



VEHICLE SAFETY OPERATIONS

# Compliance and Enforcement Strategy 2021 - 2023

## Regulating under the Road Vehicle Standards Act 2018

June 2021

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# Introduction

The *Road Vehicle Standards Act 2018* (the RVSA) replaces the *Motor Vehicle Standards Act 1989* (the MVSA) and comes into full effect on 1 July 2021. The RVSA establishes a new risk led regulatory framework for the design, manufacture, importation and provision of road vehicles in Australia.

This strategy outlines how the Department of Infrastructure, Transport, Regional Development and Communications (the department), will conduct its compliance and enforcement activities under the RVSA, and informs the community, the automotive industry, regulated entities and other regulatory agencies about our compliance and enforcement priorities for the next two years.

The strategy is informed by 'Our Compliance Approach and Model' document and the previous 'Compliance and Enforcement Strategy 2017' that supported the MVSA. This new strategy will be reviewed as required to ensure that it remains reflective of regulatory frameworks, is responsive to new issues and any changes in the operating environment. The strategy will also be considered when preparing the 2023-2026 strategy.

## Our approach to compliance and enforcement

Consistent with our vision of being an effective regulatory agency, we take a risk-based approach to compliance and enforcement management. This ensures that our compliance and enforcement activities are focused on regulated areas and regulated entities that pose the greatest compliance risk without impeding industry's ability to operate.

Our approach is informed by:

- the principles set out in this document
- our Compliance Approach and Model document
- the operating environment, including:
  - introduction of the new RVS legislation
  - the changing automotive industry in Australia and globally
  - external factors such as COVID-19.

Under this approach, we aim to:

- be agile and consistent
- allocate our resources effectively and proportionately to high-risk areas
- deliver proportionate enforcement responses to non-compliance and
- be adaptive to new or evolving risks.

## Our principles

The following principles inform all of our compliance and enforcement activities:

- **Voluntary compliance** – we will promote and encourage voluntary compliance from regulated entities through the effective use of communication and education.
- **Risk-based** – our compliance activities will be risk-based to ensure resources are effectively allocated, addressing the most serious and systemic risks.
- **Intelligence-led and evidence-based** – we will utilise intelligence, data and trend analysis to inform our compliance and enforcement activities. This will assist with evidence-based risk assessments when prioritising and planning compliance and enforcement activities.
- **Proportionate** – our compliance activities and enforcement responses will be proportionate to the compliance risks we are managing.
- **Consistent** – our compliance and enforcement activities and administrative decision making will be consistent and in accordance with documented procedures.

- **Outcomes focused** – our compliance and enforcement activities will be outcomes focused, prioritising resources to the greatest risks and with a view to improving overall compliance.
- **Fair and transparent** – we will be fair, open and transparent in relation to our decision-making and our compliance and enforcement activities, and we will communicate with regulated entities in a clear and effective manner.
- **Responsive agile and efficient** – we will be responsive to new technologies, environmental trends, data and intelligence reporting. Our compliance activities will be streamlined and coordinated to reduce unnecessary imposts on both regulated entities and the department.
- **Professional** – our staff will be qualified, professional and respectful when providing information and interacting with you.

## Our compliance approach and model

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

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

This approach is represented in the shape of a pyramid (see Figure 1 – *Vehicle Safety Operations compliance model*), 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-compliance will be addressed through appropriate and escalating compliance and enforcement responses.

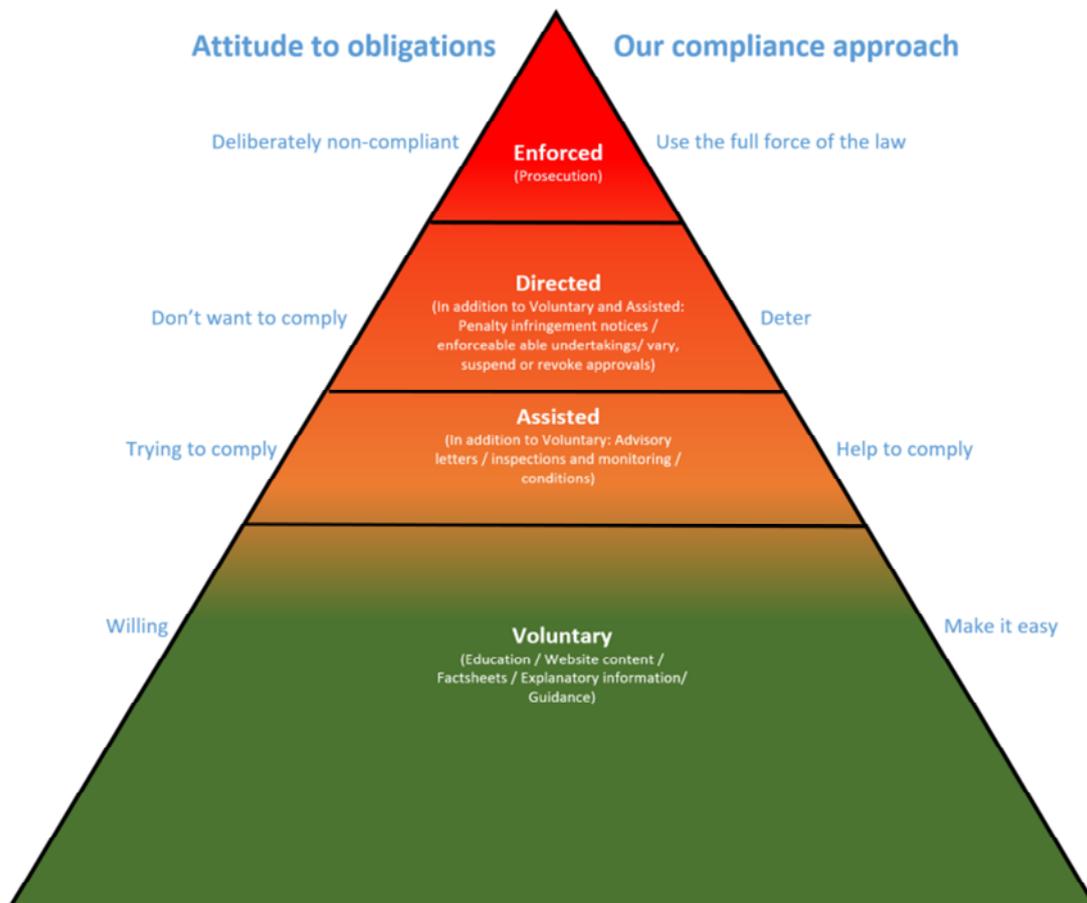


Figure 1 – Vehicle Safety Operations compliance model

## Our operating environment

In recent years, the global automotive industry has undergone rapid and significant change.

In Australia, local manufacturing of cars ceased in 2017 and since then all new cars have been imported from overseas. There are still many vehicles manufactured in Australia, most of which are either light or heavy trailers (now referred to as low aggregate trailer mass (ATM) or high ATM trailers) although many new trailers are also imported. The countries who currently supply the Australian vehicle market are technically diverse and the number of new vehicle approval applications overall is increasing. As a regulator, we are being asked to consider applications for all vehicles including those manufactured through novel processes and those that incorporate new and emerging technologies. We receive applications for electric vehicles, autonomous (driverless) vehicles, new manufacturing processes, new materials and a host of other innovations.

Societal behaviour has also changed the nature of the driving experience within Australia. Increasing urbanisation, shifts in demographics, more lifestyle choices and increasing environmental concerns have changed our transportation habits. Australians have reduced the average distance they drive and are more reliant on public transport. There has also been an increase in the number of heavy vehicles on Australian roads and an increase in the average distance travelled by those vehicles.

These factors place additional pressures on the department's role as a regulator. In response, our regulatory approach to administering vehicle legislation and regulatory compliance must be agile and focused. With this in mind, we monitor the automotive environment to ensure our efforts are concentrated on the right activities to effectively deliver the best regulatory outcomes, and that best practice principles are continuously incorporated into our everyday regulatory work.

### Effects of COVID-19

COVID-19 has had a significant impact on everyone, including the industry we regulate and departmental staff. We have all adapted to new ways of working under COVID-19 restrictions. While regulated entities will be required to comply with the RVS legislation, COVID-19 restrictions and changes in working approaches will be taken into account when planning and undertaking our compliance and enforcement activities.

## Our priorities for 2021-23

With full commencement of the RVSA on 1 July 2021, we will be focusing on education and engagement to raise understanding and awareness of obligations under the new legislation and also encouraging voluntary compliance by the regulated industry.

We will provide information on our website that will assist understanding our compliance and enforcement approach. This information will include:

- the role of our inspectors
- how we use monitoring powers and requests for information to monitor compliance
- how we use investigation powers to investigate non-compliance with the legislation
- what enforcement responses are available and how they may be used, including
  - infringement notices
  - civil penalty orders
  - enforceable undertakings
  - injunctions
  - prosecution
  - varying, suspending or revoking approvals

We will also proactively monitor compliance in our identified areas of focus. This will involve undertaking compliance campaigns that will assess levels of industry compliance and if needed encourage regulated entities to return to compliance.

We will also monitor industry compliance by using intelligence to help us identify potential areas of concern, and reports of non-compliance from the public, industry, representative organisations and other regulators.

We will continue to review and refine our compliance and enforcement approach under the new legislation, including implementing our policies and procedures, and building our workforce through recruitment and training.

We will further develop our intelligence gathering and analysis capability. This capability will provide key information that will inform our future compliance and enforcement strategies and targeted compliance and enforcement activities. Our first areas of intelligence focus are likely to be model reports, Registered Automotive Workshops (RAWS) and Authorised Vehicle Verifiers (AVV's).

## Focus areas for compliance and enforcement

We have identified three areas of compliance with the RVSA that we will focus on over the next two years:

- **Low ATM trailer road vehicle type approvals**
- **MVSA approval holders who secure road vehicle type approval using RVSA opt-in arrangements**
- **Declaration based applications**

For each area we will focus on monitoring levels of compliance and as needed, assist regulated entities to understand and comply with their obligations under the RVS legislation.

### Low ATM trailer road vehicle type approvals

Under the MVSA, trailers with an aggregate trailer mass (ATM) not exceeding 4500 kg could be supplied to the market under a self-certification arrangement if they complied with the requirements of Vehicle Standards Bulletin 1.

Under RVSA, trailer manufacturers and importers providing more than four low ATM trailers to the Australian market in a 12-month period will need to get a road vehicle type approval for their trailer type. Those wanting to provide low ATM trailers to the Australian market under the RVS legislation will need to hold appropriate approvals, demonstrate compliance with the Australian Design Rules (ADRs), comply with approval conditions, and enter trailers onto the Register of Approved Vehicles (RAV).

These requirements may be new for some trailer manufacturers and importers.

We will be monitoring compliance with these new requirements by:

- considering reports of low ATM trailer non-compliance received from the public, industry or other regulators
- undertaking monitoring activities such as requesting information, desk top document assessment or performing inspections to confirm that trailer manufacturers and importers are complying with their new obligations under the RVS legislation
- providing trailer manufacturers or importers with education regarding their obligations, and opportunities to correct areas where they have demonstrated non-compliance

More information on Low ATM trailers under the new RVS legislation can be found on our website [https://www.infrastructure.gov.au/vehicles/rvs/light\\_trailers.aspx](https://www.infrastructure.gov.au/vehicles/rvs/light_trailers.aspx).

### MVSA approval holders securing road vehicle type approvals using RVSA opt-in arrangements

Eligible holders of some type approvals granted under the MVSA may apply to transition to a road vehicle type approval under the new RVS legislation using an opt-in process.

Road vehicle type approvals have been introduced under the new RVS legislation and apply new obligations for business seeking to provide quantities of road vehicles to the Australian market. It is important that anyone who opts in understands and complies with their new obligations. Some companies and individuals who previously held approvals under the MVSA may encounter challenges when meeting some of the new obligations required of road vehicle type approval holders.

We will monitor compliance of road vehicle type approval holders who have opted in by:

- seeking information to confirm they are complying with their obligations as road vehicle type approval holders
- providing education and assistance to correct any misunderstandings or errors
- where we believe the opt-in arrangement has been taken advantage of on a false or misleading basis, such as where the individual or company knowingly cannot comply with their conditions of approval, we will apply appropriate enforcement responses to deter the behavior.

In particular, we will focus our efforts on providers that have opted in as road vehicle type approval holders for:

- high ATM trailers (previously called heavy trailers, those with an ATM greater than 4500 kg)
- situations where a road vehicle type approval holder may not have a strong connection to the design or manufacture of the vehicles they are seeking to provide to the Australian market, such as road vehicle type approval holders importing:
  - motorcycles from multiple different independent overseas factories
  - left hand drive vehicles and converting them to right hand drive.

More information on the opt-in arrangements can be found on our website

<https://www.infrastructure.gov.au/vehicles/rvs/vehicle-type-approvals/opt-in-arrangements.aspx>.

## Declaration based applications

Alongside the new RVS legislation, we have been modernising our regulatory processes and practices. This includes how we receive and assess applications to reasonably account for risk while minimising the time and cost for the applicant. For low-risk applications, we are beginning to use declarations from the applicant, rather than the requirement to provide detailed compliance information to support every new application.

This approach only works where applications are true and correct, and are supported by appropriate monitoring to detect where declarations have not been made correctly. Incorrectly made applications could occur due to misunderstanding of the requirements, opportunistic behavior, or due to an intentional disregard for the law.

We will monitor the compliance of approvals granted on the basis of declarations by:

- seeking information from approval holders to confirm they were eligible for the approval they were granted
- providing education and assistance to correct any misunderstandings or errors
- applying appropriate enforcement responses where we consider approvals have been granted based on false or misleading information or declarations, to deter similar behavior in the future

## Other key activities

### Targeted compliance activities

We will undertake a program of targeted compliance activities. Our resources will be directed to areas determined to be highest risk, with our compliance interactions with regulated entities balanced against those risks. We will also respond to rapidly changing or emerging risks.

We will consider a range of factors when identifying and programming our targeted compliance activities including:

- outcomes of previous compliance activities
- compliance trends in received applications
- compliance trends in industry segments
- referrals and information received from other government agencies, industry stakeholders and the general public
- industry responsiveness to issues requiring a rectification and/or recall response
- changes in the regulatory environment
- changes in industry practice and the commercial environment
- changes in consumer priorities and behaviours
- available resources and operational capacity

Complementing a program of targeted activities are responsive compliance activities that will be undertaken in response to safety and / or non-compliance reports, or inspections conducted as part of an application assessment.

Our targeted activities will be reviewed and evaluated periodically to capture insights and outcomes from the activities, and any changing risks and priorities.

We will undertake desk top documentary assessments of regulated entities to assess whether or not they are complying with relevant standards, conditions of approval and RVS legislation. Documentary assessments check the accuracy and veracity of an approval holder's records and may be used to inform us whether or not a further compliance activity, such as a site inspection, is required.

Site inspections may assess:

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

## Investigations

While we aim to use education and support to ensure compliance, at times it will be necessary to investigate alleged contraventions of the RVSA, especially where regulated entities have demonstrated a lack of willingness to voluntarily comply with their obligations.

A range of factors will be considered when determining whether or not a matter will be formally investigated, including, but not limited to:

- inherent regulatory risk
- extent of harm caused by the alleged contravention (such as whether or not there has been a death or injury)
- whether or not there is an identifiable safety issue related to the design, componentry or manufacture of the vehicle
- whether or not there is identifiable non-compliance with a mandatory standard such as the ADRs, conditions of an approval or other relevant legislation
- the number of similar reports
- the age and use of the vehicle
- any voluntary action taken to resolve the issue

There are also times where we may work with other regulatory agencies such as the Australian Competition and Consumer Commission (ACCC), federal, state and territory police services, and the Australian Border Force on investigations related to safety or other non-compliance with Australian legislation.

## 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 person or 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 be lodged through our website at <https://www.infrastructure.gov.au/utilities/contact.aspx>.

In the case of certain decisions made under the RVS legislation, the applicant or approval holder can seek review of the decision by the Administrative Appeals Tribunal (AAT). Reviewable decisions are outlined in section 230 of the RVS Rules and include:

- a decision not to consider certain applications
- a decision to refuse to grant certain approvals
- a decision to impose conditions on certain approvals

## More information

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.

More information on compliance and enforcement, including our compliance approach and model can be found on the department's website at [https://www.infrastructure.gov.au/vehicles/compliance\\_and\\_enforcement/index.aspx](https://www.infrastructure.gov.au/vehicles/compliance_and_enforcement/index.aspx).

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

## Reporting suspected non-compliance to us

Information from the public, industry and other regulators is a valuable tool for compliance and enforcement. The reports assist us in identifying areas of emerging concern, identifying significant issues that require immediate attention and to inform future compliance and enforcement strategies and activities.

For more information on making reports about non-compliance with our legislation or vehicle safety concerns, please see the department's website at <https://www.infrastructure.gov.au/vehicles/reporting/index.aspx>.

## Glossary

Term	Definition
ADRs	Australian Design Rules - national standards for vehicle safety, anti-theft and emissions.
ATM	Aggregate Trailer Mass - a trailer's total mass when carrying the maximum load recommended by the manufacturer.
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	A person appointed by the Secretary under section 49 of the RVSA to exercise the functions and powers conferred on them, subject to conditions and restrictions specified in the person's instrument of appointment.
MVSA	<i>Motor Vehicle Standards Act 1989</i> - legislation replaced by the <i>Road Vehicle Standards Act 2018</i> from 1 July 2021
RAV	Register of Approved Vehicles - an online, publicly searchable, database of vehicles approved for use on Australian roads.
Regulated entity	An individual or organisation engaged in the provision of motor 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.
Risk-based approach	A risk-based approach means that where the risk of an event is high or the consequence of an event is significant, there is a higher degree of compliance activity. Conversely, where the likelihood of an event is low and/or consequences of an event is minor, a lighter touch proportionate compliance approach is taken.
RVSA	<i>Road Vehicle Standards Act 2018</i>