

REGULATORY APPROACH POLICY



TRANSPORT
SAFETY
VICTORIA

PURPOSE OF POLICY

TRANSPORT SAFETY

VICTORIA (TSV) IS VICTORIA'S INDEPENDENT RISK-FOCUSSED REGULATOR STRIVING FOR EXCELLENCE IN TRANSPORT SAFETY REGULATION. IT IS AN INDEPENDENT RISK-BASED STATUTORY OFFICE COMMITTED TO SAFE BUS, MARITIME AND RAIL TRANSPORT FOR THE BENEFIT OF ALL VICTORIANS.



The purpose of this policy is to set out TSV's 'regulatory approach' in enforcing transport safety legislation (see list at **Appendix A**).

An effective regulatory approach ensures TSV realises its strategic mandate, consistent with the vision for the whole transport system under the *Transport Integration Act 2010 (Vic)*. A clear and consistent regulatory approach is also a key to good governance as a regulator.

This policy should be understood in the 'co-regulatory' context under which transport safety regulation operates. Co-regulation places a shared responsibility for safety on all relevant stakeholders, including a primary responsibility on duty-holders¹ to demonstrate how they ensure safety through risk management.



CONTENT OF REGULATORY APPROACH

Regulators consistently exercise discretion, from setting strategic visions, regulatory scope, work prioritisation and resource allocation ('what to work on'), to regulatory strategies ('how to work on it') and enforcement discretion ('when and what tools to use at what time'). TSV's regulatory approach guides this discretion by setting out:

- 1 Outcomes** TSV seeks in transport safety regulation,
- 2 Principles** which TSV binds itself to when striving for these outcomes,
- 3 Strategies** for achieving these outcomes,
- 4 Factors** to take into account, including under regulatory strategies, and
- 5 Processes**, policies and procedures to ensure this policy is effectively implemented.

¹ Duty-holders are all parties who have obligations under TSV's legislative framework

THIS CAN BE SUMMARISED AS FOLLOWS:

HOW TSV exercises its regulatory discretion **WHY TSV exercises its regulatory discretion**





REGULATORY OUTCOMES

AS VICTORIA'S SAFETY REGULATOR, TSV IS DRIVEN BY THE PUBLIC INTEREST IN SAFE TRANSPORT. TSV PROVIDES INDEPENDENT ASSURANCE THAT DUTY-HOLDERS ARE MEETING THEIR LEGISLATIVE OBLIGATIONS, HELPING TO MAINTAIN PUBLIC CONFIDENCE IN THE TRANSPORT SYSTEM.

To do this, TSV aims to maximise the following outcomes:

- **Duty-holders understand their legislative obligations,**
- **Duty-holders voluntarily comply with such obligations consistently, and**
- **Positive safety culture among all participants, including continuous improvements in safety management, best practice safety standards and capacity building for risk management across industry.**

These outcomes address legislative compliance, but extend broadly to achieve safety outcomes.

This is consistent with the objects and principles of transport safety legislation as well as the policy framework under the Transport Integration Act.



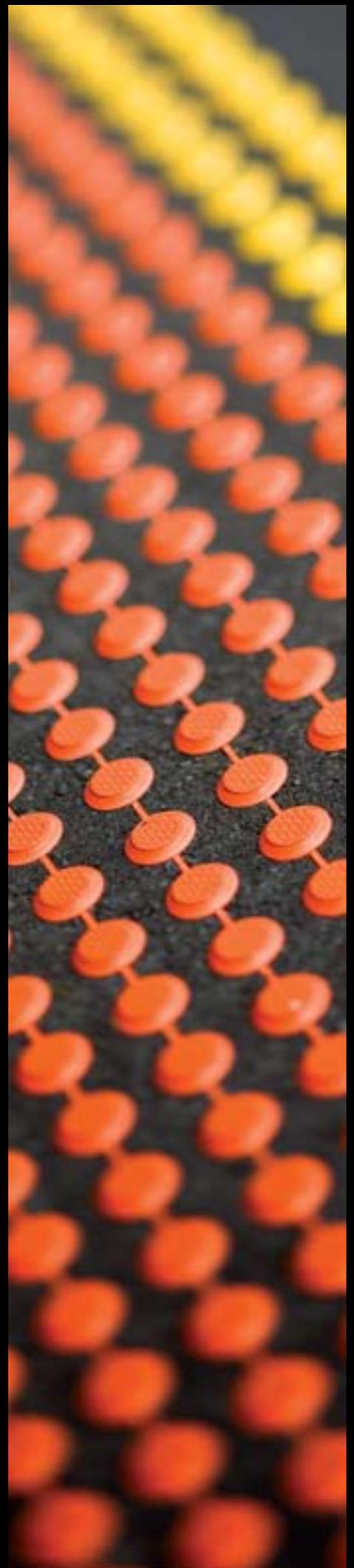
REGULATORY PRINCIPLES

TO ACHIEVE THESE OUTCOMES, TSV IS BOUND BY THE FOLLOWING PRINCIPLES:

- 1 Independent /impartial:** TSV must be independent and impartial. This includes acting without bias or favour from all political and/or industry influence and actively managing risks of regulatory capture. Independence from the Department of Transport and ministers is established through the statutory office of the Director, Transport Safety.
- 2 Risk-focussed:** TSV strives to choose 'what to work on' and 'how to work on it' on the basis of risk, taking a systemic risk and safety science perspective.
- 3 Proportionate:** in line with principle 2, the impact of TSV's regulation should be commensurate to the risks and the potential benefit to safety.
- 4 Fair, reasonable and consistent:** TSV should act in a reasonable, fair and consistent manner at all times. This includes being consistent and predictable in comparable cases, but also treating each case on its merits in light of the circumstances and due process.
- 5 Accountable and transparent:** TSV should be accountable and transparent to its stakeholders. This includes publishing information on TSV's role and core activities and that our decision-making is documented and open to internal, administrative and judicial review.

These principles are consistent with the principles set out in transport safety legislation.

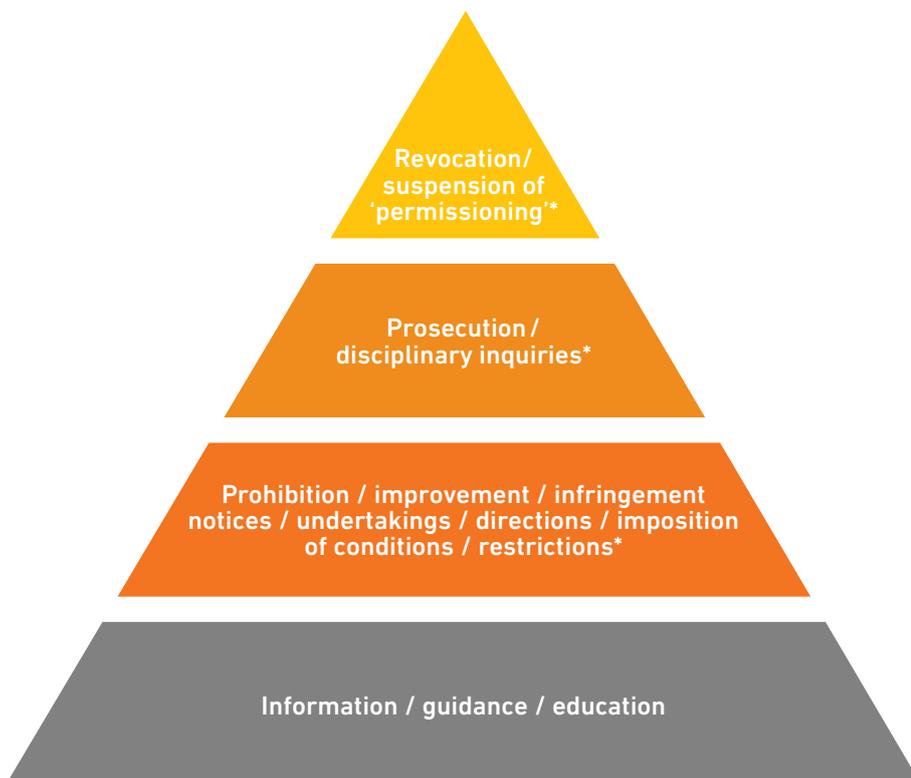
There may be tensions between the principles e.g. between proportionality in the individual case and optimising compliance impact across industry. In each case, TSV aims to optimise compliance by looking at all of the principles together, in light of desired regulatory outcomes.



REGULATORY STRATEGIES

TO MOST EFFECTIVELY ACHIEVE REGULATORY OUTCOMES, TSV EMPLOYS THE FOLLOWING STRATEGIES TO GUIDE CHOICE OF REGULATORY TOOLS AND STYLES:

Enforcement Pyramid



CHOICE OF REGULATORY TOOL

TSV takes a graduated and integrated approach to choosing the appropriate regulatory tool from compliance to enforcement.

This means TSV generally provides information/guidance/education in the first instance and uses the least interventionist tool to achieve the desired regulatory outcome. This minimises regulatory burden while maximising public value for regulatory resources. Providing information and assisting with compliance is also useful if enforcement tools are not available (e.g. in regulating recreational boating operations).

However, a graduated approach does not mean that regulatory tools must be used sequentially, nor that TSV will hesitate with enforcement when safety requires. In each case, TSV considers the full range of options available and takes a balanced approach. It chooses the most appropriate tool (or mix of tools) to achieve the desired outcome considering the factors overleaf.

*see Appendix B for list of some of these tools

CHOICE OF REGULATORY STYLE

ALIGNED WITH THE GRADUATED APPROACH, TSV IS A 'RESPONSIVE REGULATOR' THAT NOT ONLY CHOOSES THE APPROPRIATE TOOL, BUT ALSO ADOPTS THE COMPLEMENTARY REGULATORY STYLE IN THE CIRCUMSTANCES. TSV THEREFORE MOVES ALONG THE FOLLOWING SPECTRUM WITHIN THE CO-REGULATORY CONTEXT AND CONSIDERS VARIOUS FACTORS:

'COLLABORATIVE STYLE'

(tendency towards 'lower end' of enforcement pyramid)

provides cooperation and assistance to industry in terms of information/guidance/education/persuasion through:

- running seminars/workshops
- publishing guidance material
- public education campaigns
- requesting further information
- regulatory conversations with duty-holders

'MONITORING STYLE'

(tendency towards 'middle' of enforcement pyramid)

conducts monitoring/compliance activities such as:

- informal conversations
- requests for information
- inspections
- audits and reporting to duty-holder on findings

'ENFORCEMENT-ORIENTATED/PUNITIVE STYLE'

(tendency towards 'top end' of enforcement pyramid)

exercises enforcement powers by:

- issuing notices
- accepting undertakings
- changing permissioning structures
- suspending or revoking permissioning
- prosecution



FACTORS FOR CONSIDERATION

IN ADDITION TO THE TRANSPORT INTEGRATION ACT'S POLICY FRAMEWORK, TSV TAKES INTO ACCOUNT THE FOLLOWING WHEN CHOOSING REGULATORY TOOL/STYLE AND EXERCISING ITS REGULATORY DISCRETION MORE GENERALLY:

1 **Public interest** – in safe bus, maritime and rail transport for all Victorians, including to contribute to public confidence through independent assurance.

2 **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), potential/actual detriment etc.

3 **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.

4 **Impact of proposed TSV action** – which regulatory tool/style is most likely to remedy the harm, maximise future compliance and is proportionate to the risk. This requires the most effective point of intervention to achieve behavioural change (taking into account duty-holder motivations), broader educative/deterrent effect etc.

This also includes whether the action is fair, reasonable and consistent.

5 **Circumstances of duty-holder including –**

- willingness to comply (rather than blatant disregard or deliberate obstruction),
- capacity to comply (in terms of both staff and systems e.g. understanding/sophistication of risk management systems, safety maturity/culture),
- past history of breaches and likelihood of repeat breaches,
- previous and current response to breach and interactions with TSV, and
- other mitigating or aggravating circumstances.

Generally, the higher the willingness and capacity to comply, the less likely that TSV will use 'harder' enforcement tools.

6 **TSV's current risk areas** – whether the breach falls within TSV's identified regulatory focus.

There are potential tensions between these factors e.g. the level of risk (which may be high), and the behaviour of the duty-holder (which may have been exemplary before the breach). In each case, TSV exercises its discretion to best accommodate most of the factors guided by safety as the overriding concern.



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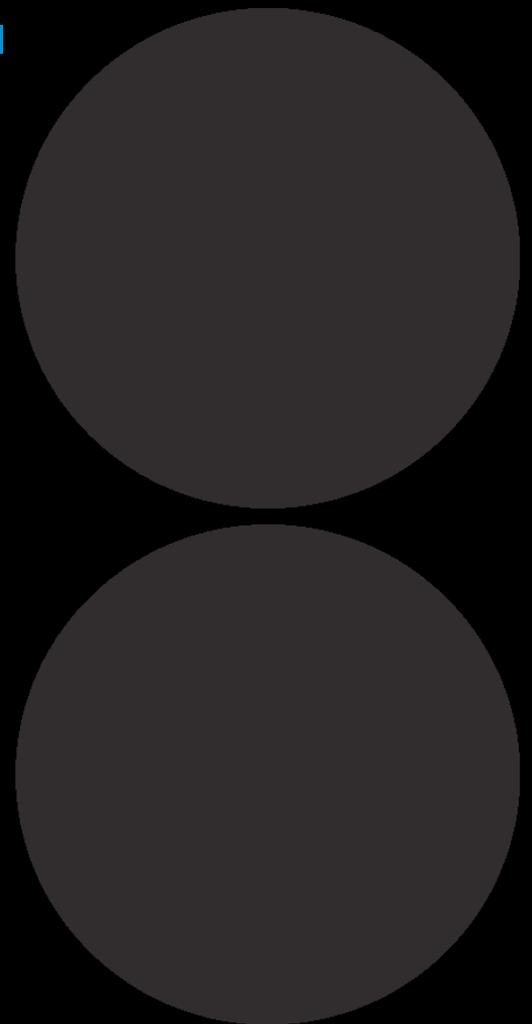
SUPPORTING PROCESSES, POLICIES AND PROCEDURES

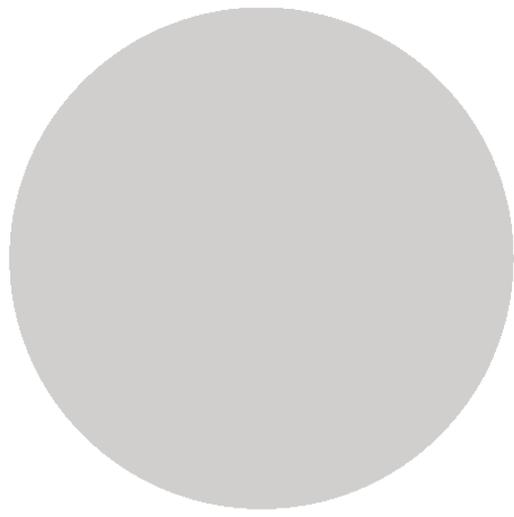
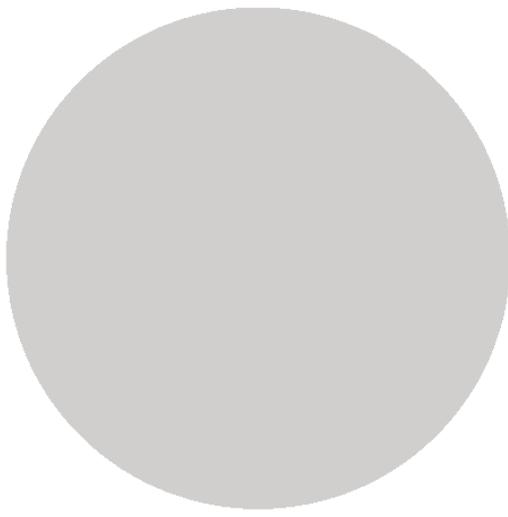
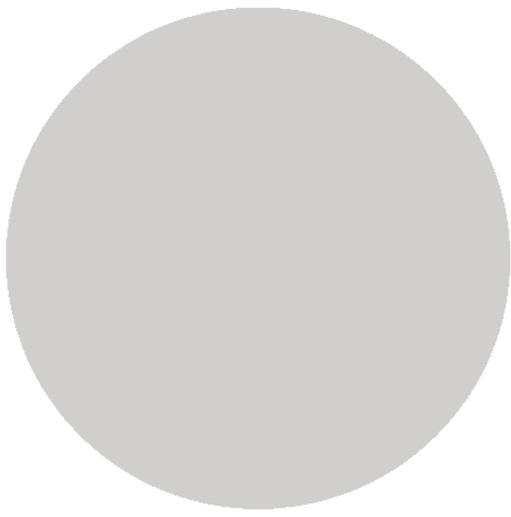
TSV IS COMMITTED TO ENSURING THAT ITS BUSINESS PROCESSES ARE ALIGNED WITH AND SUPPORT THE APPROACH IN THIS POLICY. SUCH PROCESSES INCLUDE ENSURING APPROPRIATE:

- **supervision systems** relating to transport safety officers/ marine inspectors or surveyors,
- **probity requirements** e.g. having a robust system of policies and procedures, documentation of decision-making, review and approval processes,
- **risk analysis/planning** e.g. receipt and publication of safety data, safety trend analysis and research by safety science and human factors experts, risk-based planning of audit/ inspection programs,
- **training, learning and development** e.g. regular training for transport safety officers/ marine inspectors or surveyors,
- **broader governance requirements** e.g. to conduct a cost-benefit analysis for certain regulatory decisions, compliance with Transport Integration Act framework,
- **communication/consultation processes** e.g. safety alerts to industry, regular newsletters and safety meetings with operators, and
- **relationships with other relevant regulators** e.g. through MOUs, referral protocols, regular information-sharing sessions, informal networking sessions etc.

ASSOCIATED REFERENCES

- National Rail Safety Guideline- Compliance and Enforcement for Rail Safety by the National Transport Commission (NTC) June 2008: http://www.ntc.gov.au/filemedia/Reports/NRSG_ComplianceEnforcement_June.pdf
- Guidelines on the State of Victoria's Obligation to Act as a Model Litigant, issued by Attorney-General 2001: <http://www.vgso.vic.gov.au/sites/default/files/publications/The State as Model Litigant.pdf>
- Improving Governance of Regulators: Principles and Guidelines September 2010
- Victorian Guide to Regulation, 2nd edition, April 2007: [http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/FINALPDFVersionofVictorianGuidetoRegulation-2007Edition--D07-324787/\\$File/FINAL PDF Version of Victorian Guide to Regulation - 2007 Edition -- D07-324787.PDF](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/FINALPDFVersionofVictorianGuidetoRegulation-2007Edition--D07-324787/$File/FINAL PDF Version of Victorian Guide to Regulation - 2007 Edition -- D07-324787.PDF)





APPENDIX A - RELEVANT LEGISLATION

Transport Integration Act 2010 (Vic)

Transport (Compliance and Miscellaneous) Act 1983 (Vic)

Bus Safety Act 2009 (Vic) & Bus Safety Regulations 2010 (Vic)

Marine Safety Act 2010 (Vic) (operation expected 2011) & Marine Safety Regulations (Vic) (in draft)

Marine Act 1988 (Vic) & Marine Regulations 2009 (Vic)

Port Services Act 1995 (Vic) & Port Services (Local Ports) Regulations 2004 (Vic)

Pollution of Waters by Oil and Noxious Substances Act 1986 (Vic) & Pollution of Waters by Oil and Noxious Substances Regulations 2002 (Vic)

Rail Safety Act 2006 (Vic) & Rail Safety Regulations 2006 (Vic)



APPENDIX B - REGULATORY TOOLS IN TRANSPORT SAFETY LEGISLATION

TRANSPORT (COMPLIANCE AND MISCELLANEOUS) ACT 1983: PART VII DIVISION 4B	MARINE SAFETY ACT 2010 (VIC)	RAIL SAFETY ACT 2006 (VIC)	BUS SAFETY ACT 2009 (VIC)
INFORMATION / EVIDENCE - GATHERING POWERS			
<ul style="list-style-type: none"> • Powers of entry in Subdivision 3 • Inspection, inquiry, search and seizure powers in Subdivision 4 • Search warrants in Subdivision 5 • Directions in relation to obtaining information/evidence in Subdivision 6 • Seized things and samples taken in Subdivision 7 	<ul style="list-style-type: none"> • Powers to request name/ address in relation to marine infringement under s157 (TSO or police) • Powers of entry in relation to lights under s159 (TSO or police) • Powers of arrest under s160 (police only) • Powers in relation boarding, moving, securing or operating a vessel under s262 	<ul style="list-style-type: none"> • Power to request access to railway premises, and any document or equipment under s28A • Accredited rail operators to provide information under s69A 	<ul style="list-style-type: none"> • Power to request information relating to the safety of the bus service operated under s54 • Communication with responsible person any time in relation to the accreditation under s55
'COMPLIANCE' POWERS			
		<ul style="list-style-type: none"> • Power to conduct safety audits and audits of medical records of rail safety workers to determine compliance with safety and accreditation requirements under s29, s30 	<ul style="list-style-type: none"> • Power to conduct safety audits to determine compliance with the Act and its regulations under s20
'DIRECTION' POWERS			
	<ul style="list-style-type: none"> • Impoundment, immobilisation and forfeiture of recreational vessels (police only) under Part 4.2 • Embargo notices re recreational vessels under s154 • Direction to prohibit operation of recreational vessel under s155 • Powers to remove obstructions in navigable waters or to navigation under ss267, 268 • Power to prohibit operation of particular vessel under s269 	<ul style="list-style-type: none"> • Powers in relation to works carried out by a utility or rail operations in certain circumstances or carried out on rail land ss33, 33A, 34 • Power to give directions in relation to safety interface agreements under s34J 	<ul style="list-style-type: none"> • Power to direct safety inspection to be conducted in respect of the bus service operated under s19(3)
'PERMISSIONING CHANGE' POWERS			
	<ul style="list-style-type: none"> • Vary/revoke/impose conditions/ restrictions on or cancel marine licences/harbour master licences ss 53- 55, ss 224- 227 • Cancellation/disqualification/ suspension of permission if it is in the public interest (but only if after taking disciplinary action under s165) 	<ul style="list-style-type: none"> • Accreditation refusal under Division 1 Part 5 • Variation and surrender of accreditation under Division 4 Part 5 • Revocation of accreditation exemptions for private siding rail operations under s64 • Exemption from ongoing compliance with risk management requirements under s66 	<ul style="list-style-type: none"> • Accreditation refusal under Division 3 Part 4 • Accreditation conditions under Division 4 Part 4 • Variation and surrender of accreditation under Division 5 Part 4
ENFORCEMENT POWERS			
<ul style="list-style-type: none"> • Improvement notices in Subdivision 9 • Prohibition notices in Subdivision 10 • Transport safety infringement notices in Subdivision 11A • Undertakings relating to contraventions of relevant safety laws in Subdivision 13 • Prosecutions in Division 5 (which may include sentences in Division 6: <ul style="list-style-type: none"> – commercial benefits penalty order under s230B; – supervisory intervention order under s230C; – contravention of supervisory intervention order under s230D; – exclusion orders under s230DA; – contravention of exclusion order under s230DC; – release on the giving of a safety undertaking under s230E; – adverse publicity order under s230FA) 	<ul style="list-style-type: none"> • Marine infringements notices under Part 4.4 (police or TSO) • Inquiries into marine safety matters under s264 • Disciplinary action under Part 4.6 (after holding disciplinary inquiry) • Prosecutions under s292 (which may include a court: <ul style="list-style-type: none"> – cancelling or suspending marine licences s171(1), or – disqualifying the offender s171(1), (2) & (3), – issuing an adverse publicity order s173) 	<ul style="list-style-type: none"> • Immediate suspension under s58 • Disciplinary action under Part 5 Division 5 (after holding disciplinary inquiry) 	<ul style="list-style-type: none"> • Immediate suspension under s48 • Mandatory cancellation under s49 • Disciplinary action under s50-51 (after holding disciplinary inquiry)



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