



Australian Government

Department of Infrastructure and Regional Development

Motor Vehicles Standards Act 1989

Compliance and Enforcement Strategy

December 2017



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ISBN 978-1-925531-90-9

December 2017 / INFRA-3445

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Introduction

Under the Motor Vehicle Standards Act 1989 (the Act), all new road vehicles, either newly manufactured in Australia or imported as new or used vehicles, are required to comply with national vehicle standards¹ or concessional requirements, before they can be supplied to the market for use in transport.

The Department of Infrastructure and Regional Development (the department) is responsible for administering regulation and monitoring compliance in accordance with the Act to ensure an efficient, sustainable, competitive, safe and secure transport system for all transport users and **improved vehicle safety that delivers economic benefits** (figure 1).

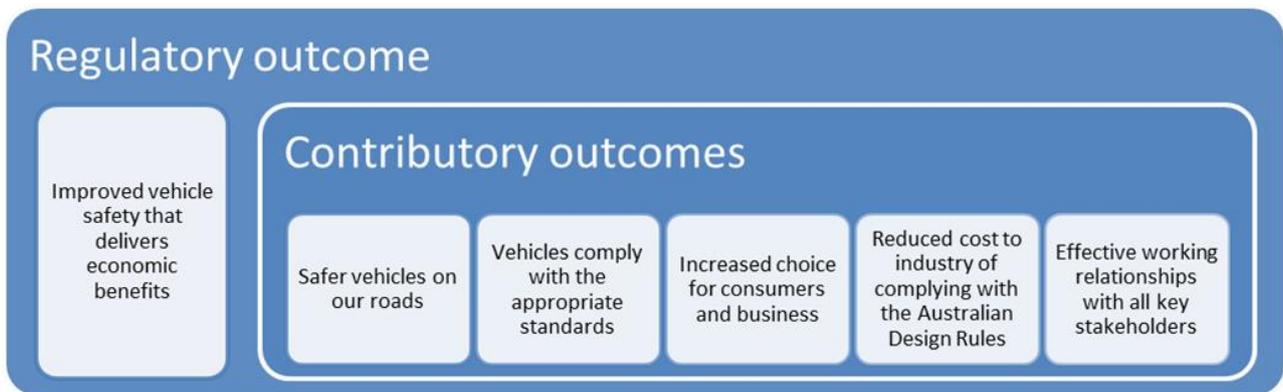


Figure 1 Motor Vehicle Standards Act 1989 - Regulatory outcome and contributory outcomes

The Compliance and Enforcement Strategy (the strategy) outlines how we, the department, will conduct our compliance and enforcement activities to fulfil our role of regulating the first supply of road vehicles in Australia and deliver our regulatory outcome.

The strategy is future-focussed and aspirational in its intent, reflecting changes currently being progressed under a continuous improvement agenda and as part of the reform of the Act.

This strategy will be regularly reviewed to ensure it remains reflective of current regulatory frameworks and responsive to changes in regulatory best practice.

¹ The national vehicle standards, referred to as the Australian Design Rules (ADRs), are standards that relate to vehicle safety, emissions control, theft protection and energy efficiency



Our role and responsibilities

We are responsible for the regulation of vehicles under the Act to ensure an acceptable level of safety, emissions, theft protection and energy efficiency across the Australian vehicle fleet. In this respect our role is to:

- maintain a contemporary national regulatory scheme that inspires public confidence in vehicle safety and supports productivity and growth
- minimise the risk of death or injury by ensuring an acceptable level of safety and environmental performance for all vehicles entering the Australian market

We achieve this through our compliance and enforcement activities by:

- assessing whether new light and heavy vehicle types entering the Australian market for the first time comply with the Australian Design Rules (ADRs) and as such are safe, secure and meet environmental performance requirements
- regulating the first supply to the market of used imported vehicles
- providing information and education to raise awareness of regulatory obligations and encourage voluntary compliance
- undertaking compliance activities, in line with a risk-based approach, to verify whether regulated entities are complying with regulatory requirements
- applying appropriate enforcement responses when non-compliance occurs
- engaging with suppliers of vehicles that are subject to recall to ensure issues are rectified in a timely manner
- engaging with a range of domestic and international stakeholders on matters relating to vehicle standards and compliance with the Act

Our operating environment

The automotive industry has undergone significant changes in recent years, influencing our approach to administering the Act and monitoring compliance with its regulatory requirements.

Domestic manufacture of light passenger motor vehicles in Australia ceased in 2017 whilst heavy and specialised vehicle manufacturing continues. The countries of manufacture supplying the Australian market are shifting - for example, the past five years has seen an increasing supply of new vehicles from emerging economies.

Developments in automotive technologies are resulting in an increase of applications for approval of alternative vehicles and vehicles using new technologies or features. Different styles and types of vehicles are also becoming available, ranging from children's toys and vehicles made primarily for leisure activities, to alternative commuter vehicles intended primarily as a means of transport. The features and performance capabilities of these types of vehicles are increasing, creating additional regulatory challenges.



International harmonisation of standards and new approaches to vehicle manufacturing and vehicle marketing is also affecting the types of vehicles seeking access to the Australian market.

Consumer expectations are higher than ever before in relation to vehicle features, safety systems and emissions performance. This is coupled with higher consumer and industry expectations of the government's role as a regulator and service provider.

The nature of the driving experience is also changing, with shifts in demographics, lifestyles and increasing urbanisation. Whilst motorists have reduced the average distance they drive, there has been an increase in the number of heavy vehicles on Australian roads and the average distance travelled by these vehicles.

Reflecting this changing operating environment and other drivers, we are continuing to develop and implement a range of measures under a reform agenda to ensure that our efforts are focussed on the right activities to effectively deliver our regulatory outcomes and that better practice regulation and administration continue to be incorporated into our regulatory approach.

These environmental and regulatory changes will be considered as we undertake our annual compliance planning over the life of this strategy.

Our stakeholders

We seek to engage with a range of stakeholders on compliance and enforcement matters to raise awareness of obligations under the Act and encourage voluntary compliance.

Key stakeholders include those entities we regulate under the Act and their representative associations.

We also engage with government agencies which have a role in broader vehicle safety and emissions issues under a range of legislation. These include:

- State and territory registration authorities, who are responsible for regulating vehicles once they are supplied to the Australian market
- The Australian Competition and Consumer Commission (ACCC) and state and territory consumer protection agencies
- The National Heavy Vehicle Regulator
- The Australian Border Force
- Commonwealth, state and territory law enforcement agencies and other regulatory authorities

We work with these agencies on compliance and enforcement matters through receiving and providing referrals of potential safety or non-compliance matters, providing technical advice and, where appropriate, coordinating operational activities and responses.

Our approach to compliance and enforcement

Consistent with our vision of being an effective and leading regulatory agency, we take an outcomes-based approach to compliance, promoting voluntary compliance and the confident and informed participation of all stakeholders.

Under this approach, we aim to:

- facilitate, encourage and incentivise compliant behaviour - through education and engagement, and a lighter touch (not 'no touch') approach to low risk entities and behaviours
- identify where non-compliance has occurred or is likely to occur through an understanding of current and emerging risks
- effectively pre-empt or address non-compliance through planned, targeted compliance activities and proportionate enforcement responses

Voluntary compliance

We seek to foster a culture of compliance – encouraging voluntary compliance through the provision of appropriate guidance material, education activities and assistance.

Informed risk-based compliance

We undertake informed risk-based compliance activities. Resources are directed to areas of highest risk, our compliance interactions with regulated entities are tailored in accordance with these risks and we respond proactively to changing and emerging risks.

A risk-based approach does not mean eliminating all risks, or taking a 'no-touch' approach to lower risk regulated entities or behaviours, but aims to deliver better regulatory outcomes, whilst minimising the regulatory burden on low risk regulated entities.

This approach seeks to address the more serious risks and systemic non-compliance through the effective allocation of resources while avoiding unnecessary costs to the department, industry and the community.

We consider a number of factors when identifying and assessing regulatory risks to inform our compliance activities. These include:

- outcomes from previous compliance activities
- trends in approval applications
- industry segment trends
- referrals and information received from other government agencies, industry stakeholders and the general public
- responsiveness to issues requiring a rectification and recall response
- changes in the regulatory environment
- changes in industry practice and the commercial environment
- changes in consumer priorities and behaviours
- technical developments

- international developments with implications for the Australian market

Application of appropriate enforcement responses

We apply appropriate enforcement responses where non-compliance is found. In considering the appropriate enforcement response, we will take into account a regulated entity’s explanation of the non-compliance and its actions to rectify the non-compliance and prevent the non-compliance from occurring in the future.

In the first instance, we will usually seek to restore a regulated entity to compliance. However, a stronger enforcement response may be warranted, even in the first instance, depending on the risk posed by the non-compliance, the entity’s behaviour and response to the non-compliance, and an entity’s capacity to meet their regulatory obligations.

Compliance and enforcement principles

Our compliance and enforcement activities are undertaken in accordance with the following principles:

Risk-based	Our compliance activities will be risk-based to ensure resources are effectively allocated towards addressing the most serious and systemic risks
Proportionate	Our compliance activities and enforcement responses will be proportionate to the risk being managed
Outcomes focussed	Our compliance and enforcement activities will be outcomes focussed, prioritising resources towards the greatest potential risks to regulatory outcomes with a view to improving overall compliance
Consistent	Our compliance activities and administrative decision making will be consistent and in accordance with documented procedures
Fair and transparent	We will be fair, open and transparent in relation to our decisions and compliance activities and will communicate with regulated entities in a clear, and effective manner
Voluntary compliance	We will promote and encourage a culture of voluntary compliance amongst regulated entities
Efficient	Our compliance activities will be streamlined and coordinated to reduce unnecessary impost on regulated entities and the department

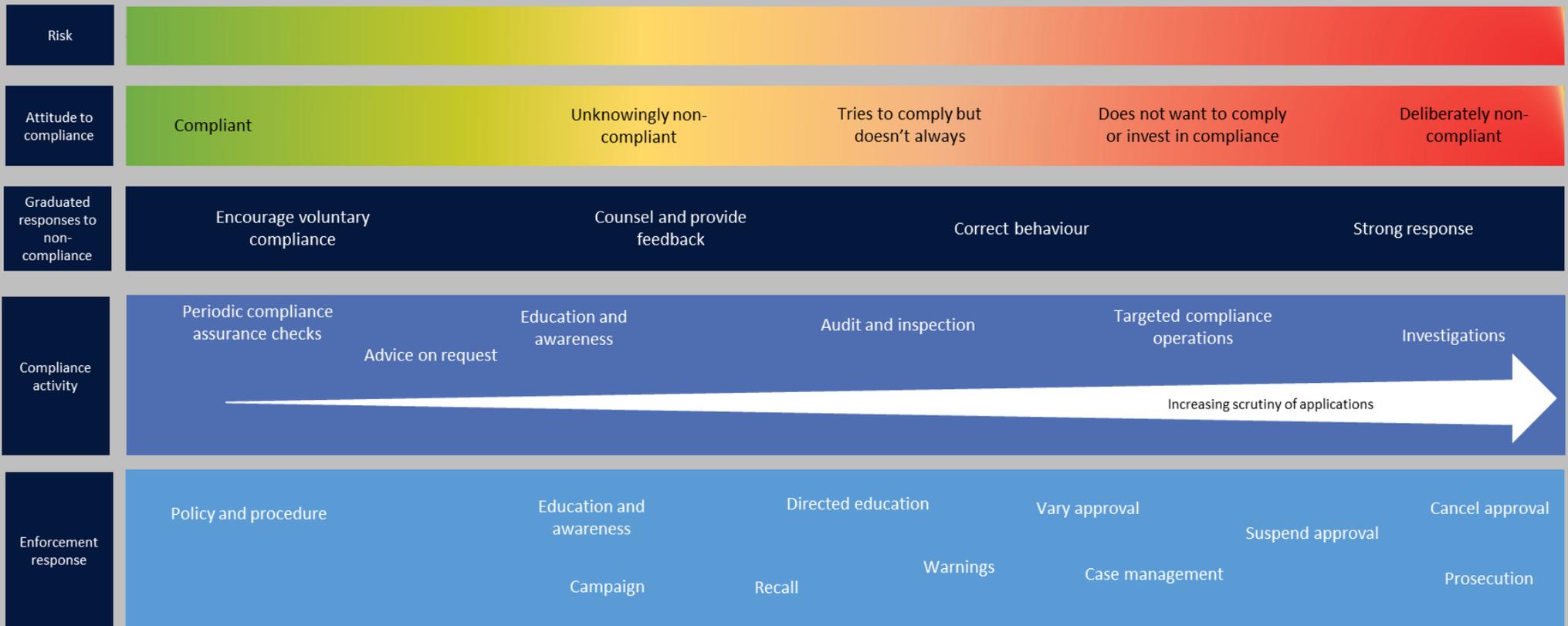


Compliance and enforcement continuum

We use a compliance continuum (figure 2) to inform our approach to compliance activities and to guide our application of enforcement responses.

The compliance continuum reflects that there are a range of activities and enforcement responses to achieve and enforce compliance that range from the light touch (such as education) to a stronger approach (e.g. investigations and prosecution).

Compliance and enforcement continuum*



*Compliance and enforcement continuum reflecting the range of compliance activities and enforcement responses against the risk rating of an entity or risk event and attitude to compliance. Enforcement responses included reflect those available administratively or under the Motor Vehicle Standards Act 1989.

Figure 2 Compliance and enforcement continuum



Compliance and enforcement activities and responses

We undertake a range of activities to monitor compliance and address identified non-compliance. Compliance activities can be either proactive (e.g. education campaigns and planned audits and inspections) or reactive (e.g. responses to safety and non-compliance reports made by the public or other regulators). A risk-based approach is applied to both proactive and reactive compliance activities.

Education and engagement

We aim to use education and engagement to educate and raise awareness of obligations under the Act and to encourage voluntary compliance.

We provide a range of information through a number of channels to assist both the general public and industry participants. This includes providing information on:

- how to comply with the Act
- how to apply for various approvals to import and supply road vehicles to the Australian market
- how to report issues that may assist us in monitoring compliance with the Act

We also engage with regulated entities through public forums, information seminars, trade shows and one-on-one discussions to assist them in fulfilling their obligations under the Act.

Approvals

We issue a range of approvals under the Act to allow people to import vehicles, supply vehicles or be recognised as a particular type of regulated entity.

We undertake compliance monitoring as part of the approval process by varying the level of scrutiny applications receive based on the risk presented by the application and conducting pre-approval inspections for higher risk applications.

Audits and inspections

We undertake physical and documentary assessments on regulated entities to assess whether they are complying with the Act.

Physical audits can encompass activity that assesses:

- compliance traceability through the design, testing, and production phases of vehicle development and supply (e.g. Conformity of Production Audits, Design/Test Facility Inspections)
- the effectiveness of quality management systems and procedures in place to ensure compliance
- key evidence records which are used to document the compliance of vehicles supplied

Documentary assessments can also be undertaken to assess the accuracy and veracity of an approval holder's records and are often undertaken to inform whether further compliance activity is required.



We also conduct physical vehicle inspections – either pre-approval or post approval. This can include inspections of a sample of a vehicle type as part of the certification process to obtain Identification Plate Approval (e.g. pre-approval Single Uniform Type Inspections) or inspections in response to specific risk indicators (either pre or post-approval).

Investigations

While we aim to use education and support to ensure compliance, at times it is necessary to undertake investigations into possible non-compliance, especially where regulated entities have demonstrated a lack of willingness to voluntarily comply with their obligations.

We investigate matters where sufficient evidence exists of either non-compliance, or an otherwise systemic safety issue. A range of factors is taken into account when determining whether a matter will be investigated, including:

- whether there has been a death or injury
- whether there is an identifiable safety issue related to the design or manufacture of the vehicle
- whether there is identifiable non-compliance with a mandatory standard (such as the ADRs), conditions of an approval and/or other relevant legislation
- the number of similar reports
- the age and use of the vehicle
- voluntary action taken to resolve the issue

There are also times where we work with other agencies such as the federal, state and territory police services and the Australian Border Force on investigations related to non-compliance and safety.

Enforcement responses

Enforcement responses to non-compliance can vary depending on the severity and risk of the detected non-compliance, the behaviour associated with the non-compliance (i.e. was the non-compliance deliberate or intentional) and the regulated entity's response to the non-compliance (i.e. did the entity respond in a satisfactory manner to address the non-compliance and to prevent future occurrences?).

Responses to non-compliance can encompass targeted education, warnings and higher levels of compliance monitoring. Enforcement options available under the Act to treat identified serious and deliberate non-compliance include varying, suspending and cancelling approvals, and prosecution.

Review and complaint mechanisms

If a regulated entity is not satisfied with our response or action in relation to a compliance matter, in the first instance it can be raised with the relevant area handling the matter.

If a regulated entity wishes to make a general complaint, or if the entity is not satisfied with the initial response from the relevant area, a formal complaint can also be lodged through [our website](#).



In the case of certain decisions made under the Act, the applicant or approval holder can seek further review of the decision by the Administrative Appeals Tribunal. These decisions are outlined in section 39 of the Act and include:

- refusal of a Vehicle Import Approval
- a decision to vary, suspend or cancel an approval
- a decision to specify a condition in an approval
- a decision to refuse to grant or renew an approval

For further information on review mechanisms, please refer to [our website](#).

Recalls

Recalls provide a mechanism for rectifying non-compliant and/or unsafe vehicles that have already been supplied to market. Under section 41 of the Act, national standards relating to vehicle safety, emissions controls and theft protection are safety standards within the meaning of the Australian Consumer Law (ACL).

The ACCC through its role of enforcing the Competition and Consumer Act 2010, including the ACL, has broad responsibilities for consumer product safety, which extends to personal motor vehicles covered by ADRs under the ACL.

The department and the ACCC have entered into a Memorandum of Understanding (MoU) that establishes a framework for cooperation with regard to the regulation of consumer products and motor vehicles.

We maintain contact with the ACCC on motor vehicle recalls and also engage with affected vehicle suppliers to negotiate and monitor the progress of voluntary recalls, to ensure that vehicles are rectified quickly.

Recalls can be voluntary (initiated by suppliers) or compulsory (initiated by the responsible Minister under the Competition and Consumer Act 2010).

Voluntary recalls

Recalls can be undertaken voluntarily by suppliers when a non-compliance or safety issue is detected. Voluntary recalls provide evidence of a supplier's capacity to self-assess, and level of voluntary compliance.

Industry associations such as the Federal Chamber of Automotive Industries and the Truck Industry Council provide codes of practice to guide the voluntary recall process for potentially unsafe or ADR non-compliant vehicles.

We engage with industry on emerging international and domestic trends that may necessitate a recall response in the Australian market. When we become aware of a safety or non-compliance issue, we may encourage a supplier to initiate a voluntary recall in the first instance.

Compulsory recalls

Where a supplier is unwilling to undertake voluntary action to rectify an unsafe vehicle through an appropriate recall process, the ACCC, together with the department may take further action.

Under the ACL, the responsible Minister can issue a recall notice for the compulsory recall of consumer goods, where one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury and any of the following applies:

- it appears the goods will or may cause injury
- it appears that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury
- a safety standard for such goods is in force and the goods do not comply with the standard
- an interim ban, or a permanent ban, on such goods is in force

For further information on recalls, please refer to [our website](#).

Annual compliance program

We undertake a program of planned compliance activities each year. An annual compliance plan is produced which outlines our key areas of compliance focus for the year and the range of planned or proactive compliance activities that will be undertaken to address these areas.

The planning process is informed by prioritised regulatory risks. Identified risks include historical, current and emerging risk events and take into consideration factors such as:

- previously identified non-compliance (by event and type of entity)
- how the identified non-compliance affects the achievement of improved vehicle safety that delivers economic benefits
- impact of emerging technical developments on regulatory outcomes and compliance
- industry changes and behaviours and emerging consumer trends that may impact on compliance with regulatory requirements

Complementing our program of planned activities are reactive compliance activities – undertaken to respond directly to safety or non-compliance reports or inspections resulting from assessments of applications where there is an indicator of potential non-compliance.

The annual compliance plan is reviewed and evaluated throughout the year to capture insights and outcomes from operational activity, to account for changing risks and priorities and to assess the effectiveness of our compliance activities in delivering our regulatory outcomes.



Keeping you informed

To support industry and other regulated entities in their commitment to voluntary compliance we seek to keep our stakeholders informed.

We will engage with regulated entities on our approach to compliance and enforcement, including the types of engagement and information that would be useful to them.

For the life of this strategy we will endeavour to share our areas of compliance focus for the forward compliance planning cycle, and where appropriate, provide summaries of findings from the annual program of compliance activities.

Useful links

Legislation

Motor Vehicle Standards Act 1989

<https://www.legislation.gov.au/Series/C2004A03813>

Motor Vehicle Standards Regulations 1989

<https://www.legislation.gov.au/Series/F1996B02086>

Australian Design Rules

<https://infrastructure.gov.au/roads/motor/design/index.aspx>

Reporting a vehicle safety or non-compliance issue

<https://infrastructure.gov.au/vehicles/reporting/index.aspx>

Vehicle Recalls

<https://infrastructure.gov.au/vehicles/recalls/index.aspx>

Review and complaint mechanisms

Feedback and complaints

<https://infrastructure.gov.au/utilities/contact.aspx>

Vehicle Imports – Your feedback and making a complaint

<https://infrastructure.gov.au/vehicles/imports/feedback.aspx>

Administrative Appeals Tribunal

https://infrastructure.gov.au/vehicles/imports/your_rights/aat.aspx