



# Monitoring, compliance and enforcement policy

2024 - 2027

# Contents

<b>1.</b>	<b>Introduction</b>	<b>3</b>
1.1	Scope and purpose	3
1.2	Role and functions	3
1.3	The monitoring, compliance and enforcement framework	5
1.4	Authorised Officer and Transport Safety Officer powers	5
<b>2</b>	<b>Regulatory practice</b>	<b>6</b>
2.1	Regulatory principles	6
2.2	Regulatory outcomes	7
2.3	Regulatory activities	7
2.4	Prioritising harms	8
<b>3</b>	<b>Governance and accountability</b>	<b>9</b>
3.1	Accountability	9
3.2	Collaboration and shared responsibility	9
3.3	Consultation and engagement	9
3.4	Continuous improvement	9
<b>4</b>	<b>Compliance activities</b>	<b>10</b>
4.1	Approach to compliance	10
4.2	Compliance activities and tools	10
4.3	Determining the compliance response	13
<b>5</b>	<b>Performance monitoring</b>	<b>14</b>

# 1. Introduction

We are the Victorian transport safety regulator that manages compliance, accreditation, and registration for commercial passenger vehicles (CPVs) such as taxis and rideshares, along with buses and the maritime sector. Our job is to help people travel safely on our roads and waterways.

By working with our three industries, we help foster a safe and sustainable transport network for all Victorians. We encourage innovation to create better journeys on our roads and waterways and we believe in education before enforcement.

In our role, we work closely with other parts of government such as the Department of Transport and Planning (DTP) and the Department of Jobs, Skills, Industry and Regions (DJSIR).

This monitoring, compliance and enforcement policy (the Policy) details how we will perform our role, meet community expectations and work with the maritime, CPV and bus sectors to be an effective regulator.

The Policy sets out how we will select and use proportionate, cost-effective and efficient options to monitor and promote duty holders' compliance with legislation and other regulatory requirements, and how we undertake enforcement activities.

This Policy is developed in accordance with the following legislation:

- section 279 of the *Marine Safety Act 2010* (MSA)
- section 275 of the *Commercial Passenger Vehicle Industry Act 2017* (CPVIA)
- section 64A of the *Bus Safety Act 2009* (BSA).

## 1.1 Scope and purpose

The purpose of this Policy is to explain how we undertake our monitoring, compliance and enforcement activities in Victoria.

This document describes:

- our responsibilities and our role in regulating the maritime, CPV and bus sectors
- our monitoring, compliance and enforcement framework
- our regulatory principles
- our objectives and desired outcomes
- the harms focused, proportionate, and risk-based approach we take to regulation
- how we apply the tools we use to regulate
- the high-level guidance that we provide to our external enforcement partners.

This Policy does not seek to cover how any substantive obligations under relevant legislation should be interpreted, nor does it seek to advise on when associated information or evidence-gathering powers should be exercised.

## 1.2 Role and functions

We operate as part of the wider transport system in Victoria. The State Government's vision for transport in Victoria is an integrated and sustainable transport system that contributes to an inclusive, prosperous and environmentally responsible State. In pursuit of that vision, the Government's objectives for transport in Victoria are:

- social and economic inclusion
- economic prosperity
- environmental sustainability
- integration of transport and land use
- efficiency, coordination and reliability
- safety, health and wellbeing.

We aim to regulate ST Vic's duty holders in line with these objectives.

The areas we regulate are broad and include, but are not limited to:

## **Maritime industry**

- port, local port and waterway managers
- employers who manage boating activity events
- designers, manufacturers, suppliers of vessels and safety equipment
- pilotage service providers and towage providers
- commercial maritime permission holders including pilots, pilot-exempt masters, harbour masters, and local knowledge certificate holders
- marine safety workers
- accredited licence training providers
- recreational boating sector.

## **Commercial passenger vehicle industry**

- booking service providers
- drivers
- vehicle owners
- persons who have control over the provision of CPV services
- suppliers of services or equipment in vehicles.

## **Bus industry**

- bus operators
- procurers of bus services
- bus safety workers
- people involved in the installation of bus stopping points and bus stop infrastructure.

We aim to regulate the above duty holders to ensure they provide services that are safe, accessible, customer focused and competitive. We will achieve this by:

- making sure long-lasting improvements are made in the maritime, CPV and bus industries, as well as the recreational boating sector
- facilitating competition and innovation
- improving the safety of drivers and passengers of commercial passenger vehicles and buses
- improving the safety of all Victorian waterway users
- monitoring the systems used by operators to manage safety risks
- promoting public confidence in the safety of these sectors
- providing advice and recommendations to the government on transport safety policy and laws.

### 1.3 The monitoring, compliance and enforcement framework

This Policy is part of our monitoring, compliance and enforcement framework (the Framework). The Framework guides how we apply policy, principles, strategies and processes for planning and delivering targeted, efficient and consistent compliance activities.

The Framework applies primarily to duty holders (see section 1.2) as defined by legislation. ST Vic and these duty holders share responsibility for safety within these sectors.

The Framework includes:

- monitoring, compliance and enforcement policy (this Policy)
- a three-year monitoring, compliance and enforcement strategy that covers compliance priorities based on an assessment of potential harms and issues in accordance with the principles outlined in this policy.
- annual monitoring, compliance and enforcement plans (safety operation plans) that will outline our compliance and enforcement priorities for the year in line with the three-year monitoring, compliance and enforcement strategy.

Also, included in the Framework are accompanying policies and procedures, codes of practice, recruitment, training, delegations, authorisations, compliance reporting, the Minister’s statements of expectations, processes for memoranda of understanding with other government agencies and regular performance monitoring (including performance indicators). The Framework will contribute to a consistent and transparent approach to our monitoring, compliance and enforcement activities.

**Figure 1: Elements of the monitoring, compliance and enforcement framework**



### 1.4 Authorised Officer and Transport Safety Officer powers

To ensure that we can effectively regulate the CPV, bus and maritime sectors, ST Vic employs compliance officers.

Our bus and maritime Transport Safety Officers are authorised under section 116 of the *Transport (Safety Schemes Compliance and Enforcement) Act 2014* (TSSCEA).

Our CPV Authorised Officers, responsible for enforcing powers in relation to CPV, are authorised under section 125 of the CPVIA.

## 2 Regulatory practice

We apply an outcomes and risk-based approach to regulation through a consistent, transparent and fit-for-purpose framework. We proactively identify emerging issues and respond to harms and challenges, while reducing unnecessary burdens to industry participants and driving flow-on economic and social benefits.

Our regulatory approach guides this discretion by:

- applying an outcomes-based approach to assess both the efficiency and effectiveness of our actions
- implementing a risk-based approach to prioritise effort in supporting compliance and enforcing non-compliance
- allocating appropriate resources to areas where there is the highest risk and potential harm and where they are likely to have the greatest impact
- utilising a consistent and transparent constructive compliance approach that brings together regulatory principles, discretion and fairness.

### 2.1 Regulatory principles

We are committed to the following principles in carrying out our monitoring, compliance and enforcement responsibilities:

- **Independent and impartial:** acting without bias or favour from all commercial and/or political influence. Any potential, perceived or actual conflicts of interest must be disclosed and documented. Decisions and reasoning behind decisions should be communicated where appropriate.
- **Risk-focused:** striving to direct and carry out our regulatory activities based on risk analysis that is informed by sound data and intelligence, and taking a contemporary approach to monitoring, compliance and enforcement.
- **Proportionate:** striving to ensure that in applying discretion to our choice of regulatory strategies and compliance tools, the impact will be commensurate to the risks and the potential benefit to safety.
- **Fair, reasonable and consistent:** always acting in a reasonable, fair and consistent manner. This includes being consistent and predictable in comparable cases, but also treating each case on its own merits considering the circumstances and due process.
- **Accountable and transparent:** by, for example, publishing information on our role and core activities and ensuring our decision-making is documented, follows procedural fairness and is open to internal, administrative and judicial review.

These incorporate the principles that underpin the regulation of:

- marine stakeholders set out in Part 1.4 Division 2 of the MSA
- commercial passenger vehicle services set out in Part 2 Division 1 of the CPVIA
- bus services set out in Part 2 of the BSA.

## 2.2 Regulatory outcomes

We are driven by the public interest to regulate in a manner that is safe, accessible, customer-focused and competitive. We provide independent assurance that duty holders are meeting their legislative obligations, which is essential to maintaining public confidence in the maritime, CPV and bus sectors of the transport system.

In doing this, we aim to achieve the following:

- duty holders understanding their legislative obligations
- duty holders voluntarily complying with their obligations consistently
- continuous improvement in the management of safety in the transport sectors that we oversee
- Maritime, CPV and bus services are more accessible to Victorians regardless of their background, location or level of disability
- improved safety culture among ST Vic stakeholders.

These outcomes are consistent with the CPVIA, BSA, MSA and the policy framework under the *Transport Integration Act 2010*.

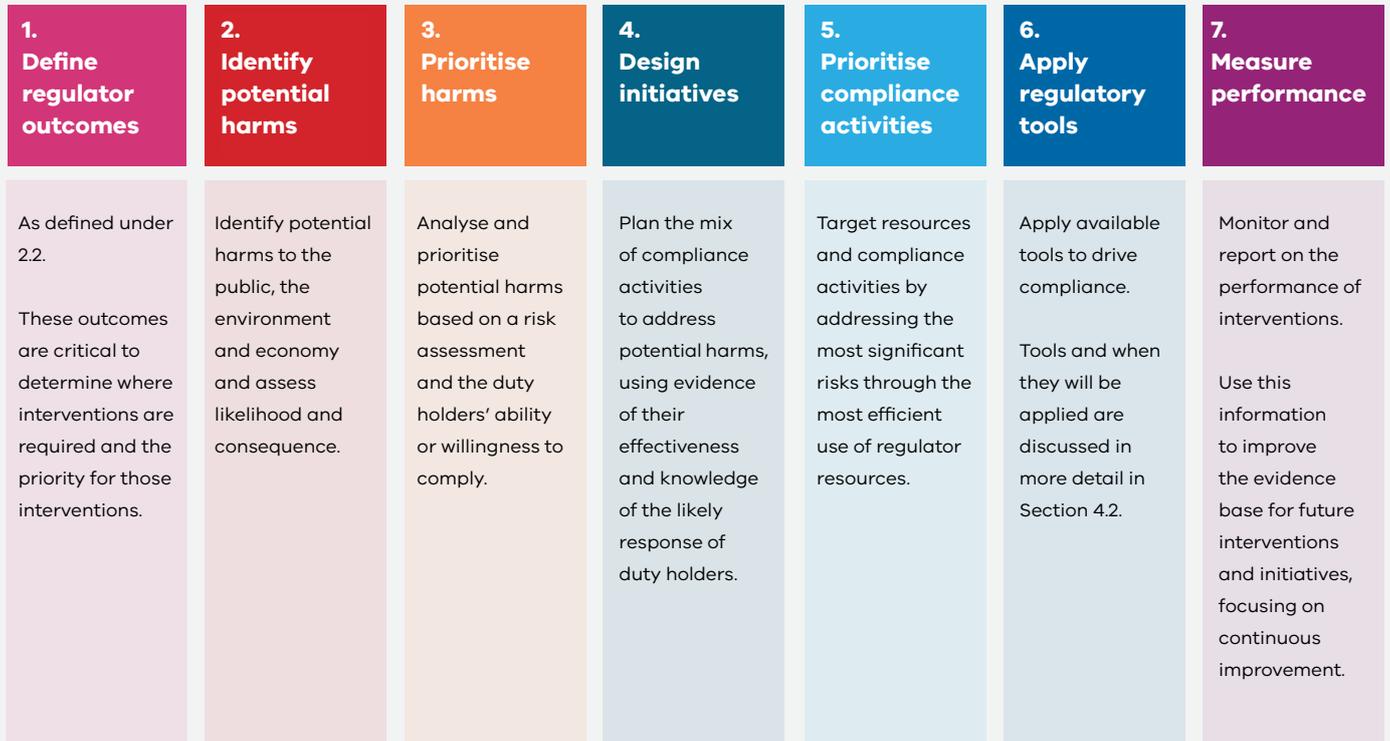
## 2.3 Regulatory activities

In broad terms, regulatory outcomes will be achieved by:

- applying consistent monitoring, compliance and enforcement principles across all regulatory activities
- ensuring duty holders are educated about their safety responsibilities and are informed about best practices in managing risks and compliance obligations so that they can continuously improve their performance
- maintaining a level of monitoring and enforcement activity that provides a general deterrent to non-compliance
- focusing compliance, enforcement and assurance effort, intelligence, resources and capability on high-risk activities, behaviours and duty holders
- developing, maintaining and applying effective intelligence and data collection, management and analysis to ensure compliance resources are targeted to areas where they are most effective
- continuously improving ST Vic's regulation through performance monitoring, regular evaluation and review, and updating the regulatory framework to reflect industry maturity, changing business practices, and adoption of safety responsibilities.

## 2.4 Prioritising harms

We take an approach to monitoring, compliance and enforcement that first provides methods for identifying, analysing and prioritising potential harms. We then select appropriate compliance measures and plan the implementation of compliance activities. This is often referred to as a risk-based approach to regulation because it uses risk analysis and management tools.



We will tailor the use of enforcement and other regulatory tools based on the severity of posed risks and underlying behavioural drivers of non-compliance and harmful activities. Tailoring responses in a consistent and transparent way will help to underpin ST Vic's authority and credibility and motivate improvements in compliance by duty holders.

### **Figure 2: Risk-based approach to compliance**

We will use data and intelligence to identify and assess harms, as well as for prioritising and resourcing compliance activities. We will also regularly review and evaluate the effectiveness of our risk management actions.

We will assess harms to society in accordance with their probability, their potential impact, and whether ST Vic has a legislative basis to intervene. Non-compliance risks will be directly related to potential harms to the community.

Based on various international and Australian standards, we have adopted a best practice approach to developing a compliance strategy that involves the process outlined in Figure 3 (below).

## 3 Governance and accountability

### 3.1 Accountability

We create clear accountabilities for all aspects of the compliance framework. Accountability for delivery of regulatory activities generally has a statutory basis derived from the legislation that we are charged with administering. Our Chief Executive is ultimately responsible for the implementation of the monitoring, compliance and enforcement framework, but may delegate accountability for some elements to our directors as appropriate.

### 3.2 Collaboration and shared responsibility

We will work collaboratively with a range of other government agencies and organisations to achieve our regulatory objectives, realise shared benefits and improve outcomes for the Victorian community. We will seek to cooperate with other bodies to realise shared benefits and improved outcomes for the Victorian community.

As part of this, we will review our existing arrangements with organisations who share regulatory responsibilities (such as VicRoads, Ports Victoria, Australian Maritime Safety Authority, the Victorian Fisheries Authority, Parks Victoria, the Information Commissioner, WorkSafe, Consumer Affairs Victoria, the State Revenue Office, the National Heavy Vehicle Regulator and Victoria Police). This will include creating, reviewing and maintaining memoranda of understanding (MOU) where appropriate.

### 3.3 Consultation and engagement

Engagement and consultation with our duty holders, other regulators and the wider community is critical to developing effective approaches to regulation. We consult with industry on significant regulatory changes, and with the community when seeking to address issues that affect them.

We engage with other government agencies and regulators on a regular basis to encourage cooperation and provide a consistent approach on common matters. Our monitoring, compliance and enforcement strategies and annual plans are developed using a consultative approach to ensure policy, operational, legal and other specialist knowledge and experience is considered. Links and relationships between policy, legal and operational areas are critical in achieving lawful, effective compliance strategies and positive compliance outcomes.

### 3.4 Continuous improvement

We are committed to a process of continuous improvement by consistently striving to improve our regulatory services in accordance with the highest standards. This includes establishing and maintaining measures for systematic performance reporting and evaluation.

# 4 Compliance activities

## 4.1 Approach to compliance

We engage with duty holders and with the community in the most effective ways to achieve regulatory outcomes. In performing our functions, we balance educational and deterrent tools to promote safety performance and outcomes, accessibility of services, and customer focus across our stakeholders.

ST Vic recognises that real and sustainable improvement in safety can only be achieved when duty holders understand they have a shared responsibility to identify, assess and manage risks.

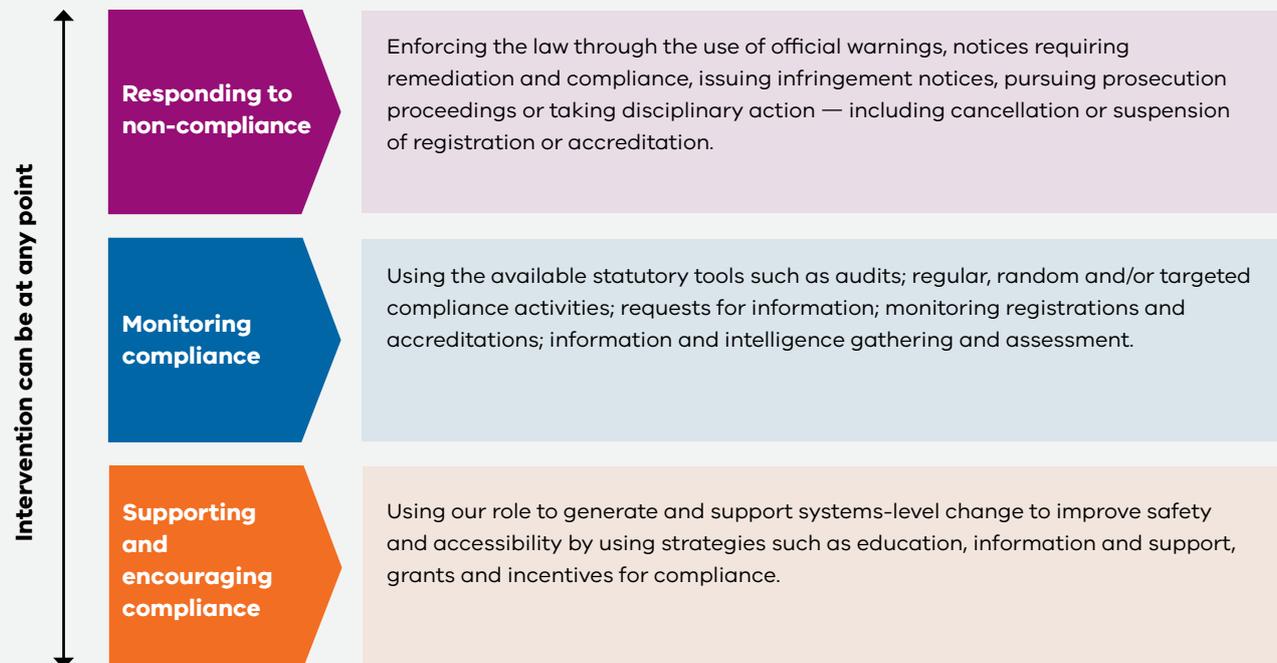
As such, we seek input from industry participants to understand how they would best comply with their requirements, and what we can do to encourage compliance.

## 4.2 Compliance activities and tools

We use a range of measures and tools to encourage compliance and deter or address non-compliance. These provide for a constructive compliance approach (see Figure 3) such as encouraging ongoing compliance, educating on safety duties and addressing non-compliance through enforcement activities.

As a responsive regulator, we choose the appropriate tool and adapt our approach based on the circumstances. These interventions may begin at any point and move along the following spectrum within the co-regulatory context. Figure 3 shows a summary of compliance activities followed by more detailed information and examples.

**Figure 3: Compliance approach**



## Influencing compliance

We play a role in influencing the creation and maintenance of safety systems. This is achieved by working with:

- all parties involved in the maritime sector
- all parties that use CPVs and buses, especially those with the least access
- data analysts, forecasters and researchers who consider usage and trends
- consumer, regulator, business, technical and research groups who speak to environmental and socio-economic changes which may influence behaviours.

Our three-year strategies enable us to facilitate systemic improvements in safety through brokering partnerships, promoting international best practice and advocating for safety across industry and government channels.

## Encouraging compliance

We provide information, guidance, education and encouragement to duty holders through:

- conversations with duty holders
- seminars/workshops
- development of codes of practice, standards and determinations which provide practical guidance on meeting safety duties
- publishing guidance material to supplement information provided in regulations and codes
- public education campaigns.

## Monitoring compliance

We work with industry to understand operating environments and compliance status, through:

- informal conversations
- requests for information for audit, inspection and investigative purposes

(Requests for information can be made using powers granted by relevant legislation. These requests may be made to any of our duty holders relating to information that is required to be kept under legislation. This may include copies of safety management systems or any information that relates to maritime, CPV and bus operations that can be used to support an investigation.)

- targeted and random compliance activities

(Targeted and random compliance activities are conducted in accordance with the CPVIA and TSSCEA both independently and in partnership with our Compliance Partners (for example Victoria Police, the National Heavy Vehicle Regulator and the Victorian Fisheries Authority). Examples are set out below:

- our maritime Transport Safety Officers regularly conduct targeted compliance activities in response to identified marine safety issues across a range of areas in the commercial and recreational boating sectors.
- our CPV Authorised Officers regularly conduct compliance activities to identify vehicle defects that constitute an imminent safety risk. A vehicle defect notice may be issued using the *Road Safety Act 1986* which can impose conditions on, or prohibit the use of, the CPV.
- our bus Transport Safety Officers regularly conduct targeted compliance activities to monitor operators' compliance with the BSA to ensure bus services are safe and provided by competent and appropriately accredited operators.

- audits of, and reports to, duty holders on findings, particularly regarding safety duties and complaints handling.

Where there are concerns about a failure within safety systems that constitute a breach of the relevant legislation, a compliance officer may respond to non-compliance by exercising one or more enforcement powers below.

## **Enforcement and response to non-compliance:**

It is important to respond to non-compliance when identified.

We exercise enforcement powers by:

### ***Issuing infringement notices***

We may issue an infringement notice when we have reason to believe a breach of the relevant legislation has occurred.

The use of infringement notices is discretionary as there are a range of alternative tools that can be used to address contraventions. Infringement notices can be used to address the committing of a range of offences where it is not considered appropriate to prosecute.

### ***Issuing improvement notices***

We may issue an improvement notice requiring that certain actions be undertaken to remedy an alleged breach, if we have reason to believe that safety is being threatened but that issuing a prohibition notice or suspension is not warranted.

An improvement notice remains valid until a "clearance certificate" is issued or withdrawn.

### ***Issuing prohibition notices***

We may issue a prohibition notice, requiring that a particular activity is ceased, if we have reason to believe that there is an immediate risk to safety if the activity continues.

A prohibition notice has effect until withdrawn or until a certificate is served confirming there is no longer an immediate risk to safety.

### ***Inquiries***

We may hold an inquiry to determine whether there are sufficient grounds to take further disciplinary action. Inquiries are generally held when the safety issue is more serious than one which can be appropriately addressed through a general compliance investigation or inspection. An example of an incident which may result in an inquiry is a fatality caused by fatigue.

### ***Investigations***

We may investigate any safety matter either on our own or in conjunction with another law enforcement agency or regulator, such as Victoria Police or WorkSafe.

### ***Varying the conditions of a permission***

We may impose a condition on a permission, for example:

- preventing a marine pilot from piloting vessels over a certain length, breadth or draught
- requiring a CPV or bus driver to produce specific medical records in order to ensure their medical condition does not compromise safety.

***Suspending or revoking a permission***

ST Vic has discretion to suspend or revoke a permission, such as an accreditation or a registration; for example, when the duty holder has been found guilty of a relevant offence.

***Prosecution***

We may elect to initiate prosecution in some circumstances.

***Which action to take***

In determining which of the above enforcement activities to undertake, we have regard to the matters set out in section 4.3 below.

Other than prosecution, all disciplinary actions taken by ST Vic are either subject to internal review or may be reviewed on application to the Victorian Civil and Administrative Tribunal (VCAT).

**4.3 Determining the compliance response**

In choosing the right tool, we will draw on our industry knowledge, the interests of transport users and the public, as well as the specific circumstances of duty holders. We will also tailor these tools to the circumstances at hand. In doing this, we may consider the following when choosing a regulatory tool and exercising our regulatory discretion more generally:

- immediate nature and circumstances of the breach - including associated safety risks (for example, whether there is an immediate risk or whether there are systemic risk concerns)
- characteristics of the breach – the severity of the potential or actual harm
- broader impact of the breach - including the effect on other duty holders or the public if it is not adequately addressed
- impact of any proposed regulatory action i.e. what is most likely to remedy the harm, maximise future compliance and is proportionate to the risk
- whether the breach falls within our identified regulatory focus
- circumstances of the duty holder, including:
  - willingness to comply
  - past history of compliance and likelihood of repeat breaches
  - previous and current response to breach and interactions with us
  - other mitigating or aggravating circumstances
- our constructive compliance approach – whether there has already been a focus on education and standard setting in relation to the breach
- public confidence in safety.

There are potential tensions between these factors. For example, the level of risk of a breach or activity may be high, but the behaviour of the duty holder may have been exemplary before the breach. When this occurs, we will exercise our discretion to carefully balance all the factors but, we will primarily be guided by our responsibility as a regulator to promote and ensure positive safety outcomes.

## 5 Performance monitoring

Our strategic planning processes include gathering evidence and reporting on the achievement of safety outcomes and our strategic priorities. These processes allow us to monitor and report on compliance activities to inform the continuous improvement of our approach and response.

We identify relevant performance indicators across various industries to provide a relevant, appropriate and fair representation of performance. These performance indicators are included within our compliance and enforcement strategies and annual plans. We are accountable for delivering and reporting on these indicators, and for using any insights to inform our future compliance work and areas for improvement.

The performance monitoring processes are in addition to the measures that we are required to provide under government reporting requirements.

Key elements of the performance monitoring are:

- identifying and collecting accurate performance information
- regular assessment of the appropriateness, effectiveness and efficiency of compliance activities
- regular review and evaluation of the monitoring, compliance and enforcement strategies and annual plans.

Performance indicators for our compliance efforts include:

- duty holders voluntarily complying with their legislative responsibilities, which is likely to indicate effective delivery of our education, information and advisory activities
- duty holders having enough knowledge to comply with obligations and potential penalties
- the number of offenders identified per compliance inspection or audit undertaken, which helps to identify duty holders that pose a higher risk and require increased compliance effort
- efficiency measures being created by comparing compliance activities with the resources expended by ST Vic. For example, the subsequent level of compliance through changed behaviour for a given budget provides information about efficiency within a program and may prompt changes to procedures.

If you have any queries or would like further information about this policy, please email [policy@safetransport.vic.gov.au](mailto:policy@safetransport.vic.gov.au)

ST035\_ Policy\_ Monitoring, Compliance and Enforcement\_ Native\_ V23

