



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

VEHICLE SAFETY OPERATIONS

Our compliance approach and model

Regulating under the Road Vehicle Standards Act 2018

June 2021

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Purpose and context

The Vehicle Safety Operations Compliance Model (the compliance model), represents the department's approach to ensuring compliance with the *Road Vehicle Standards Act 2018* (the RVSA), the *Road Vehicle Standards Rules 2019* (the Rules) and Australian Design Rules for Road Vehicles (ADRs).

The department is responsible for supporting the safety, environmental and anti-theft performance of all road vehicles being provided to the Australian market for the first time. To achieve this outcome, the department's Vehicle Safety Operations (VSO) branch takes a risk-based approach to the management of compliance with the RVSA, the Rules and the ADRs.

Vehicle Safety Operations risk framework

Our compliance model uses principles from the Vehicle Safety Standards Regulatory Risk Framework (the framework).

The framework principles:

- set a consistent approach to identifying, assessing and prioritising regulatory risks
- detail how to allocate resources and identify appropriate activities to address risks
- outline how a risk-based regulatory approach will be embedded within VSO.

Application of the risk framework principles

We apply the risk framework principles when:

- assessing applications from regulated entities
- selecting regulated entities for inspection or investigation (except where there is a legislative requirement to undertake an inspection)
- educating or engaging with regulated entities
- conducting activities to verify that a regulated entity is complying with their obligations
- responding to instances of non-compliance
- reviewing operational activities
- developing VSO regulatory risk assessment processes, compliance plans and operational plans
- allocating resources to compliance activities, and applying enforcement responses.

New legislation

The RVSA was drafted to reflect Australia's current automotive landscape, which has substantially changed since the prior legislation was introduced in 1989 and significantly influences how vehicles are now being imported and supplied for the first time to the Australian market. At a high-level, the RVSA supports voluntary compliance by linking current industry practices to clear, relevant and objective legislative criteria for importing and providing road vehicles to the Australian market.

New legislative provisions in the RVSA include, but are not limited to, the following:

- A framework through which the Minister is empowered to recall road vehicles and approved road vehicle components that are unsafe or do not comply with national road vehicle standards. Previously, vehicle-related recalls were administered in Australia by the Australian Competition and Consumer Commission (ACCC) using powers under the Australian Consumer Law and the *Competition and Consumer Act 2010*.
- The triggering of certain provisions of the *Regulatory Powers (Standard Provisions) Act 2014* (RPA), thereby expanding the department's regulatory powers and allowing for a range of compliance and enforcement responses. These powers, for example, include civil and administrative penalties (such as infringement notices).

- The use of computer programs to assist with applications. This has led to the development of the new ROVER IT system through which applications will be submitted online, recorded and processed.
- A publicly available Register of Approved Vehicles (RAV), where road vehicle details must be entered before vehicles are provided to the Australian market for the first time. The RAV (and the Specialist and Enthusiast Vehicles Register), will be maintained by the department and are publicly accessible via the department's website.

A risk-based approach to compliance management

A risk-based approach to compliance management means that where the non-compliance risk is considered high, there is a greater or stronger compliance and enforcement response to that risk. Conversely, where the non-compliance risk is considered low, a lesser or lighter compliance and enforcement response is taken.

This risk-based approach helps ensure that compliance activities are focussed on regulated areas and regulated entities that pose the greatest compliance risk, without impeding the regulated industry's ability to operate.

A risk-based approach does not mean eliminating all risks, or taking a 'no-touch' approach to lower-risk regulated entities or behaviours.

A risk-based approach utilises the following elements:

- **Risk identification:** actively identifying and documenting historical, current and emerging risks that relate to our regulatory outcomes.
- **Risk assessment:** assessing the likelihood and consequence of identified risks, taking into account the effectiveness of any controls.
- **Risk prioritisation:** prioritising the risks, together with the risk assessment, to inform the design of compliance activities, allocation of resources to compliance activities and selection of the most appropriate compliance or enforcement response.
- **Control assessment:** identifying and assessing the effectiveness of controls currently used to modify or prevent the likelihood or consequence of the risk.
- **Allocation of resources to compliance activities:** allocating resources to compliance activities in proportion to the risk and guided by the risk priority.
- **Tailoring of the enforcement response:** tailoring enforcement or compliance responses based on the severity and behavioural drivers of the non-compliance.

A risk-based approach aims to deliver better regulatory outcomes, while minimising the regulatory burden on low-risk regulated areas or entities. The implementation of an effective risk-based approach results in, but is not limited to:

- a flexible, yet consistent approach to the monitoring and management of compliance
- the efficient and effective allocation of limited resources proportionate to the identified risk
- direction of the 'cost' of compliance and enforcement activities to higher-risk areas or entities
- lower-risk entities being subject to a lighter touch compliance approach (not no touch), with any intervention designed to provide an incentive to voluntarily comply with obligations
- higher-risk entities being subject to greater regulatory scrutiny and intervention
- proportionate responses to non-compliance
- flexibility to adapt to changing circumstances. This is where VSO regulatory strategies, compliance activities and responses are adjusted to reflect changing priorities resulting from new or evolving risks, changes in stakeholder expectations, or the behaviour and motivations of regulated entities.

Vehicle Safety Operations regulatory posture

Our current 'regulatory posture' is one of considered risk appetite and risk tolerance, coupled with a compliance and enforcement program that is risk-aware, proportionate, evidence-based and outcome-oriented.

For example, while the department has a moderate risk appetite for regulatory risks, it has a low tolerance for systemic non-compliance with regulation. Similarly, the department has a moderate risk appetite for our service delivery work, with a low tolerance for risks to community wellbeing.

We are committed to maintaining effective and efficient regulatory frameworks that are fit-for-purpose, proportionate to risk, and reviewed for continuous improvement. In achieving these goals we use a risk-based approach to our compliance and enforcement activities with a focus on achieving proportionate practical outcomes.

Our relationships with stakeholders help us to achieve our purpose and objectives, with open discussions seen as critical to designing our policy intent and regulatory approaches. It is important to us that we understand the different perspectives of our stakeholders, even where we may not agree.

Our compliance model

The compliance model, detailed below, will guide our work over the 12-month transitional period following the commencement of the RVSA on 1 July 2021.

The compliance model does the following:

- reflects our approach to regulating, particularly in the transitional 12-month period
- sets out an escalating compliance response to escalating risk and non-compliant behaviours
- shows the relationship between non-compliant behaviour and the likely corresponding VSO regulatory response
- guides our compliance activities and enforcement responses while supporting industry as it adjusts to new legislation
- allows flexibility in addressing non-compliance issues and risks as they arise, and
- complements our current regulatory posture.

Introduction of the compliance model

It is anticipated that regulated entities and industry stakeholders will require reasonable time to become familiar with the changes under the RVSA and, importantly, their new obligations. Additionally, time will be required for industry to become familiar with new application processes and support systems that have been developed by the department.

The compliance model takes these matters into consideration, and during the transition, education of the sector will be the primary focus of VSO.

Education will be our key compliance and enforcement focus during the 12-month transitional period from 1 July 2021.

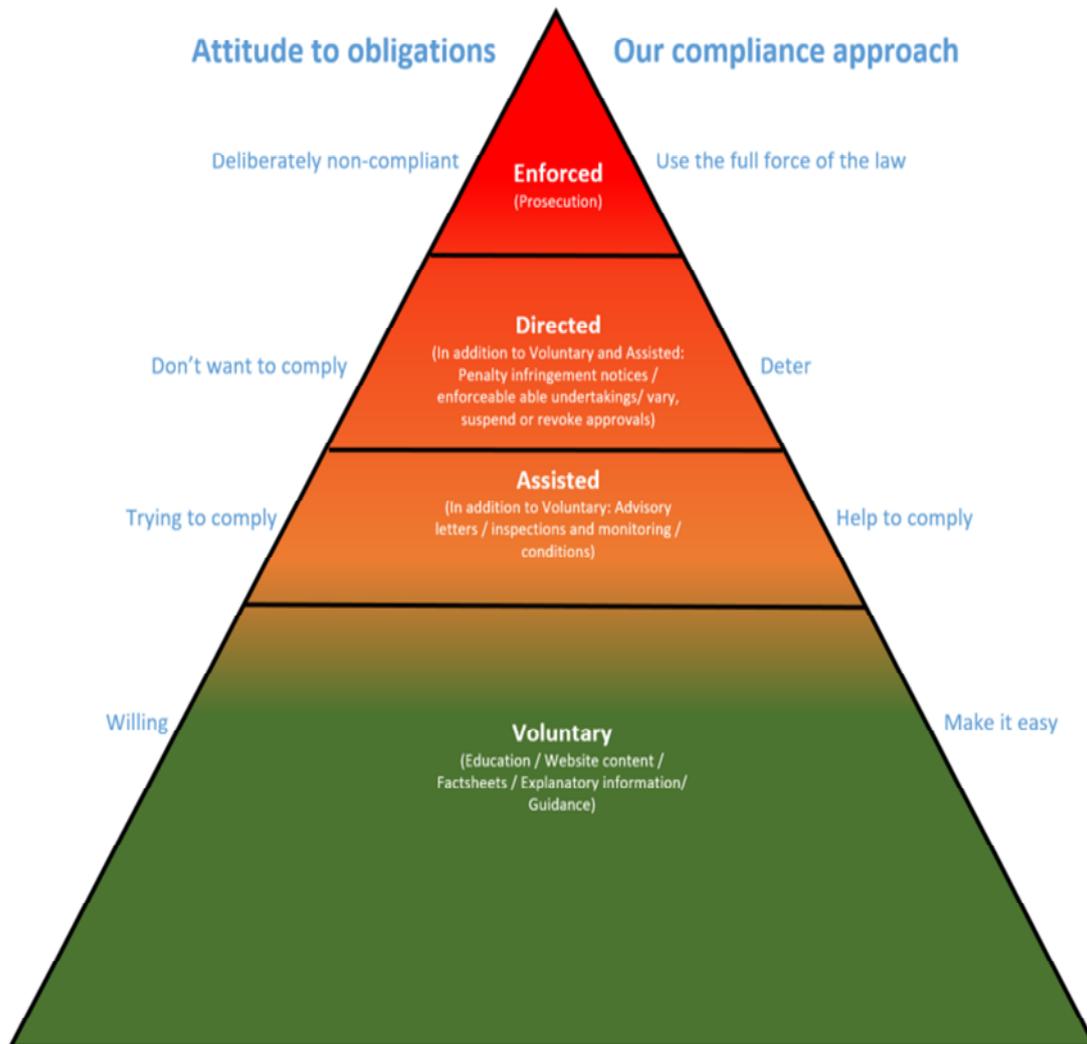
During the 12-month transition period the compliance model will also be reviewed regularly, taking into consideration any legislative changes, emerging risks and, importantly, industry feedback.

Compliance types

The compliance model recognises there are varying degrees of compliant and non-compliant behaviour. Each behaviour requires a different compliance and enforcement approach to respond to any non-compliance, encourage a return to compliance or enforce compliance. We use four main types when considering non-compliance and responding to non-compliance:

- voluntary compliance
- assisted compliance
- directed compliance
- enforced compliance

This approach is often represented in the shape of a pyramid, where the majority of regulated entities are voluntarily compliant and supported by education material to assist them in remaining compliant. Moving to the top part of the pyramid, intentional or repeated non-compliant behaviour will be addressed through appropriate and escalating compliance and enforcement responses.



The Vehicle Safety Operations compliance model

Voluntary compliance

The compliance model recognises that industry largely endeavours to operate within the law and strives to be compliant. The department will assist industry by providing high quality explanatory guidance materials, streamlined processes and points of contact for assistance with issues or concerns.

Information about compliance obligations are built into the ROVER IT system, which aids in facilitating voluntary compliance. Further, a declaration-based system has been adopted to simplify the application requirements and reduce the number of onsite inspections needed during an application process.

The department's website also contains easily accessed compliance-related information addressing a wide range of areas to assist industry in identifying the changes to the regulated operating environment and the regulated entities' obligations.

The information provided covers the new legislation, vehicle importation and certification, the Registered Automotive Workshop Scheme (RAWS), applications, links to relevant State and Territory authorities and many more areas of significance to industry, including information about how to report a vehicle safety or a non-compliance issue.

All public information is subject to frequent review and updates and industry is encouraged to regularly check the department's website and provide feedback through relevant consultative forums.

Assisted compliance

When non-compliance occurs through error or inability to comply with an aspect of an entity's obligations, our aim is to assist. We will provide targeted guidance and education to assist in achieving, or re-establishing compliance. If this proves unachievable, previously issued approvals may be varied, suspended or revoked, as appropriate, initiated either by the department or the approval holder.

Assistance may also be provided through inspection and monitoring activities to identify compliance and/or potential or actual non-compliance. These activities may be conducted either using remote technology or onsite. It is important to note that initial assistance is provided through education about compliance obligations and how to meet them. However, regulatory consideration of non-compliance which falls within this second tier recognises an escalation in seriousness which may also justify proportionate enforcement action.

Importantly, assisted compliance is not provided with a view to providing information to avoid compliance with regulatory obligations.

Directed compliance

The likelihood of detection is seen as a strong deterrent to deliberate non-compliance. We will conduct inspections and regular compliance monitoring in conjunction with planned targeted compliance activities that target identified risks and suspected deliberate non-compliant behaviours.

Our regulatory activities in this category may involve varying, suspending or revoking approvals or executing monitoring and investigation warrants, issuing infringement notices, accepting enforceable undertakings or seeking court issued injunctions. Referral of matters for prosecution may also be considered, dependent upon the duration or seriousness of any detected non-compliance.

Enforced compliance

In cases involving deliberate or repeated serious non-compliance we are prepared to apply all relevant enforcement options provided under the law, including seeking prosecution. When considering the actions to be taken, we will consider an entity's compliance history and responses to any previous interactions with us.

Key enhancements to compliance and enforcement

A significant change under the RVSA is that the department now has access to broader regulatory powers under the provisions of the RPA. These include:

- strengthened monitoring powers (Part 2 of the RPA)
- strengthened investigation powers (Part 3 of the RPA)
- seeking civil penalties (Part 4 of the RPA)
- issuing infringement notices (Part 5 of the RPA)
- accepting enforceable undertakings (Part 6 of the RPA)
- seeking injunctions (Part 7 of the RPA).

The RVSA also sets out a range of criminal offences that on conviction can result in significant financial penalties.

Many of these new regulatory powers were not prescribed in the *Motor Vehicle Standards Act 1989* (MVSA).

Monitoring powers

Section 50 of the RVSA states that provisions of the RVSA, and offences against the *Crimes Act 1914* or the *Criminal Code* that relate to the RVSA, are subject to monitoring under Part 2 of the RPA.

This means that we can undertake monitoring to determine compliance or non-compliance with provisions of the RVSA. We can also monitor whether or not information that has been given in compliance, or purported compliance, with the RVSA is correct.

To conduct monitoring activities, an authorised person (i.e. an inspector), may enter a premises either with the consent of the occupier, or under a monitoring warrant. The inspector may also, under section 23(1) of the RPA and section 50(5) of the RVSA, be formally assisted by other persons in exercising powers and functions where that assistance is reasonable and necessary.

When persons assisting exercise a power or perform a function or duty under the direction of the inspector, that power, function or duty is taken to have been exercised or performed by the inspector being assisted. For this reason persons assisting are likely to be departmental, law enforcement, regulatory personnel, or individuals with particular relevant expertise.

Monitoring powers that can be exercised include, but are not limited to:

- searching a premises and any thing on a premises
- examining or observing an activity conducted on the premises
- make any still or moving images or recording of the premises or any thing on the premises
- inspecting any document on the premises.

In addition to these monitoring powers, inspectors have additional monitoring powers to sample any thing on the premises and the power to remove and test such samples.

These monitoring powers are a strengthening of powers that were available under the MVSA.

Investigation powers

Section 52 of the RVSA delineates investigation from monitoring by stating that an offence against the RVSA, or a civil penalty provision of the RVSA, or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to the RVSA, is subject to investigation under Part 3 of the RPA.

Part 3 of the RPA creates a legal framework for gathering material that relates to the contravention of offence provisions and civil penalty provisions.

An authorised person (i.e. an inspector), may enter premises if the authorised person suspects on reasonable grounds that there may be material on the premises related to the contravention of an offence provision or a civil penalty

provision. Entry must be with the consent of the occupier of the premises or under an investigation warrant. While on the premises the authorised person may exercise investigation powers, and may have persons assisting.

Investigation powers are similar to the monitoring powers that are briefly listed above.

An investigation is different from compliance monitoring. An investigation activity is significant and is conducted with a view to referring a completed Brief of Evidence to the Commonwealth Director of Public Prosecutions (CDPP), for consideration of prosecution action.

Investigation activities may also result in other enforcement decisions such as the issuing of infringement notices.

These investigation powers are a strengthening of powers that were available under the MVSA.

Civil penalties

Under section 54 of the RVSA, civil penalty provisions are enforceable under Part 4 of the RPA. Part 4 of the RPA allows an authorised applicant (i.e. the Minister, the department Secretary, an Senior Executive Service (SES) employee or acting SES employee of the department), to apply to a relevant court for an order that a person - including a body corporate - who is alleged to have contravened a civil penalty provision of the RVSA, pay the Commonwealth a pecuniary penalty (a monetary penalty).

The authorised applicant must make an application within 6 years of the alleged contravention.

If the relevant court is satisfied that person has contravened a civil penalty provision of the RVSA, the court may order the person to pay a penalty that the court determines is appropriate.

A single civil penalty order may be made by the court for multiple contraventions of a civil penalty provision.

The MVSA did not prescribe provisions related to civil penalties (i.e. court issued fines).

Infringement notices

Section 55 of the RVSA and Part 5 of the RPA create a framework for using infringement notices to deal with a civil penalty provision in Part 2 of the RVSA (for the regulation of road vehicles and road vehicle components), or strict liability offences against a provision in Part 3 of the RVSA (recalls of road vehicles or approved road vehicle components).

An infringement notice is a lesser penalty than could be applied for via a civil penalty order and may be appropriate for less severe contraventions of the RVSA.

A person can be given an infringement notice in relation to a contravention of a provision that is subject to an infringement notice where an infringement officer believes on reasonable grounds that the provision has been contravened. Infringement notices can be given by the Secretary, or an SES or acting SES employee of the department.

An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

A person who is given an infringement notice can choose to pay the penalty amount as an alternative to having court proceedings brought against them for a contravention. If the person chooses not to pay the amount, proceedings can be brought against them in relation to the contravention. The value of an infringement notice is generally less than could be imposed by a court via a civil penalty order.

Enforceable undertakings

Section 57 of the RVSA prescribes that a civil penalty provision of the RVSA is enforceable under Part 6 of the RPA. This part of the RPA creates a framework for accepting and enforcing undertakings made by a person in regard to compliance with relevant RVSA provisions. Enforceable undertakings can be accepted by an authorised person (i.e. the Minister, the Secretary, an SES employee, or an acting SES employee).

To be accepted, undertakings must be written and expressed as an undertaking under section 114 of the RPA, and that the person will:

- take specified action in order to comply with a provision that is enforceable
- refrain from taking specified action in order to comply with a provision that is enforceable
- take specified action towards ensuring that they do not contravene a provision that is enforceable.

An authorised person may also cancel the undertaking by giving written notice to the person.

A person giving an undertaking may withdraw or vary the undertaking but only with the written consent of an authorised person.

An authorised person may also apply for an order if they consider the person has breached an undertaking (section 115 RPA). The court may make any or all of the following:

- an order directing the person to comply with the undertaking
- an order directing the person to pay the Commonwealth an amount up to the amount of any financial benefit obtained directly or indirectly and reasonably attributable to the breach
- any order the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach
- any other order the court considers appropriate.

A notice of a decision to accept an undertaking, and the name of the person who gave it, will be published on the department's website.

The MVSA did not prescribe provisions for enforceable undertakings.

Injunctions

Section 58 of the RVSA prescribes that a civil penalty provision in the RVSA is enforceable under Part 7 of the RPA. Part 7 of the RPA creates a framework for using injunctions to enforce these provisions.

Injunctions may be used to restrain a person from contravening a RVSA provision or compel compliance with a provision.

There are two types of injunction.

a) Restraining injunctions. If a person has engaged, is engaging, or is proposing to engage in conduct that contravenes an RVSA provision, a court, on application by an authorised person may grant an injunction:

- restraining a person from engaging in conduct; and
- if desirable in the court's opinion, require the person to do a thing.

b) Performance injunctions. If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do a thing; and the refusal or failure was, is, or would be a contravention of an RVSA provision, a court, on application by an authorised person may grant an injunction:

- requiring the person to do that thing.

Authorised persons for making an application to the court seeking an injunction are the Minister, the Secretary, an SES employee, or acting SES employee.

Interim injunctions are also available to a court before deciding an application seeking an injunction.

Injunctions were a regulatory power available under the MVSA.

The new Road Vehicle Regulator IT system (ROVER)

The progression from the MVSA to the RVSA, in conjunction with the impacts of the COVID-19 pandemic, has altered the way in which the department conducts business with our industry stakeholders.

The development of the purpose-built Road Vehicle Regulator (ROVER), IT system allows for the online submission and assessment of the various types of applications, improving application submission efficiency and reducing the need for on-site application related inspections.

ROVER provides a consolidated database that contains information that is used to inform and support targeted compliance and enforcement activities and assist with identifying high risk areas of the industry.

More information

For more information on the introduction of the RVSA, please see the department's website <https://www.infrastructure.gov.au/vehicles/rvs/index.aspx>. Content related to various aspects of the new regulatory regime and what it means for regulated entities is being added regularly.

Our compliance and enforcement activities are the operational face of a risk-based framework of policies, strategies, processes and plans developed to:

- provide a cohesive approach to meeting our legislated responsibilities as a regulator; and
- assist industry stakeholders in consistently meeting their legislated obligations.

Information regarding our risk-based framework will be progressively published and updated on the department's website at https://www.infrastructure.gov.au/vehicles/compliance_and_enforcement/index.aspx

Glossary

| Term | Definition |
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| Civil penalty order | A court-issued pecuniary penalty order i.e. fine, imposed when a civil penalty provision of the RVSA has been breached. Taken to be a 'judgement debt', the Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a due debt. |
| Compliance monitoring | A broad term referring to any form of information collection, or contact with a regulated entity by VSO for the purposes of identifying issues relating to that entity's compliance with the legislation and/or any conditions of an approval they hold. |
| Enforceable undertaking | A written, court-enforceable undertaking given by a regulated entity to comply with provisions of the RVSA, accepted by an authorised person. Breaches of an accepted undertaking may result in a court making a compliance, financial and/or any other order that it considers appropriate. |
| Infringement notice | A pecuniary penalty notice given to a regulated entity by a infringement officer who believes on reasonable grounds that the person has contravened a provision of the RVSA. |
| Injunction | Court issued document restraining a person from engaging in non-compliant conduct (restraining injunction); or requiring the person to do a thing they have refused or failed to do (performance injunction). |
| Inspection | VSO may conduct an inspection to assess whether or not a regulated entity complies with the legislation and any conditions of the approval they hold. |
| Inspector | Means a person appointed as an inspector under s.49 of the RVSA |
| Motor Vehicle Standards Act 1989 (MVSA) | An Act to provide for national motor vehicle standards and for related purposes. The MVSA will be replaced by the RVS legislation—full implementation of the RVS legislation is anticipated by July 2021. |
| Register of Approved Vehicles (RAV) | A publicly accessible online database of vehicles that comply (or substantially comply) with applicable national road vehicle standards or are otherwise permitted for use on public roads under a concessional scheme. Generally, vehicles must be entered on the RAV with a |

| Term | Definition |
|--|--|
| | vehicle type approval or concessional RAV entry approval before they are provided to the Australian market. |
| Regulated entity | An individual or organisation engaged in the provision of road vehicles or components to the Australian market, as authorised through a Licence/Approval issued by the department of Infrastructure, Transport, Regional Development and Communications, in accordance with the legislation. |
| RPA | Regulatory Powers (Standard Provisions) Act 2014 |
| Risk appetite | The amount of risk the department is willing to accept (or retain), in order to achieve our purposes and objectives. |
| Risk tolerance | The levels of risk that are tolerable / acceptable to the department in order to manage a category or particular type of risk. |
| ROVER | RVSA's IT support system |
| Road Vehicle Standards Act 2018 (RVSA) | An Act to provide for the regulation of road vehicles and road vehicle components, to set national road vehicle standards, and for other purposes. For more information, refer to the Federal Register of Legislation. |
| The department | Department of Infrastructure, Transport, Regional Development and Communications |
| The model | Vehicle Safety Operations Compliance Model |
| VSO | Vehicle Safety Operations branch within the department |
| Warrant | Court-issued document authorising an inspector ('authorised person'), entry to a premises and the seizure of things relevant to the purpose of the warrant. A warrant may be issued for monitoring or investigative purposes. |