OUR REGULATORY INTERVENTION STRATEGY

A roadmap for compliance monitoring and enforcement

NHVR

1 OVERVIEW

The National Heavy Vehicle Regulator (NHVR) is committed to being a modern regulator by adopting a risk-based, proportionate, and consistent approach to regulating the heavy vehicle industry.

The NHVR applies regulatory effort to the greatest safety risks on our roads and where it will have the greatest influence in achieving improved safety outcomes. The NHVR's intervention activities are undertaken in response to identified safety risks and non-compliance, including to enforce the Heavy Vehicle National Law (HVNL) where necessary.

The NHVR recognises that industry participants are best placed to manage the safety of their transport activities. We work closely with industry and partner agencies to encourage and empower industry and supply chain parties to support the delivery of a safe, productive, efficient, and innovative road transport task.

The NHVR's Regulatory Intervention Strategy focuses on the following key elements:

- **Inform/Educate:** Encouraging voluntary compliance through education and the provision of information.
- **Enforce:** Deterring non-compliance through intervention and enforcement.
- **Monitor:** Continuous compliance monitoring to inform risk profiles and identify non-compliance.

What is an intervention activity and an intervention response?
The term intervention refers to regulatory activities and resulting responses undertaken or applied to industry participants by the NHVR to support and encourage a safe and compliant heavy vehicle industry. Intervention responses refer specifically to appropriate and proportionate measures taken to support compliance and/or enforce the HVNL where appropriate in response to an identified safety risk or instance of non-compliance.

The NHVR utilises a range of regulatory intervention activities including education and awareness, safety campaigns and regulatory advice as well as traditional compliance activities such as mobile patrols, intercepts and investigations. Investigation outcomes include both non-punitive and punitive measures, such as enforceable undertakings, notices, orders, and prosecution.
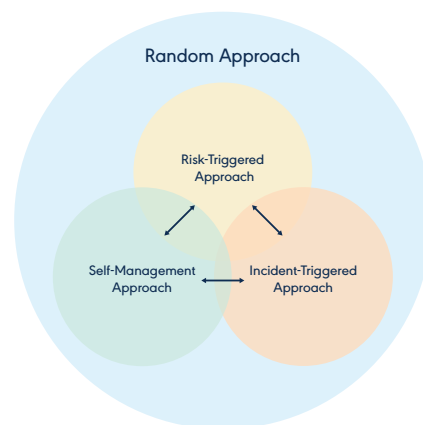
The NHVR adopts four intervention approaches that apply risk profiles to sectors of the heavy vehicle industry based on the nature of the risk, the industry participant's attitude towards safety and their history of compliance. These approaches include:

- **Approach 1 – Self management,** applied to those in the heavy vehicle industry whose profiles indicate that they are largely compliant with the law and present no inherent risk to safety. The self-management approach relies on informing industry

of their obligations and providing education and information on how best to comply. In turn, reduced targeted intervention responses will allow for an increase in productivity for industry participants. This approach requires the sharing of information between the regulator and industry.
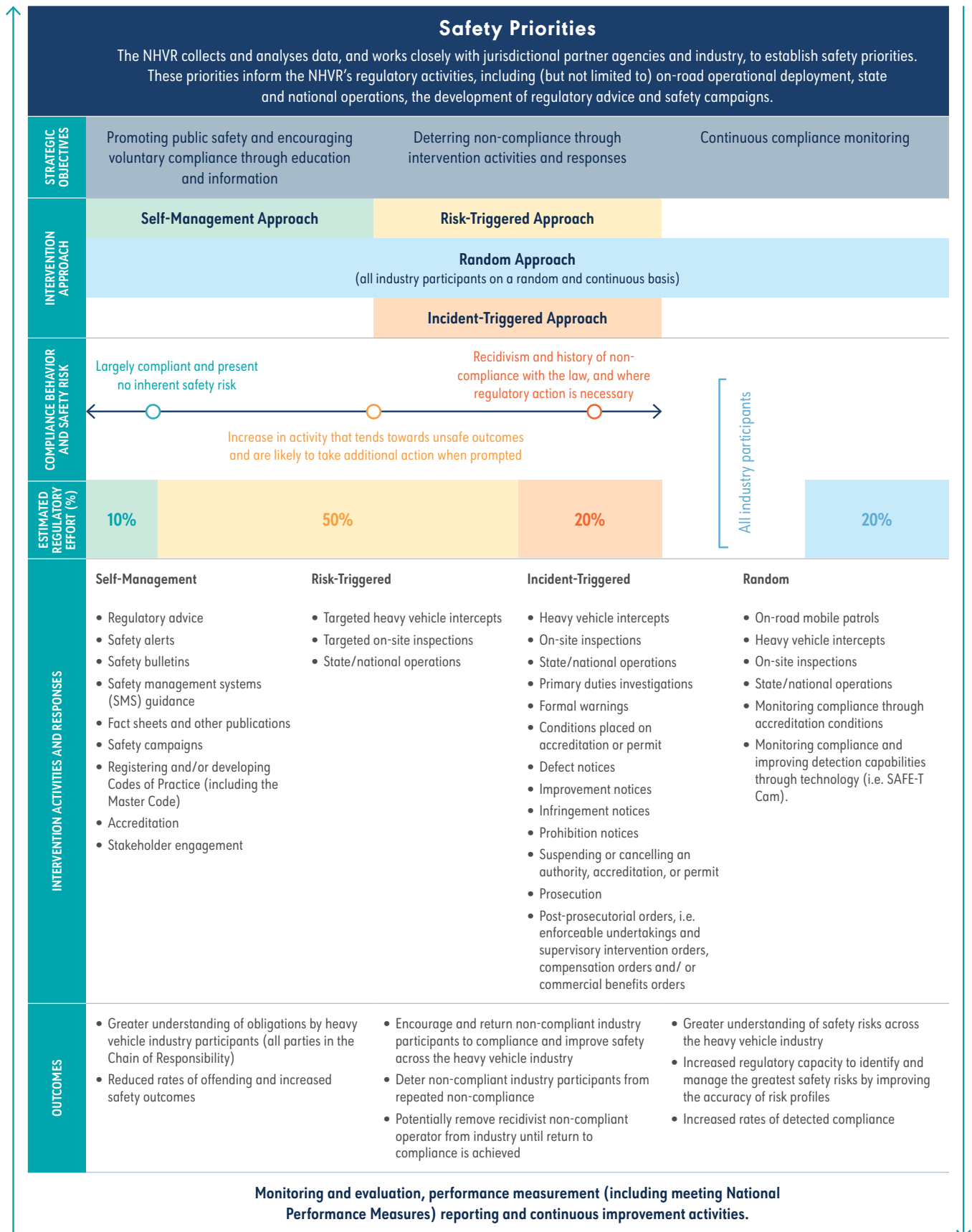
- **Approach 2 – Risk-triggered,** directed towards those in the heavy vehicle industry whose risk profiles indicate a potential increase in unsafe behaviours and who require targeted intervention (i.e., targeted intercepts or site visits) to identify or confirm compliance levels. This approach will assist the NHVR to identify industry participants who present either no inherent risk to safety and who can be captured by the self-management approach, as well as to identify those who have a history of non-compliance and who should be captured under the incident-triggered approach.
- **Approach 3 – Incident-triggered,** directed towards those in the heavy vehicle industry whose profiles indicate a history of non-compliance with the law, and where regulatory action is necessary to secure compliance and to ensure risks are managed. This approach focuses on traditional enforcement responses and punitive measures that are proportionate to the safety risk and level of compliance behaviour. Enforcement may range from formal warnings to prosecution and post-prosecutorial orders.
- **Approach 4 – Random,** applied to all industry participants on a continuous basis to monitor compliance and improve the NHVR's visibility of industry participants across the heavy vehicle industry. The random approach will assist the NHVR to more accurately apply or refine risk profiles for heavy vehicle industry participants. It allows the NHVR to identify and respond to changes in key safety risks, trends and the factors influencing non-compliance. By doing so, this approach will also help to identify whether industry participants should fall under (or move between) the risk-triggered, self-management or incident-triggered approaches as outlined below.

The diagram below outlines how these approaches interact with each other and how an industry participant may be triggered to move between approaches:

This Strategy aligns with the objectives of the HVNL and the NHVR's strategic vision as outlined in the Corporate Plan and integrates with the NHVR's Heavy Vehicle Safety Strategy.

2 AT A GLANCE – THE NHVR'S REGULATORY INTERVENTION STRATEGY

Safety Priorities
The NHVR collects and analyses data, and works closely with jurisdictional partner agencies and industry, to establish safety priorities. These priorities inform the NHVR's regulatory activities, including (but not limited to) on-road operational deployment, state and national operations, the development of regulatory advice and safety campaigns.

STRATEGIC OBJECTIVES
Promoting public safety and encouraging voluntary compliance through education and information	Deterring non-compliance through intervention activities and responses	Continuous compliance monitoring

INTERVENTION APPROACH
- **Self-Management Approach** | **Risk-Triggered Approach**
- **Random Approach** (all industry participants on a random and continuous basis)
- **Incident-Triggered Approach**

COMPLIANCE BEHAVIOR AND SAFETY RISK
- Largely compliant and present no inherent safety risk
- Recidivism and history of non-compliance with the law, and where regulatory action is necessary
- Increase in activity that tends towards unsafe outcomes and are likely to take additional action when prompted
- All industry participants

ESTIMATED REGULATORY EFFORT (%)
10%	50%	20%	20%

INTERVENTION ACTIVITIES AND RESPONSES

Self-Management	Risk-Triggered	Incident-Triggered	Random
• Regulatory advice • Safety alerts • Safety bulletins • Safety management systems (SMS) guidance • Fact sheets and other publications • Safety campaigns • Registering and/or developing Codes of Practice (including the Master Code) • Accreditation • Stakeholder engagement	• Targeted heavy vehicle intercepts • Targeted on-site inspections • State/national operations	• Heavy vehicle intercepts • On-site inspections • State/national operations • Primary duties investigations • Formal warnings • Conditions placed on accreditation or permit • Defect notices • Improvement notices • Infringement notices • Prohibition notices • Suspending or cancelling an authority, accreditation, or permit • Prosecution • Post-prosecutorial orders, i.e. enforceable undertakings and supervisory intervention orders, compensation orders and/or commercial benefits orders	• On-road mobile patrols • Heavy vehicle intercepts • On-site inspections • State/national operations • Monitoring compliance through accreditation conditions • Monitoring compliance and improving detection capabilities through technology (i.e. SAFE-T Cam).

OUTCOMES

• Greater understanding of obligations by heavy vehicle industry participants (all parties in the Chain of Responsibility) • Reduced rates of offending and increased safety outcomes	• Encourage and return non-compliant industry participants to compliance and improve safety across the heavy vehicle industry • Deter non-compliant industry participants from repeated non-compliance • Potentially remove recidivist non-compliant operator from industry until return to compliance is achieved	• Greater understanding of safety risks across the heavy vehicle industry • Increased regulatory capacity to identify and manage the greatest safety risks by improving the accuracy of risk profiles • Increased rates of detected compliance

Monitoring and evaluation, performance measurement (including meeting National Performance Measures) reporting and continuous improvement activities.

3 UNDERSTANDING THE NHVR'S REGULATORY INTERVENTION STRATEGY

The NHVR's Regulatory Intervention Strategy aims to improve safety outcomes by changing behaviours across the heavy vehicle industry. By undertaking appropriate compliance monitoring and intervention activities based on the safety risk and the compliance behaviour of the industry participant in any given circumstance, the NHVR ultimately aims to reduce serious crashes and fatalities on Australian roads.

3.1   Finding the optimal balance

The NHVR is committed to continually finding the optimal balance between encouraging industry to voluntarily comply with the law and the need to enforce the HVNL where necessary. By combining traditional and contemporary approaches, the NHVR is better able to address and influence the different behaviours that drive compliance with the HVNL and more effectively manage risks across all facets of the heavy vehicle industry.

Deterrence
Traditional deterrence-based compliance monitoring and intervention activities (through on-road intercepts, off-road activities including investigations, and reactive intervention).

Risk Profiling
A modern, risk-based approach to managing safety by proactively identifying and managing risks through risk profiling.

3.2   Identification of greatest regulatory risks

In order to determine the appropriate intervention activity to achieve these outcomes, the NHVR's Regulatory Intervention Strategy focuses in part on identifying and understanding the greatest regulatory risks through data analysis and intelligence.

The NHVR is committed to continually evolving its regulatory capacity to monitor compliance and better manage identified safety risks by collecting and analysing data from compliance monitoring and intervention activities. This information is developed into repeatable risk profiles which can be applied consistently and proportionately across the heavy vehicle industry. To achieve this, the NHVR is focused on:

• developing improved compliance monitoring capabilities with current and emerging technologies, and
• continuing to improve our intelligence and data analytics capability to source, collate and analyse data and information to identify systemic non-compliance and inform risk profiles, compliance priorities, investigative actions, and appropriate intervention responses.

3.3   Developing risk profiles

Australia's heavy vehicle industry continues to rapidly evolve, with the road freight task and number of heavy vehicles on Australian roads growing each year. The NHVR uses a number of data sets to identify registered heavy vehicles and operators, and is focused on improving its ability to sight and intercept

these industry participants. The majority of this information is collected through the national camera system and used as a basis for developing the NHVR's risk profiles.

NHVR interacts with or collects compliance information from sighted heavy vehicles and operators, with the majority of information obtained through the national camera system. All data collected is used as a basis for developing risk profiles and compliance footprints.

The NHVR's Regulatory Intervention Strategy applies risk profiles to locate and target vehicles and operators who present a higher risk to public safety, as well as to reduce interruptions and support the productivity of industry participants who are complying with the HVNL.

The NHVR will continue to monitor compliance to improve its understanding of the heavy vehicle industry and strengthen the NHVR's risk profiling to enhance efficient and effective allocation of regulatory effort.

The NHVR is developing risk profiles using algorithms based on categories that impact safety, including the ability for industry to manage their own safety risks. These algorithms are applied to data and other information sources associated with key risk factors to allow the NHVR to understand compliance performance across the heavy vehicle industry. These profiles support the calculation and allocation of a risk score, and subsequently, a risk category.

Subject to the risk category and other information and analysis, the NHVR chooses the most appropriate combination of intervention activities and responses to address the identified safety risk and support the achievement of compliance across the heavy vehicle industry. This enables the NHVR to tailor its intervention approach towards the greatest safety risk – where regulatory action is likely to be most effective.

3.4 Understanding compliance behaviours and safety risks

The NHVR promotes safety by undertaking intervention activities and responses that are contingent on the relevant risk profile (including the compliance behaviour and history of the industry participant) and the identified safety risk in each circumstance. The NHVR's intervention pyramid below outlines how the compliance behaviour of the industry participant, combined with the nature of the safety risk, interact to trigger an appropriate intervention response to secure compliance:

3.5 NHVR's intervention pyramid

For example, when dealing with systemic issues of non-compliance of a high-risk nature, the NHVR would utilise stronger intervention responses compared to a lower-risk issue of non-compliance where the industry participant is willing and able to comply. Conversely, if an industry participant is willing to comply but the severity of the safety risk is serious, stronger intervention tools (including prosecution) may be appropriate.
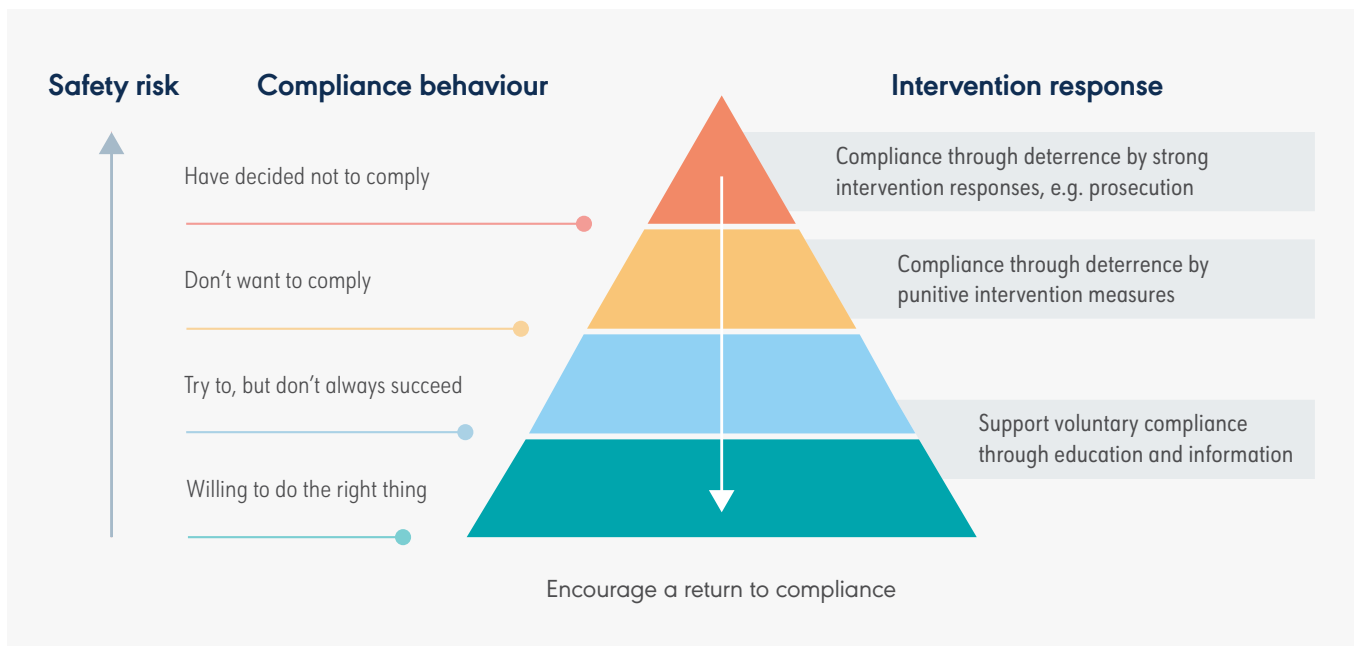
3.6 Application of regulatory effort

To tailor its intervention activities based on an understanding of the regulatory risk, the NHVR applies regulatory effort to the four types of regulatory approaches. The below chart outlines the estimated regulatory effort necessary to undertake intervention activities associated with these approaches.

By applying regulatory effort where it will have the most effective outcomes, the NHVR can focus its resources on the greatest safety risks. Over time, the NHVR will review these percentages to ensure that regulatory effort continues to be applied where it will achieve the greatest safety outcomes.

Estimated regulatory effort

- Risk-triggered
- Incident-triggered
- Self-managed
- Random
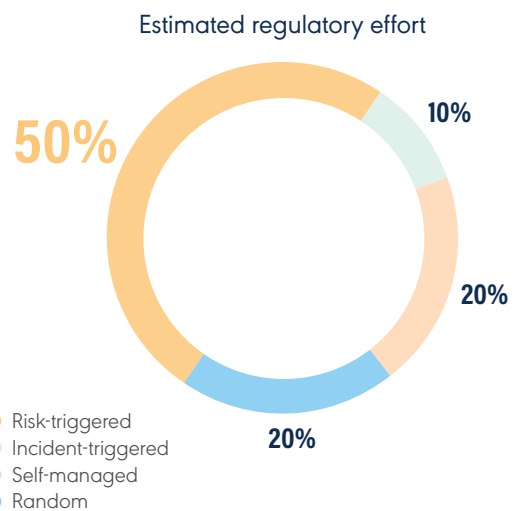
4 REGULATORY INTERVENTION IN AN OPERATIONAL SETTING

The four intervention approaches align to the three key elements of the NHVR's intervention strategy. These have been developed based on the NHVR's current understanding of the regulatory environment as well as an understanding of which compliance behaviours and safety risks are best addressed through specific types of intervention.

4.1 Promoting public safety and encouraging voluntary compliance

The **self-management approach** includes the following intervention activities:

- education and/or provision of information at the roadside or on-site
- publication of the following to inform industry of their compliance obligations and how best to comply, including:
  - regulatory advice
  - safety alerts
  - safety bulletins
  - safety management systems (SMS) guidance
  - fact sheets and other publications
- coordination of safety campaigns that target identified safety risks, including planned communication strategies that combine a range of publications and guidance material.

By providing education and information (including information sharing between the Regulatory and industry participants), the NHVR gives industry the opportunity to understand and manage their own safety risks and voluntarily comply, based on their understanding and desire to undertake safe transport activities.

Case Study: Trialling risk-based algorithms with educative intervention
As at January 2022, the NHVR is trialling the Operator Risk Profile against a cross-section of identified 'medium risk' operators in South Australia. The current trial provides targeted education around safety management systems (SMS) and encourages identified operators to implement an appropriate SMS within their business to improve safety outcomes. This is an example of the NHVR using risk to identify appropriate areas for educative intervention activities in order to encourage and support voluntary compliance with the HVNL.

What is voluntary compliance?

Whilst complying with the HVNL is not a choice, the term 'voluntary compliance' refers to the behavioural reasoning behind why an industry participant complies. Voluntary compliance is based on the concept that an industry participant understands why certain obligations exist, agrees those obligations are reasonable, and that by complying believes they are providing and achieving a community benefit. This behaviour is considered by the NHVR when undertaking compliance monitoring, intervention activities and intervention responses, as it indicates a level of willingness to comply.

4.2 Deterring non-compliance through intervention activities and responses

The NHVR further supports compliance through personal and general deterrence, where behaviour is influenced by a desire to avoid penalties and other repercussions. Deterrence can be achieved by promoting awareness of legislative powers and formal sanctions available to the NHVR, as well as awareness of previous enforcement action taken against others. The likelihood of being detected, the severity of penalties involved, and timeliness of punishment are key factors that influence an individual's perceived consequences of non-compliance.

For industry participants who may not be willing to comply and/or who have a history of non-compliance, the NHVR takes a more active deterrence role through planned and responsive regulatory intervention. In response to identified non-compliance, the NHVR utilises a range of intervention responses to enforce the HVNL where appropriate.

General and personal deterrence are also underpinning elements of a court's approach to sentencing in circumstances where a prosecution is deemed appropriate, and a finding of guilt is made.

The NHVR applies the **incident-triggered approach** to enforce the HVNL where necessary and deter further non-compliance. This may include the following intervention activities:

- formal warnings
- conditions placed on accreditation or permit
- defect notices
- improvement notices
- infringement notices
- prohibition notices
- suspending or cancelling an authority, accreditation, or permit
- primary duties investigations
- enforceable undertakings
- prosecution
- supervisory intervention orders
- prohibition orders
- compensation orders
- commercial benefits orders

Education may also be considered an appropriate intervention response at the conclusion of intervention activities.

4.3 Triggering a move between self-management and incident-triggered

The **risk-triggered approach** is directed towards those in the heavy vehicle industry whose risk profiles indicate a potential increase in unsafe behaviours. These industry participants require targeted intervention to identify or confirm compliance levels. To implement this approach, the NHVR may undertake the following to gather further compliance information:

- targeted on-road intercepts
- targeted site-visits, and/or
- investigate using information and technology (i.e. Safe-T-Cam data).

The risk-triggered approach will assist the NHVR to move industry participants into or between the self-management approach or the incident-triggered approach. Where further monitoring is required to determine compliance levels, the industry participant would remain under the risk-triggered approach.

4.4 Continuous compliance monitoring

The NHVR undertakes continuous compliance monitoring across the heavy vehicle industry to identify non-compliance and inform and enhance risk profiles. The NHVR identifies key safety risks, trends, and instances of non-compliance by undertaking the following intervention activities:

- conducting random on-road road patrols, heavy vehicle intercepts and on-site inspections
- undertaking investigations in response to identified safety risks and instances of non-compliance
- undertaking detailed primary duties investigations into alleged higher-risk contraventions of the HVNL, and
- undertaking continuous compliance monitoring through data collection and analysis.

To implement this strategy, the NHVR applies the **random intervention approach** to all industry participants in order to monitor and detect non-compliance and provide a level of deterrence, whilst also establishing a baseline of industry compliance that continues to feed into and enhance the NHVR's risk profiles. This approach increases the NHVR's ability to sight heavy vehicles, detect non-compliance and improve overall understanding of the heavy vehicle industry.

As a result of compliance monitoring activities undertaken through this approach, intervention responses from all intervention approaches may be considered appropriate (in that compliance monitoring may identify risks and instances of non-compliance that must be addressed appropriately to ensure a return to compliance).

5 INVESTIGATING PARTIES IN THE CHAIN OF RESPONSIBILITY

The HVNL contains a mix of risk-based performance and prescriptive legislated requirements, with overarching safety duties for those in the chain of responsibility[1]. The 2018 amendments to the HVNL introduced a positive safety duty for parties in the chain of responsibility to ensure the safety of transport activities. This refocus on the primary duty ensures those with control and influence over safety outcomes are legally accountable to the extent of that influence.

Each party in the chain of responsibility has a primary duty of care to ensure the safety of their transport activities 'so far as reasonably practicable'. The primary duty seeks to contribute to safety outcomes by requiring those in the chain of responsibility to focus on safety and enables more innovative responses to the management of safety risks. The NHVR focuses its investigative functions on chain of responsibility parties, rather than drivers of heavy vehicles. Where a primary duty breach is detected, any intervention responses will be directed to the relevant party in the chain.

As an example of this focus, the NHVR laid charges against 15 defendants during 2020-2021 for breaches of primary duties as a party in the chain of responsibility. Defendants in these cases comprised operators, consignors, prime contractors, and executives.

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1 For a definition of parties in the chain of responsibility, refer to Section 5 *Heavy Vehicle National Law*

5.1 Improving safety outcomes: case studies

The below case studies are examples of the NHVR focusing its intervention resources on operators as a result of chain of responsibility investigations:

Case Study – Supervisory Intervention Order

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

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

The NHVR applied for a SIO as part of a prosecution alleging breaches of the primary duty after an investigation into 49 registered heavy vehicles that were the subject of numerous defect and infringement notices. As an operator, the defendant failed to ensure the safety of transport activities, exposing individuals to a risk of death and / or serious injury. It was alleged that the operator failed to implement adequate systems for inspection, fault finding, recording, maintenance and repairs for those vehicles. Due to the high-risk offending, the court imposed a 12-month SIO requiring education, as well as for the organisation to provide fleet details to the NHVR and to have vehicles inspected, to ensure defected vehicles be made roadworthy and pass re-inspection – at the operator's cost. A $25,000 penalty and conviction were also imposed.

Case Study – Enforceable Undertaking

As an alternative to prosecution in the event of an alleged contravention of the HVNL, the NHVR may accept an enforceable undertaking (EU). An EU is a voluntary statutory agreement that can be used as an alternative to prosecution, where the alleged offender can demonstrate their ability to undertake organisational reform and implement effective safety measures for transport activities. The NHVR accepted EUs from two executives of a company for breaches of the primary duty. This arose from conduct which exposed drivers to a risk of death or serious injury, whereby an investigation was conducted into the company's safety policies and procedures following the death of a contractor.

Each EU required the executives to develop a suite of safety materials, including a due diligence manual, induction video and a paper on lessons learned – each to be distributed to wider industry participants. This was considered a preferred option to prosecution, as it offered an opportunity to provide training regarding COR executive due diligence requirements. The outcomes of the EU were perceived to achieve benefits not obtainable by prosecution and was considered the appropriate intervention in this circumstance.

6 MEASURES OF SUCCESS

The NHVR collects multiple data sets, including from compliance monitoring, intervention activities and intervention responses. The collection of this data allows for continuous development and improvement of the NHVR's risk-based approach, as well as a more efficient and effective allocation of regulatory effort by analysing levels of compliance across the heavy vehicle industry. By creating this baseline and improving data collection and analytics capabilities, the NHVR is incrementally improving its ability to monitor and evaluate the impact and effectiveness of its efforts to change non-compliant industry behaviour.

The NHVR is increasing its capability to detect non-compliance through harnessing new camera technologies, increasing the skill sets and mobility of safety and compliance officers (SCOs) and improving data-collection techniques. By doing so, the NHVR can direct regulatory efforts towards industry sectors of greater risk. Ultimately, the NHVR will be able to identify incremental improvements to the behaviour of operators through improved risk-based targeting. This will reflect the NHVR's focus on operators and other parties in the chain of responsibility.

Reporting on intervention activities and intervention responses can be found in the NHVR's Annual Report.