



# Monitoring, compliance and enforcement policy

2019 - 2022

COMMERCIAL  
PASSENGER  
VEHICLES  
VICTORIA

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# 1 Introduction

The commercial passenger vehicle industry has undertaken enormous change recently. This has required reform in the legislation and regulations, and in the regulatory approach of Commercial Passenger Vehicles Victoria (CPVV). The reform has changed CPVV's approach from protecting a highly regulated taxi and hire car industry to one where competition is encouraged, and safety, accessibility and consumer protections are the regulatory focus. This policy provides a basis for CPVV to examine and transform its approach to regulating the commercial passenger vehicle industry to meet the expectations of the Victorian community.

This policy sets out how CPVV will select and use proportionate, cost effective and efficient options for monitoring and promoting duty holders' compliance with the new laws, and how it will undertake enforcement activity.

This policy is developed in accordance with section 275 of the *Commercial Passenger Vehicle Industry Act 2017* (CPVI Act).

## 1.1 Scope and purpose

The purpose of this policy is to explain CPVV's approach to commercial passenger vehicle regulation in Victoria, particularly as the reforms are being implemented and are new for the industry. This document describes:

- CPVV responsibilities and role in regulating the commercial passenger vehicle industry
- the elements of the monitoring, compliance and enforcement framework
- CPVV regulatory principles
- CPVV objectives and the outcomes it seeks to achieve
- the harms focussed and risk-based approach CPVV takes to regulating commercial passenger vehicle services
- how CPVV applies the tools it uses to regulate commercial passenger vehicle services.

## 1.2 Role and functions

CPVV operates as part of the wider transport system in Victoria. The Government's vision for transport in Victoria is an integrated and sustainable transport system that contributes to an inclusive, prosperous, and environmentally sustainable 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, and safety; and, health and wellbeing.

CPVV aims to regulate the commercial passenger vehicle industry in line with those objectives.

CPVV is established by the *Transport Integration Act 2010* to regulate the taxi and hire car industry (the Industry). CPVV administer the CPVI Act as well as other related legislation. The industry CPVV regulates is broad and includes many types of industry participants.

CPVV accredits and registers three central types of industry groups:

- Booking Services Providers (BSPs)
- owners and operators of commercial passenger vehicles
- drivers of commercial passenger vehicles.

Each of these groups, along with equipment suppliers and others that have control over commercial passenger vehicle services, has responsibilities and duties relating to ensuring commercial passenger vehicle services in Victoria are safe and accessible.

CPVV's primary objective is to regulate the commercial passenger vehicle industry in a manner that promotes the provision of commercial passenger vehicle services that are safe, accessible, customer focussed and competitive. This includes:

- pursuing and promoting major and enduring improvements in the commercial passenger vehicle industry
- facilitating competition and innovation in the industry
- improving the safety of drivers and passengers of commercial passenger vehicle vehicles
- promoting public confidence in the safety of the commercial passenger vehicle industry.

To deliver this, CPVV functions include:

- administering registration of commercial passenger vehicles and booking service providers, driver accreditation and other requirements imposed on the commercial passenger vehicle industry
- promoting and monitoring compliance with duties relating to the safety and accessibility of commercial passenger vehicle services by the commercial passenger vehicle industry
- investigating and prosecuting breaches of any relevant legislation
- informing and educating the public about the operation and performance of the commercial passenger vehicle industry
- preparing and publishing guidelines, Codes of Practice and research relevant to the regulation of the commercial passenger vehicle industry
- where relevant, engaging and collaborating with stakeholders to ensure better outcomes for all Victorians.

### 1.3 The monitoring, compliance and enforcement framework

This policy is part of CPVV's monitoring, compliance and enforcement framework. The framework provides a platform of policy, principles, strategies and processes for planning and delivering targeted, efficient and consistent compliance activities. It describes the components of a coherent and effective compliance and enforcement system that meets the government's reform objectives.

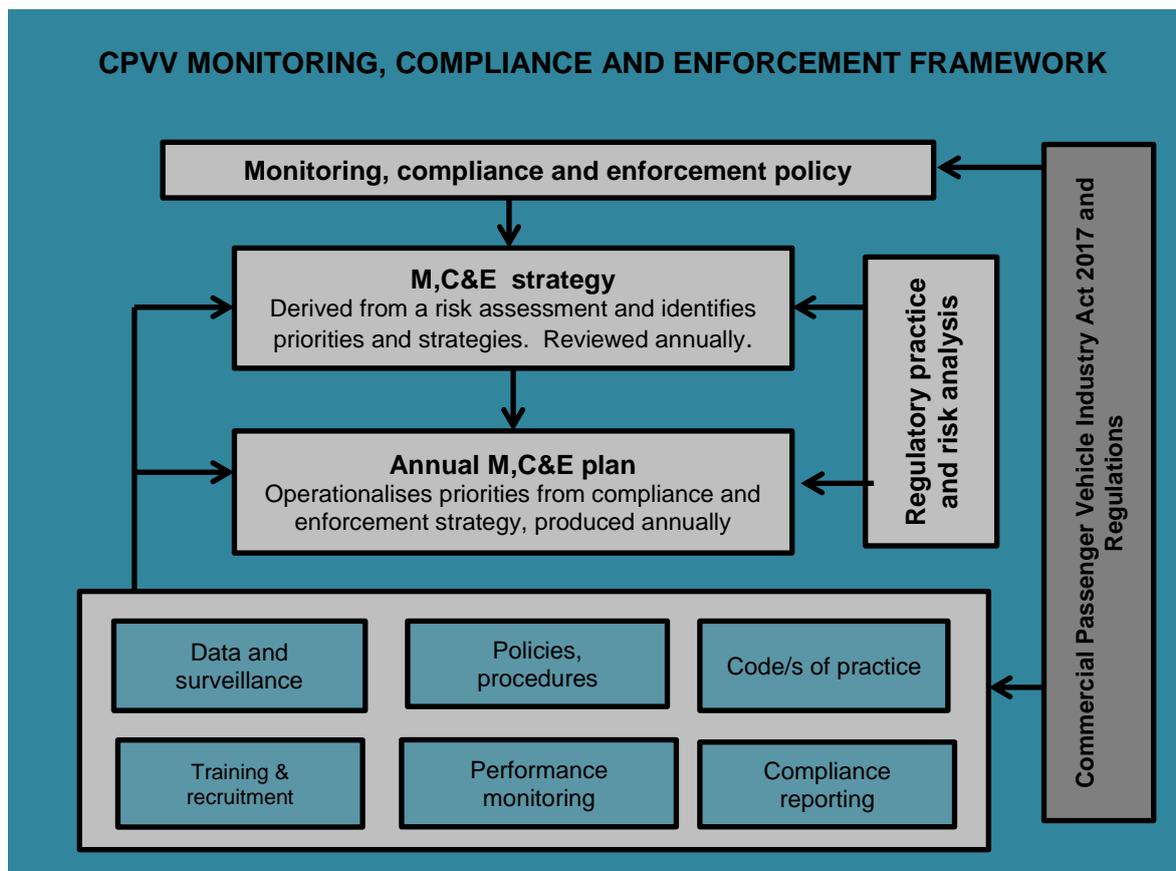
The elements of the monitoring, compliance and enforcement framework apply primarily to the duty holders who are defined by the CPVI Act under a shared responsibility model. This extends across all key industry participants, from owners of commercial passenger vehicles, to booking service providers, suppliers, installers of equipment in vehicles and drivers.

The key components of the monitoring, compliance and enforcement framework are:

- monitoring, compliance and enforcement policy (this policy)
- a three-year monitoring, compliance and enforcement strategy that will reinforce the principles outlined in this policy and compliance priorities based on an assessment of harms and issues. The strategy will also describe key issues and identify performance indicators and will be reviewed each year
- annual monitoring, compliance and enforcement plans that will operationalise the strategy, outlining how the compliance and enforcement priorities will be addressed over the year.

Also, included in the monitoring, compliance and enforcement 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 agencies and regular performance monitoring (including performance indicators). All of these will contribute to a consistent and transparent approach to CPVV’s monitoring, compliance and enforcement activities.

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



## 2 Regulatory practice

CPVV's regulatory approach sets out the underlying principles, objectives and regulatory activities that provide efficient and effective monitoring, compliance and enforcement activities.

As a regulator, CPVV must frequently exercise discretion in terms of setting regulatory strategies, prioritising work, allocating resources and determining what compliance tool to use at what time. CPVV's regulatory approach guides this discretion by:

- applying regulatory principles (see 2.1 below) to ensure that regulatory decision making is consistent and transparent and that resource allocations, the selection of compliance measures, and activities will maximise fairness and effectiveness
- an outcomes-based approach to assess both the efficiency and effectiveness of regulatory actions and outcomes respectively
- implementing a risk-based approach to prioritise effort in assisting compliance and identifying and enforcing instances of non-compliance, allocating resources to areas where they are most needed to manage risk, and where evidence indicates that interventions are likely to have the greatest effect.

CPVV aims to apply an outcomes and risk-based approach to regulation through a consistent and transparent framework, that can be practically applied to identified issues and outcomes. In this way, CPVV will be able to proactively respond to challenges, while reducing unnecessary regulatory burden on regulated entities and driving flow-on economic and social benefits.

### 2.1 Regulatory principles

CPVV is committed to several principles in carrying out its monitoring, compliance and enforcement responsibilities:

- **Independent and impartial:** This includes acting without bias or favour from all commercial and/or political influence. Any potential conflict of interest must be disclosed and documented. Decisions and reasoning for decisions should be communicated where appropriate.
- **Risk-focussed:** CPVV strives to choose how to direct and carry out its regulatory activities based on risk analysis, informed by sound data and intelligence, and taking a contemporary approach to monitoring, compliance and enforcement.
- **Proportionate:** CPVV strives to ensure that in applying discretion to its 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:** CPVV will always act in a reasonable, fair and consistent manner. This includes being consistent and predictable in comparable cases, but also treating each case on its merits considering the circumstances and due process.
- **Accountable and transparent:** CPVV will be accountable and transparent to its stakeholders. This includes publishing information on CPVV's role and core activities and ensuring our decision-making is documented and open to internal, administrative and judicial review.

These incorporate the principles that underpin the regulation of commercial passenger vehicle services set out in Part 2 Division 1 of the CPVI Act.

## 2.2 Regulatory outcomes

CPVV is driven by the public interest to regulate a CPV industry that is safe, accessible, customer focussed and competitive. CPVV provides independent assurance that duty-holders in the commercial passenger vehicle industry are meeting their legislative obligations which is essential to maintaining public confidence in the commercial passenger vehicle transport system.

In doing this, CPVV aims to achieve the following outcomes:

- duty-holders understand their legislative obligations
- duty-holders voluntarily comply with such obligations consistently
- continuous improvement in the management of safety risks associated with commercial passenger vehicle services
- commercial passenger vehicle services are made more accessible to all Victorians regardless of their background, location or level of disability
- improved safety culture in the organisations that provide commercial passenger vehicle services.

These outcomes are consistent with the CPVI Act and the policy framework under the *Transport Integration Act 2010*.

## 2.3 Regulatory activities

In broad terms regulatory outcomes will be achieved through activities that:

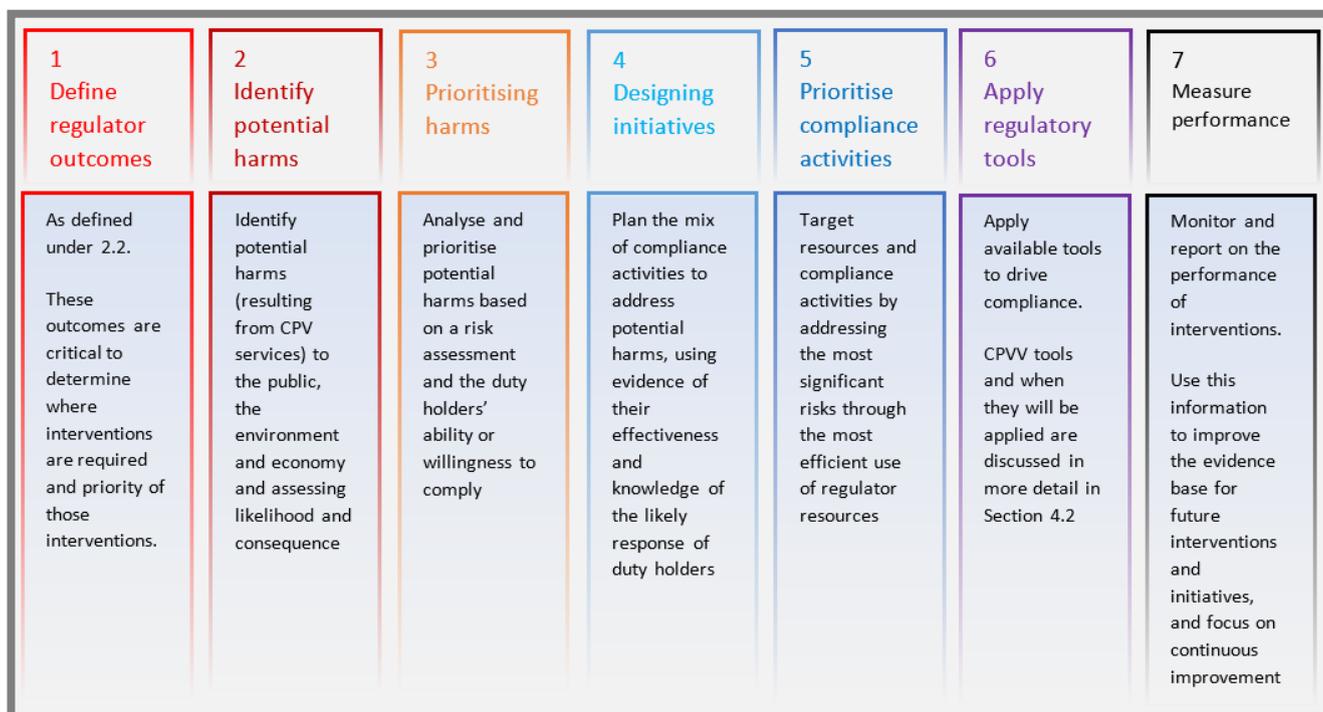
- apply consistent monitoring, compliance and enforcement principles across all regulatory activities
- ensure regulated entities and those in the supply chain are educated about their safety responsibilities and are informed about best practices in managing risks and compliance obligations to continuously improve their performance
- maintain a level of monitoring and enforcement activity that provides a general deterrent to non-compliance
- focus compliance, enforcement and assurance effort, intelligence, resources and capability on high-risk activities, behaviour and regulated entities
- develop, maintain and apply effective intelligence and data collection, management and analysis to ensure compliance resources are targeted to areas where they are most effective
- continuously improve CPVV's regulation through performance monitoring, regular evaluation and review, and updating the regulatory framework commensurate with industry maturity; changing business practices; and adoption of their safety responsibilities.

## 2.4 Prioritising harms

CPVV takes an approach to monitoring, compliance and enforcement that provides methods for identifying, analysing and prioritising potential harms before selecting compliance measures and planning the implementation of compliance activities. This is often referred to as a risk-based approach to regulation and indeed uses risk analysis and management tools.

CPVV will tailor the use of enforcement and other regulatory tools based on the severity and behavioural drivers of non-compliance and harmful activities. Tailoring responses in a consistent and transparent way will help to underpin CPVV’s authority and credibility and incentivise better compliance by duty holders.

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



Data and intelligence will be used to identify and quantify harms and prioritise and resource compliance activities. CPVV will also regularly review and evaluate the effectiveness of its risk management actions.

CPVV will identify potential harms to society, their probability and impact, and a legislative basis for intervention by CPVV. Non-compliance risks will be related directly to potential harms to the community.

Based on the advice of various international and Australian Standards CPVV has adopted a best practice approach to developing a compliance strategy that involves the process outlined in Figure 2.

## 3 Governance and accountability

### 3.1 Accountability

CPVV will create clear accountabilities for all aspects of the compliance framework. Accountability for delivery of regulatory activities generally has a statutory basis derived from the CPVI Act and other relevant legislation that CPVV is charged with administering. The CPVV Commissioners will ultimately be responsible for the implementation of the monitoring, compliance and enforcement framework, but may delegate accountability for some elements to the CEO or directors as appropriate.

### 3.2 Collaboration and shared responsibility

CPVV works collaboratively with a range of other government agencies and organisations to achieve its regulatory objectives. CPVV will seek to cooperate with other bodies to realise shared benefits and improved outcomes for the Victorian community.

As part of this, CPVV will review its governance arrangements with external bodies who share regulatory responsibilities (such as Transport Safety Victoria, VicRoads, the Information Commissioner, WorkSafe, Consumer Affairs Victoria, the State Revenue Office and Victoria Police) by creating, reviewing and maintaining memoranda of understanding (MOU) where appropriate.

### 3.3 Consultation and engagement

Engagement and consultation with the commercial passenger vehicle industry, other regulators and the wider community is a critical element in developing effective approaches to regulation. CPVV will consult with industry on significant regulatory changes, and with the community when seeking to address issues that affect them. CPVV engages with other government agencies and regulators on a regular basis to encourage cooperation and provide a consistent approach on common matters.

CPVV's monitoring, compliance and enforcement strategies and annual plans are developed using a consultative approach to ensure policy, specialist, operational and legal 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

CPVV is committed to a process of continuous improvement by consistently striving to improve its regulatory services according to the highest standards. This includes establishing and maintaining measures for systematic performance reporting and evaluation.

## 4 Compliance activities

### 4.1 Approach to compliance

CPVV engages with duty holders and with the community in the ways that are most effective in achieving regulatory outcomes. In performing its functions, CPVV applies a range of tools that provide a balanced combination of positive motivators and deterrents to promote safety performance and outcomes, accessibility of services and customer focus across the commercial passenger vehicle industry.

Integral to this strategy is the recognition that real and sustainable improvement in safety performance and outcomes is achieved primarily by ensuring that duty holders understand they have shared responsibility in the risk identification, assessment and management process.

A critical element of CPVV's approach is to seek input from industry participants to inform how the industry would best comply with their requirements, and what the CPVV can do to encourage this compliance.

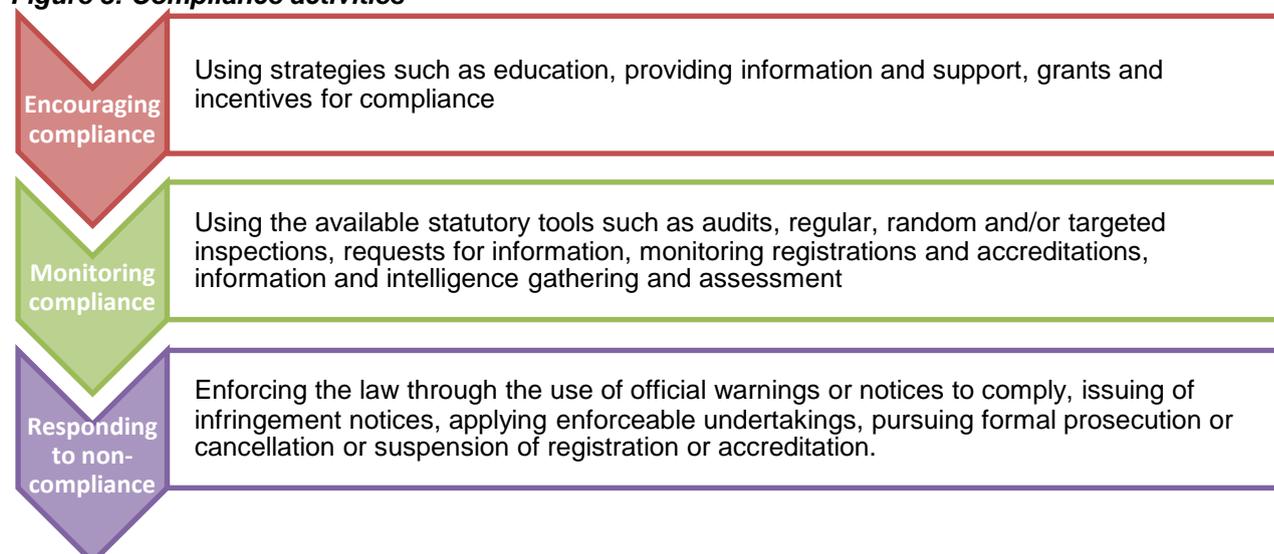
The following information sets out types of compliance activities CPVV undertakes depending on the situation; the compliance tools that CPVV can use to address issues and improve compliance; and the factors CPVV may consider in determining its compliance response.

### 4.2 Compliance activities and tools

CPVV has access to a range of measures, or tools to encourage compliance and deter or address non-compliance. These tools can be considered through three levels, from low levels of intervention to promote voluntary compliance, monitoring of compliance, to high levels of intervention to respond to and manage non-compliance through enforcement activities.

As a responsive regulator, CPVV chooses the appropriate tool and adopts the complementary regulatory style in the circumstances. The intervention may begin at any point and move as appropriate 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 activities**



## **Encouraging compliance**

Provides cooperation and assistance to duty holders in terms of information, guidance, education and persuasion through:

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

## **Monitoring compliance**

Conducting activities towards the middle of the enforcement continuum, such as:

- informal conversations and formal interviews
- requests for information for audit and investigative purposes
  - Requests for information can be made using the CPVI Act and CPVI Regulations 2018. The directions may be given to Booking Service Providers, owners / permission holders of commercial passenger vehicles and drivers that relate to information that is required to be kept under industry law and information that is known to be kept. This may include a wide range of trip data, consumer complaints or any information that relates to commercial passenger vehicle operations that can be used to support an investigation.
- targeted or random on-road inspections of vehicles
  - Targeted or random on-road inspections of commercial passenger vehicles are conducted in accordance with the CPVI Act. If Authorised Officers identify 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 commercial passenger vehicle.
- audits and reports to duty-holder on findings, particularly regarding safety duties and complaints handling.

## Enforcement and response to non-compliance:

It's important to respond to non-compliance when it occurs. CPVV exercises enforcement powers by:

- issuing infringement notices (refer text box on right)
- initiating court action
  - CPVV may elect to initiate prosecution when the offence or offences cannot be dealt with via a PIN or the offending is serious or repeated. Examples include failure to comply with safety duties, driver operating a commercial passenger vehicle with a suspended driver licence and accreditation or drivers engaging in repeated fraudulent activity.
- varying registration or accreditation conditions
  - CPVV may impose a condition on drivers' accreditation requiring them to provide specific medical reports to ensure their medical condition does not compromise their ability to provide commercial passenger vehicle services safely.
- suspending or revoking registration or accreditation
  - Where a driver is charged with or found guilty of a Category 1 offence, the CPVI Act mandates an immediate suspension or cancellation, respectively, of the driver's accreditation. CPVV has discretion to suspend or cancel drivers' accreditation if they are charged with or convicted of other (non-Category 1) criminal offences.

In determining which of the above enforcement activities to undertake, CPVV has regard to the matters set out in section 4.3.

### Issuing infringement notices

To issue a penalty infringement notice (PIN) an Authorised Officer must form a reasonable belief that there has been a contravention of the *Commercial Passenger Vehicle Industry Act 2017*, the *Road Safety Act 1986*, or associated Regulations for a prescribed infringement offence. For example:

- a driver operating an unbooked commercial passenger vehicle with a defective security camera
- an owner permitting a commercial passenger vehicle to be used when not in a safe and roadworthy condition.

The decision to issue a PIN is made considering the surrounding facts and circumstances applicable to that matter (as outlined in 4.3). The recipient of a PIN may have a notice reviewed through an internal review process or elect to have the matter heard in court.

CPVV exercises various powers in the CPVI Act to ensure drivers:

- meet the public care objective
- are technically competent
- are sufficiently fit and healthy and fit and proper to provide commercial passenger vehicle services.

In addition to cancelling or suspending accreditation (as described above), disciplinary actions routinely exercised by CPVV include imposing conditions on accreditation, a reprimand or warning, or requiring drivers to undertake appropriate courses and training.

All disciplinary actions taken by CPVV may be reviewed on application to VCAT.

### 4.3 Determining the compliance response

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

- Public confidence in the safety of commercial passenger vehicle services
- Immediate nature of breach - the nature and circumstances of the breach, including associated safety risks (e.g. whether there is an immediate risk, whether there are systemic risk concerns)
- Broader impact of breach - the broader repercussions of breach- including the effect on other duty-holders or the public if it is not adequately addressed.
- Impact of proposed CPVV action - using the regulatory tool or style that is most likely to remedy the harm, maximise future compliance and that is proportionate to the risk. This requires the most effective point of intervention to achieve behavioural change, taking into account duty-holder control and influence, motivations, and broader educative or deterrent effect. This also includes whether the action is fair, reasonable and consistent.
- Whether the breach falls within CPVV's identified regulatory focus.
- Circumstances of duty-holder including:
  - willingness to comply (rather than blatant disregard or deliberate obstruction)
  - past history of breaches and likelihood of repeat breaches
  - previous and current response to breach and interactions with CPVV
  - other mitigating or aggravating circumstances.
- Implementation stage of requirements. In the early stages of the CPVI Act reforms, the focus will more likely be on education and standard setting. As the implementation progresses, CPVV will draw on the full scope of its powers, including enforcement powers and penalties.

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. However, in all cases CPVV exercises its discretion to best accommodate most of the factors but is guided by safety as the overriding concern.

## 5 Performance monitoring

CPVV's strategic planning processes include a monitoring and evaluation system to gather evidence and report on achievement of outputs and strategic priorities, and a performance and accountability framework that includes program evaluation and performance reporting. These processes provide the frameworks for CPVV to monitor and report on compliance activity and delivery of its compliance program. These performance measures and information will inform the continuous improvement of the CPVV regulatory approach and compliance response.

The processes need to identify relevant performance indicators across various outcome levels to provide a relevant, appropriate and fair representation of performance. These performance indicators will be included in the monitoring, compliance and enforcement strategy and the annual plans. CPVV will be accountable for delivering and reporting on these indicators, and for using the insights to inform its future compliance work and areas for improvement.

The processes are in addition to the measures for Output Performance (BP3) Reporting that CPVV is required to provide for the Department of Transport's full year reporting requirements to the Department of Treasury and Finance.

Key elements of the performance monitoring are:

- mechanisms identified for collecting accurate quantitative and qualitative performance information
- regular assessment and reporting of the appropriateness, effectiveness and efficiency of compliance activities
- regular review and evaluation of the monitoring, compliance and enforcement strategy and annual plan.

CPVV will develop processes for monitoring quality assurance, accountability and oversight of existing regulator activity, make use of information collected by the system to demonstrate contributions to compliance outcomes and CPVV's regulatory obligations.

The performance information will be collected on different types of compliance delivery outcomes, with CPVV selecting performance indicators from the following range:

- voluntary compliance with their legislative responsibilities by duty holders is likely to reflect in attitude, knowledge and behaviour and indicate effective delivery of CPVV's education, information and advisory activities
- information that identifies whether duty holders have enough knowledge to comply with obligations and potential sanctions
- the number of offenders identified per compliance inspection or audit undertaken can identify duty holders that pose a higher risk and require increased compliance effort
- efficiency measures can be calculated when output measures are combined with information about inputs used. For example, the number of audits or inspections undertaken for a given budget provides information about efficiency within a program and may prompt changes to procedures.