

Warning/Caution Policy

Policy Number: A34010205

Effective Date: 10/09/20

Review Date: 10/09/22

1 Who is this document for?

This policy applies to Authorised Officers from Transport for NSW (TfNSW) when assessing whether it is appropriate to issue a formal warning under the *Heavy Vehicle National Law (HVNL)* or an official caution under the *Road Transport Act 2013*.

2 Purpose of this Policy

Authorised Officers use this policy to decide when it is appropriate to issue a warning/caution to a person.

Transport for NSW is committed to improving compliance and safety across the road network. The core objective is to increase the level of compliance.

Compliance is dynamic and circumstantial. Several approaches are used for this reason to achieve compliance. This may include sanctions and action for prosecution, as well as cautionary measures such as warnings/cautions.

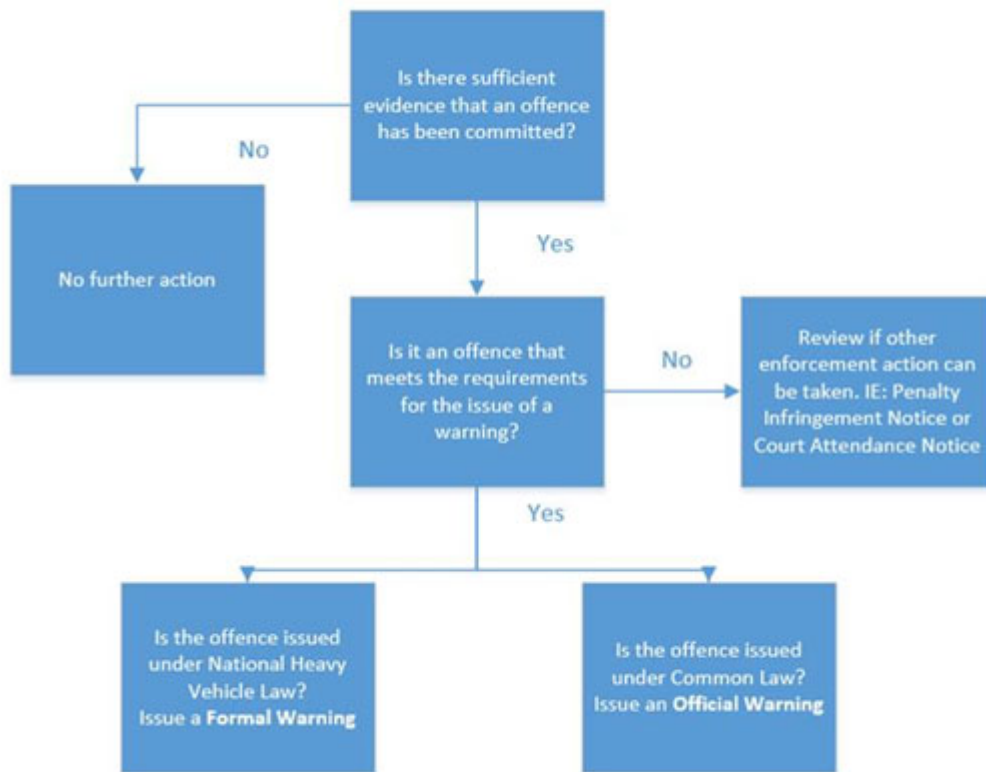
3 Principles

To achieve our commitment to increase compliance, we will determine the appropriate response to HVNL and National Regulations breaches based on risk level.

It is reasonable, in some cases, to deal with an offence by warning/caution rather than enforcement action, such as issuing a notice of penalty.

Warnings/Cautions can be issued in the following circumstances:

- **Formal warnings** can be issued when there is a reasonable belief that there is a contravention of the HVNL
- **Official cautions** can be issued for offences under common law (non-HVNL)



4 Formal Warnings

A formal warning applies if an authorised officers believes:

- a person has contravened a provision of the HVNL
- the person exercised reasonable diligence to prevent the contravention
- the person was unaware of the contravention
- it is appropriate to deal with the contravention by way of a warning under Section 590 of the HVNL.

The authorised officer may give the person a written warning.

Do not issue a formal warning which involves a contravention of either a:

- mass, dimension or loading requirement which constitutes a substantial risk breach or a severe risk breach
- maximum work requirement or a minimum rest requirement which constitutes a substantial risk breach or severe risk breach or a critical risk breach.

5 Official Cautions

An official caution can be issued under Section 19A of the *Fines Act 1996*. These offences will not be covered by the provisions of the *Heavy Vehicle National Law (NSW)*.

An Authorised Officer may give a person an official caution instead of issuing a penalty notice if the officer believes:

- on reasonable grounds that the person has committed a penalty notice offence, and
- that it is appropriate to give an official caution in the circumstances.

The Caution Guidelines under the *Fines Act* issued by the Attorney General assist Authorised Officers in exercising their discretion when deciding whether to issue a caution or penalty notice.

6 Reasonable Steps Defence

Before issuing a warning/caution Authorised Officers must first decide that the person has taken all reasonable steps to prevent the breach from occurring by determining that:

- (a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- (b) either—
 - (i) the person took all reasonable steps to prevent the contravention; or
 - (ii) there were no steps the person could reasonably be expected to have taken to prevent the contravention.

The HVNL provides guidance to Authorised Officer when considering reasonable steps defence. Authorised Officers are expected to make a decision using their judgement and discretion.

See Section 4 of the Warning Procedure.

7 Withdrawal/Review of Warning/Caution

Transport for NSW use Revenue NSW's Review Assist guidelines as the framework to review fines. The guidelines ensure the fines process is fair and upholds the expectation of public and road safety in NSW.

See Section 5 of the Warning Procedure.

7.1. Formal Warnings

Under section 590 of the HVNL a formal warning may be withdrawn by an Authorised Officer. A written notice must be served within 21 days after the formal warning was given.

7.2 Official Cautions

Under Section 120 of the *Fines Act 1996*, official caution can be reviewed to determine whether a caution was correctly issued

8 Review

Senior Manager, Enforcement Adjudication is to coordinate any review into this policy.

9 Compliance

Compliance with this Policy, and related Procedures or Standards, is mandatory

10 Breaches of this Policy

Transport for NSW may commence disciplinary action if a person to whom this Policy applies breaches this Policy (or any of its related procedures). This may include termination of employment.

11 Related/supporting documents

1. Heavy Vehicle National Law
2. Road Transport Act 2013
3. Fines Act 1996
4. Warning Procedure

12 Document control

12.1 Superseded documents

This Policy replaces Warning Policy (Version 2) dated 28/2/2014.

12.2 Document history

Date & Policy No	Document owner	Approved by	Amendment notes
10/09/20 FA8767129	Director, Compliance	Director, Compliance	Review and updated by Policy Support Services

12.3 Feedback and help

For advice on interpreting or applying this document, please contact Senior Manager, Enforcement Adjudication.