

Primary Duty Investigations

Purpose

The National Heavy Vehicle Regulator (NHVR) initiates investigations into suspected contraventions of the primary duty imposed by the *Heavy Vehicle National Law* (HVNL). This policy outlines the principles and investigative priorities the NHVR adheres to in response to these suspected contraventions.

This policy aligns with the NHVR's *Corporate Plan, Regulatory Intervention Strategy and Compliance and Enforcement Policy*, as well as the NHVR's *Prosecution Policy*.

Scope

This policy applies to Authorised Officers, employed by the NHVR, who perform primary duty investigations, and under Section 659 of the HVNL have the following functions:

- monitoring compliance with the HVNL
- investigating contraventions or suspected contraventions of the HVNL
- working collaboratively with other law enforcement agencies to ensure a nationally consistent approach to investigating suspected contraventions and enforcing the HVNL where necessary.

This policy does not apply to other law enforcement agencies or affect the exercise of discretion by NHVR Authorised Officers exercising their powers under the HVNL or any other law.

Policy Statement

1. The NHVR will lead a nationally consistent, risk-based and proportionate approach to investigations into suspected contraventions of the primary duty imposed by the HVNL.
2. The NHVR is committed to discharging its investigative functions fairly, and in a reasonable, consistent, impartial, efficient and accountable manner.
3. The NHVR will triage investigative intervention in a proportionate manner to the identified risks, noting not all incidents or allegations will result in a primary duty investigation.
4. Primary duty investigations undertaken by the NHVR will focus on parties in the chain of responsibility and executives as outlined under the HVNL, as these parties have the most control or influence over safety risks across the heavy vehicle industry.

5. Investigations are undertaken based on the applicable law at the time.
6. The NHVR will seek to obtain all admissible evidence relevant to the investigation using appropriate investigative powers provided for under the HVNL.
7. The NHVR will make investigative decisions and exercise enforcement powers independently.
8. The NHVR will risk assess investigative decisions allowing for controls and treatments of risks that will assist in ensuring the needed resources, partner relationships and activities are enacted to produce good outcomes.
9. The NHVR will seek to improve safety outcomes for the heavy vehicle industry and support greater compliance with the law.

Principles

The application of this policy will be consistent with the following principles.

Prioritising the Primary Duty

10. Priority will be given to primary duty investigations involving;
 - i. Fatalities
 - ii. Serious injuries
 - iii. Identified high risk parties
 - iv. Contraventions of the primary duty by parties in the chain of responsibility and executives of legal entities.
11. Consideration will then be given to investigations into prescriptive offences committed by parties in the chain of responsibility – particularly where there is previous or ongoing non-compliance.

Deciding to Investigate

12. The NHVR will apply investigative resources to address the greatest safety risk in order to achieve the best possible outcome.
13. The NHVR consider the following general factors as part of a risk assessment process when deciding to investigate, noting each case is different, and factors will be assessed based on the individual circumstances:
 - a. The seriousness of any incident, the risk involved and any ongoing offence or risk
 - b. Whether an investigation is a proportionate and effective regulatory response in the circumstances

- c. What regulatory responses and enforcement activities have been undertaken so far
 - d. The background of the suspect (including previous non-compliance with the HVNL)
 - e. Any victims of an incident (if an incident occurred)
 - f. Whether the offence/s to be investigated are of public concern.
14. A decision whether to proceed with an investigation must not be influenced by:
- a. Race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the alleged offender or another person involved
 - b. Personal feelings of the investigator concerning the investigation, any alleged offence or lack of offence, an accused person, or a victim
 - c. The possible effect of the decision on the personal or professional circumstances of the accused, victim or any other person associated with the investigation
 - d. Possible media or community reaction to the decision.

Who can be investigated?

15. All parties in the chain of responsibility, including their executives, can be investigated to determine compliance with their primary duty under the HVNL.

Investigative Process

Commencing an Investigation

16. An investigation may be triggered by several factors, including (but not limited to):
- a. In response to the outcomes of NHVR operational activities, such as on-road activities, notification of an incident involving a heavy vehicle, or in response to alleged offences detected by other law enforcement agencies.
 - b. In response to a report from a member of the public or the heavy vehicle industry, such as through the Heavy Vehicle Confidential Reporting Line (HVCRL), a Minister or Member of Parliament, or partner agency.
 - c. In response to intelligence (both from the NHVR's Analysis, Intelligence and Risk (AIR) Team as well as through interaction with other agencies), particularly involving likely systematic contraventions of the HVNL.
 - d. As a result of other investigations where further contraventions of the HVNL may be identified.

These matters may need to be evaluated for either inclusion in the initial investigative scope or to consider a separate investigation.

- e. As a result of an incident involving a heavy vehicle resulting in a fatality or serious injury.

Using investigative powers

17. The NHVR may use investigative powers throughout the course of an investigation. These powers are outlined in Chapter 9 of the HVNL and include (but are not limited to):
- a. power to enter a business or office
 - b. power to seize things
 - c. information gathering powers
 - d. powers in relation to heavy vehicles
 - e. powers to use equipment to access and examine or process things
 - f. the power to require reasonable help

Investigative activity

18. The NHVR will conduct investigative activity to determine the facts related to the case. The objective of this stage is to gather admissible evidence against each of the physical elements and fault elements of a criminal offence.
19. The NHVR will search objectively for the truth of the case, engaging in critical thinking and exploring possible sources of inculpatory and exculpatory evidence to challenge the strength of any investigative hypotheses.

Evidence

20. The NHVR will collect, handle, and manage evidence in accordance with the following guidelines and law:
- a. NHVR's *National Investigations Manual*
 - b. *Australian Government Investigations Standards*¹
 - c. *Evidence Act 1995* or applicable laws of evidence

Timeliness

21. Whilst investigation timeframes are influenced by the complexity and risk of each circumstance, the NHVR will commit to meeting performance indicators to undertake investigations in an efficient and timely manner.

Feedback, Queries and Complaints

22. The NHVR commits to providing consistent, accountable and transparent communication with

¹ Australian Federal Police, *Australian Government Investigation Standards* (October 2022)

complainants and those involved with investigations.

23. Feedback on investigations informs the continuous improvement of the NHVR's policies and processes. Feedback is welcomed via the NHVR website, the HVCRL and the NHVR Call Centre.

Confidentiality

24. Sharing information will be done in accordance with the *Privacy Act 1988* and provisions within the HVNL governing information sharing.
25. All documents and information will be kept and filed according to NHVR policies and procedures.
26. Files and electronic cases will be maintained and stored in accordance with NHVR procedures, the *Archives Act 1983* and the *Protective Security Policy Framework*.
27. Information regarding human sources, or Information Providers, will be confidential and their identities kept protected.

Investigation Outcomes

Non-prosecutorial enforcement outcomes

28. In instances of non-compliance, the NHVR will undertake graduated and proportionate compliance monitoring activities and enforcement responses in line with the NHVR's *Compliance and Enforcement Policy*. This may include issuing an improvement notice or, for more serious circumstances, a prohibition notice.

Referral to NHVR Prosecutions

29. Some investigations will result in the referral of a brief of evidence to NHVR Prosecutions.
30. The referred brief of evidence will include all evidence in support of any charges of an offence or offences and will contain sufficient detail to establish the elements of the offence or offences.
31. The brief of evidence will include any information in relation to the credibility or reliability of the prosecution witnesses and material which the prosecution does not intend to rely on as part of its case which either runs counter to the prosecution case or might reasonably be expected to assist the defendant in advancing a defence.
32. A decision to prosecute is made independently by NHVR Prosecutions, having regard to the considerations raised in the NHVR's *Prosecution Policy*.

Related legislation and documents

- *Heavy Vehicle National Law Act 2012*
- *Evidence Act 1995*
- *Privacy Act 1988*
- *Archives Act 1983*
- *Australian Government Investigations Standards 2011*
- *Protective Security Policy Framework*
- *NHVR's Regulatory Intervention Strategy*
- *NHVR's National Regulatory Model*
- *NHVR's Compliance and Enforcement Policy*
- *NHVR's Statement of Regulatory Approach*
- *NHVR's Prosecution Policy*
- *NHVR's Prosecution Manual*
- *NHVR's National Investigations Manual*
- *Complaints Handling Process*
- *Customer Complaints Management Policy*