e., the HVNL) is addressed and/or rectified.
Investigation	The process of establishing whether there has been a contravention of the law, identifying the persons responsible, and obtaining admissible evidence to support their prosecution.
Proactive compliance	A methodical, strategic approach to monitoring compliance through the review of data and intelligence, allegations made to the NHVR, safety cameras, compliance reports and/or anonymous reports. Includes monitoring compliance with court-imposed orders.
Primary duty	An obligation to eliminate or minimise potential harm or loss (risk) by doing all that is reasonably practicable to ensure safety.

See the *NHVR Governance Glossary* for a list of terms related to this policy.

Related legislation and documents

- Heavy Vehicle National Law Act 2012*
- NHVR's Statement of Regulatory Approach*
- NHVR's Regulatory Intervention Strategy*
- NHVR's National Regulatory Model*
- NHVR's Prosecution Policy*