



National Compliance and Enforcement Policy

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Related legislation and documents

- *Heavy Vehicle National Law 2012 (Qld)*
- Heavy Vehicle National Regulations
- The NHVR's suite of strategic documents, including:
 - *Setting the Agenda 2016-2020*
 - *NHVR Strategic Directions 2016*
 - *NHVR Corporate Risk Management Policy and Framework*
 - *NHVR Corporate Plan 2018-2021*
- NHVR Risk Management Policy
- NHVR Prosecution Policy
- Australian Government Regulator Performance Framework 2014
- Australian Government Investigations Standards 2011
- National Road Safety Strategy 2011 – 2020

Purpose

Through leadership and influence, the National Heavy Vehicle Regulator (NHVR) administers a national system that delivers consistent and streamlined regulatory services and administration to the Australian heavy vehicle transport sector, reducing regulatory burden while enabling greater safety and productivity.

The *National Compliance and Enforcement Policy* (Policy) outlines the risk-based and outcomes-focused approach adopted by the NHVR and partner agencies when planning and undertaking heavy vehicle related compliance and enforcement activities. This approach is based on the co-regulation model and forms part of the NHVR's regulatory framework. As such, this Policy informs a number of national safety standards, procedures and operational guidance, which direct the NHVR's approach to compliance activities, investigations and enforcement responses.

Compliance monitoring and enforcement activities are an integral part of the regulatory policy framework that allows the NHVR to assist industry, including all parties in the Chain of Responsibility, to operate in a safe and compliant manner. This Policy outlines how the NHVR will influence industry behaviour and deter non-compliance by informing, educating, continuously monitoring and, where necessary, enforcing the Heavy Vehicle National Law (HVNL). These activities contribute to identifying and monitoring trends of high risk, unsafe behaviours and non-compliance from a national perspective.

This Policy details the principles that guide the NHVR's and partner agencies' operational regulatory approach. These principles will ensure that all compliance activities and any resulting enforcement responses are planned and undertaken in a nationally consistent, proportionate, fair and risk-based manner, in line with best-practice regulatory standards. This Policy and associated activities are intelligence-led and will provide assurance to the NHVR, partner agencies, industry and the community regarding the safe and compliant operation of the heavy vehicle industry.

This Policy aligns with the *NHVR's Corporate Plan, Strategic Directions and Setting the Agenda* documents. It also embodies policy guidance provided by our partner agencies and mirrors regulatory approaches adopted by other Australian regulatory bodies. Furthermore, this Policy reflects guidance outlined in the Australian Government's *Regulator Performance Framework 2014*.

Scope

This Policy applies to the planning and delivery of compliance monitoring and enforcement activities to assist the NHVR and partner agencies (including jurisdictional partners and police agencies) in effectively meeting their obligations and responsibilities under the HVNL.

The NHVR and partner agencies undertake a number of activities within an assurance framework to support and promote compliance with the HVNL and encourage a strong safety culture across the industry. Such activities include (but are not limited to):

- developing strategic frameworks, operational plans, work procedures and guidance documents that direct and inform a national compliance and enforcement approach
- informing and educating industry participants, including all parties in the Chain of Responsibility, through the provision of information and industry engagement to assist with understanding relevant safety and compliance obligations
- developing improved monitoring capabilities through the use of current and emerging technologies
- building an intelligence capability to source, collate and analyse data and information to identify systemic non-compliance and inform compliance priorities, investigative actions and enforcement responses
- undertaking local and national operations targeting identified key safety risks and trends, including joint operations with partner agencies
- conducting on-road compliance and enforcement activities, including mobile road patrols, heavy vehicle intercepts and fixed site inspections
- undertaking detailed investigations into alleged contraventions of the HVNL
- conducting audits under the National Heavy Vehicle Accreditation Scheme (NHVAS)
- undertaking enforcement actions, including prosecution, in response to non-compliance.

Applicability

Authorised Officers

This Policy applies to HVNL-related compliance and enforcement activities undertaken by Authorised Officers employed by the NHVR and jurisdictional partner agencies (Australian state and territory road transport authorities). These activities include, but are not limited to, on-road compliance monitoring, off-road compliance activities, investigations into alleged contraventions of the HVNL, and any resulting intervention or enforcement responses.

Police

Police Officers, who are also Authorised Officers, are required to comply with legislation in addition to the HVNL 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. In this context, the Policy is not intended to affect the exercise of any applicable discretion by Police Officers exercising powers under the HVNL or any other law.

To aid national consistency in operational practices across the NHVR and its partner agencies, including both jurisdictional and police agencies, a regulatory framework will be developed during the first 12 months of the implementation of this Policy. This will assist all agencies in delivering a consistent compliance and enforcement approach across the heavy vehicle industry.

Policy statement

The NHVR will lead and encourage a nationally consistent, risk-based, proportionate and effective compliance and enforcement approach in relation to regulating the heavy vehicle industry, in order to encourage and facilitate a strong safety culture.

The NHVR regulates the heavy vehicle industry in collaboration with partner agencies and provides support for industry participants in taking responsibility for public safety. In doing so, the NHVR seeks to work with industry participants and partner agencies to secure a safe, productive, efficient and innovative heavy vehicle industry.

The NHVR has adopted the co-regulation model for the planning and undertaking of its compliance and enforcement activities. This model is characterised by a strong, collaborative relationship between the NHVR, partner agencies and industry, while maintaining a focus on compliance monitoring and enforcement responses where necessary. This co-regulatory approach places emphasis on targeted compliance activities, interventions or enforcement responses that are proportionate to both the industry participant's behaviour and identified safety risks.

The NHVR and partner agencies will set safety standards and inform and educate industry to assist them in complying with the HVNL. In instances of non-compliance, graduated and proportionate intervention and enforcement responses will be implemented and compliance will be continuously monitored. These compliance and enforcement activities will be planned and undertaken in a risk-based, outcomes-focused and intelligence-led manner.

In addition, the NHVR and its partner agencies will seek to be agile and responsive in the face of emerging trends, technologies, risk factors and community expectations to improve levels of safety and compliance across the heavy vehicle industry. Furthermore, the NHVR will encourage continuous improvement in achieving safety outcomes and associated management of risks, while working to reduce the regulatory burden placed upon industry. To achieve this, the NHVR will undertake compliance and enforcement activities in line with the following principles:



Principles

The following overarching principles are applied to all heavy vehicle related compliance and enforcement activities undertaken by the NHVR and its partner agencies:

Regulatory compliance	Network access
Collaborative	The NHVR and partner agencies will seek to maintain and nurture collaborative partnerships with industry and each other.
Consistent	The NHVR and partner agencies will apply a consistent compliance and enforcement approach to seek the same outcome in the same circumstances. This approach will reduce inconsistency related to enforcement activities and responses.
Effective	The NHVR and partner agencies will plan and conduct efficient and effective compliance, enforcement and investigative activities and encourage industry participants to build a safe, sustainable, productive and innovative heavy vehicle industry.
Evidence-based	The NHVR and partner agencies will utilise data and analytics to identify strategies to improve the safety of the heavy vehicle industry.
Fair and transparent	The NHVR and partner agencies will conduct compliance and enforcement activities in a consistent and transparent manner, based on the principles of procedural fairness and accountability.
Intelligence-led	The NHVR and partner agencies will utilise intelligence, data and trend analysis to inform compliance and enforcement activities. This will assist with evidence-based risk assessments when prioritising and planning compliance and enforcement activities.
Professional	The NHVR and partner agencies will undertake compliance and enforcement activities in a professional and respectful manner. Staff undertaking these activities will be empowered, appropriately trained, efficient in their duties and motivated to uphold these principles.
Proportionate	The NHVR and partner agencies will undertake compliance and enforcement activities that are proportionate to the identified safety risk and the compliance history and behaviour of the industry participant(s). These activities will be consistent with the HVNL.
Responsive	The NHVR and partner agencies will remain responsive and agile in the face of new data, intelligence, emerging technologies and any resulting change in identified safety risks. The NHVR and partner agencies will react appropriately to emerging priorities, while continuing to carry out compliance activities, investigations and enforcement responses.
Risk-based	The NHVR and partner agencies will develop evidence-based risk assessments to ensure that compliance activities, investigations and enforcement responses are targeted, proportionate and effective in achieving sustainable improvements to safety, productivity, efficiency and compliance.
Safe	The NHVR and partner agencies will adopt a co-regulatory approach that supports and encourages a strong safety culture owned by the heavy vehicle industry, based on risk management and continuous improvement.

Risk-based approach

A risk-based approach is fundamental to the planning, prioritising and conduct of compliance monitoring activities, as well as selecting appropriate enforcement responses. Focusing on risk identification allows the NHVR and its partner agencies to enhance their understanding of national priorities and plan and conduct appropriate compliance and enforcement activities.

When undertaking risk-based assessments to inform proposed compliance and enforcement activities, the NHVR's Corporate Risk Management Framework is applied, as indicated in the diagram below. In this operational context, risks to public safety and infrastructure across the heavy vehicle industry are identified, analysed and assessed for prioritisation prior to treating these risks through compliance, investigative and/or enforcement activities.

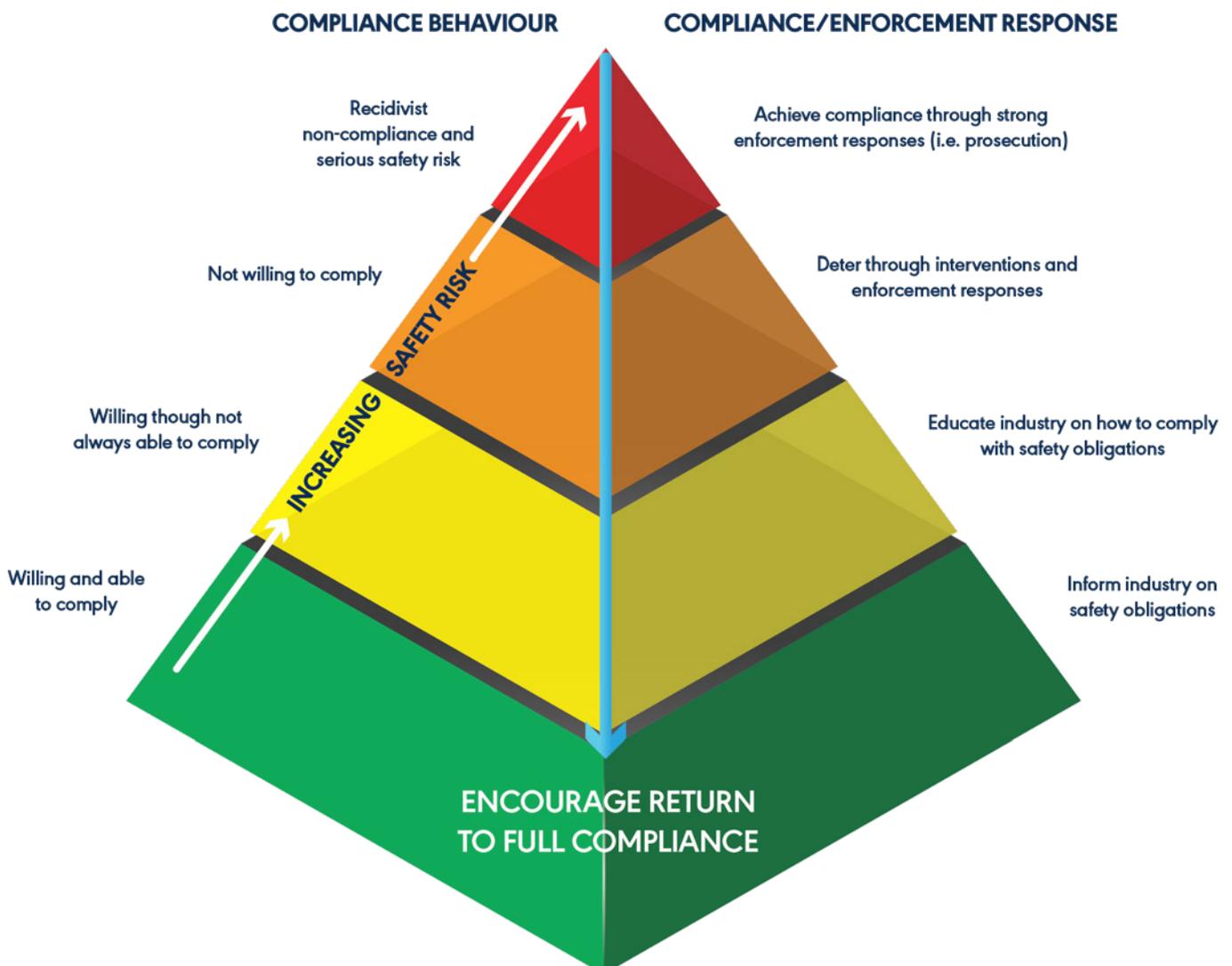


Compliance and enforcement approach

The NHVR and partner agencies encourage safety and deter non-compliance through a layered approach of informing, educating and enforcing the HVNL, while conducting continuous monitoring to identify compliance trends and whether measures of success have been met.

- **Inform** - The NHVR will set safety standards and engage with industry through various forums, publications and channels of communication to inform industry participants of their safety and compliance obligations.
- **Educate** - The NHVR and partner agencies will educate industry participants on how to improve their levels of safety and compliance with the HVNL through the provision of guidance and advice.
- **Enforce** - In instances of non-compliance, the NHVR and partner agencies will enforce the HVNL in a consistent and risk-based manner whereby each intervention or enforcement response is proportionate to the safety risk and compliance behaviour identified in each circumstance.
- **Monitor** - The NHVR and partner agencies will conduct ongoing compliance monitoring across the industry, including parties in the supply chain, to identify both compliant and non-compliant industry participants and will apply the most appropriate intervention or enforcement response where needed.

The NHVR will inform and educate industry participants on their safety obligations with the objective of encouraging voluntary compliance. In instances of non-compliance, the NHVR and partner agencies will undertake graduated and proportionate compliance activities and enforcement responses in line with the below compliance pyramid. These graduated intervention and enforcement responses will enable instances of non-compliance to be dealt with consistently, fairly and appropriately. This pyramid outlines the relationship between compliance behaviour and risk severity, and how these factors influence the resulting compliance or enforcement response as a means of deterrence.



As the safety risk increases and the compliance behaviour of the industry participant degrades, more stringent enforcement actions will be considered, such as sanctions or voluntary undertakings. In cases of severe safety risks and recidivist behaviour, more severe responses, including prosecution, will be undertaken.

When determining appropriate and proportionate responses to issues of non-compliance, a number of elements are taken into consideration, including:

- the severity of the safety risk and the immediacy of actual or potential consequences
- the willingness and/or ability of the industry participant to comply, taking into account their compliance history.

The heat map in **Appendix A** outlines the escalating enforcement measures adopted by the NHVR and partner agencies based on the severity of the safety risk and the compliance behaviour of the offender.

The NHVR and partner agencies inform, educate, enforce and monitor through a number of functions, including on-road activities, off-road activities and investigations.

On-road compliance and enforcement activities include (but are not limited to):

- mobile road patrols (including vehicle intercepts)
- fixed inspection sites (e.g. heavy vehicle safety stations)
- local and national operations targeting identified key safety risks and trends, including joint operations with partner agencies
- informing and educating industry participants, including the provision of information at roadside interventions, industry forums and toolbox talks, to assist them in understanding their safety and compliance obligations
- undertaking enforcement actions in a proportionate and nationally consistent manner in response to safety risks and non-compliant behaviour, including prosecution where necessary.

On-road activities are undertaken and managed in line with regionally based deployment plans. These plans are founded on evidence-based assessments of key freight routes, industries, transport hubs, seasonal factors, as well as fatal or serious injury crash data. These plans also inform on-road rostering for compliance and enforcement activities and targeted operations.

Off-road compliance and enforcement activities include (but are not limited to):

- providing information and education for industry on their safety and compliance responsibilities through a range of communication channels, including face-to-face sessions, industry forums and various electronic media
- information/intelligence gathering and analysis of safety and compliance trends across the industry
- audits relating to accreditation schemes
- assisting industry in developing Industry Codes of Practice
- investigating and analysing incidents and offences detected through heavy vehicle safety camera networks and other technologies
- identifying or assessing the effectiveness of safety management systems

- investigating under primary duties legislation to identify, assess and respond to potential unsafe and non-compliant supply chain practices (see Investigations below).

Furthermore, industry is responsible for undertaking its own safety and compliance assurance activities. Such activities may include (but are not limited to):

- identifying and rectifying unsafe/unlawful business activities
- ensuring appropriate safety management systems are in place across their business
- undertaking regular reviews and audits on internal safety systems
- adhering to accreditation scheme standards and business rules where appropriate
- adopting and adhering to relevant Industry Codes of Practice where appropriate, or adopting policies and practices that provide an equivalent of higher safety standard.

Investigations are specific compliance activities that may occur in instances where there is a risk to public safety and road infrastructure. Investigations may occur as a result of risks identified through assessments undertaken by the NHVR's intelligence function, including reports from the Heavy Vehicle Confidential Reporting Line, or referrals from other agencies. Triggers for an investigation may include (but are not limited to):

- non-compliance by a party in the Chain of Responsibility
- a significant event or incident
- operating factors affecting one or more businesses.

A risk-based assessment will be undertaken through intelligence to enable investigators to determine whether an investigation is warranted.

Role of intelligence

The intelligence function plays a pivotal role in the application of this Policy. This involves monitoring and interpreting data and information from the heavy vehicle environment to produce reliable intelligence for strategic and operational planning and decision-making. NHVR Intelligence will facilitate a risk-based and intelligence-led methodology for compliance and enforcement activities through the application of the NHVR's National Intelligence System. This methodology outlines the strategy, resourcing and analytical standards for the intelligence function.

NHVR Intelligence will utilise all available information to analyse the operational environment across Australia and, through a structured and systematic process, identify emerging trends and adverse safety and compliance behaviours. NHVR Intelligence will undertake strategic risk assessments and tactical intelligence analysis in order to identify risks for the prioritisation of resulting compliance and enforcement activities.

Technology and targeted activities

The NHVR places great emphasis on the value of data and analysis as a source of regulatory intelligence in determining the prioritisation of targeted compliance and enforcement activities. Technology also plays a significant role in influencing the NHVR's compliance, investigative and enforcement approaches. With significant advancements occurring in intelligent transport systems (including telematics), and their associated technologies, the NHVR will remain agile in responding to these advancements to capture more comprehensive and indicative datasets on a national scale.

Embracing these new technologies will allow the NHVR and partner agencies to strengthen their compliance approach through the comprehensive analysis of safety risks and compliance trends. By doing so, the NHVR will remain responsive to the prevailing safety risks of specific regions, routes, operators, behaviours, industry segments and seasonal events. Such technologies (including heavy vehicle automated monitoring systems) will not only allow for greater monitoring over general compliance trends, but may also minimise the regulatory burden placed on industry by reducing the frequency and duration of on-road intercepts and inspections. Furthermore, emerging technologies will allow for greater opportunities to enhance enforcement capabilities.

New technologies will also provide industry with greater self-monitoring capabilities, which will assist them to improve their levels of safety and compliance. The NHVR will encourage the adoption of technology to assist industry in collecting and maintaining operational data to support their safe and compliant operations. This may also assist in demonstrating compliance in the event of a compliance monitoring activity or investigation.

The NHVR will also consider opportunities emerging through such technologies for the mutual sharing of compliance information with the heavy vehicle industry.

Responsibilities

Position	Responsibilities
NHVR	To lead and apply a nationally consistent, risk-based, proportionate and effective compliance and enforcement approach in relation to regulating the heavy vehicle industry, in order to encourage and facilitate a strong safety culture.
Partner agencies	To apply a nationally consistent, risk-based, proportionate and effective compliance and enforcement approach in relation to regulating the heavy vehicle industry and to work collaboratively with the NHVR in assisting industry to achieve a strong safety culture.
Industry	To take responsibility for safety and compliance obligations under the HVNL and work collaboratively with the NHVR, partner agencies and other industry participants to improve their safety and compliance performance.

Definitions

Term	Definition
Assurance	Certainty provided through information-gathering, risk assessment, evaluation and review to ascertain whether safety and legislative obligations are being met, and to ensure compliance and enforcement activities are achieving these obligations.
Co-regulation	A regulatory model characterised by a strong, collaborative and purposeful relationship between the NHVR, partner agencies and industry, while maintaining a focus on compliance monitoring, intervention strategies and enforcement responses where necessary. Industry is encouraged to achieve voluntary compliance and the HVNL is enforced in a proportionate manner.
Compliance	The act of compelling compliance with legislation through the issuing of penalties or sanctions as a means of deterring further non-compliant behaviours and contraventions of the law.
Enforcement	The act of compelling compliance with legislation through the issuing of penalties or sanctions as a means of deterring further non-compliant behaviours and contraventions of the law.
Heavy Vehicle National Law (HVNL)	An Australian law with the purpose of regulating the heavy vehicle industry, including driver fatigue, vehicle standards, mass dimension and loading, compliance and enforcement, and access.
Heavy vehicle industry participants (industry)	Individuals, groups or corporations involved with heavy vehicles, including all parties in the supply chain, who have obligations and responsibilities under the HVNL.
Intelligence-led	Where information is collected and analysed so that targeted issues and systematic non-compliance are disrupted and treated. Collected information is analysed into actionable intelligence, which enables decision-makers to expend resources in a more efficient manner to mitigate instances of non-compliance.
Investigation	The process of seeking information (admissible evidence) relevant to an alleged, apparent or potential contravention of the law, involving possible judicial proceedings. The primary purpose of an investigation is to gather information and, where necessary, admissible evidence in the event of any subsequent enforcement action.
Partner agency	Australian state and territory road transport authorities, Police agencies, and other relevant regulators and law enforcement agencies. (See 'Applicability' on page 5 for further clarification.)
Regulator	An entity empowered by legislation to administer and enforce regulation.
Regulatory approach	The intervention strategies and approaches adopted by a regulator in administering a regulatory regime. These can be influenced by policy, the behaviour of regulated entities and other stakeholders, and the broader operating environment.
Risk	Effect of uncertainty on the achievement of objectives. An effect is a deviation from the expected—positive and/or negative.
Risk assessment	The overall process of risk identification, risk analysis and risk evaluation.



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