Bus Safety Regulations 2020

Regulatory Impact Statement

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Glossary

|  |  |
| --- | --- |
| ABS | Australian Bureau of Statistics |
| ADRs | Australian Design Rules |
| ALVSR | Australian Light Vehicle Standards Rules |
| AMSA | Australian Maritime Safety Authority |
| ATAC | Australian Transport Advisory Council |
| ATAP | Australian Transport Assessment and Planning |
| BITRE | Bureau of Infrastructure, Transport and Regional Economics |
| BRV | Better Regulation Victoria |
| BSV | Bus Safety Victoria |
| DoT | Department of Transport |
| EAC | Equivalent Annual Cost |
| HVNL | *Heavy Vehicle National Law* |
| LBT | Licensed Bus Tester |
| MCA | Multi-criteria Analysis |
| MMS | Maintenance Management System |
| MIS | Management Information System |
| NPV | Net Present Value |
| OHS Act | *Occupational Health and Safety Act 2004* |
| ONRSR | Office of the National Rail Safety Regulator |
| RSV | Road Safety Victoria |
| RIS | Regulatory Impact Statement |
| SLA | *Subordinate Legislation Act 1994* |
| TSV | Transport Safety Victoria |
| VASS | Vehicle Assessment Signatory Scheme |
| Vehicle Regulations | Road Safety (Vehicle) Regulations 2009 |
| VIN | Vehicle Identification Number |

# Executive Summary

The *Bus Safety Act 2009* commenced December 2010 and is the prime statue regulating the safety of bus operations across the State. The purpose of the Bus Safety Act is to prevent deaths and injuries arising from bus operations and services by facilitating better hazard identification and better risk management.

The Bus Safety Act established a broad-based safety duties scheme applicable to all bus operators and other parties who have a role in providing bus services. Operators of large buses continued to be regulated through an accreditation scheme and new safety standards were introduced to the small, or mini-bus sector, through a registration scheme.

Bus Safety Victoria (BSV) is a branch of Transport Safety Victoria (TSV) whose role as the regulator derives from the powers and functions of the Safety Director described in Part 7, Division 1 of the *Transport Integration Act 2010*.

While the Department of Transport (DoT) has no safety regulatory role, it does have a role in managing the delivery of contracted passenger bus services in metropolitan and regional areas.

The Bus Safety Regulations 2010 (the Regulations) commenced at the same time as the Bus Safety Act. The objective of the Regulations is to provide for the safety of bus services in Victoria by giving effect to the key provisions of the Bus Safety Act.

The Bus Safety Regulations 2010 will sunset on 12 October 2020. The Department has reviewed these regulations to assess whether the regulations should be remade and whether there is any opportunity to improve their operation. This regulatory impact statement (RIS) summarises the nature and extent of the problem that gives rise to the need for regulation, various options to address the identified problems, and an assessment of the impacts of those options. This RIS has been prepared in accordance with requirements of the *Subordinate Legislation Act 1994* (the SLA) and the *Victorian Guide to Regulation*.

The Commissioner for Better Regulation is responsible for providing independent advice and reviewing the adequacy of RISs for public consultation purposes. Better Regulation Victoria (BRV) supports the Commissioner for Better Regulation and makes its assessment of adequacy relative to the Victorian Guide to Regulation.

## Nature and extent of the problem (refer to Section 3)

Bus services operate on the public roads and regularly interact with other road users. Accidents and incidents may occur during the delivery of bus services and may impact drivers of buses, bus passengers, and other road users, such as other motor vehicle drivers, cyclists, and pedestrians.

The actions or inactions of the providers of bus services affect the safety of those services and the safety of all road users. If safety is not adequately managed, there may be a higher level of fatalities or serious injuries which may be undesirable from the community’s perspective.

While safety is regulated through a principle-based safety duties scheme imposed on industry participants under the Bus Safety Act, this RIS considers whether any further safety requirements should be prescribed in regulations.

### Bus safety performance (refer to Section 3.2 for further discussion)

Between 2011 and 2019, there were 3,651 bus related incidents equivalent to an average of 406 incidents involving a bus service per year. The most prevalent types of incidents over the period were collisions (1,869 incidents) and slip, trip or fall (658 incidents).

There was a total of 57 recorded fatalities involving a bus service for the period 2011 to 2019 or an average of 6 fatalities per year. Collisions are associated with the most fatalities (34 fatalities in total). The second highest cause for fatalities relates to medical episodes (15 fatalities). During this period, the highest number of fatalities are suffered by passengers (27 fatalities), followed by drivers of other motor vehicles (11 fatalities) and pedestrians (10 fatalities).

There was a total of 534 serious injuries recorded from the period 2011 to 2019 or an average of 59 serious injuries to persons per year. Collisions (273 serious injuries) make up the greatest proportion of causes for serious injuries, followed by slips, trips or falls (172 serious injuries). Bus passengers suffer the majority of serious injuries (311 serious injuries), followed by drivers of other vehicles (84 serious injuries) and bus drivers (62 serious injuries).

The safety performance of the industry has been relatively stable over the life of the regulations. While there are no emerging trends that would warrant consideration of additional regulatory requirements, DoT will consider the merits of continuing regulatory requirements in Bus Safety Regulations and the merits of additional measures to improve safety outcomes.

### Vehicle safety (refer to Section 3.3 for further discussion)

Between 2011 and 2019 there were a total of 134 incidents of mechanical failures reported to the regulator while the bus was operating. Using unsafe buses or inadequately maintaining vehicles may increase the risk of an incident. DoT considers that regulatory intervention is still required.

#### Design and standards (refer to Section 3.3.1 for further discussion)

The safety of a bus is dependent on the vehicle design and standards. Appropriate vehicle design and standards, including installed equipment and devices, will ensure that vehicles are safe for use on the road and do not harm passengers and other road users. Additional standards may be required to cover any gaps in the ADRs to ensure buses are safe or to ensure the standards can be enforced by the regulator or to provide clarity of enforcement.

#### Vehicle maintenance and inspections (refer to Section 3.3.2)

Measures to ensure that the vehicle and equipment continues to be maintained to a safe standard can both reduce the occurrence of an incident itself as well as act as mitigating the consequences of an incident should one occur. An inspection of a vehicle is a way to confirm whether a vehicle is maintained and is compliant with bus standards.

### Safety of bus operations (refer to Section 3.4 for further discussion)

The safety of a bus service is also dependent on how the bus service is operated by the operator. Further regulatory intervention may be required to ensure that operators meet their safety obligations under the Act or that the operators implement measures to address known safety risks. The driver of the bus also plays a role in the safety of the bus service, so additional measures could be required.

#### Maximum number of passengers (refer to section 3.4.1 for further discussion)

An overloaded bus may pose several safety risks to the structural integrity of the vehicle. It is important for the driver to know the maximum carrying capacity of each bus to minimise the risk of overloading a bus. As different vehicles may have different capacities, particularly if the vehicle has been modified, a driver may not know the maximum carrying capacity for each bus they drive. A regulatory intervention may be needed to address this specific issue.

#### Alcohol and other drugs (refer to section 3.4.2 for further discussion)

Alcohol or other drugs may impair a driver’s ability to operate or ensure the safety of a bus service. There are already a range of regulatory interventions to reduce the risks associated with driving on the road while being impaired. However, without regulations bus drivers are unable to be tested immediately prior to the beginning of a shift.

#### School buses (refer to section 3.4.3 for further discussion)

School buses carry a vulnerable cohort of passengers (i.e. children) who may not take the same level of care around vehicles or the road as adults. This means that additional measures may be needed to ensure that children are protected around school buses.

### Permission to operate a bus service (refer to section 3.5 for further discussion)

The Bus Safety Act provides for an accreditation and registration scheme for bus operators. Operators of a commercial bus service or local bus service must apply to become accredited. All other bus service operators must apply and become registered. Operators can also apply for an exemption from certain requirements of accreditation or registration. It is not practicable to have an operator accreditation or registration scheme without specifying procedural or information requirements in regulations relevant to the application for that scheme.

### Identification of services (refer to section 3.6 for further discussion)

Enforcement of bus safety laws is reliant on ensuring the regulator has information related to the bus service and the bus operator responsible for the service. That information may need to be displayed on a vehicle. Identification information may also help provide information to the community relating to the bus service.

Currently, special issue number plates do not necessarily identify who is primarily responsible for the vehicle as a bus operator. Enforcement activity may be hindered where buses are used to provide bus services that are not directly owned by the bus operator or are leased to another operator.

### Cost recovery (refer to section 3.7 for further discussion)

The costs of administering and enforcing regulation are borne by the government and its agencies The Bus Safety Branch of TSV conducts several activities in relation to bus safety regulation.

DoT has conducted an analysis of the operations of TSV to estimate the costs attributable to administering bus safety regulations in Victoria. DoT estimates the cost of bus safety regulation to be $4.48 million, with $2.29 million in direct costs for the Bus Safety Branch of TSV and $2.19 million in indirect costs.

DoT has also undertaken some analysis to assess whether these costs are efficient. DoT has identified that the changing functions and scope of TSV (i.e. responsibility for rail safety regulation, and responsibility for the regulation of domestic commercial vessels) may lead to changes in the levels of indirect costs that may be needed in the future. Also, any future legislative reforms will impact on the costs of regulations. So, for this reason, DoT is recommending a delay to fully reviewing regulatory fees prescribed in regulations.

## Objectives (refer to Section 4)

In making the proposed regulations, DoT’s overarching objective is to promote and improve the safety of bus services provided in Victoria while minimising regulatory and compliance costs to industry and enabling effective enforcement of bus safety laws.

## The base case (refer to Section 5)

The Victorian Guide to Regulation requires that for new regulations or for regulations which are sunsetting, the RIS should assume “zero” or no regulations as being the base case against which the proposed regulations and feasible alternatives should be assessed.

The discussions on options are considered on the basis of several contributing factors to the safety of bus operators in Victoria:

* General duties under the Bus Safety Act – duty holders already have general safety obligations imposed on that duty holder
* Road safety legislation – road safety legislation already regulates the design of buses, driver standards and their conduct on the road
* Market incentives – there are still market incentives for sound safety performance in many sectors of the bus industry
* Government service contracts – scheduled bus services are provided in Victoria subject to government contracts, in which there are already contractual arrangement between the government and scheduled route bus service to implement safety standards.

DoT considers that any additional requirements should support the safety duties scheme under the Bus Safety Act, as well as covering any gaps that may exist in relation to existing regulatory schemes or private incentives relating to bus operations.

## Identification of feasible options (refer to Section 6)

### Vehicle safety (refer to Section 6.1 for further discussion)

DoT has looked at some options to improve vehicle safety. These are described below.

#### Bus standards (refer to Section 6.1.1 for further discussion)

Design standards for consideration include ensuring all buses:

* are stable
* have a device or means to remove or prevent condensation on a windscreen for buses manufactured prior to 1 July 1988
* have restrictions on exposed bars
* are equipped to provide a driver with a view of all passengers in or on the bus
* have safe luggage racks, where equipped
* have a prescribed bulkhead behind the driver’s seat, where required by the Safety Director.

In relation to addressing fire on buses, an option may be to require all buses to have fire extinguishers regardless of ADR requirements or for regulations to be consistent with the ADRs.

#### Safety systems for vehicle safety (refer to Section 6.1.2.1 further discussion)

DoT considers that the contents of any system to manage vehicle safety ought to cover off on measures addressing the sources of risk to safety in relation to the vehicle. Any system could also specify the frequency of how each of the activities are to be undertaken. The set requirements in an MMS could be achieved via prescribing contents of MMS in regulations, delegating power to the Safety Director to set requirements via notice to an operator or via notice in Government Gazette.

DoT considers who should be required to implement such systems. DoT considers it sufficient to only impose this requirement on accredited operators having regard to the nature of the safety risk faced by those operators and the complexity of their operations.

DoT also considered options for auditing or reviewing an MMS to ensure the system for managing vehicle safety is up-to-date. Audits could be required at the Safety Director’s discretion, prescribed at periodic intervals or be required after the occurrence of a prescribed event. There could also be non-periodic circumstances which would warrant a review of the MMS to ensure it continues to achieve the safety objectives of the bus service.

#### Roadworthy inspections (refer to 6.1.2.2 for further discussion)

Under the Bus Safety Act, buses operated by accredited operators are required to undergo annual roadworthy inspections. However, there is a capability to prescribe in regulation intervals that are not annual. There is no annual inspection requirement for buses operated by registered operators under the Bus Safety Act but there is a capability to prescribe such a requirement. It is therefore necessary to consider whether this should be prescribed and what an appropriate frequency for inspection would be. An alternative to prescribed intervals could be risk-based inspections where the frequency at which buses are inspected changes with risk and other factors that may be relevant to the safety of a bus. DoT considers the merits of an inspections regime that is a combination of a default prescribed minimum interval of inspections and providing flexibility for risk-based inspections.

There are a range of parties that could be considered to be allowed to conduct vehicle inspections of buses. DoT considers that licensed bus testers, qualified mechanics, and TSV officers are best placed to be able to conduct inspections.

### Safety of bus operations (refer to Section 6.2 for further discussion)

#### Safety systems for bus operations (refer to Section 6.2.1 for further discussion)

The contents of any safety system for bus operations should cover measures to address the sources of risk that may arise from the operational aspects of a bus service. The set requirements in an MIS could be achieved via prescribing contents of MIS in regulations, delegating power to the Safety Director to set requirements via notice to an operator or via notice in Government Gazette.

DoT considered which duty holder under the Bus Safety Act should be required to implement an MIS. DoT considers that accredited operators are the appropriate duty holder to be required to implement an MIS.

DoT also considered options for auditing or reviewing an MMS to ensure the safety system is for managing vehicle safety is up-to-date. Audits could be required at the Safety Director’s discretion, prescribed at periodic intervals or be required after the occurrence of a prescribed event. There could be non-periodic circumstances which would warrant a review of the MIS to ensure it continues to achieve the safety objectives of the bus service.

#### Maximum number of passengers (refer to Section 6.2.2 for further discussion)

DoT considered an option for bus drivers to be required to have records of the carrying capacity of every bus they are required to drive. This is considered impractical and unnecessary. Alternatively, bus operators could have similar obligations to provide this information to bus drivers. Another option is each bus to clearly display the maximum carrying capacity to ensure drivers are aware of the maximum carrying capacity for the bus.

The parties that could determine the safety maximum carrying capacity of a bus include manufacturers, licensed bus testers, signatories of the Vehicle Assessment Signatory Scheme (VASS), and operators (with the assistance of guidelines or standards). DoT proposes that manufacturers are best placed to determine the maximum carrying capacity. In cases where a vehicle is modified affecting the buses maximum carrying capacity, licensed bus testers or VASS engineers may be appropriately qualified.

DoT considers buses with a seating capacity of 10 to 12 seats do not need to display a maximum carrying capacity sign. DoT considers larger buses (seating capacity for 13 or more adult) should be required to display a maximum carrying capacity sign.

#### Alcohol and other drugs (refer to Section 6.2.3 for further discussion)

DoT considers there is merit in requiring drivers to be subject to a zero alcohol and drug requirement, both immediately before and while driving a bus. DoT does not consider that all bus safety workers should be subject to the zero alcohol and drug requirements.

#### School buses (refer to Section 6.2.4 for further discussion)

DoT has looked at options to fit school buses with special lights, hazard warning devices, “school bus” signs or speed limit signs. The Road Safety (Vehicles) Regulations 2009[[1]](#footnote-2) already specify the fitting and operation of warning lights and signs fitted to school buses after June 1999. An option could be for regulations to extend fittings to warning lights and signs to school buses fitted prior to 1 July 1999. Another option is to adopt the standards required in NSW, which includes (in addition to a “school bus” sign and hazard warning lights) requiring a sign indicating “40km/h” and “when lights flash”. Laws to require drivers of motor vehicles in the vicinity of a stopped school bus to stop and wait for the stopped school bus to load or unload its passenger is not considered further in the RIS.

DoT also considers regulations are needed to ensure that not only warning lights and signs are fitted to a school bus, but that they are operational at all times, within reason, particularly when a bus is stationary.

### Notifiable incidents (refer to Section 6.3 for further discussion)

The Bus Safety Act requires bus operators to notify the Safety Director of prescribed incidents in accordance with the regulations. DoT considers that notifiable incidents should relate to the safety of the services and have a material consequence. The information provided in a notifiable incident can be used to identify the causes of the incident, determine whether there were any breaches with legislative or other requirements, and as part of a risk-based assessment on areas the regulator should focus their resources for compliance monitoring and enforcement.

In terms of when the operators should notify the Safety Director of an incident, there are several options to consider:

* require oral notification for serious incidents as the bus operator is aware of the incident, with the oral notification followed up with a written notification of the bus incident within 72 hours.
* require oral notification for serious incidents as above, but with the oral notification followed up with a written notification within one week.
* require less urgent notification for less serious incidents, to be provided only as a written notification within a short timeframe (e.g. within 72 hours) after the operator becomes aware of the safety incident.
* require group reporting for incidents that are relatively minor in nature and consequence and which may not need to be reported individually within a short time frame (e.g. monthly reporting).

A notification should contain enough information about the service (e.g. who the driver was, which vehicle was used to provide the service etc.) for the Safety Director to make an appropriate choice on what action to take, if required. The information required could be prescribed in the regulations or in a manner and form determined by the regulator.

### Bus incident investigation (refer to Section 6.4 for further discussion)

DoT considers that an investigation of the bus incident is the most appropriate response to an incident. Options include whether all bus incidents should be investigated, whether a prescribed subset of incidents should be investigated or whether the Safety Director should have the discretion to direct an operator to investigate any such incidents. Given the variable nature and significance of incidents, the Safety Director could have the discretion to direct a bus operator to conduct a bus incident investigation. DoT considers that the Safety Director should be empowered to require a more thorough investigation to be undertaken, further information to be required to be provided, or to conduct his/her own investigation.

### Requirements of accreditation and registration (refer to Section 6.5 for further discussion)

DoT considers that regulations to enable the Safety Director to collect information and documents relating to an application for bus operator registration or accreditation is preferred compared to no regulations.

In relation to all operator applications, the Safety Director will require basic identifying information about the applicant, including information relating to the identity of relevant applicant, evidence of the safety of all vehicles used by the bus operator (e.g. roadworthy certificate) and previous accreditation and registration details.

In relation to applications for accreditation, the Safety Director will require information to be satisfied that the applicant has the competence and capacity to operate a bus service safely and the applicant has not committed certain disqualifying offences as specified under the Bus Safety Act. Any proposed regulatory requirements could impose a set of conditions in which accredited operators are required to abide by in order to keep their accreditation.

The Bus Safety Act allows the Safety Director to issue a certificate of registration to the registered bus operator. It may be necessary to include basic details on the certificate of registration.

### Identification (refer to Section 6.6 for further discussion)

DoT considers all the persons responsible for the accredited and registered bus service should be identified on the road-side for compliance monitoring and enforcement purposes.

The display of identification information could include a sign attached to the vehicle that can be viewed from the outside, a requirement of each bus to have a copy of an accreditation or registration certificate, or a special number plate. DoT considers it may be appropriate that a removable sign or sticker be attached to the outside of the bus which identifies the responsible operator of the bus at the time. Information to be displayed may include details of the person or operator responsible for the bus service, accreditation or registration number, contact details, details on type of service and bus driver identification details.

### Records (refer to Section 6.7 for further discussion)

Records and record keeping requirements enable the Safety Director to access evidence of compliance with the Bus Safety Act and its regulations. The type of records required is dependent on the specific information that is needed for bus operators to demonstrate compliance with requirements under the Bus Safety Act and the regulations.

There are two broad options relating to who should be required to keep prescribed records: accredited operators and registered operators. Given the greater responsibility and accountability expected of bus services operated by accredited operators, more evidence or records may need to be kept by accredited operators.

Given the importance of a safe vehicle for providing a safe bus service, all operators could be required to keep records relating to inspections and evidence that any defects identified during bus safety inspections have been cleared. Alternatively, or in addition to operators keeping records, all parties authorised to undertake bus inspections could provide information directly to the regulator on any bus inspections carried out by that party. Other records to be maintained by both accredited and registered operators could include records of their bus fleet.

To ensure effective compliance monitoring and enforcement, records could be required to be kept for a minimum period of time and in the English language.

### Exemptions (refer to Section 6.8 for further discussion)

The Bus Safety Act provides for making of regulations related to exemptions for persons from the requirement for registration or accreditation. Regulations are required to specify the procedural or information requirements relevant to an application for exemption. The purpose of the registration and accreditation scheme under the Bus Safety Act is to impose general safety duties on operators of bus services. DoT considers that any exemption should not reduce the safety of the bus service or be in contradiction with the objectives of the Bus Safety Act.

### Fees (refer to Section 6.9 for further discussion)

DoT has considered a range of options for structuring fees for recovering the costs of bus safety regulation, including options in relation to the type of fees, the structure of those fees, and the level of cost recovery. DoT notes that current fees are levied in relation to the processing of application for accreditation and a general annual fee is imposed on accredited operators. There are no fees levied on registered operators.

DoT assessed three options for recovering the costs of processing applications and the general regulation for bus safety:

* Option 1 reflects the current structure and level of fees that are imposed. That is, an application fee is applicable to accredited operators, with the fee set on a per operator basis. This would mean that fees would only partially recover costs.
* Option 2 would include the current structure and level of fees but also include a new fee to be levied annually on registered operators. Fees would be set such that there is partial cost recovery (fees less than the costs incurred by TSV in administering all applications for accreditation and registration).
* Option 3 would set fees such that there is full cost recovery both through the application fee and an annual fee that is imposed on both accredited and registered operators.

## Impact Assessment (refer to Section 7)

### Vehicle safety

#### Bus standards (refer to Section 7.1.1 for further discussion)

While DoT has not quantified the expected costs and benefits of additional bus standards, DoT expects the benefits of requiring bus standards as proposed in the regulations to outweigh the costs. DoT’s assessment is that the compliance costs associated with complying with the standards are minor and that the regulations address potential safety risks in buses that are not otherwise covered by the Vehicle Standards under the Road Safety Act or the Heavy Vehicle National Law. For these reasons, DoT proposes that the regulations for bus standards be made.

#### Requirements for maintaining vehicle safety (refer to Section 7.1.2 for further discussion)

The costs associated with a regulatory requirement to develop and maintain safety systems for vehicle maintenance are $2.06 million and the costs to comply with those systems are $62.7 million to $317.1 million over the life of the regulations (i.e. a 10-year period). DoT notes that many operators would have incurred these costs regardless of the proposed regulation, as it is good practice to regularly maintain vehicles. Therefore, the costs estimated presented here reflect the upper bound of costs imposed on the industry.

An annual roadworthy inspection regime is estimated to impose $21 million in compliance costs on registered operators over the life of the regulations, with approximately 6,000 buses needed to be inspected annually. DoT has also considered regulations which would permit the Safety Director to require additional roadworthy inspections of an operator if, based on an assessment of risk, such additional inspections are warranted. While this cost has not been quantified, additional costs are only incurred if the operator is identified as operating unsafely. If an operator adequately maintains and repairs their vehicles, then no additional costs will be incurred. Cost are expected to be in the order of approximately $300 per inspection.

DoT has conducted a ‘break-even analysis’ to assess how many fatalities and serious injuries would need to be avoided for the intervention to have a net-gain to society. In the case of the proposal to require to an MMS, there must be a reduction of between 1 to 5 fatalities per year or 21 to 105 serious injuries per year for the intervention to ‘break even’. In calculating these estimates, DoT has assumed that under the upper bound of the estimates, there is a high utilisation rate of buses by accredited operators. For the annual inspection regulations, there must be a reduction of up to 1 fatality per year or approximately 7 serious injuries per year for that intervention to ‘break even’. The costs incurred to avoid the fatalities or serious injuries may not be entirely attributable to the regulations – some operators may implement safety systems irrespective of the regulations as part of good practice to regularly maintain vehicles.

As there is still a significant number of items failed when buses are presented for their annual roadworthy vehicle inspections, it suggests that more could be done to improve safety in bus services. In particular, DoT recommends that the current measures of requiring roadworthy inspections and requiring accredited operators to implement systems for maintaining vehicles continue in the proposed regulations.

DoT recommends that the option to give the Safety Director power to require additional roadworthy inspections of an operator be adopted in the proposed regulations.

### Safety of bus operations

#### Safety systems for bus operations (refer to Section 7.2.1 for further discussion)

Documenting and following systems for the safety of bus operation is expected to lead to better risk management practices by bus operators. DoT estimates the compliance costs associated with the systems are approximately $5.14 million over the life of the regulations. DoT considers that these are reasonable costs in the context of improving bus safety and recommends that the regulations be made.

DoT has noted that some of the costs estimated to implement systems to ensure the safety of bus operations could be attributed to the obligations under the Bus Safety Act, rather than wholly attributable to the proposed regulations. As such, the estimated compliance costs attributed to the regulations may be lower than the estimated $5.14 million over the life of the regulations. The extent to which costs may be attributable to the Bus Safety Act (in the absence of supporting regulations) are not able to the quantified, although DoT expects it to be substantial.

#### Maximum number of passengers (refer to Section 7.2.2 for further discussion)

DoT recommends that the regulations continue to prescribe requirements for operators to determine the maximum carrying capacity of buses they operate and install signs to advise of that capacity. This will provide better information to drivers. DoT estimates that the compliance costs of this regulation for new buses introduced into the fleet amounts to $0.44 million over the life of the regulations.

#### Alcohol and other drugs (refer to Section 7.2.3 for further discussion)

DoT recommends that the proposed regulations regulate the use of alcohol and drugs of drivers as this regulation will assist with compliance monitoring and enforcement by the regulator and Victoria Police. DoT does not expect there to be significant compliance costs associated with the proposed regulation beyond the status quo (i.e. above what is already required in relation to alcohol and other drugs under Road Safety Act and the Bus Safety Act) are expected to be minimal.

#### School buses (refer to Section 7.2.4 for further discussion)

DoT expects that requiring specific lights and signs to be displayed on a bus when transporting children will reduce the incidence of crashes involving children around buses. The option to adopt the New South Wales’ (NSW) standards for lights and signs would place an additional burden on operators in installing new lights and signs in the order of $0.26 million to $0.3 million over the life of the regulations. DoT does not have data to establish whether the NSW standard for lights and signs will achieve further reductions in fatalities or serious injuries involving children around buses compared to the current standards.

**Stakeholder question:**

* ***Is there merit in adopting the NSW standard for school bus lights and signs in Victoria? Why or why not?***
* ***Would you support adopting the NSW standard for school bus lights and signs on Victorian buses?***

DoT notes that continuing the current standards imposes relatively less compliance burden on existing operators. DoT recommends continuing with the current standard for lights and signs for school buses.

### Notifiable incidents (refer to Section 7.3 for further discussion)

Incident notifications are intended to improve the level of information available to the regulator in order for it to undertake its functions. DoT estimates that the compliance costs associated with incident reporting is in the range of $0.065 million to $0.13 million over the life of the regulations. Since the compliance costs are relatively low, DoT is recommending that the proposed regulations be made.

### Bus incident investigation (refer to Section 7.4 for further discussion)

DoT notes that it is difficult to appropriately quantify the costs associated with this regulation, despite the availability of information relating to the number and type of investigations that may occur during any given year. TSV has advised that investigations are not overly onerous, particularly for registered operators. It should also be noted that a bus safety investigation acts as a means to address potential safety issues and minimise safety risk in the operations of bus services. Therefore, DoT considers the burden imposed cannot be absolutely attributed to the regulations alone – investigations inform a considerable part of the general bus safety duties under the Bus Safety Act in ensuring that bus services are safe. Notwithstanding the uncertainty as to the compliance costs attributable to the regulations, DoT is recommending that the proposed regulations be made.

### Requirements for accreditation and registration (refer to Section 7.5 for further discussion)

Regulations are needed to prescribe what must be included in applications for both accreditation and registration. DoT estimates that the compliance costs of collecting this information totals $0.3 million over the life of the regulations. Since this information is need by the Safety Director in order to make a decision on applications, DoT is recommending that the proposed regulations be made.

### Identification (refer to Section 7.6 for further discussion)

DoT is recommending that all bus operators be required to display a sign identifying the operator of the bus while the bus is in service. The costs of the proposed regulations relating to identification is estimated to be approximately $0.74 million over the life of the regulations. DoT expects that the benefits, which will improve enforcement efficiency, outweighs the costs of implementing the regulatory requirement.

In the case of bus specific number plates, DoT notes that if there is identifying information displayed on the vehicle, then bus specific number plates are unlikely to further assist TSV officers in compliance monitoring and enforcement. DoT recognises that there may be some benefit to the community in the form of increased public confidence in the safety of bus services provided in Victoria. DoT has not included this requirement in the draft regulations for consultation. However, DoT seeks the community’s views on the merits of requiring number plates to be displayed.

**Stakeholder question:**

* ***Do you support the removal of the requirement to display specific accredited bus number plates? Why or why not?***

### Records (refer to Section 7.7 for further discussion)

DoT recommends that accredited bus operators be required to keep the full set of records and registered bus operators be required to keep a limited set of records. This will impose a 10-year cost of $4.5 million to accredited operators and $2.0 million to $4.1 million to registered operators. This achieves objectives of improved compliance outcomes and minimises compliance costs on the industry.

### Exemptions (refer to Section 7.8 for further discussion)

Overall, operators will assess the merits of the exemption when considering applying for an exemption. In cases where the reduction in compliance costs outweighs the regulatory burden of making an application, a bus operator has an incentive to apply for an exemption. Otherwise, the operator will continue to be subject to the usual requirements under the Bus Safety Act and the regulations. Given this represents a reduction in regulatory burden and no decrease in safety, DoT considers there will be a net benefit to the industry associated with having exemptions requirements in regulations.

### Fees (refer to Section 7.9 for further discussion)

DoT undertook a multi-criteria analysis to assess the merits of the three options for recovering bus safety costs. In undertaking this analysis, DoT has had regard to three objectives: efficiency, equity and the effect of the fee on compliance. DoT notes that the option which seeks to fully recover costs (i.e. Option 3) from the industry best meets these three objectives. However, due to the uncertainty in relation to the regulatory cost base and possible future regulatory reforms, DoT is not recommending any change to fees at this point in time. DoT is committed to undertaking a full review of regulatory fees within three to five years, as the Department will be able to better analyse costs at that point in time.

## Preferred option (refer to Section 8)

DoT is proposing to remake the Bus Safety Regulations. These draft regulations are available for public comment and the public is invited to make a written submission to provide DoT with feedback. The proposed regulations include requirements in relation to applications for accreditation and registration, bus standards, vehicle equipment requirements, Management Maintenance Systems (MMS) and Management Information Systems (MIS), annual inspections, record keeping requirements, fees and exemptions.

The following sections outline the key changes in the proposed regulations from the current Regulations.

### Bus safety duties

The proposed regulations require all bus operators to display their accreditation or registration number on each bus operated by the bus operator. DoT is also recommending that the special number plates for bus operated by accredited bus operators not be mandatory.

### Record keeping for bus operators

Accredited bus operators are currently required to keep a range of records. The proposed regulations require accredited operators to also keep records of each bus used in the operator’s fleet. This is not currently a formal record keeping requirement in the regulations.

Registered operators are not currently required to keep any records. The proposed regulations required that registered operators keep some records in relation to the operator’s fleet and annual inspection of buses.

### Bus inspections

The proposed regulations would provide the Safety Director with power to require any operator to conduct additional or more frequent inspections if the Safety Director considers it appropriate to do so based on a safety risk assessment of that operator.

### Reporting and investigation of bus incidents

Operators will continue to be required to notify TSV of incidents, however the form of notification would be different. The proposed regulations prescribe three categories of incidents, each having different reporting obligations. The Safety Director must be notified of an incident as follows:

* category 1 incident – orally as soon as possible after the operator becomes aware that an incident has occurred, followed by in writing within 72 hours after the occurrence of the incident
* category 2 incident – in writing within 72 hours after the occurrence of the incident
* category 3 incident – in a written report provided monthly within 5 days of the last day of each calendar month.

## Implementation, Evaluation and Consultation (refer to Sections 9, 10 and 11)

Following the formal public consultation period, DoT will consider all submissions and submit its final recommendations to the Minister for Public Transport for approval. The Minister for Public Transport will publish a notice of decision in the Government Gazette and in newspapers which will outline the changes from the exposure draft of the proposed Regulations. DoT expects the regulations to be made and commence before the current regulations expire on 12 October 2020.

DoT and TSV will communicate with the industry regarding the commencement of the new regulations, and the approach to compliance monitoring and enforcement before the new regulations commence. TSV is the primary regulatory agency to implement the proposed regulations reflecting their role as the sector regulator. TSV may be required to change processes and provide guidance to accredited and registered operators on the incremental changes under the proposed regulations, including the introduction of record keeping for registered operators, new incident reporting scheme and categories, and new signage requirements. Any changes or guidance provided will be made after the proposed regulations are approved and prior to commencement of the proposed regulations.

An evaluation of the proposed regulations will assess whether the proposed regulations are the appropriate intervention to meet their identified objectives. The evaluation of the proposed regulations will be assessed against the objectives of the Bus Safety Act and will need to consider the performance of the bus services industry, including bus operators, bus drivers, passengers and the broader community generally.

The evaluation will be informed by current data available in relation to data on safety outcomes in the bus industry, bus safety incidence and other compliance, investigative and enforcement activities conducted by the regulator. TSV is able to collect information and data through safety audits, vehicles inspections and investigations arising from incidents notified to the regulator. However, DoT notes that in the development of the proposed Regulations and this RIS, there have been some difficulties with accessing and gaining insight from the data for the purposes of this RIS. DoT will consider investigating opportunities to ensure that these limitations are addressed for future regulatory reviews.

Key performance indicators for the evaluation strategy will include the trends in bus-related death, injuries and incidents from bus operations. The evaluation should also consider industry innovation in managing bus safety risks and the interplay of various intervention available to government, such as code of practice and education campaigns.

DoT will evaluate the effectiveness and the operation of the proposed regulations before the sunset date of the proposed regulations (i.e. ten years from the date of making). This would commence approximately 12 to 18 months before the expiry of the proposed Regulations in 2030.

Having identified several factors that may affect the cost of bus safety regulation, DoT is committing to undertaking a full review of regulatory fees within three to five years of the commencement of the proposed Regulations.

In the preparation of this RIS and draft proposed regulations, DoT consulted with several stakeholders, including TSV, as the sector regulator, Road Safety Victoria, in relation to vehicle standards and the requirements of the Road Safety Act, the Bus Association Victoria, as a representative of the industry and bus operators.

# Background

## Introduction

The *Bus Safety Act 2009* commenced December 2010 and brought together a range of regulatory provisions in relation to bus safety into a single dedicated Act. The Bus Safety Act is the prime statute regulating the safety of bus operations across the State. The purpose of the Bus Safety Act is to prevent deaths and injuries arising from bus operations and services by facilitating better hazard identification and better risk management.

The Bus Safety Act is part of a broader transport legislation reform program. The *Transport Integration Act 2010* provides the overarching policy framework for the program aimed at modernising transport safety regulation.

Before the Bus Safety Act, bus safety in Victoria was regulated by an operator [accreditation](https://en.wikipedia.org/wiki/Accreditation) scheme in the former *Public Transport Competition Act 1995* and by miscellaneous prescriptive offences in the former Transport (Passenger Vehicles) Regulations 2005. The Bus Safety Act was developed to replace an outmoded and inadequate bus safety regulatory regime, to address a perceived increase in safety risks associated with expanding bus operations and to cover sectors of the industry (such as mini-bus services) that were not yet regulated for safety.

The Bus Safety Act establishes a regulatory scheme containing policy principles relating to shared responsibility for safety, accountability for managing safety risks, [enforcement](https://en.wikipedia.org/wiki/Enforcement) and [stakeholder involvement](https://en.wikipedia.org/wiki/Stakeholder_engagement).

Under the Bus Safety Act, broad-based safety duties apply to all bus operators and other parties who have a significant role in providing both commercial and non-commercial bus services. Regulatory control over the operation of large buses has been continued through a more streamlined accreditation scheme and safety standards were introduced through a registration scheme for the small, or [mini-bus](https://en.wikipedia.org/wiki/Mini-bus), sector.

Bus Safety Victoria (BSV) is the bus safety branch of Transport Safety Victoria (TSV) whose role as the regulator derives from the powers and functions of the Safety Director described in Part 7, Division 1 of the *Transport Integration Act 2010*.

The Department of Transport (DoT) has no safety regulatory role with respect to bus services however it does have a role in managing the delivery of bus services through contracts with a large number of bus companies. The Department monitors the contracted passenger services in metropolitan and regional areas through a program of random audits to ensure that they comply with performance targets and service standards. The Department also has a role in providing strategic and legislative policy advice to the Minister for Public Transport.

### Bus safety regulations

The Bus Safety Regulations 2010 (the Regulations) commenced at the same time as the Bus Safety Act. The objective of the Regulations is to provide for the safety of bus services in Victoria by giving effect to the key provisions of the Bus Safety Act, including in relation to:

* bus operations and vehicle requirements
* the accreditation and registration of bus operators
* exemptions from designated provisions
* inspections and audits of bus operators
* the investigation of bus incidents.

The Regulations are authorised under sections 72 to 77 of the Bus Safety Act.

## Industry profile

### Bus operator types

The bus industry in Victoria consists of operators who are required to be accredited or registered under the Bus Safety Act.

Operators who must be accredited by TSV are those providing services for profit using buses built with seating for 13 or more adult passengers (including the driver). These include commercial bus services, such as:

* route bus services
* demand responsive bus services
* tour and charter bus service
* courtesy bus services (other than non-commercial courtesy bus service)
* local bus services that are operated on a regular basis or subject to demand and are available to the general public at no extra cost.

The second category is bus operators who are required only to be registered by TSV. These operators deliver either:

* commercial mini-bus services wherein the bus operator only uses 10, 11 or 12 seat buses to provide a route bus service. This includes:
  + route bus services
  + demand responsive bus services
  + tour and charter bus services
* non-commercial services with a vehicle that has 10 or more seats (including the driver). This includes:
  + community and private bus services on a not-for-profit basis in connection with the activities of religious, educational, health, welfare, philanthropic, sporting or social bodies
  + non-commercial courtesy bus services (e.g. where an employer transports their employees or contractors by bus between work sites)
  + hire and drive bus services where a bus is hired by a third person.

Regardless of the scale of operations, a bus operator must be accredited (or registered, as the case may be) if they are responsible for providing a bus service under the relevant category of bus service – even if the operator only operates one bus service of those defined above.

## Requirements of the Subordinate Legislation Act 1994

The regulatory impact statement (RIS) has been prepared in accordance with requirements of the *Subordinate Legislation Act 1994* (the SLA) and the *Victorian Guide to Regulation* (the Guide).

The Commissioner for Better Regulation is responsible for reviewing the adequacy of RIS and providing independent advice. Better Regulation Victoria (BRV) supports the Commissioner for Better Regulation and makes its assessment of adequacy relative to the Guide.

## Structure of the RIS

Section 3 provides an analysis of the nature and extent of problems that the proposed regulations are aiming to address

Section 4 states the objectives of the proposed regulations

Section 5 details the base case

Section 6 identifies the various options available to address problems

Section 7 assesses the benefits and costs of short-listed options

Section 8 details the preferred option, including the impact of the proposed regulation on competition and small business

Section 9 explains the proposed approach to implementation and enforcement strategy

Section 10 specifies the evaluation strategy

Section 11 details the consultation undertaken for the RIS

## How you can have your say

You are invited to make comments on the RIS and the proposed regulations.

Submissions may present analysis of alternative options and recommend changes to the proposed regulations.

Submissions are required to be made in writing and submitted on the Department’s consultation website, [Get Involved](https://getinvolved.transport.vic.gov.au/).

Submissions must be provided to the Department on or before 13 August 2020.

Please note that all submissions will be treated as public information unless you request otherwise.

You should be aware that all submissions are subject to the *Freedom of Information Act 1982*.

Personal information may be used to contact you regarding your submission and the outcomes of the consultation. Please clearly state in your submission if you do not wish for this to occur.

# Nature and extent of the problem

## Overview

A range of different bus services are provided in Victoria. This spans from public transport bus services such as fixed route bus services, courtesy bus services run by councils to privately chartered services.

Bus services operate on the public roads and regularly interact with other road users. Accidents and incidents may occur during the delivery of bus services. The consequences of an accident or incident could have an impact on the drivers of buses used to provide services, the passengers in a bus or other road users, including the occupants of other vehicles on the road, cyclists, and pedestrians.

The actions taken or failed to be taken by a person responsible (or a bus operator) for the provision of a bus service will affect the safety of services provided and therefore the consequences experienced by a person involved in an incident. Incentives and risks influence whether bus operators take action to reduce risks to safety. An externality is where some of the economic costs or benefits of an activity affects a party not directly involved in the activity. Not factoring these costs and benefits into the decision-making process will result in a higher or lower quantity of the activity undertaken.

The size of an externality, from a bus safety perspective, may be substantial. The costs may be significant to an individual such as where there is a loss of life, or a serious injury that may require hospitalisation or result in a diminished quality of life from the injury. Alternatively, the costs may be widespread and be borne by many because bus services carry many passengers and interact with many other road-users such as other motorists and pedestrians, all of whom may experience delay costs as a result of the same incident caused by a breach in safety. Section 3.2 analyses data relating to the impacts of bus safety incidents on other roads users.

Consumers of bus services may exercise choice in relation to whether to use a bus service or not or to choose alternative service providers. Consumers may not be best placed to determine whether aspects of the services are suitable to their needs. For example, in respect of the safety aspects of the service, it may be difficult to determine the skills and fitness of the bus driver or assess the quality and maintenance history of the vehicle. An information asymmetry may arise if there is some hidden information that may not be accessible to the consumer of the service. To improve outcomes, government could intervene to ensure that consumers are fully informed to make choices about which service to use.

The level of information asymmetry could differ depending on the different types of bus services, and this can influence the level of intervention, if any, that may be required to address problems. For example, a person using a route bus service is not in a position to make a choice on which bus operator to use (as there may only be a single operator available providing that service in a particular location). However, route bus services are contracted by government, and therefore the government is in a position to vet the operators of these services on behalf of consumers, since all such services must be provided pursuant to service contracts between the operator and the government. In this case, the government is substantially better placed than individual consumers to inform itself as to the safety performance of competing suppliers of bus services. Thus, the information asymmetry issue is somewhat mitigated in this context.

On the other hand, a person hiring a tour and charter bus service may have the opportunity to choose between different providers and will usually have the time to inform themselves of the aspect of these operators that is important to the consumer (including safety performance of the operator) in advance of hiring these services.

To promote the safety of bus services, the government regulates bus operators. Under the Bus Safety Act, safety is regulated through a principle-based safety duties scheme which is comprehensive in its coverage. That is, all persons who may influence the safety of bus services have obligations to ensure safety, so far as is reasonably practicable, and safety duty holders are required to assess all relevant risks to the safety of bus operations and consider and implement the means to eliminate or mitigate those risks so far as is reasonably practicable.

The purpose of this RIS is to consider whether any further safety requirements are needed to be prescribed in regulation to support the safety scheme provided for in the primary legislation.

## Bus safety performance

The Bus Safety Act establishes a safety duties framework whereby general safety duties are imposed on bus service industry participants to ensure the safe operations of bus services. The safety duties scheme provides the basis for considering whether additional safety requirements should be prescribed in regulation. The following sections describe the main type of bus safety incidents, as well as the incidence of serious injuries and fatalities, that occur in the provision of bus services.[[2]](#footnote-3)

Table 3‑1 shows that for the years between 2011 and 2019, there were 3,651 bus related incidents equivalent to an average of 406 incidents involving a bus service per year. Amongst this number of incidents, there were on average 6 fatalities per year and 59 serious injuries to persons per year. Based on Bureau of Infrastructure, Transport and Regional Economics (BITRE) data on the distance travelled by buses in Victoria, DoT observes that the number of kilometres travelled by buses has been increasing over this period (by on average 1 per cent each year). This means that the exposure risk has been increasing over time. Table 3‑1 also presents the incident data taking into account the distance travelled by buses in Victoria. Despite the increasing distances buses are being driven in Victoria, DoT observes that there is no clear trend in relation to the overall number of incidents involving buses, the number of fatalities has been stable over this period, and the number of serious injuries has been decreasing.

The incident data is collected from bus operator incident notifications. Under the Bus Safety Act, bus operators are required to notify the Safety Director of any prescribed incident involving the use of the operator’s buses. This requirement applies to both accredited bus operators and registered bus operators.

**Table 3‑1: Bus incidents, fatalities and serious injuries in Victoria – 2011-2019**

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** | **Ave. annual** |
| Number of bus incidents | 346 | 385 | 325 | 323 | 428 | 514 | 475 | 441 | 414 | **3,651** | **406** |
| Number of bus incidents per 100 million km travelled | 59.2 | 63.2 | 52.5 | 51.2 | 67.2 | 80.0 | 73.3 | 67.3 | 62.4 |  | **64.2** |
| Fatalities | 5 | 7 | 7 | 6 | 7 | 5 | 10 | 5 | 5 | **57** | **6** |
| Fatalities per 100 million km travelled | 0.9 | 1.1 | 1.1 | 1.0 | 1.1 | 0.8 | 1.5 | 0.8 | 0.8 |  | **0.9** |
| Serious injuries | 83 | 62 | 51 | 53 | 72 | 66 | 49 | 56 | 42 | **534** | **59** |
| Serious injuries per 100 million km travelled | 14.2 | 10.2 | 8.2 | 8.4 | 11.3 | 10.3 | 7.6 | 8.5 | 6.3 |  | **9.3** |

Source: DoT analysis based on TSV and BITRE data

The high-level data on the safety performance of the industry is further detailed in the following sections.

### Bus related incidents

Table 3‑2 shows the total number of bus related safety incidents by incident type from 2011 to 2019, with the percentage column showing the relative proportion of the total incidents for each incident type over the period from 2011 to 2019 out of the total incidents of all incidents over the period. The most prevalent types of incidents over the period were collisions (1,869 incidents) and slip, trip or fall (658 incidents).

**Table 3‑2: Number of bus related incidents by incident type – 2011-2019**

| **Incident type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** | **Ave. annual** | **%** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Driver Positive Test for Alcohol or Drugs | 2 |  | 1 | 1 |  | 2 |  | 1 | 5 | **12** | **1.3** | **0.33** |
| Alleged Assault | 23 | 34 | 33 | 35 | 45 | 61 | 44 | 32 | 20 | **327** | **36.3** | **8.96** |
| Anti-social behaviour | 4 | 4 | 1 | 3 | 5 | 4 | 10 | 9 | 20 | **60** | **6.7** | **1.64** |
| Breach of road rules by driver |  |  | 1 |  | 1 |  |  |  | 1 | **3** | **0.3** | **0.08** |
| Child Left on Bus |  | 1 | 1 |  | 2 | 2 | 1 |  | 2 | **9** | **1.0** | **0.25** |
| Collision | 191 | 228 | 182 | 181 | 247 | 261 | 223 | 210 | 146 | **1,869** | **207.7** | **51.19** |
| Employee Other Than Driver Injury |  |  | 1 |  | 1 | 2 |  |  | 1 | **5** | **0.6** | **0.14** |
| Fire | 11 | 13 | 12 | 14 | 15 | 13 | 18 | 16 | 6 | **118** | **13.1** | **3.23** |
| Level Crossing Collision |  |  |  |  |  |  |  | 1 |  | **1** | **0.1** | **0.03** |
| Level Crossing Near Miss | 2 | 3 | 1 | 3 | 1 | 4 | 4 | 3 | 3 | **24** | **2.7** | **0.66** |
| Mechanical Failure | 8 | 12 | 9 | 6 | 10 | 17 | 25 | 27 | 20 | **134** | **14.9** | **3.67** |
| Medical episode | 24 | 24 | 17 | 23 | 25 | 37 | 40 | 31 | 59 | **280** | **31.1** | **7.67** |
| Near Miss | 2 | 2 | 1 | 3 | 2 | 3 | 1 | 12 | 1 | **27** | **3.0** | **0.74** |
| Other |  |  |  |  | 1 |  | 2 | 4 | 6 | **13** | **1.4** | **0.36** |
| Other Road Vehicle Collision with Person | 6 | 2 | 2 | 2 | 5 | 2 | 2 | 1 | 2 | **24** | **2.7** | **0.66** |
| Passenger Injury by Object in Bus |  |  | 2 | 1 |  | 3 | 1 |  | 5 | **12** | **1.3** | **0.33** |
| Roll-away | 1 |  | 2 | 1 | 5 | 3 |  | 2 | 10 | **24** | **2.7** | **0.66** |
| Slip, Trip or Fall | 64 | 53 | 56 | 48 | 57 | 95 | 99 | 87 | 99 | **658** | **73.1** | **18.02** |
| Suspected or Attempted Self Harm |  |  |  |  |  |  |  |  | 1 | **1** | **0.1** | **0.03** |
| Terror Threat | 1 |  |  |  |  |  |  | 3 |  | **4** | **0.4** | **0.11** |
| Vehicle Left Road | 7 | 9 | 3 | 2 | 6 | 5 | 5 | 2 | 7 | **46** | **5.1** | **1.26** |
| **Total** | **346** | **385** | **325** | **323** | **428** | **514** | **475** | **441** | **414** | **3651** | **405.7** | **100** |

Source: TSV

DoT notes that the number of bus safety incidents recorded by TSV may be underreported. In addition, some types of incidents are more likely to be underreported than other types of incidents. For example, there may be high cases of underreporting for incidents involving ‘near misses’. As near misses do not necessarily cause material consequences (a near misses generally does not involve a collision or injury to a person), there may be an incentive for a bus driver to avoid reporting these types of incidents. In contrast, it is unlikely that there is a widespread underreporting of collisions given the nature of collisions and likelihood of other parties (such as pedestrians and other motorists) reporting the collision to the authorities (e.g. police, TSV) or to their insurance company. In these cases, drivers are likely to report collisions to the bus operator as there are other methods for bus operators to verify whether a collision has taken place.

Taken together, the true rate of bus incidents occurring may not be known. However, the data in Table 3‑2 is the best available information collected by TSV.

### Bus-related fatalities

Table 3‑3 shows the number of bus related fatalities from 2011 to 2019 by the cause of the fatality.

**Table 3‑3: Fatalities by occurrence type – 2011-2019**

| **Incident type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Alleged Assault |  | 1 |  |  |  |  |  |  |  | **1** |
| Collision - Bicycle | 1 |  | 2 |  |  |  |  |  |  | **3** |
| Collision - Car |  | 1 | 1 |  | 6 |  | 4 | 1 |  | **13** |
| Collision - Motorbike |  | 1 |  |  |  | 1 | 1 | 1 |  | **4** |
| Collision - Person | 1 | 2 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | **12** |
| Collision - Truck |  |  |  | 1 |  |  |  |  | 1 | **2** |
| Employee Other Than Driver Injury |  |  | 1 |  |  |  |  |  |  | **1** |
| Medical Episode | 3 | 1 | 2 | 3 |  | 3 | 2 | 1 | 1 | **15** |
| Slip, Trip or Fall - Heavy Braking |  |  |  |  |  |  |  |  | 1 | **1** |
| Vehicle Left Road |  | 1 |  | 1 |  |  | 2 |  |  | **4** |
| **Total** | **5** | **7** | **7** | **6** | **7** | **5** | **10** | **5** | **5** | **57** |

Source: TSV

There was a total of 57 recorded bus fatalities for the period 2011 to 2019. Collisions are associated with most fatalities (34 fatalities in total). Collisions are related to human error. Broadly, collisions signify the role buses play in being a factor of fatalities on the roads. However, DoT did not collect aggregated information relating to whether it is the fault of the bus driver, other driver, cyclist etc. to allow analysis in any meaningful way in this RIS. Therefore, DoT is unable to determine the full extent to which the bus operation contributed to the fatality.

The second highest cause for fatalities relates to medical episodes (15 fatalities). Medical episodes include incidents which involve either a medical episode suffered by a driver or a passenger. Bus operators have little control of medical episodes that cause a passenger fatality (i.e. operators have little control over the fitness of their passengers), although there may be a role in putting procedures in place by bus operators to minimise the risk to life if a medical episode did occur. In the case of medical episodes for bus drivers, bus operators may have a role in ensuring medical fitness via bus driver accreditation.

Table 3‑4 shows that the highest number of fatalities are suffered by passengers (27 fatalities), followed by drivers of other motor vehicles (11 fatalities) and pedestrians (10 fatalities).

**Table 3‑4: Number of fatalities by person type – 2011-2019**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Person type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| Bus Driver |  |  |  |  | 1 | 1 |  |  | 1 | **3** |
| Bus Employee |  |  | 1 |  |  |  |  |  |  | **1** |
| Bus Passenger | 3 | 3 | 2 | 5 | 2 | 2 | 7 | 1 | 2 | **27** |
| Cyclist | 1 |  | 2 |  |  |  |  |  |  | **3** |
| Other Vehicle Driver |  | 2 | 1 |  | 3 | 1 | 2 | 2 |  | **11** |
| Pedestrian | 1 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | **10** |
| Trespasser |  |  |  |  |  |  |  | 1 | 1 | **2** |
| **Total** | **5** | **7** | **7** | **6** | **7** | **5** | **10** | **5** | **5** | **57** |

Source: TSV

These figures highlight the relative negative externalities of bus services – as evidenced by the fatalities suffered by those not directly engaging with the bus service (e.g. occupants of other vehicles, pedestrians etc.) – and the importance of considering the operating environment of buses – such as interaction with other road users and bus stop locations.

### Bus-related serious injuries

Table 3‑5 shows serious injuries by occurrence type and category that occurred each calendar year from 2011 to 2019.[[3]](#footnote-4) There were a total of 534 serious injuries recorded for the period 2011 to 2019. Collisions (273 serious injuries) make up the greatest proportion of causes for serious injuries, followed by slip, trip or fall (172 serious injuries).

**Table 3‑5: Serious injuries by occurrence type – 2011-2019**

| **Incident type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Alleged Assault | 6 | 4 | 5 | 4 | 5 | 4 | 4 | 5 | 1 | **38** |
| Collision | 37 | 31 | 23 | 27 | 44 | 30 | 27 | 28 | 26 | **273** |
| Mechanical Failure | 1 | 1 |  |  |  |  |  | 1 |  | **3** |
| Medical Episode | 2 | 4 | 1 | 1 | 2 | 4 |  | 1 |  | **15** |
| Near Miss |  |  |  | 1 |  |  |  |  |  | **1** |
| Other Road Vehicle Collision with Person | 4 | 1 | 1 |  | 5 | 2 | 1 | 1 |  | **15** |
| Passenger Injury by Object in Bus |  |  | 1 | 1 |  |  |  |  |  | **2** |
| Roll-away |  |  |  |  |  |  |  |  | 1 | **1** |
| Slip, Trip or Fall | 32 | 21 | 20 | 13 | 14 | 26 | 12 | 20 | 14 | **172** |
| Vehicle Left Road | 1 |  |  | 6 | 2 |  | 5 |  |  | **14** |
| **Total** | **83** | **62** | **51** | **53** | **72** | **66** | **49** | **56** | **42** | **534** |

Source: TSV

Table 3‑6 shows that, as with fatalities, bus passengers suffer the majority of serious injuries (311 serious injuries), followed by drivers of other vehicles (84 serious injuries) and bus drivers (62 serious injuries).

**Table 3‑6: Number of serious injuries by person type – 2011-2019**

| **Person type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Bus Driver | 9 | 11 | 3 | 9 | 6 | 10 | 4 | 6 | 4 | **62** |
| Bus Employee | 1 |  |  | 1 |  | 2 |  |  | 1 | **5** |
| Bus Passenger | 45 | 33 | 34 | 28 | 40 | 45 | 27 | 35 | 24 | **311** |
| Cyclist | 1 |  | 1 | 2 | 1 | 1 | 3 | 1 |  | **10** |
| Other |  |  |  |  | 1 |  |  | 3 |  | **4** |
| Other Vehicle Driver | 15 | 8 | 8 | 11 | 15 | 7 | 5 | 6 | 9 | **84** |
| Other Vehicle Passenger | 5 | 4 |  | 1 | 6 |  | 5 |  | 1 | **22** |
| Pedestrian | 7 | 6 | 5 | 1 | 3 | 1 | 5 | 5 | 3 | **36** |
| **Total** | **83** | **62** | **51** | **53** | **72** | **66** | **49** | **56** | **42** | **534** |

Source: TSV

### Comments and observations

Overall, DoT concludes that the safety performance of the industry has been relatively stable over the life of the regulations. There have been no emerging trends that would warrant consideration of additional regulatory requirements. However, there may be measures or interventions that could be adopted to improve the safety outcomes in the bus industry.

Since the Bus Safety Regulations will expire in October 2020, DoT notes that the absence of regulations may change operator behaviour. The extent of this change and the likely impact on safety outcomes is not known. Nevertheless, in this RIS, DoT will consider the merits of continuing regulatory requirements in Bus Safety Regulations and whether additional measures to improve safety are worthwhile.

## Vehicle safety

The safety of the buses, more generally, are regulated by a range of regulatory instruments:

* the Heavy Vehicle National Law (HVNL), where the bus is also a heavy vehicle, supported by the Heavy Vehicle (Vehicle Standards) National Regulations.
* the Victorian *Road Safety Act 1986*, where the bus is a light vehicle, supported by the Road Safety (Vehicles) Regulations 2009.
* the Australian Design Rules (ADRs) are administered under the Commonwealth *Motor Vehicle Standards Act 1989* and which require all road vehicles to comply with the relevant ADRs at the time of manufacture and supply to the Australian market. The ADRs cover technical and engineering vehicle standards for buses. Particularly relevant to this RIS are the *Vehicle Standards (Australian Design Rule 58/00 – Requirements for Omnibus Designed for Hire and Reward) 2006* and the *Vehicle Standard (Australian Design Rule 42/05 – General Safety Requirements) 2018*.
* the Australian Light Vehicle Standards Rules (ALVSRs) are model rules that regulate in-service vehicle standards for light vehicles. The ALVSRs require vehicles that are subject to ADRs when they are being built or imported to continue to comply with the ADRs. In Victoria, the ALVSRs are implemented through the Road Safety (Vehicles) Regulations 2009.

Given that the vehicle itself is an important input into the provision of a bus service, the condition of the vehicle is naturally an important factor to the safety of the service. The safety duties under the Bus Safety Act require bus operators to ensure that vehicles used to provide a bus service are maintained to a safe standard as the vehicle is a source of safety risk. At a very minimum, the vehicle will need to comply with the HVNL and Road Safety Act, their supporting regulations and the ADRs.

Table 3‑7 shows the number of incidents of mechanical failures while the bus was operating and reported by the operator to the Safety Director between 2011 and 2019. Mechanical failures involve failure of the safety of the vehicle, and includes failures in the brake, chassis, doors, drive train, fuel system, steering, tyres and wheel dislodgement. Mechanical failures may increase the risk to bus safety. For example, a brake failure may mean that a bus is not able to stop effectively, increasing the likelihood of a collision or injury. There appears to be an increase in terms of mechanical failure incidents over the period from 2011 to 2019. In Table 3‑8, DoT has examined whether this increase in mechanical failure incidents is attributable to an increase in the number of buses operating in the bus industry or the increase in the aggregate distance travelled by buses in Victoria. The increasing number of buses used to provide services in Victoria and the increasing distance travelled by those buses over time could be making a minor contribution to the increasing number of mechanical failures reported to TSV. Rather than being an indication of any systemic underlying failures of vehicle safety, this increase could be attributable to greater, better or more detailed reporting of these incidents to TSV.

**Table 3‑7: Number of mechanical failure incidents by type – 2011-2019**

| **Type of failure** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Brakes | 1 | 1 |  | 1 | 1 | 2 | 6 | 4 | 3 | **19** |
| Chassis |  |  |  |  |  | 1 |  |  |  | **1** |
| Doors |  | 1 | 1 |  |  |  | 1 |  |  | **3** |
| Drive train |  |  | 1 | 1 |  | 1 |  |  |  | **3** |
| Fuel system |  |  |  |  |  |  |  |  | 2 | **2** |
| Steering | 1 |  | 1 |  | 1 | 1 | 1 |  |  | **5** |
| Tyres |  | 3 | 2 | 1 | 1 | 2 | 3 | 5 | 2 | **19** |
| Wheel dislodgement |  |  |  |  |  |  |  |  | 1 | **1** |
| Other[[4]](#footnote-5) | 6 | 7 | 4 | 3 | 7 | 10 | 14 | 18 | 12 | **81** |
| **Total** | **8** | **12** | **9** | **6** | **10** | **17** | **25** | **27** | **20** | **134** |

Source: TSV

Given the continuing occurrence of mechanical failures, noting that these failures have still occurred within the context of the existing legislative and regulatory framework relating to vehicle safety, DoT considers that regulatory intervention is still required. Regulatory intervention will largely ensure that the regulator and transport safety officers are able to monitor compliance with vehicle standards. On the other hand, it will also ensure certainty around the minimum level of compliance in meeting safety duties under the Bus Safety Act.

**Table 3‑8: Comparison of the number of mechanical failure incidents to the number of buses and distance travelled – 2011-2019**

|  | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Ave. annual** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Total mechanical failure incidents | 8 | 12 | 9 | 6 | 10 | 17 | 25 | 27 | 20 | 14.9 |
| Mechanical failure incidents per 1000 buses | 0.9 | 1.1 | 0.8 | 0.5 | 0.8 | 1.4 | 2.0 | 2.1 | 1.5 | 1.3 |
| Mechanical failure incidents per 100 million km travelled | 1.4 | 2 | 1.5 | 1 | 1.6 | 2.6 | 3.9 | 4.1 | 3 | 2.4 |

Source: DoT estimates based on TSV and BITRE data

### Design and standards

The safety of a bus is dependent on the vehicle design and standards. Appropriate vehicle design and standards will ensure that vehicles are safe for use on the road and do not harm passengers or other road users. This includes standards relating to the design of the body, chassis, internal fittings, as well as installed equipment or devices. The overall design of the vehicle itself as well as components fitted or installed can both reduce the occurrence of an incident itself (e.g. flashing lights to warn motorists of disembarking passengers) as well as mitigating the consequences of an incident should one occur (e.g. the use of airbags or seatbelts to mitigate the risk of serious injury in the event of a collision).

Schedule 1 of the Heavy Vehicle (Vehicle Standards) National Regulations requires a heavy vehicle that is subject to an ADR when built or imported to continue to comply with the ADR. Similarly, Schedule 2 of the Road Safety (Vehicles) Regulations 2009 require a vehicle that is subject to an ADR when built or imported to continue to comply with the ADRs throughout its life. The default requirement is for vehicles to be compliant with the applicable ADR when built or imported. However, a vehicle need not comply with the original standard if the standard is replaced by, or inconsistent with, a later standard and the vehicle complies with the later standard. Older vehicles may, therefore, be fitted with any equipment allowed on newer vehicles.

While the ADRs cover most bus standards, intervention may still be required to ensure the standards can be enforced by the regulator or there are gaps which may require additional interventions to ensure buses are safe.

##### Application of ADRs and Bus Safety Regulations

Some safety standards not covered in the ADRs may still be important for the safety of a bus. The third edition ADRs only cover vehicles manufactured on or after 1 July 1988. As there are buses in the fleet that are manufactured prior to 1 July 1988, there is a gap in the coverage of the ADRs for these older buses.

Some specific standards are not covered in the ADRs irrespective of the age of the bus. For example, the ADRs require double deck buses to be stable when positioned on a flat surface with a 28-degree transverse slope. There is no similar standard for a single deck bus.

It is important for bus drivers to be able to see their passengers while they are driving a bus. This is to ensure that the bus driver is able to monitor and view the behaviour of their passengers to ensure that they are safe. For example, a bus driver may need to stop the bus if they have viewed that a passenger has fallen while the bus is in service. The ADRs do not specify any requirement for any equipment or device to view passengers in or on the bus.

##### Effective enforcement of standards

The regulator and transport safety officers do not have powers to directly enforce the requirements in the ADRs. The ADRs are given effect through the Road Safety Act and the regulations made under that Act. Under the *Transport Integration Act 2010*, and the *Transport (Safety Schemes Compliance and Enforcement) Act 2014*, transport safety officers have powers to inspect vehicles and issue improvement notices or prohibition notices in circumstances where the bus is unsafe to use or poses an immediate threat to safety. However, transport safety officers do not have the powers to inspect vehicles and issue defect notices under the Road Safety Act.

For example, the ADRs specify the design and construction of luggage racks to minimise injury from any projection or dislodgement of luggage during braking or cornering. This requirement, however, cannot be enforced by TSV officers unless specified in the regulations.

Officers of the former VicRoads and DoT, officers of the National Heavy Vehicle Regulator (where applicable), and police officers generally have powers to enforce vehicle standards through inspecting vehicles and issuing defect notices under the Road Safety Act.

Under the current regulations, all buses are required to undergo inspection by a licensed bus tester. This complements any activity undertaken by TSV officers.

There may be some aspects of vehicle standards that need to be directly enforced by the regulator.

Fire presents a safety hazard in the provision of bus service. As shown in Table 3‑9, there has been an average of about 13 incidents per calendar year of fire reported on a bus during the period 2011 to 2019. This points to the importance of measures to either prevent the occurrence of fires or mitigate the risks of a fire in cases of fire on a bus.

**Table 3‑9: Incidence of fire on bus – 2011-2019**

| **Incident type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Fire | 11 | 13 | 12 | 14 | 15 | 13 | 18 | 16 | 6 | **118** |

Source: TSV

There may be many different causes of a fire on a bus including arson, mechanical failure or dangerous (flammable) goods. While the data on the number of incidents does not record the cause of the fire, consultation with TSV have indicated that mechanical failure is usually the main cause for fires on buses – arson and dangerous (flammable) goods are not the usual cause for fires on buses, particularly since smoking is prohibited on a bus and buses do not generally transport goods that are flammable.

ADR 58/00 requires a fire extinguisher to be installed on all buses used for hire and reward, to ensure that if a fire is present, there is means in which to extinguish the fire on these buses. The general safety duties under the Bus Safety Act require bus operators to eliminate or mitigate risks to safety. A fire on a bus may be one of the risks that needs to be managed. One mechanism to mitigate the consequences of this type of incident on a bus is to carry a fire extinguisher. Accordingly, DoTs view is that compliance with the duty may compel a bus operator to make this piece of equipment available in the vehicle. Furthermore, fire extinguishers should be operational and fit for purpose to minimise the risks to safety in cases of a fire.

Despite the requirements under the ADRs, and the current regulations that fire extinguishers are maintained in operating condition, compliance inspections performed by TSV still result in cases of failures relating to compliance with fire extinguisher requirements, as shown in Table 3‑10. Failures include the fire extinguisher not being inspected for operational readiness in the last 6 months, not charged, or both.

**Table 3‑10: Compliance inspection outcomes relating to fire extinguishers – 2018-2019**

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **2018** | **2019** | **Total** |
| In charge and inspected (or manufactured) in past 6 months | 455 | 798 | **1,253** |
| In charge and not inspected in past 6 months | 70 | 62 | **132** |
| Inspected in past 6 months but not in charge | 1 | 2 | **3** |
| Not in charge and not inspected in past 6 months | 9 | 2 | **11** |
| No extinguisher in bus | 5 | 5 | **10** |
| **Total** | **540** | **869** |  |

Source: TSV

Despite the safety duties under the Bus Safety Act, it may still be warranted to provide clarity and specificity of measures to reduce the consequences of fires by specifying regulations that are consistent with the ADRs as well as regulations requiring installed fire extinguishers to be maintained to operational standards. Regulations also provide clear enforcement powers for transport safety officers to ensure that the risks of fires are properly addressed.

### Vehicle maintenance and inspections

Ongoing maintenance and repair of buses is also critical for the safety of bus services. Keeping a vehicle compliant with standards throughout its operating life requires a program of ongoing vehicle maintenance once the vehicle is in service. This ensures the continued safety of the vehicle for the purpose of providing a bus service. Without measures to ensure that the vehicle continues to be maintained to a safe standard to provide a safe service, the risk of incidents and the consequences of any resulting incident may increase.

Inspections to examine a vehicle are a means to provide confirmation of whether a bus continues to comply with standards and is maintained to a safe standard. The maintenance of a safe vehicle and equipment can both reduce the occurrence of an incident itself as well as mitigate the consequences of an incident should one occur.

Currently, accredited and registered operators must ensure that all buses within their fleet used to provide a bus service are inspected annually by a licensed bus tester (LBT). The inspection is essentially a roadworthiness check of the bus to ensure that key components have not worn or deteriorated and that it is safe for normal road use – i.e. that hazards are being controlled at their source. LBTs are required to inspect vehicles in relation to standards specified in the Road Safety (Vehicles) Regulations 2009, and the Bus Safety Regulations 2010. As a result of an inspection, the LBT issues either a roadworthy certificate (valid for 12 months from the date of issue) or a test report listing the defective areas of the bus.

Table3‑11 shows the total number of annual bus inspection conducted during each calendar year from 2015 to 2017, and the corresponding type of items failed. Note that more than one item may fail for any one bus inspected (i.e. there may be more item failures than number of buses inspected). Over the period from 2015 to 2017, defects and failures relating to “body and chassis” recorded the highest proportions of failures from bus inspections, followed by “lamps, signal, reflectors” and “steering and suspension”. Failures as a result of a “modification” to a vehicle represented the least proportion of failures.

**Table 3‑11: Items failed during annual bus inspections – 2015-2017**

| **Year[[5]](#footnote-6)** | **2015** | **2016** | **2017** |
| --- | --- | --- | --- |
| Total bus inspections | 11,239 | 11,257 | 11,756 |
| Number of buses failed | 2,791 | 3,046 | 3,614 |
| **Items failed** |  |  |  |
| Body and Chassis | 887 | 1,007 | 1,243 |
| Lamps, Signals, Reflectors etc | 859 | 945 | 1,223 |
| Steering and Suspension | 802 | 878 | 1,101 |
| Seats and Seat Belts | 673 | 702 | 885 |
| Engine and Driveline | 574 | 704 | 884 |
| Brakes | 488 | 483 | 620 |
| Wheels and Tyres | 404 | 420 | 460 |
| Windscreen Wipers, Washers, etc. | 290 | 302 | 408 |
| Brake Performance | 260 | 252 | 241 |
| Windscreen and Windows | 248 | 243 | 330 |
| Exhaust and Emission Controls | 209 | 135 | 203 |
| Parking Brake | 154 | 127 | 178 |
| Modifications | 88 | 54 | 92 |
| Other Items | 1,105 | 1,249 | 1,475 |
| **Total** | **7041** | **7501** | **9343** |

Source: TSV

Data presented above shows the importance of inspections in identifying (and allowing for rectification) of failures against the vehicle standards. Failures against the vehicle standards may lead to a higher incidence of mechanical failures and risks to the safety of the bus service.

In addition to annual inspections, TSV may undertake their own vehicle compliance inspections. Data is presented in relevant sections in this RIS.

## Safety of bus operations

In addition to the safety of the vehicle itself, the safety of a bus service is also dependent on the way in which a bus and its services are conducted. That is, actions by the operator, or equally a failure to act, will affect the safety of the services provided.

Bus operators already have duties under the Bus Safety Act to ensure the safety of the bus service, which includes the operation of the bus service as well as the vehicle. This means that bus operators are required to identify safety risks and either eliminate those risks or implement measures to mitigate them. While the safety duties are overarching and cover all aspects of the service, it may be the case that further regulatory intervention may be required to ensure that operators meet their safety obligations under the Bus Safety Act or ensure that the operators implement measures to address known safety risks. This may be in the form of introducing a minimum level to which operators meet their safety duties.

The Bus Safety Act requires that an accredited or registered bus operator must notify the Safety Director of prescribed incidents in accordance with the regulations. The current regulations list a broad range of incidents and consequences of a circumstance, act or omission that must be reported to the Safety Director. Note that if the regulations do not prescribe incidents, then operators do not have to report. As shown in Table 3‑2, there are a wide variety of incidents reported to the Safety Director relating to bus safety. Broadly, the majority of incidents cover:

* assaults and anti-social behaviour
* near misses
* collisions
* slips, trips or falls
* driver and passenger medical episodes.

Table 3‑2 shows that bus safety incidents relating to the operations of a bus service make up the majority of incidents (approximately 93 per cent). Incidents relating to vehicle safety (i.e. mechanical failures and fires) make up a small proportion of total incidents (almost 7 per cent). This highlights the importance of considering the safety of bus services from an operational perspective.

The safety of a bus service is largely dependent on the driver’s operation of the bus service, particularly since the driver is the one who conducts the bus service in real-time. The driver’s actions can have real-time impacts to reduce of the occurrence of incidents (e.g. by optimising their mental alertness), mitigate the negative consequences should an incident occur (e.g. not overloading a bus to prevent serious injury in case of a collision), or monitor correct operation of safety devices (e.g. warning or hazard lights on school buses).

While there are already legislative requirements to ensure a driver is appropriately qualified to drive and the safe operation of a bus, other additional measures could be required in the proposed regulations to ensure a minimum level to which drivers must meet their safety obligations. For example, this may include providing driver real-time bus service information or reinforcing safe operations.

The following sections discuss areas in relation to bus safety which may warrant further regulatory intervention.

### Maximum number of passengers

The safety of a bus is dependent on the capacity and loading of the bus during service. An overloaded bus poses several safety risks, including diminished stability and manoeuvrability, longer stopping distance due to a heavier load, and excessive pressure on tyres and brakes that can result in tyre blow-outs or brake failure.

While there are already requirements that prescribe that a vehicle cannot exceed its maximum occupant capacity (usually set by the vehicle manufacturers or subsequently varied by a Vehicle Assessment Signatory Scheme (VASS) Certificate if the vehicle has been modified), a driver may not be aware or know the maximum capacity of each bus they drive. This information is important for bus drivers to help minimise the risk of overloading the bus.

Under the Bus Safety Act, bus drivers have safety duty obligations to take reasonable care and this could include ensuring that buses are not overloaded. In some cases, maximum seating capacity may be obvious (i.e. there are a certain number of seats and no standing room available). In other cases, such as where there is standing room area and seating, the maximum carrying capacity is not as obvious. Given that bus drivers may drive a variety of different buses, this obligation may be difficult to comply with if there is little information or the information is not provided to the driver in a timely manner so that they are informed of the maximum carrying capacity of the bus.

### Alcohol and other drugs

It is widely recognised that alcohol or other drugs can affect a driver’s ability to drive safely, and therefore, a person’s ability to operate or ensure the safety of a bus service. Drivers impaired by alcohol or other drugs increase the risk of motor vehicle collisions, which can cause injury or death.

Currently, under the Road Safety Act, there is a zero blood or breath alcohol concentration requirement for all drivers of commercial passenger vehicles and buses (only those which have a seating capacity of more than 12 adults including the driver). The Road Safety Act prohibits the presence or impairment of alcohol or drugs while driving or being in charge of a vehicle.

The alcohol and drug requirements for bus drivers under the Bus Safety Act are broader than those imposed under the Road Safety Act. The definition a bus is broader under the Bus Safety Act to include motor vehicles with seating for 10 or more adults. The difference in the definitions is a consequence of reforms introduced as part of the Bus Safety Act which replaced the former *Public Transport Competition Act 1995*. The new definition was a response to the rapid growth in the mini-bus sector (buses with 10 to 12 seats) at the time and the intent was to bring operators of these buses within the regulatory regime for the first time.

In addition, Part 5 of the Bus Safety Act requires that all bus operators must develop, maintain and implement an alcohol and drug management policy. The alcohol and drug management policy must specify that a driver must not have alcohol or drugs present immediately before, or while, driving a bus. This approach is different to the obligations under the Road Safety Act, which only regulates alcohol or drug presence for persons driving a bus.

While there is some overlap between the Bus Safety Act and the Road Safety Act in relation to regulating for alcohol and drugs while driving a bus, the intent and purpose of the two schemes are different. In comparison to the Road Safety Act, the requirements of the Bus Safety Act in relation to alcohol and drugs are broader and are targeted specifically to the bus industry. The requirements apply to bus safety workers who carry out bus safety work. Bus safety work includes any activity that may affect the safety of the bus service including bus driving, and works and maintenance related to a bus or bus equipment. The Road Safety Act, on the other hand, regulates driving motor vehicles and includes restrictions on being impaired by alcohol and other drugs while driving a motor vehicle (which also includes buses). In addition, the Bus Safety Act also requires that bus safety workers are not impaired by alcohol or drugs immediately before starting a shift or work. The purpose of this requirement is to enable testing of bus safety workers prior to the commencement of a shift or work. In contrast, the Road Safety Act only contains offences relating to driving motor vehicles but it (generally) does not apply when the vehicle is not being driven.

In practice, the overlap between the two schemes is unlikely to affect enforcement. The Road Safety Act assigns stronger penalties to breaches of the law relating to alcohol and drugs and includes licence suspensions, fines and requirements to use interlock devices and undertake behaviour change programs. Therefore, enforcement of the law while a person is driving a bus is likely to be pursued under the Road Safety Act, and in all other instances carried out under the Bus Safety Act. The Bus Safety Act can be viewed as being complementary to the Road Safety Act.

However, despite the current requirements under the Road Safety Act and Bus Safety Act, there are still instances of positive alcohol and other drugs by bus drivers. Table 3‑12 shows the incidence of a positive presence alcohol and drug in a bus driver. Note that this only includes information received by TSV on the incidence of positive alcohol and drugs by bus drivers. It does not include information held by Victoria Police in relation to their road policing and enforcement activities.

**Table 3‑12: Incidence of positive test for alcohol or drugs – 2011-2019**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Incidence type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| Driver positive test for alcohol or drugs | 2 | 0 | 1 | 1 | 0 | 2 | 0 | 1 | 5 | **12** |

Source: TSV

Continuing to have regulations restricting the use of alcohol and drugs during the provision of bus services may be warranted.

### School buses

School buses carry a particularly vulnerable cohort of passengers, children. School children in and around vehicles and/or the road pose different risks. School children may not take the same level of care around vehicles or the road as adults and may rush to catch a bus or may not cross the road with care when disembarking. This means that additional measures may be needed to ensure that children are protected around school buses.

In the absence of any signs alerting motorists that the bus is a school bus or that there are children on board a bus, motorists may not be aware that there are children in the vicinity of the bus when the bus is stopping to pick up or drop off passengers. A stationary bus presents the highest risk of a motorist collision with a child passenger as this is when it is most likely a child is in the vicinity of a school bus to either board or disembark from the bus.

The Road Safety (Vehicles) Regulations 2009[[6]](#footnote-7) (the Vehicles Regulations) specify requirements for warning lights and signs for buses mainly used for carrying children if the bus is fitted with these devices after June 1999. Additionally, under the Vehicles Regulations, buses with warning lights and signs fitted prior to July 1999 are permitted to display one or more flashing yellow lights. The vehicle standards and requirements in the Vehicles Regulations apply to the registered owner of the vehicle. This may not necessarily be the bus operator that is responsible for the service being provided.

While there are requirements for warning lights and signs set out in the Vehicles Regulations, the risks of collision with a child passenger will only be mitigated if there is a requirement for the ongoing operation of lights or hazard warning lights. This is not a requirement of the Vehicles Regulations.

Motorists should be alert to the possibility of children on or near the road when in the vicinity of a school bus. For this reason, it may be reasonable to prescribe additional safety requirements in relation to the operation of school buses to ensure the safety of school children.

Table 3‑13 shows in the past two years there has been broad compliance with school bus requirements in the current Regulations. About 5 per cent of buses inspected by TSV for compliance with school bus requirements failed or had a defect notice issued.

**Table 3‑13: Compliance inspection outcomes relating to school bus lights – 2018-2019**

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **2018** | **2019** | **Total** |
| Pass | 117 | 151 | **268** |
| Defect Issued | 3 |  | **3** |
| Fail | 3 | 7 | **10** |
| **Total** | **155** | **236** |  |

Source: TSV

## Permission to operate a bus service

The Bus Safety Act provides for an accreditation and registration scheme for bus operators. Operators of a commercial bus service or local bus service must apply and become accredited. All other bus service operators must apply and become registered. There is also a process where an operator can apply for an exemption from certain requirements of accreditation or registration.

Table 3‑14 shows the number of applications for accreditation and registration granted by TSV per calendar year from 2011 to 2019. In all years, except 2014 and 2015, there has been more operators applying for and being granted registrations compared to accreditation.[[7]](#footnote-8) The relatively large number of applications for registration in 2011 and 2012 (compared to all application from 2013) are due to the commencement of the Bus Safety Act which introduced a new registration scheme for the mini-bus sector of the industry.

**Table 3‑14: Number of applications for accreditation or registration granted per year – 2011-2019**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Operator type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| Accreditation | 5 | 28 | 70 | 160 | 291 | 42 | 41 | 43 | 40 | 720 |
| Registration | 829 | 636 | 126 | 113 | 160 | 213 | 183 | 131 | 157 | 2,548 |
| **Total** | **834** | **664** | **196** | **273** | **451** | **255** | **224** | **174** | **197** | **3,268** |

Source: TSV

The Bus Safety Act envisages that regulations will be made to specify procedural and information requirements as well as providing the Safety Director with sufficient authority to enforce these requirements. It is not practicable to have an operator accreditation or registration scheme without specifying procedural or information requirements relevant to the application for that scheme.

The Bus Safety Act provides that a person can make an application to become accredited or registered to operate a bus service in accordance with requirements specified in the regulations:

* Section 25(b)(i) of the Bus Safety Act provides that an application must be accompanied by an application fee
* Section 25(b)(ii) of the Bus Safety Act provides that an application must be accompanied by evidence, “as required by regulations”, that each relevant person satisfies the requirements for accreditation, respectively
* Section 25(2)(d) of the Bus Safety Act provides that an application must be accompanied by any other matter that is “required by the regulations”
* Section 34 of the Bus Safety Act provides that accreditation be granted to an operator subject to any “prescribed conditions”
* Section 22(3)(b) provides that an application for registration of an operator of a bus service that is not a commercial bus service, or a local bus service, must “contain any prescribed information”.

As part of this RIS, DoT will consider what information the Safety Director needs to gather in order for the Safety Director to assess an application, or to monitor compliance and enforce bus safety laws. It follows that regulations may be required that prescribe necessary information to be provided with an application for accreditation or registration.

## Identification of services

Enforcement of bus safety laws is reliant on ensuring information related to the bus service and the bus operator responsible for the service is available to the regulator. That information may need to be displayed on a vehicle to show information relevant to the bus service being provided while the vehicle is being used. Identification information helps to ensure effective and efficient compliance monitoring and enforcement as well as providing information to the community relating to the bus service.

For effective compliance monitoring and enforcement, it is important for transport safety officers to identify from the vehicle who is responsible for the bus service being provided. It is also important to be able to identify whether a bus is being used to provide an accredited or registered bus service. This assists the regulator and transport safety officers to establish whether a person is committing an offence under the Bus Safety Act or regulations made under that Act. This is particularly essential for real-time on-road enforcement activities.

All vehicles are required, under the Road Safety Act and the regulations made under that Act, to display number plates. The display of number plates enables the vehicle to be identified and the registered operator of the vehicles to be identified. In the case of operator onus offences, number plates enable the driver of the vehicle to be identified (i.e. through a nomination by the operator of the vehicle). Therefore, number plates, under that regulatory scheme, are used for compliance and enforcement activity.

Under the current Regulations, accredited bus operators are required to display special number plates which signify that the bus is being operated by an accredited bus operator. These number plates identify that the bus is operated by an accredited bus operator as the number plates will only be issued to buses with registered operators (under the Road Safety Act scheme) who are also accredited bus operators (under the Bus Safety Act). However, the special issue number plates do not necessarily identify who is primarily responsible for the vehicle as a bus operator (as this information is not recorded in the VicRoads Registration and Licensing database).

The Bus Safety Act requires the operator to become accredited or registered, but there is no equivalent permission or registration required in respect of the vehicle itself – the vehicle used to provide a bus service is not registered under the Bus Safety Act. This is in contrast to commercial passenger vehicles (e.g. taxis, hire cars and rideshare), in which the vehicle itself is registered under the *Commercial Passenger Vehicle Industry Act 2017*.

Considering these factors, enforcement activity may be hindered where buses are used to provide bus services that are not directly owned by the bus operator or are leased to another operator. That is, it may be difficult for the regulator or transport safety officers to identify who is responsible for the service if the bus does not sufficiently identify who is responsible for the service. A number plate in these cases may not provide enough identification for who is responsible for the bus service being provided. Consultation with TSV indicated that their transport safety officers have encountered numerous instances where buses have no identifying information other than a number plate on a bus. This meant that transport safety officers were unable to quickly ascertain the accreditation or registration details, including contact details, of the operator from the number plate.

Other identification issues may also arise for identifying some buses operated by registered bus operators (e.g. mini-buses). A bus operator is required to be registered if the vehicle used to provide a bus service is equipped to seat 10-12 passengers, including the driver. However, a bus operator is only required to be registered if the vehicle is used to provide a bus service; if the vehicle is used for private purposes then the Bus Safety Act does not apply. This may make it difficult for transport safety officers to discern whether a bus is registered under the Bus Safety Act (i.e. being used to provide a bus service) or whether it is a bus used for private purposes (e.g. for a large family).

Taken together, it is difficult for the regulator to identify the operators or responsible person of a bus given the Bus Safety Act provides for an operator accreditation and registration scheme, as opposed to a bus service vehicle registration scheme. As is the case, TSV advised that, in practice, on-road identification of vehicles and their corresponding operator is not always immediately apparent nor readily available.

DoT considers that the case for identification for the purposes of ensuring the public are made aware of the responsible operator of each bus service is not as compelling. It may be argued that the display of identifying bus service information could provide the public with information in relation to whether a bus service is safe and is subject to the obligations to ensure safety under the Bus Safety Act. However, many bus services are booked in advance (e.g. tour and charter), have responsible parties already known to the customer (e.g. community and not-for profit buses), or are contracted (with safety requirement built into contracts) by the government (e.g. route services).

In many cases, the public is in a position to be able to inform themselves of the responsible operator of the bus service prior to using the service. For example, aged care facilities often provide transport for their residents to access the broader community or places of interest. Often, the bus operator providing the bus services to the aged care facility may be an employee of facility and are therefore well-known to both the aged care company and residents. In this case, the aged care company will be in a good position to determine the safety of the buses used to transport their residents, as well as the competency of the bus driver.

## Cost recovery

### General principles of cost recovery

The costs of administering and enforcing regulation are borne by the government and its agencies. Such costs would be avoided if the regulated activity ceased. Accordingly, the incidence of these costs can be attributed to those participating in the activity.

The *Cost Recovery Guidelines 2013* issued by the Department of Treasury and Finance define cost recovery as:

“*the recuperation of the costs of government-provided or funded products, services, or activities that, at least in part, provide benefits to individuals, entities or groups, or reflect the costs their actions impose*.” (Page 5)*[[8]](#footnote-9)*

In practice, cost recovery involves setting and collecting fees or charges to cover the costs incurred in undertaking activities such as the administration of regulation, the provision by government of certain goods and services purchased by customers, or government measures in natural resource-based sectors and ecological services.

In the context of bus safety, there are safety risks associated with operating bus services. In order to reduce safety risks, the government intervenes by regulating bus industry participants. This intervention has costs associated with it, some of which are directly incurred by those regulated, i.e. bus operators and others are incurred by the government. The government costs are those that are incurred in the administration of regulation (registration, accreditation, monitoring compliance, investigations, enforcement activities etc.). The fees prescribed in regulations aim to recover costs from those that give rise to the need for them.

As stated in the *Victorian Guide to Regulation*, general government policy is that regulatory fees should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met. Full cost represents the value of all the resources used or consumed in the provision of an output or activity. It includes all indirect costs (i.e. on-costs) and capital costs.

Cost recovery aims to ensure that, to the extent practicable and efficient, all efficient costs of necessary regulation, are incorporated into the cost base and reflected in the ‘price signal’ to regulated parties. Cost recovery through specific fees and charges is appropriate when government services are directly attributed to a regulated party.

By contrast, if a law has a general beneficial effect for all, then there is generally no attempt to directly recover costs from those that give rise to the need for regulations. This is because the cost of regulation is not attributable to any particular activity (for which a fee could be attached) and because there is no particular person or group who benefits from the administration and enforcement of such laws – all Victorians are taken to benefit from this form of regulation.

This means that despite the general rule, full cost recovery may not always be the most appropriate basis for setting fees. There may be circumstances in which fees should be set at levels entailing subsidies (i.e. less than full-cost recovery). This may occur, for example, where the risks or harms associated with the activity are not fully restricted to the entity being charged the fee. This may be because:

* there are impediments to the entity passing on regulatory costs to the regulated party; or
* the affected parties of the regulation, at least in part, are not readily identifiable and so cannot be charged a proportion of the costs that can be attributed to them.

It may also be appropriate to consider partial cost recovery due to the nature of the services provided. A proportion of bus services are provided as public transport services or are provided as courtesy or community services. The purposes of these types of services is to improve the accessibility of the transport system and to enable the mobility of persons who otherwise are unable to access other parts of the transport system or travel independently. These services are provided so that such persons are able to remain socially (e.g. visiting family, friends or others in the community) and economically (e.g. for work or education purposes) connected in the community. Governments may subsidise the provision of such services and this subsidy could take the form of lower regulatory fees.

There may also be circumstances where fees and charges are set to over-recover the costs of the regulation. This approach could be used to act as a disincentive to address undesirable behaviours.

On the whole DoT considers it appropriate to attribute the costs of bus safety regulatory services to the regulated parties. Bus operators, both accredited and registered operators, are subject to regulatory interventions under the Bus Safety Act and the proposed regulations. But there may be a valid argument for the under-recovery of costs based on the degree to which buses are used to provide public transport or courtesy services.

### Current legislative and regulatory requirements

The Bus Safety Act empowers the Governor in Council to make regulations for prescribing a range of fees to recover the costs of regulatory services, including application fees for registration or accreditation and annual fees to be paid by registered operators and accredited operators.

Current fees are specified in Schedule 3 of the Bus Safety Regulations 2010 and summarised in Table 3‑15. They cover the fee to accompany an application for accreditation and an annual accreditation fee.

**Table 3‑15: Current fees prescribed under the Bus Safety Regulations and estimated revenue in 2019-2020**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Fee revenue source** | **Average fee unit** | **Fee unit value** | **Average fee per operator** | **Number of transactions (operators)** | | **Estimated revenue 2019-2020** |
| Accreditation Application Fees | 40 | $14.81 | $592.40 | 40 | | $23,696 |
| Annual Accreditation Fees | 74.71[[9]](#footnote-10) | $14.81 | $1,106.48 | 667 | | $738,019 |
| **Total** | | | | | **$761,715** | |

### Estimating the efficient costs of bus safety regulation

Victorian government policy, under the *Cost Recovery Guidelines 2013* published by the Department of Treasury and Finance, specify that cost recovery charges should be set according to an ‘efficient’ cost base. The ‘efficient’ (i.e. minimum) costs are the costs of providing the good/service at the required quality, or of undertaking the necessary regulatory activity, and still maintain quality or achieve government objectives over time.

In the context of bus safety regulation, it is important to ensure that the costs of TSV in providing services are as efficient as possible. If the efficient level of regulatory costs is known, then it is possible to set efficient fees.

DoT has conducted an analysis of the operations of TSV to estimate the costs attributable to administering bus safety regulations in Victoria. TSV is organised by different branches who administer the different regulatory schemes for which TSV has responsibility. The Bus Safety Branch administers the Bus Safety Act and Regulations and is supported by general corporate branches providing policy, legal and corporate support to the Bus Safety Branch.

Table 3‑16 below summarises the estimates of the costs incurred by TSV in the process of undertaking bus safety regulation under the Bus Safety Act. These estimates include the direct costs that are incurred by the Bus Safety Branch of TSV and the indirect costs incurred by other branches of TSV (e.g. legal, policy and corporate).

**Table 3‑16: Aggregate costs attributed to bus regulatory activities under the Bus Safety Act and Regulations in 2018-19 – by cost category**

|  |  |
| --- | --- |
| **Cost category** | **Cost** |
| Bus Safety Branch costs |  |
| Salary and on-costs of Bus Safety Branch | $2,107,118 |
| Professional and legal costs | $12,570 |
| Information technology costs | $33,650 |
| Office expenses (including travel and communications costs) | $110 |
| Occupancy costs | $107,640 |
| Depreciation and amortisation | $6,668 |
| Grants | $20,000 |
| Total (Bus Safety Branch) | **$2,287,756** |
| Indirect costs (pro-rata) | **$2,192,345** |
| **Total** | **$4,480,101** |

The Bus Safety Branch of TSV conducts several activities in relation to bus safety regulation. These activities are based on the requirements of the Bus Safety Act and the Regulations and include administering the operator accreditation and registration schemes, compliance monitoring and enforcement of the general safety duties and other requirements imposed on operators (e.g. annual roadworthiness inspections, implementation of MMS and MIS etc). For the purposes of estimating costs, DoT has categorised all activities into five broad groups, summarised as follows:

* Accreditation and registration activities, which are assessing applications for accreditation and registration, processing application and annual fees paid by operators, assessing applications for exemptions, administering the accreditation and registration schemes (e.g. updating operator information) and attending to any enquiries relating to accreditation and registration requirements.
* Audit activities, which involves conducting audits of bus operators, and preparing reports in relation to audits conducted.
* Compliance activities, other than conducting audits, which involves undertaking compliance inspections in the field, and conducting investigations and auditing investigations undertaken by bus operators.
* Enforcement activities, which includes prosecutions and court attendance, issuing and processing infringement, improvement, and prohibition notices.
* Information activities, which involves responding to general enquiries, complaints handling, and preparing and updating guidelines and compliance information for the purposes of communicating to bus operators.

Table 3‑17 summarises the five broad activity categories and provides an estimate of the costs attributable to each activity. DoT has calculated these costs estimates based on an estimate of the proportion of time spent by TSV for each activity. This information was collected at a high level through discussions with TSV, and therefore are indicative costs only.

**Table 3‑17: Aggregate direct costs attributed to bus regulatory activities under the Bus Safety Act and Regulations in 2018-19 – by activity category**

|  |  |  |
| --- | --- | --- |
| **Activity category** | **Proportion of total direct costs** | **Costs** |
| Accreditation and registration – processing applications and administering the operator schemes | 20% | $457,551 |
| Audit activities – conducting audits of bus operators | 35% | $800,715 |
| Compliance activities – conducting non-audit compliance activities including in-field compliance monitoring and investigations | 20% | $457,551 |
| Enforcement activities – prosecutions and administering infringement and other legal notices | 20% | $457,551 |
| Information activities – preparing and disseminating information to bus operators | 5% | $114,388 |
| **Total direct costs** | **100 %** | **$2,287,756** |

Since, under the current Bus Safety Regulations, there is a fee imposed on applying for accreditation, DoT has conducted specific cost analysis in relation to this activity, which is summarised in Table 3‑18. There are two components of this activity, processing the fee submitted as part of application and undertaking the assessment of the application itself. DoT estimates that each application costs $3010.75 to process.

**Table 3‑18: Summary of input costs for assessing bus operator accreditation applications**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | **Estimated hours to complete activity for each Victorian Public Service (VPS) and Executive level** | | | |
|  | **VPS 3** | **VPS 4** | **VPS 6** | **E03** | |
| Processing Application Fees | 1.4 | - | 0.07 | - | |
| Assessing Accreditation Applications | 44.5 | 7.6 | 5.67 | 0.15 | |
| **Total time to complete activity at each VPS level** | **45.9** | **7.6** | **5.74** | **0.15** | |
| *multiplied by* |  |  |  |  | |
| **Hourly rate per VPS level** | **$45.61** | **$54.44** | **$84.39** | **$127.54** | |
| *equals* |  |  |  |  | |
| ***Total cost of activity at each VPS and Executive level*** | **$2093.49** | **$413.74** | **$484,39** | **$19.13** | |
| Cost of assessing an application for bus operator accreditation | | | | | $3010.75 |

With an average number of 40 applications submitted each year, DoT also estimates that the aggregate revenue for this fee is $120,430 (see Table 3‑19).

**Table 3‑19: Estimate aggregate costs of processing bus operator accreditation applications**

|  |  |  |  |
| --- | --- | --- | --- |
| **Fee revenue source** | **Average cost** | **Average number of transactions (operators)** | **Estimated revenue 2019-2020** |
| Assessment of accreditation application | $3010.75 | 40 | $120,430 |

The estimates of total costs include indirect costs incurred by TSV that are attributable to the administration of the Bus Safety Act and Regulations. These indirect costs include occupancy and office expenses, professional and legal costs, IT systems and the cost of staff across different regulatory functions. DoT has used the pro-rata method to allocate indirect costs to the total cost of regulating for bus safety. DoT has used the proportion of TSV staff engaged to fulfil the bus safety regulatory function as the proxy for apportioning the indirect costs. In 2018-19, TSV was also responsible for administering other regulatory schemes. This includes:

* acting under a service level agreement with the Office of the National Rail Safety Regulator (ONRSR) to administer the Rail Safety National Law in Victoria
* regulating local rail operators (tram operators and certain tourist and heritage rail operators) under the Rail Safety (Local Operations) Act 2006
* acting as an agent of the Australian Maritime Safety Authority (AMSA) in administering the Domestic Commercial Vessel National Law in Victoria, and
* regulating local waterway managers, pilots and pilotage service providers, harbour masters and recreational boaters under the Marine Safety Act 2009.

There is 21.3 per cent of TSV staff who are engaged to directly fulfil a regulatory function have a primary role in regulating bus safety. Accordingly, 21.3 per cent of indirect costs ($2.19 million) have been attributed to the costs to be considered in this RIS. DoT considers that the proportion of staff is an appropriate proxy as several indirect costs incurred are proportional to the level of staff engaged to fulfil bus safety regulatory functions (for example, occupancy and office costs and HR costs). In other cases, DoT considers that staff proportions provide a reasonable proxy for allocating indirect costs.

#### Assessment of efficiency of costs

DoT has conducted some analysis to determine whether TSV’s current costs are efficient.

DoT notes that the scope of the TSV’s functions has changed since 2018 which may affect the degree to which the costs of regulation are efficient:

* Since 2018, TSV has no longer been responsible for the regulation of domestic commercial vessels. AMSA is now directly responsible for administering the Domestic Commercial Vessel National Law in Victoria.
* In 2019, legislation provided the transition of the local rail operators to the national rail safety scheme and that the ONRSR was directly responsible for regulating all rail operators.

As a result of these changes, TSV staff previously employed to fulfil rail safety and domestic commercial vessel safety regulatory functions have transferred to the respective national regulators. These changes may also affect the level of indirect costs that are needed to support TSV’s remaining functions. Since costs are estimated based on actual costs incurred in the 2018-19 financial year, any such changes may not be fully reflected in the cost estimates. There may be further adjustments to indirect costs in future years to reflect the size of the organisation and the scope and function of the regulator. These changes would suggest that the total costs of regulation as estimated in this RIS may not be efficient.

Other possible legislative reforms may also affect the scope and role of the Bus Safety Branch of TSV and, therefore, the total costs of regulation. There are reform proposals canvassed by DoT, other government agencies, such as the Red Tape Commissioner and the Cross-Border Commissioner, and industry which would increase or decrease the level of regulatory services provided by TSV. For example, responsibility for the bus driver accreditation scheme, which is currently administered by the commercial passenger vehicles regulator, could be transferred to TSV. Other examples including changes to the operator accreditation and registration schemes to address emerging issues and risks such as the use of mini-buses by commercial bus operators. No decision has been made by the Government in respect of these proposals yet.

DoT has identified some factors which would suggest that the regulatory cost base is not entirely efficient and may change in future years. For this reason, DoT will consider options in relation to setting fees to seek the public’s views and feedback on different fee models. However, DoT is recommending that the regulatory fee structure and levels do not change at this time.

### The base case

The adoption of the base case of no regulations would imply that taxpayers fully fund the estimated cost of bus safety regulation once the current regulations expire. The estimated cost associated with this is $4.48 million per annum. DoT considers this to be the least efficient and equitable option available when compared with alternative options which seek to achieve some level of cost recovery from the regulated parties.

# Objectives

In considering what options are available to address the problems and issues identified in Section 3 of this RIS, it is important to have regard to the objectives of the regulatory scheme. The objectives will guide the identification of options. The merits of the options will be informed by how well the options achieve the intended outcomes.

In making the proposed regulations, DoT’s overarching objective is to promote and improve the safety of bus services provided in Victoria while minimising regulatory and compliance costs to industry and enabling effective enforcement of bus safety laws.

This overarching objective is explained below.

**Safety**

The primary purpose of the proposed regulations is to positively affect the safety of bus services. Promoting and improving safety to the extent practicable in this context entails:

* minimising fatalities and serious injuries of drivers and passengers of buses and other road users
* minimising property damage arising from incidents that involve buses, and
* encouraging the active management of risks to safety.

The overarching objective is consistent with the objectives prescribed in the Bus Safety Act. The Bus Safety Act objectives are to promote:

* the safety of bus services
* the effective management of safety risks in bus services
* continuous improvement in bus safety management
* public confidence in the safety of the transport of passengers by bus
* the involvement of relevant stakeholders in bus safety, and
* a safety culture among persons who participate in the provision of bus services.

**Minimise regulatory burden**

There are other broader government objectives which are relevant to the regulatory proposal. In achieving the safety objective identified above, the regulations should also aim to minimise regulatory burden on industry participants. In terms of bus operations, the intended outcomes are that the compliance, administrative and delay costs associated with implementing a proposed regulatory solution are the lowest necessary to achieve the primary safety objective.

**Effective and efficient compliance monitoring and enforcement**

Additionally, any proposed regulations to complement the bus safety scheme under the Bus Safety Act should support the efficient and effective compliance monitoring and enforcement of bus safety laws. This means that the regulator, TSV, and its officers, Transport Safety Officers, should have the appropriate regulatory powers and information to be able to conduct compliance monitoring and enforcement in a manner that supports the primary safety objective. Compliance monitoring and enforcement should be undertaken such that it imposes the minimum burden on industry.

# The base case

The *Victorian Guide to Regulation* requires that for new regulations or for regulations which are sunsetting, the RIS should assume “zero” or no regulations as being the base case against which the proposed regulations and feasible alternatives should be assessed.

The discussions on options are considered on the basis of several contributing factors to the safety of bus operators in Victoria.

##### General safety duties under the Bus Safety Act

Firstly, options are considered on the basis that, under the Bus Safety Act, duty holders already have general safety obligations imposed on that duty holder. The duty holders are:

* bus operators
* bus safety workers (including drivers)
* procurers of bus services
* persons who determine the location of, design, construct, install, modify or maintain bus stopping points or bus stop infrastructure.

The Bus Safety Act requires duty holders to ensure safety in a manner relevant to the circumstances of each duty holder. For example, bus operators and procurers must, so far as is reasonably practicable, ensure the safety of the bus service. A bus safety worker must take reasonable measures to ensure the safety of persons who may be affected by the acts or omissions of the bus safety worker. Persons who determine the location of, design, construct, install modify or maintains bus stopping points or bus stop infrastructure must ensure these points or infrastructure are safe.

For this reason, in the base case it would be illegal to operate, or knowingly cause or allow a person to operate, an unsafe bus or bus service. The Bus Safety Act provides that a bus, bus service, or bus stopping point or infrastructure is considered unsafe if its operation may endanger any person.

The general safety duties imply that each duty holder would need to take steps to identify and eliminate or manage the safety risks to the extent that the person has control over that risk. This includes, but is not limited to, ensuring that:

* the design and operation of the bus is safe
* the right equipment is installed in a bus to minimise safety risks, and
* policies and procedures are in place to address safety risks.

However, given that compliance with the safety duties can be achieved in a number of different ways, general safety duties can give rise to uncertainty with ensuring compliance with the law. Bus operators and bus safety workers (including drivers) may be uncertain as to whether their actions in relation to ensuring safety so far as is reasonably practicable is compliant with their general safety duties under Bus Safety Act.

The broad requirements under the Bus Safety Act relating to the responsibilities of duty holders to ensure safety means that there is scope for subjectivity and interpretation in the Safety Director’s assessment of how a duty holder is complying with their safety duties. The Bus Safety Act may not sufficiently cover specific actions or omissions which constitutes a contravention and may make it difficult for the Safety Director to proactively enforce.

The general safety duties under the Bus Safety Act are similar to the duties under the *Occupational Health and Safety Act 2004* (OHS Act). The OHS Act, however, applies to workplaces, employers and employees. The Bus Safety Act contains provisions to make clear that the OHS Act takes precedence if there is conduct that could breach the requirements of both Acts.

##### Road safety legislation

DoT notes that other regulatory arrangements are already in place that affect the safety of bus operations in Victoria. Road safety legislation affects the design of buses, driver standards (through general driver licensing) and their conduct on the road. The vehicle standards that apply to buses were discussed in detail in Section 3.3.

The base case therefore includes these regulatory requirements in place to mitigate general road safety risks. These other regulatory requirements, however, only have a partial coverage of the broad range of factors that determine overall bus safety performance. It is important that any proposed regulations ensure any specific safety risks relevant to bus safety are comprehensively addressed and that these safety risks are able to the monitored and enforced by transport safety officers.

##### Market incentives

In the absence of regulatory levers, there are still market incentives for sound safety performance in many sectors of the bus industry. Some sectors of the bus industry (e.g. charter and tourists bus sectors) face reputational risks if their services suffer from poor safety performance. These risks could be seen to motivate bus operators to ensure appropriate levels of safety.

However, there may be factors which limit the effectiveness of market incentives. Tourists from outside Victoria (and, especially, from outside Australia) are unlikely to have a strong awareness of the safety performance of different providers.

In principle, bus service providers that face greater reputational risks if their services suffer poor safety performances (e.g. tour and charter services) are less likely to experience a deterioration of bus safety standards – and therefore an increase in bus safety incidents – in the absence of regulations. In other words, there are still strong market incentives for this cohort of bus services to maintain a high level of safety. Bus service providers that do not face the same reputational risks or risks of customers choosing an alternate bus service (e.g. local or courtesy bus services) may experience a deterioration in their performance standards (and therefore an increase in bus safety incidents) in the absence of regulations.

More generally, however, the relatively low level of bus safety incidents means that it will be difficult in practice to discern which providers have better or worse performance standards.

With respect to records, there are no specific requirements to keep records under the Bus Safety Act. However, in the normal running of a bus service, there will still be incentives to maintain records, particularly in the case of commercial bus operators or operators from a large organisation. However, despite the incentives for bus service providers to maintain records, these records may not be the same as those required by the regulator to fulfil its functions. Some of these records will also be required to be kept for taxation purposes.

##### Government service contracts

Finally, scheduled route bus services are provided in Victoria subject to government contracts. Contracted providers receive government subsidies to provide services to the community. This means that there are already contractual arrangements between the government and scheduled route bus services to implement safety standards, which would be detailed in written bus contracts.

However, not all bus services are covered by written contractual arrangements with the government, such as commercial tour and charter bus services and other non-commercial services.

##### Summary

Taken together, DoT considers that any additional requirements should support the safety duties scheme under the Bus Safety Act, as well as covering any gaps that may exist in relation to existing regulatory schemes or private incentives relating to bus operations. Additional requirements through regulations may also be a necessary tool to allow for any identified problems to be resolved through criminal penalties, rather than through civil remedies.

Where necessary, the base case for specific safety matters addressed in this RIS are discussed in more detail under its corresponding section in Section 6.

# Identification of feasible options

There are a number of interventions that government, its agencies, bus operators and bus workers could take to mitigate safety risks in the provision of bus services. This section will identify options to address the problems and issues identified in earlier sections of this RIS.

## Vehicle safety

A prescriptive approach to address the safety of a vehicle is for regulations to prescribe the vehicle standards or equipment that must be used to ensure the safety of a vehicle used for a bus service. This approach allows for targeting measures to be aimed at specific safety risks. For example, prescribing bus stability to avoid bus rollovers. Prescriptive regulations also allow the Safety Director to objectively assess industry compliance with the regulations. The trade-off of this model is that it limits the market’s ability to implement efficient methods to address safety concerns.

Within the context of safety, it is important to note that there are already obligations under the safety duties scheme in the Bus Safety Act. The scheme is a broad general duties scheme which requires duty holders, including bus operators and bus procurers, to ensure the safety of the bus service, so far as is reasonably practicable. A bus safety worker must take reasonable measures to ensure the safety of persons who may be affected by the acts or omissions of the bus safety worker. These safety duties can be taken as the base case for ensuring the vehicle is safe to provide a bus service. The Road Safety Act and HVNL also require buses to meet minimum safety standards.

Given the general safety duties under the Bus Safety Act and existing legislative and regulatory measures for vehicle safety (as discussed in Section 3.3), the need for prescriptive regulations relating to specific safety measures is diminished. However, notwithstanding the safety duties scheme under the Bus Safety Act, there are instances where the prescription of specific safety measures may be justified to ensure that duty holders comply with their safety duties and to minimise uncertainty relating to one’s obligations under the Bus Safety Act.

In relation to vehicle safety, this may include specific measures relating to the design of a bus or specific devices or signs to be used or installed on a bus. Prescribed bus design or specified devices or signs may be required to address apparent failures in vehicle safety that do not appear to be addressed via the broader general safety duties obligations. For example, the regulator may observe the occurrence of a relatively high level of a specific incident compared to other incidents or there appears to be a trend of an increasing number of the specific incident in proportion to the total number of buses. In these cases, the failures in vehicle safety could be a result of a lack of knowledge or clarity on the bus operator’s behalf on how to address a specific issue under the broad safety duties scheme. Therefore, specific measures may be required to ensure the specific issue is addressed.

A broader approach may involve providing for a safety framework or system to be put in place to ensure that vehicles are safe. These systems do not directly prescribe particular matters to address a specific identified safety issue (e.g. prescribing the installation of fire extinguishers to mitigate the consequences of fire). Rather, it allows for each bus operator to implement a maintenance system for their bus fleet based on their own operations, safety objective and vehicles in their bus fleet. This approach is particularly useful in circumstances where there are a range of regulated parties, each with different models of operating. In these cases, it may not be appropriate to apply one set of safety measures across the whole regulated industry. For example, it may not be appropriate to require all buses to carry snow chains if not all bus operators provide services on the mountain during snow season.

### Bus standards

DoT has considered whether additional bus design standards need to be prescribed in the bus safety regulations.

Some proposed measures complement the safety duties scheme and may include regulations to cover identified gaps in the ADRs in relation to bus safety or to ensure consistency with the ADRs. Compliance with these measures would form part of the safety duties scheme. Other proposed measures may support compliance monitoring and enforcement of the safety duties scheme to ensure that standards already prescribed in ADRs, for example, can be enforced by transport safety officers empowered to enforce the Bus Safety Act and its regulations.

Specifically, design standards for consideration include ensuring all buses:

* are stable – consistent with the ADR requirement for double deck buses
* have a device or means to remove or prevent condensation on a windscreen for buses manufactured prior to 1 July 1988 – consistent with the ADR requirement for a device to remove condensed moisture from the inside of a windscreen for vehicles manufactured after 1 July 1988
* have restrictions on exposed bars
* are equipped to provide a driver with a view of all passengers in or on the bus
* have safe luggage racks, where equipped – consistent with ADRs
* have a prescribed bulkhead behind the driver’s seat, where required by the Safety Director.

These design standards have historically been additional requirements with respect to design standards for buses. The standards which are all relevant to the vehicle or the operation of the bus service are either not covered by the ADRs or ensure that the ADRs cover all buses in the industry.

In relation to addressing fire on buses, an option may be to require all buses to have fire extinguishers regardless of ADR requirements. This imposes the greatest burden as all buses operate under the Bus Safety Act. Currently, ADR 58/00 requires that fire extinguishers are to be provided on every bus provided for hire and reward in accordance with AS 2444-2001 “Portable Fire extinguishers – Selection and Location”. An option is for the regulations to be consistent with the ADRs to allow the regulator and transport safety officer to enforce these requirements.

##### Summary

DoT will consider the merits of continuing to prescribe the bus design standards specifically identified above (status quo) in Section 7.1.1.

### Requirements for maintaining vehicle safety

There are several interventions that could be used to keep vehicles safe. DoT considers two ways to ensure vehicles are safe: safety systems for vehicle safety and roadworthy inspections.

#### Safety systems for vehicle safety

Regulations could require specific systems, policies or procedures to be put in place to ensure that vehicles are maintained to a safe standard. These systems would complement the broader safety duties scheme under the Bus Safety Act – specified duty holders would be required to implement systems for vehicle safety which would be used to demonstrate that the person is complying with their duties to ensure the safety of their bus service.

This type of approach is similar to those undertaken in other safety schemes, where safety management systems are required to be established and maintained. For example, rail transport operators are required to maintain a safety management system under the *Rail Safety National Law* to ensure the safe management of railway operations carried out by rail transport operators.

##### What should be included in any system or procedures for managing vehicle safety?

DoT considers that the contents of any system or procedures to manage vehicle safety ought to cover off on measures addressing the sources of risk to safety in relation to the vehicle. This could include procedures in relation to inspections, escalation of defects, and maintenance and repair of the vehicle. Any system should also specify the frequency of how each of the activities are to be undertaken.

For example, current maintenance management system (MMS) requirements as directed by the Safety Director are that an MMS must include:

* a pre-trip inspection of each bus
* quarterly inspection and maintenance of each bus
* mandatory annual inspection of the bus undertaken by a licensed bus tester.

While there may be merit in prescribing specific requirements of the MMS, the nature of the general safety duties, which impose an onus on the bus operator to tailor approaches to managing safety based on the circumstances of the bus operations, suggests that some elements of the MMS should be left to the operator’s discretion. Therefore, as an alternative, a requirement to implement a safety system could specify the areas/requirements that the bus operators must include in the system but not be prescriptive about how it is implemented (e.g. the MMS requirements include inspection requirements but not how frequently these are undertaken).

The set requirements in an MMS could be achieved in the following ways:

* prescribing the contents of the MMS in the regulations
* delegating power to the Safety Director to set the requirements of the MMS (by written notice to the bus operator)
* in accordance with requirements set out by the Safety Director via a notice in the Government Gazette.

##### Who must prepare an MMS?

The following industry participants have a general safety duty under the Bus Safety Act:

* accredited operators
* registered operators
* procurer of bus services
* bus safety workers (includes drivers).

It is necessary to consider whether all or only a subset of these duty holders should be required to implement an MMS. The reason being that safety system requirements should reflect the nature and control over bus operations and the level of risks associated with the duty holder’s operations. It may not be appropriate for all duty holders under the Bus Safety Act to implement an MMS.

Bus operators have the greatest control over the vehicles used in their bus service and are obligated under the Bus Safety Act to ensure the safety of bus services. Under the Bus Safety Act, there is a two-tiered scheme for bus operators – bus operator accreditation and bus operator registration. The legislative framework under the Bus Safety Act approximates risk by imposing additional obligations for accredited operators compared to registered operators.

The purpose of accreditation under the Bus Safety Act is to ensure that a person who operates a commercial bus service or a local bus service has the competence and capacity to manage the risks to safety associated with operating that service. Accreditation is also required when the operator operates a bus service using buses with a capacity of 13 or more seats.

Registration, on the other hand, is only required of the community and not-for-profit bus operators and operators of commercial services only using mini-buses (buses with seating between 10 to 12 persons). Registered operators are not required to demonstrate competence and capacity to manage the risks to safety in the same way that accredited operators must demonstrate when applying for accreditation.

The legislative framework differentiates between these different types of operators because accredited bus service operators operate larger buses, usually have larger fleet sizes or provide services that use their vehicles more frequently, over a larger distance.

Registered operators generally have a lower risk-profile than their accredited counterparts as the buses are smaller in size, are not used frequently (e.g. less than once a week) or have a smaller fleet size.

However, DoT acknowledges that the proxy for risk is an imperfect one and there are some examples where registered operators do not fit into this general profile (e.g. some commercial mini-bus operators).

Nevertheless, given that bus services operated by accredited operators on the whole are considered to be a riskier cohort than services operated by registered operators, it would be reasonable to require accredited operators to establish and maintain an MMS for the safety of vehicles. This aligns with an accredited operator’s obligation under the Bus Safety Act to demonstrate competence and capacity to manage risks associated with operating a bus service.

An alternative to assessing the risk profile of a bus service based on the operator type defined in the Bus Safety Act (accredited versus registered) is to assess the risk profile based on the fleet size of an operator. Generally, when compared with operators of smaller fleets, operators with a larger fleets are faced with a greater magnitude and types of risks to bus safety for reasons including that operators with larger fleets operators generally:

* carry a larger number of passengers
* carry a greater demographic range of passengers
* provide bus services in which the aggregate distances travelled by the whole bus fleet would be larger or the frequency of use may be higher (i.e. higher utilisation of the bus fleet)
* employ a larger number of bus drivers to drive the larger fleet, which means there is greater variability in backgrounds and capabilities in the drivers used.

This means that ensuring that buses are maintained in a systematic way becomes increasingly necessary as the number of buses operated by an operator increases. Larger fleets may warrant the requirement for an MMS to manage the greater risks their bus services pose compared to operators with a smaller fleet.

For example, the requirement for an MMS could be aimed at operators who have a fleet of three or more buses. The actual threshold may be determined through an assessment of the relative safety of different operators with different fleet sizes (e.g. an assessment of the relative number of bus safety incidents, fatalities and or serious injuries relative to an operator’s fleet size). DoT considers that an operator may be able to safely manage the operational aspects of only a small number of buses in their fleet without causing detriment to the safety of each bus providing the bus service. As the number of buses increase, it may be more appropriate that systems or procedures be put in place to ensure that there is still broad oversight of the bus operations by the operator.

Consultation with TSV indicated there are no comprehensive records on the current size of each operator’s bus fleet, although it was suggested that community and not-for-profit operators, which are considered lower risk, only operate one or two buses in their fleet. Therefore, for example, the requirement for an MMS could be aimed at operators who have a fleet of three or more buses.

Procurers of bus services have a less direct level of control over bus services to mitigate risks and ensure safety of bus services. Procurers must generally be satisfied as to the safety of the bus service before deciding to procure a bus service, which can be done through imposing conditions and obligations relating to safety via contracts with the bus operator. When compared with bus operators, procurers have a lesser direct impact on the day-to-day operations of a bus service. For this reason, it is not proposed to impose requirements for an MMS on these duty holders.

In relation to persons who determine bus stopping points and bus stop infrastructure, these parties generally consider safety risks when assessing the placement of bus infrastructure or bus stopping points. Such persons are not involved in the provision of bus services, and so it follows that there is limited merit in requiring a safety system in place to mitigate risks to the bus services. It is therefore not proposed to impose requirements for an MMS on these duty holders.

Bus safety workers, which include drivers of bus services, have a different duty to other parties under the Bus Safety Act. Bus safety workers must take reasonable measures to ensure the safety of persons who may be affected by their acts or omissions, similar to the duty imposed on employees under the OHS Act. This type of duty does not impose a requirement on the driver to consider and manage risks but instead to take care for their own safety during work. Essentially this duty requires drivers to do things during the provision of services rather than to take pre-emptive actions to manage safety risks. Therefore, DoT considers it is unnecessary and inconsistent with the nature of the duty under the Bus Safety Act to impose regulations requiring the driver to implement an MMS.

##### Audit or review of an MMS

There may be merit in considering whether an MMS should be required to be audited or reviewed. The purpose of such a requirement is to ensure that any systems and procedures established to manage vehicle safety risks are still current.

Generally, audits could be required at the Safety Director’s discretion, prescribed at periodic intervals or be required after the occurrence of a prescribed event. Another option is to require an MMS to be kept up-to-date and audited periodically to ensure any deficiencies in these systems are identified and rectified in a timely manner. While more prescriptive options provide greater certainty for regulated parties in relation to compliance, the trade-off is the burden associated with undertaking more frequent audits and reviews. DoT considers that the right balance between these two factors is needed to ensure that bus operators are not unduly required to review their systems and procedures. The frequency of auditing should be frequent enough to detect any deficiencies in a timely manner, but not so frequent that it creates an unnecessary burden on the bus industry to audit or review their MMS.

An annual audit could balance the need to detect and amend any deficiencies with the need to minimise regulatory burden.

In addition to or in place of periodic reviews of an MMS, there could be other circumstances which would warrant a review of the MMS to ensure it continues to achieve the safety objectives of the bus service. This may include the following circumstances:

* following the audit of an operator by transport safety officers where an improvement notice or a prohibition notice has been issued
* a failure in the annual vehicle inspection
* where a bus safety incident has occurred
* as part of an investigation by the operator into the causes of a bus incident.

These circumstances are not likely to occur at periodic or regular intervals. For example, a bus incident or an investigation would generally only be required if the Safety Director considered the incident was significant or required actions to remedy (currently, a bus incident investigation is required if directed by the Safety Director).

##### Summary

DoT has considered a range of options relating to regulations which would require affected operators to implement systems to maintain their vehicles.

Based on the above considerations, Section 7.1.2.1 further assesses the impacts of the option to prescribe in the regulations a system for vehicle maintenance. The assessment of this option will consider both the administrative and substantive compliance costs for an MMS requirement. This option involves requiring accredited operators to prepare an MMS and for the accredited operator to maintain the MMS periodically through annual audits or reviews (status quo).

DoT will not further consider the option of imposing this requirement on registered operators, because it is likely to place an undue burden on those operators having regard to the nature of their operations. Based on discussions earlier in this section, the legislative framework of the Bus Safety Act is designed to approximate the lower risk-profile of registered operators based on the size of the buses used and the type of bus service provided. That is, given that registration applies to operators of smaller buses (mini-buses) and to providers of community and not-for-profit bus services, an MMS requirement would place an undue burden on this sector.

The impacts of non-periodic audits or reviews of an MMS form part of the assessment of bus incident investigations. DoT will not further consider options for auditing or reviewing an MMS in any other circumstances.

A break-even analysis is also used to assess this option in Section 7.1.2.3.

#### Roadworthy inspections

One option to ensure the safety of the vehicle is to ensure that vehicles are inspected regularly to a specified standard. The Bus Safety Act already provides for the inspection of buses. Part 3 of the Bus Safety Act specifies that both accredited operators must ensure that all buses in their fleet are inspected annually or at prescribed intervals. Registered operators are required to ensure that each bus undergoes a safety inspection in accordance with the regulations made under the Bus Safety Act.

In terms of the regulations, it is necessary to consider:

* In the case of accredited operators, whether an alternative frequency of inspection should be prescribed (annual is the default frequency but there is a capability to prescribe an alternative frequency), who should undertake an inspection, and to what standard should an inspection be conducted.
* In the case of registered operators, what an appropriate frequency for inspection should be, who should undertake an inspection, and to what standard an inspection should be conducted.

##### Frequency of inspections

As discussed above, in the case of a bus managed and used by an accredited operator, buses must be inspected annually. However, there is a capability to prescribe in the regulations intervals that are not annual. This could include more frequent inspections (e.g. monthly, quarterly, half-yearly etc.) to less frequent inspections (e.g. every two years or more).

An alternative could be risk-based inspections where the frequency at which buses are inspected changes with risk and other factors that may be relevant to the safety of a bus. This may involve prescribing different intervals between inspections for different types of bus services or bus types. For example, more frequent bus inspections may be required for bus services or buses that are considered riskier (e.g. commercial bus services or large buses with more than 25 seats). A sub-option to prescribed risk-based inspections is to provide the Safety Director the power to set the inspections regime based on TSV intelligence or strategic safety directions.

The same options and considerations apply to registered operators, noting that registered operators differ to accredited operators in that:

* the buses used by registered operators are not the same (by definition, these are buses with less than 13 seating positions including the driver)
* the services provided by registered operators may or may not be commercial bus services.

DoT considers in the assessment of costs and benefits the merits of an inspections regime that is a combination of a default prescribed minimum interval of inspections and providing flexibility for risk-based inspections. This ensures a minimum level of certainty around the safety of buses used to provide a bus service, as well as providing for more effective monitoring of the bus fleet.

##### Who can conduct inspections?

There are a range of parties that could be considered to be allowed to conduct vehicle inspections of buses. This includes licensed bus testers, qualified mechanics, TSV officers, insurance assessors, bus operators and drivers. Parties that can conduct inspections of a bus should have the knowledge to understand the mechanics of a bus and standards to which buses are to be deemed safe. For this reason, DoT considers that licensed bus testers, qualified mechanics, and TSV officers are best placed to be able to conduct inspections. Other parties may not have the specialist knowledge of the mechanics or standards of a bus to be able to appropriately assess a bus for its safety.

##### What matters should be considered in a roadworthy inspection?

There are a range of laws that set out standards for buses, including the Road Safety (Vehicle) Regulations 2009 (incorporating the ADRs and the Australian Light Vehicle Standards Rules 2015) and the Heavy Vehicle (Vehicle Standards) National Regulations. The proposed regulations may set other bus standards.

It follows that an inspection of a bus may be assessed against applicable vehicle standards under the Road Safety Act and the bus safety scheme that apply to buses.

##### Summary

Based on the above considerations, Section 7.1.2.2 further assesses the impacts of two options related to the frequency of inspections:

* Option 1 (status quo): All buses subject to annual inspections (noting that annual inspections for buses operated by accredited operators is the base case)
* Option 2: All buses subject to annual inspections and a power for the Safety Director to require any operator to conduct additional inspections if the Safety Director considers it appropriate to do so based on a risk assessment of that operator.

All options assessed involve the use of a licensed bus tester to conduct the annual bus inspection (status quo). DoT will not further assess the impacts of other parties conducting annual bus inspections.

All options assessed involve annual bus inspections being assessed against the roadworthy requirements determined by the Secretary of DoT and the requirements of the Bus Safety Regulations (status quo).

A break-even analysis is also used to assess this option in Section 7.1.2.3.

## Safety of bus operations

Regulations may prescribe compliance with bus service procedures to ensure the safety of bus operations. The regulations could prescribe a range of requirements that must be complied with in addition to the general safety duties imposed under Bus Safety Act.

### Safety systems for bus operations

Rather than prescribing specific safety measures to address the range of identified bus operational safety risks (e.g. mandating that a bus’s maximum passenger capacity does not exceed seating capacity to avoid slips, trips or falls or the use of security cameras to mitigate incidents of assault etc.), a more flexible approach is for regulations to require duty holders to implement a system for managing operational safety based on a bus service’s own operating model, risk context, incident history and safety objectives. The safety system may require specific matters to be covered, however the manner and scale in which the duty holder details and implements the safety system may be determined by the duty holder depending on their business model. Specific matters may include requirements relating to safety policy, hazard identification and risk minimisation, emergency management, fatigue management, drug and alcohol policy and incident reporting.

This option aims to ensure that bus services are operated in a way that minimises risks to bus safety in line with the safety objectives of the Bus Safety Act. This can be used to demonstrate that safety has been considered by duty holders in order to fulfil their obligations under the Bus Safety Act. The duty holder is then able to consider the management of safety risks as part of their unique operations. This also ensures that identifying and managing safety risks, and documenting operating conditions and incidents are actively undertaken.

The benefit of this option is that the size of the systems that must be implemented scales with the level the safety risks unique to each bus operator’s service and business model.

##### What systems and procedures should be in place in relation to bus operations?

The contents of any system in relation to bus operations should cover measures to address the sources of risk that may arise from the operational aspects of a bus service. This could involve ensuring that there are clear processes in place to minimise the risk to safety of a bus operator’s bus service based on the operator’s operating conditions, risks, incident history and safety objectives.

For example, current Management Information System (MIS) requirements as directed by the Safety Director are that an MIS must include the following:

* safety policy
* governance and internal control arrangements
* documented safety accountabilities and authorities
* information management process
* safety information communication process
* drug and alcohol management policy
* hazard, risk and change management processes
* emergency management process
* process to establish bus safety worker competence
* processes for incident reporting and investigation
* internal audit procedure.

While the areas of bus operations are specified in the MIS, it is largely left up to the operator to determine how it is scaled and implemented according to their operations.

The set requirements in an MIS could be achieved in the following ways:

* prescribing the contents of the MIS in the regulations
* delegating power to the Safety Director to set the requirements of the MIS (by written notice to the bus operators)
* in accordance with requirements set out by the Safety Director via a notice in the Government Gazette.

##### Who must prepare a MIS?

The following industry participants have a general safety duty under the Bus Safety Act:

* accredited operators
* registered operators
* procurer of bus services
* bus safety workers (includes drivers).

As is the case for MMS, it is necessary to consider whether all or only a subset of these duty holders should be required to implement an MIS.

Bus operators are required to consider the range of safety risks in relation to the operations of the bus service. This implies bus operators are in the best position to implement systems that address a broad range of safety policies, including fatigue management, emergency procedures, driver behaviour and training, and reporting.

As discussed in Section 6.1.2, the legislative framework under the Bus Safety Act approximates risk by imposing additional obligations for accredited operators compared to registered operators. Accredited bus operators generally oversee operations that are likely to face, and be in control of, a greater range of risks (i.e. commercial bus service or local bus service). Registered bus operators generally have a lower risk-profile than their accredited counterparts as the services provided are considered less complex and therefore face a lesser range of risks, particularly in relation to community and not-for-profit bus operators. The safety risks that could reasonably be managed by bus services operated by registered bus operators are not likely to be sufficiently complex to benefit from systems to manage the safety of bus operations and should be apparent to the operator of the vehicle.

For these reasons, it would be reasonable to require accredited operators to establish and maintain an MIS for the safety of bus operations. This aligns with an accredited operator’s obligation under the Bus Safety Act to demonstrate competence and capacity to manage risks associated with operating a bus service.

Note that while the external risks to the bus services operated by registered operators could be lower due to the nature of the service operators, it may be the case that higher internal risks are present for this type of operator. Large accredited operators may employ dedicated staff to oversee safety of their services (e.g. risk management personnel, safety liaison officers etc.). In comparison, some registered operators operating less sophisticated bus services (e.g. small community bus services) may not possess the same level of expertise or experience about safety issues of their bus service.

This may be compounded by the fact that while accredited bus operators are required to demonstrate competence and capacity to manage the risks to safety associated with operating the commercial bus service or local bus service, registered bus operators do not face the same obligations.

As mentioned previously in discussions relating to the MMS, the risk profile of a bus service could be based on the fleet size rather than operator type. A larger fleet can often be considered as a proxy for more complex bus operations – operators of larger bus fleets would normally be faced with, and therefore need to consider, a greater range of risks during the operation of their bus service. As the complexity of a bus service increases, it becomes increasingly important for the management of safety and risks to be considered in a systematic way.

DoT considers it appropriate that the threshold for requiring an MIS based on fleet size should be similar to what is required for an MMS.

As per the discussion in relation to options for an MMS, DoT does not consider it appropriate to impose an MIS on other duty holders under the Bus Safety Act. That is, DoT considers that the following duty holders should not be required to implement an MIS:

* procurers of bus services – these duty holders have a less direct level of control over bus services to mitigate risks and ensure safety of bus services.
* persons who determine bus stopping points and bus stop infrastructure – these duty holders are not involved in the provision of bus services
* bus safety workers – these duty holders only have a duty to take reasonable care of themselves and other persons and are not obligated to manage or eliminate safety risks.

##### Audit or review of an MIS

Options must also consider when an audit of the MIS should occur. Audits of a review could be allowed at the discretion of the Safety Director, at prescribed periodic intervals or be required after the occurrence of a prescribed event. To ensure certainty of auditing and that the systems are up-to-date, a review could be prescribed at periodic intervals.

An annual review may be the right balance between minimising regulatory burden on the industry and ensuring safety systems are up-to-date to ensure any deficiencies in these systems are identified and rectified in a timely manner.

As previously discussed in relation to an MMS, instead of periodic reviews of an MIS, there could be other circumstances which would warrant a review of the MIS to ensure it continues to achieve the safety objectives of the bus service. This may include the following circumstances:

* following the audit of an operator by transport safety officers where an improvement notice or a prohibition notice has been issued
* where a bus safety incident has occurred
* as part of an investigation by the operator into the causes of a bus incident.

These circumstances are not likely to occur at periodic or regular intervals.

##### Summary

DoT has considered a range of options relating to regulations which would require affected operators to implement systems to promote the safety of their operations.

Based on the above considerations, Section 7.2.1 further assesses the impacts of the option to prescribe in the regulations a system to ensure safe bus operations. The assessment of the option will consider both the administrative and substantive compliance costs with the MIS requirements. This option involves requiring accredited operators to prepare an MIS and for accredited operators to maintain the MIS periodically through annual audits or reviews (status quo).

DoT will not further consider the option of imposing this requirement on registered operators, because it is likely to place an undue burden on those operators having regard to the nature of their operations. As discussed in Section 6.1.2, the legislative framework of the Bus Safety Act is designed to approximate the lower risk-profile of registered operators based on the size of the buses used and the type of bus service provided.

The impacts of non-periodic audits or reviews of an MIS form part of the assessment of bus incident investigations. DoT will not further consider options for auditing or reviewing an MIS in any other circumstances.

### Maximum number of passengers

There may be occasions where safety related information informing bus drivers of bus operational requirements may be required to ensure the bus service is provided in a safe manner.

##### Display of maximum carrying capacity

DoT considers there is merit in assessing options to ensure that bus drivers are aware of the maximum carrying capacity of the bus they are driving. An option could be for bus drivers to be required to have records of the carrying capacity of every bus that they may be required to drive. However, this option is impractical and unnecessary as bus drivers can drive many different types of buses as part of their job and the safety benefits are only derived from knowing the capacity of the bus that the bus driver is currently driving. Alternatively, bus operators could have similar obligations to provide this information to bus drivers.

As bus drivers may drive different buses on each shift and each bus may be built differently, another option is that notices on or in each bus are displayed to clearly show the maximum carrying capacity of that bus. This ensures drivers are aware of the maximum carrying capacity for the particular bus they are currently driving.

Note that there is currently no separate offence for drivers to let more passengers on their bus than the maximum carrying capacity of the bus. Breaches relating to maximum carrying capacity would involve the driver breaching their own duties to take reasonable care under the Bus Safety Act if they allow more passengers on the bus than the maximum carrying capacity. Operators may also be in breach of their safety duties under the Bus Safety Act if there are inadequate procedures or systems in place to ensure drivers are not overloading buses. Such systems may include ensuring there are enough buses in the fleet to meet passenger demand or ensuring that bus scheduling do not put pressure on drivers to overload the bus to meet targets. Breaches under the Bus Safety Act are generally observed via audit of compliance with general safety duties.

##### Who determines maximum carrying capacity?

Options in relation to maximum carrying capacity relate to parties responsible for determining the maximum carrying capacity. There are several parties that may be in a position to determine the safe maximum carrying capacity of a bus:

* manufacturers
* licensed bus testers
* signatories of the Vehicle Assessment Signatory Scheme (VASS) – a VASS Certificate is required from a VASS Signatory if any works or modifications have been done on a vehicle to certify that the vehicle complies with standards for registration.
* Operators with the assistance of guidelines or standards.

Parties that can determine the maximum carrying capacity of a bus should have a technical knowledge or engineering expertise related to the design of the bus. This is because determining the maximum carrying capacity of a bus is dependent on a range of complex factors. This may include factors such as the number of seats on the bus, standing space, size of the bus, and distribution of people on the bus. DoT proposes that manufacturers are best placed to determine the maximum carrying capacity as the design of all vehicles used in Victoria must adhere to the safety standards set out in the ADRs. In cases where a vehicle is modified affecting the buses maximum carrying capacity, licensed bus testers or VASS engineers may be appropriately qualified to determine the maximum carrying capacity of a bus. Since the current regulations only permit licensed bus testers to make this assessment, DoT seeks the industry’s views as to whether there are alternative arrangements that would assist bus operators in complying with this requirement.

It is not proposed that bus operators determine the maximum carrying capacity as there may be a conflict of interest between their operations and determining the safe capacity of a bus. While there may be similar conflict of interests with other parties (for example, manufacturers may overstate the maximum carrying capacity of buses to maximise sales of buses), DoT considers this risk to be minimal as bus manufacturers are responsible for adherence to the ADRs in determining maximum carrying capacity or face breaches under the *Motor Vehicle Standards Act 1989* or the *Heavy Vehicle National Law*.

##### Which buses should display maximum carrying capacity?

Consideration is given to whether all buses or a subset of buses should be required to display a sign advising the driver of the maximum carrying capacity. Given the rationale for any such sign is to ensure that bus drivers are aware of the maximum carrying capacity, it follows that this requirement will be most beneficial in situations where it is uncertain what the maximum carrying capacity of a bus is.

Given that most buses with a seating capacity of 10 to 12 seats do not have standing capacity, there is an obvious one-to-one relationship between the number of seats and the maximum number of passengers that can be carried. DoT considers that these sized buses do not need to display a maximum carrying capacity sign as it will be obvious to the driver the maximum number of passengers these buses can carry.

Larger buses (seating capacity for 13 or more adults[[10]](#footnote-11)), on the other hand, often have capacity for standing passengers. In these cases, it will not be obvious to drivers what the maximum carrying capacity of the bus is, given that the carrying capacity may be larger than the number of seats in the bus. Due to this uncertainty in the relationship between number of seats and maximum carrying capacity for these buses, it is warranted to consider the display of maximum carrying capacity signs on larger buses.

##### Summary

Based on the above considerations, Section 7.2.2 further assesses the costs and benefits of regulations which require the bus operator to determine the maximum carrying capacity of the vehicle based on an assessment made by the manufacturer of the vehicle or a licensed bus tester. This option involves the requirement for operators of buses with 13 or more seats to display signs in the vehicle advising this determination (status quo).

DoT also seeks the industry’s views on feasible alternative arrangements to assist bus operators with complying with their obligations.

### Alcohol and other drugs

DoT considers there is merit in considering options for specific bus safety regulations to cover any gaps in other legislative or regulatory requirements relating to alcohol and other drugs. In addition, regulations will also allow the enforcement of the requirements bus industry participants by transport safety officers.

Consideration should be given to which parties should be required to have a zero alcohol and drug requirement. It is clear that driver impairment has an immediate and significant consequence on the safety of a bus service. DoT considers there is merit in requiring drivers to be subject to zero alcohol and drug requirements. Allowing for this requirement to come into play both immediately before and while driving a bus allows for the implementation of alcohol and drug testing by bus operators prior to a shift and during a shift, as well as allowing enforcement of the requirement by transport safety officers.

Further consideration should be given to whether other bus safety workers should be subject to zero alcohol and drug requirements. A similar scheme applies to rail safety workers under the *Rail Safety National Law*. Rail safety workers must not carry out or attempt to carry out rail safety work while there is alcohol or a prescribed drug present in their blood or breath.

Bus safety workers include, in addition to drivers, workers that are involved with activities including bus and bus equipment design, repair, modification, maintenance and testing, as well as setting or altering a schedule or timetable for a bus service. DoT does not consider that all bus safety workers should be subject to the zero alcohol and drug requirement as some bus safety worker’s activities do not directly impact the safety of a bus service, particularly the safety of a vehicle. DoT, however, does consider that impairment from alcohol and other drugs may directly impair a person’s ability to ensure the condition of a vehicle is safe. This includes persons involved with vehicle maintenance, repairers and testers.

Section 7.2.3 further assesses the impacts of alcohol and other drug requirements under the proposed regulations, per the option discussed above (status quo).

### School buses

DoT regards the importance of reducing the safety risks for children using school buses. Options should ensure that motorists are alert to the possibility of children in and around a bus when the bus is either picking up or setting down children. This is due to the fact that children may not be as aware of risks around the road as adults and may not take the same level of care around vehicles or the road. This may cause children to rush to catch a bus or children who are disembarking from a bus may not cross the road with care. There are options for school buses to be fitted with special lights, hazard warning devices, “school bus” signs or speed limit signs.

The Road Safety (Vehicles) Regulations 2009[[11]](#footnote-12) already specify the fitting and operation of warning lights and signs for buses mainly used for carrying children if the bus is fitted with warning lights after June 1999. As compliance with school bus warning lights and signs should cover all buses, an option could be for regulations to cover bus fitted with warning lights before 1 July 1999, if they also have a hazard warning light and “school bus” sign.

In addition, while there is a requirement for ensuring the fitting of warning lights and signs, the risks of collision with a child passenger will only be mitigated if there is a requirement for the ongoing operation of warning lights and signs. DoT considers regulations are needed to ensure that not only warning lights and signs are fitted to a school bus, but that they are operational at all times, within reason. Any warning lights or signs only need to be operating when a bus is stationary, where risk is highest. A moving bus has lesser risk of children pedestrians around the bus.

Another option is to adopt standards required in NSW. These standards include ensuring motorists travel at a speed which gives them a reasonable chance to stop in time if a hazardous situation arises. For example, in addition to requirements relating to the display of a “school bus” sign and equipping and operating lights and hazard warning lights, NSW requires a sign indicating “40km/h” and “when lights flash”. In this case, the speed limit may be regarded as be an extension of the 40km/h speed limit zones around schools.

In some jurisdictions overseas (for example, the United States of America and Canada), laws require that drivers of motor vehicles in the vicinity of a stopped school bus stop must wait for the stopped school bus to load or unload its passengers. Generally, if a school bus in these jurisdictions display flashing hazard lights, a driver of a vehicle meeting or overtaking the stopped school bus from either direction must stop and wait until the school bus moves again or the hazard lights are off. In some jurisdictions, vehicles must also stop on divided highways.

##### Summary

Based on the above considerations, Section 7.2.4 further assesses the impacts of the following options:

* Option 1 (status quo): adopt warning lights and sign requirements equivalent to current Victorian requirements under the Bus Safety Regulations
* Option 2: adopt warning lights and sign requirements to align with NSW standards for school buses

The road rule relating to motorists being required to stop if in the vicinity of a school bus with flashing hazard lights is not considered further in this RIS, as the costs of the rule will likely outweigh its effectiveness. The status quo intervention of alerting motorists to the probability of school children around buses is likely to already influence motorist behaviour around school buses, including driving slower around school buses and being more alert to the possibility of crossing children.

## Notifiable incidents

Section 65 of the Bus Safety Act requires an accredited bus operator or a registered bus operator to notify the Safety Director of prescribed incidents in accordance with the regulations. The purpose of this requirement is to enable the Safety Director to have timely information in relation to certain incidents.

##### What types of incidents should be prescribed as a notifiable incident?

The requirement to notify the Safety Director of prescribed incidents is enlivened if there are circumstances or types of incidents prescribed in the regulations. This means that if no incidents are prescribed then there is no requirement to notify the regulator.

Not all types of incidents are suitable or necessary for this requirement. DoT considers that notifiable incidents should:

* relate to safety of the service
* have a material consequence.

The information would be used to identify the causes of the incident and to determine whether a person involved in bus service operations has failed to comply with legislative or other requirements. The information could also be used as part of a risk-based assessment as to what areas the regulator should focus their compliance monitoring and enforcement effort and resources at.

Consultation with TSV suggests that the threshold for notifiable incidents should be broadly focused on actual or potential consequences of an incident rather than narrowly defined incident types or categories. As such, DoT considers incidents should be framed to ensure that the consequences of the incident are reflected in the regulations. Incidents or consequences considered appropriate for reporting to the Safety Director include those which result in (or had the potential to result in):

* the death of, or serious injury to, any person
* damage to any property
* loss of control of the bus
* a person requiring immediate treatment as an in-patient in hospital
* attendance by a police officer or health professional.

There are also a range of events that DoT considers warranting notification, including:

* collision between the bus and any person, vehicle, infrastructure, or other property
* implosion, explosion or fire
* mechanical failure
* divergence from the highway
* uncontrolled movement of a bus
* alleged assault
* suspected or attempted self-harm
* terrorist attack
* a circumstance where the driver of the bus is in contravention of the bus operators’ alcohol and drug management policy.

Further advice from TSV suggests that there are bus safety related circumstances in which the regulator considers it appropriate to be notified, with the incidents also relating to legislative requirements not under the Bus Safety Act. For example, the *Education and Care Services National Law Act 2010* have their own suite of safety requirements relating to ensuring the protection from harm and hazard and the adequate supervision of children when an approved provider of an education and care service manages the transport of children. Although bus operators are not approved providers under the *Education and Care Services National Law Act 2010,* and therefore are not subject to notification requirements under that Act, TSV considers that the vulnerability of children warrants that bus operators notify the regulator of safety incidents relating to the protection from harm and hazard of children, including where a child has been left off a bus at the end of a route.

DoT also considered notifications relating to mechanical failures that results in the bus being unable to commence, continue or complete a journey. Consultation with TSV noted that this will result in a significant reporting burden to the industry, with which TSV do not derive significant benefits from being notified. As such, this incident was not included as a list of prescribed incidents.

##### When should the regulator be notified of a prescribed incident?

The purpose of requiring the industry to alert the regulator that a specific type of incident has occurred is to enable an investigation to be conducted, if necessary, and to inform risk-based compliance monitoring and enforcement of safety issues.

Different types of bus safety incidents may involve differing levels of urgency with respect to notifying the Safety Director. Certain incidents of a serious nature would suggest that the Safety Director should be notified quickly after the incident has occurred, while other incidents of a relatively less serious nature may only need to be reported to the regulator in a less urgent manner (e.g. a report to the regulator on a monthly basis).

Information collected on bus safety incidents are used by TSV in a number of ways. Incidents reported to TSV help them identify current or emerging bus safety issues in the bus industry. This enables TSV to target compliance monitoring and enforcement activities. It also assists with informing future auditing efforts by TSV to investigate any possible breaches in safety duties under the Bus Safety Act.

If TSV considers a particular incident to be serious in nature, TSV will direct that an investigation take place (e.g. all bus rollaway incidents reported to TSV are investigated as a matter of course due to the seriousness of the incident). An investigation may provide bus operators with intelligence to be able to put in place systems or procedures to minimise similar future incidents from occurring. Identifying areas of safety concerns may also assist TSV with devising non-regulatory actions in response to emerging bus safety issues, such as promoting education campaigns to minimise bus safety incidents.

One option could be to require certain incidents to be notified to the Safety Director orally as soon as the bus operator is aware of the incident. Taking a similar requirement in other safety schemes (e.g. the *Rail Safety National Law*), this oral notification can be followed up with a written notification of the bus incident within 72 hours of an incident occurring to ensure that all relevant information is captured in an accessible and easy to examine format. This may be important in situations where the operator is not in a position to provide all the details of the incident immediately (e.g. if police or an ambulance is in attendance, the operator may not be able to ascertain immediately whether a fatality or serious injury has occurred) while also balancing the need for the Safety Director to be made aware of the incident in a timely manner. This puts the Safety Director in a position to be able to begin an investigation of the incident immediately, while giving the operator time to provide full details of the incident within a short (but not immediate) timeframe. An alternative that could be considered is for the operator to have one week to provide a written notification. A written notification also ensures that there is a paper trail of evidence to demonstrate that the bus operator fulfilled their duty to notify the regulator in the event of a bus safety incident.

Other incidents that are considered less serious in nature may require less urgent notification and could be provided as a written notification only within a short timeframe (e.g. within 72 hours) after the operator becomes aware of the safety incident.

Furthermore, a third category of incidents that are considered to be relatively minor in nature and consequence may not need to be reported individually within a short timeframe after the operator becomes aware of the incident. These may include incidents which are still important for the Safety Director to be aware of (such as for the purposes of risk-based compliance monitoring and monitoring trends in bus safety), but for which the timeliness of knowing the information is of less importance. Consultation with TSV indicated that certain incidents, such as less serious incidents involving the attendance by a police officer or health professional (of which there was no serious consequence), an alleged assault witnessed by a bus driver or minor property damage, only need to be reported to the Safety Director as part of a group report (e.g. monthly reporting).

##### Manner in which the regulator should be notified of a prescribed incident

There is a minimum level of information the Safety Director requires to assess whether there is a breach of a duty holder’s safety duties or whether to proceed with an investigation. A notification should contain enough information about the service (e.g. who the driver was, which vehicle was used to provide the service etc.) for the Safety Director to make an appropriate choice on what action to take, if required.

The regulations could prescribe the specific matters that must be provided when an incident happens, and a notification is made. Alternatively, the regulations could specify that a notification must be made in the manner and form determined by the regulator. While the latter provides greater flexibility to the Safety Director in terms of the information they can require and how the information is received from the bus operator in relation to a bus safety incident, it does reduce an operator’s certainty on the incident notification process. However, given the notification is to be made on matters relating to a bus safety incidents, it is reasonable for the operators to assume the types of information the Safety Director will require will be based on gathering information relating to the “what”, “who”, “when”, “how” and “why”.

##### Summary

DoT has considered a range of options for the industry notifying the regulator of the occurrence of a bus incident.

Based on the above considerations, Section 7.3 further assesses the impact of regulations which require bus operators to report incidents to the regulator. The type of incidents required to be notified to the Safety Director under the proposed regulations will be similar to the incidents required to be notified to the Safety Director under the current Bus Safety Regulations (status quo).

DoT will further consider in the options subcategories of when an incident needs to be notified to the Safety Director, based on the seriousness of the incidents, as follows:

* oral notification, as well as written notification within 72 hours (status quo for all notifications)
* written notification within 72 hours
* written notification on a monthly reporting basis.

## Bus incident investigation

The proposed regulations provide that bus operators must notify the Safety Director of prescribed bus safety incidents. This RIS considers whether further actions may be required by bus operators after a notification event has occurred. DoT considers that an investigation of the bus safety incident is the most appropriate response to an incident.

Options in relation to conducting a bus incident investigation relate to whether all bus safety incidents should be investigated, whether a prescribed subset of incidents should be investigated or whether the Safety Director should have the discretion to direct an operator to investigate any such incidents. Given the variable nature and significance of incidents, the trigger for a bus safety incident could be flexible. Under this option, the Safety Director could have the discretion to direct a bus operator to conduct a bus incident investigation. The Safety Director already has a range of investigatory powers for buses – including entry and boarding powers, search and seizure powers etc. – under the *Transport (Safety Schemes Compliance and Enforcement) Act 2014*.

Where an investigation is conducted, information relating to the incident and investigation is important to ensure that measures are taken by the operator to take actions to prevent the bus incident occurring again. This is in line with the objectives of the Bus Safety Act to ensure safety of bus services. To ensure the integrity of the bus incident investigations, DoT considers that the Safety Director should be empowered to require a more thorough investigation to be undertaken or further information to be provided. The Safety Director should also be empowered to conduct his/her own investigation.

##### Summary

Based on the above considerations, Section 7.4 further assesses the impacts of regulations which gives the Safety Director the power to direct a bus operator to investigate a bus safety incident (status quo).

## Requirements of accreditation and registration

In the context of supporting the provisions of the Bus Safety Act, the base case of no regulations would make it difficult for the Safety Director to make decisions in relation to applications for accreditation or registration. DoT considers that regulations to enable the Safety Director to collect information and documents relating to an application for bus operator registration or accreditation is preferred compared to no regulations. That is, regulations are necessary to enable the Safety Director to administer the objectives of the Bus Safety Act by supporting the efficient and effective compliance monitoring and enforcement of bus safety laws. As such, the following analysis focuses on what regulations can be justified on the grounds that they would best satisfy the specified regulatory objectives.

It is important to note in the following sections relating to accreditation, registration, identification, records and exemptions, DoT considers that regulations are required in cases where it provides guiding overarching principles for the application of the Bus Safety Act or covers main obligations to be applied broadly across the whole bus industry. Other matters that are more administrative in nature, or which does not apply consistently across the whole industry, are more appropriately left to the discretion of the regulator. For example, the proposed regulations do not cover the broad array of conditions that may be imposed on specific operators. Other matters that are administrative in nature, such as the form in which records are to be kept, are left for the regulator to decide.

##### What should accompany all applications for accreditation or registration?

When considering an application for an accreditation or registration, the Safety Director will require basic identifying information about the applicant.

Important information required includes information relating to the identity of relevant applicant, such as if the applicant is a natural person, partnership, unincorporated body, company or body corporate.

Additionally, the Safety Director may require information in relation to the buses used to provide services. The proposed regulations could require evidence of the safety of all vehicles used by the bus operator. Given that a Certificate of Roadworthiness of a bus used to provide a bus service is a significant indicator of the safety of the vehicle, this could be required for bus operated by both accredited bus operators and registered bus operators. An alternative is for a licensed bus tester to verify that the bus is safe to use on Victorian roads.

Previous accreditation and registration details may be important information for the Safety Director. As such, information relating to dates of any previous registrations or accreditations held by the applicant in relation to the operation of bus services could be required.

##### Documents supporting an application for accreditation

The Safety Director is required to consider additional matters before making a decision on an application for accreditation. That is, the Safety Director must be satisfied the applicant has the competence and capacity to operate a bus service safely and that the operator (or relevant persons, such as company directors) have not committed certain disqualifying offences as specified under the Bus Safety Act. Disqualifying offences include offences against or specified under the *Crimes Act 1958*, *Sentencing Act 1991*, *Working with Children Act 2005*, *Road Safety Act 1986* and *Bus Services Act 1995*, among other offences.

Evidence of an accredited operator’s competency (i.e. training, skills or experience) and capacity (i.e. established MMS and MIS) is necessary to support the purpose of accreditation under the Bus Safety Act.

Under the Bus Safety Act, the Safety Director must refuse an application for accreditation (or relevant person, as the case may be) in circumstances where the applicant:

* has been found guilty of a tier 1 offence (other than a specified indictable fraud or dishonesty offence)
* has been found guilty in the last 10 years of a tier 1 offence that is a specified indictable fraud or dishonesty offence
* is subject to certain provisions under the Working with Children Act 2005
* is insolvent, placed in administration or is under order for winding up.

In order for the Safety Director to make an assessment of an application for accreditation in accordance with the Bus Safety Act, the Safety Director requires information about the applicant’s criminal record, meaning the Safety Director could require the applicant to agree to a police background check or to provide information in relation offences that the person has been found guilty of.

##### Conditions of accreditation

Any proposed regulatory requirements could impose a set of conditions in which accredited operators are required to abide by in order to keep their accreditation. The need for certain conditions, including those relating to establishing and maintaining an MMS and MIS, and paying applicable fees are discussed in further detail in its respective sections of this RIS.

Other conditions relate to rules around what can or cannot be done with respect to their accreditation certificate. Certificates of accreditation or registration are a useful tool for compliance monitoring and enforcement purposes as it allows transport safety officers to verify the details of the accredited party from the certificate. It follows that conditions relating to altering or defacing a certificate be included in the proposed regulations.

It is noted that with the increasing use of technology in relation to electronic permissioning, certificates may move to a non-physical digital form. In this case, there may no longer be a need for conditions relating to altering or defacing a certificate. As the implementation of the permissions system has not yet moved to digital, this will not be considered further in this RIS.

##### Issue of certificate of registration

The Bus Safety Act allows the Safety Director to issue a certificate of registration to the registered bus operator. It is intended for the regulations to specify details that the Safety Director must include on a certificate of registration when it is issued to a registered bus operator. It may be necessary to include basic details on the certificate of registration including a registration number, name and contact details of the registered bus operator or a contact person. The Safety Director could also require any additional information to be included on the registration certificate as appropriate. Specifying details in the regulations would ensure consistency and certainty in the details that are included in the certificate and ensures that the operator is aware of the basic information required for the certificate of registration.

##### Summary

DoT considers that the regulations should prescribe specific requirements relating to applications for accreditation and registration. These include powers for the Safety Director to collect information and documents relating to the application for bus operator accreditation and registration (status quo). Section 7.5 further assesses the administrative and compliance costs of the providing this information.

DoT also supports making regulations which provide for the issue of certificates of registration.

## Identification

DoT considers there is merit in assessing options for the display of information relating to the person responsible for the provision of the bus service. As discussed previously, DoT considers the main rationale for the display of identification information relating to the operator is to ensure that the regulator and transport safety officers can ascertain the person responsible for the bus service. This ensures an effective and efficient compliance monitoring and enforcement regime for bus safety regulations.

##### Who should display identification?

There are two relevant cohorts: accredited bus operators and registered bus operators.

Accredited bus operators are subject to greater regulatory requirements, such as competency and capacity requirements, record keeping, and requirements to establish and maintain an MIS and MMS. Accredited bus operators provide commercial for-profit bus services and local bus services in larger buses that seat 13 or more adults and are therefore considered to provide services that are higher risk compared to smaller or not-for-profit type services (which only require registration).

Registered operators, on the other hand, are subject to a lighter touch regulatory regime, due to the assessment that the type of bus services offered, particularly the non-for-profit and community sector.

DoT considers that, for reasons described in Section 3.6, all the persons responsible for the accredited and registered bus service should be identified on the road-side for compliance monitoring and enforcement purposes (i.e. via identification on the bus). This is particularly relevant for mini-bus services, as there is little differentiation between a registered mini-bus and a privately-owned people mover type vehicle.

##### Manner of identification

There are several means by which identification information could be conveyed to the regulator and transport safety officers to ensure they are able to ascertain the person responsible for the bus service. Options include a sign with relevant identification to be attached to the vehicle that can viewed from the outside, a requirement of each bus to have a copy of an accreditation or registration certificate, or a special number plate. Identification from the outside of the bus is an option to ensure transport safety officers can readily identify the responsible operator of the bus. In addition, as the responsible operator of each bus may change depending on the bus service provided, it proposed that identification should be easily changed (i.e. not permanently affixed to the bus).

Given all vehicles used on Victorian roads must be registered with VicRoads’s Registration and Licensing, it may also be possible for transport safety officers to identify the responsible operator by a general issue registration plate of each bus. This would require the regulator to hold records of all operators and each bus in the bus fleet’s registration plate. This option may not be practical as the regulator’s records would need to be updated in real-time since a particular bus may be operated by different operators at any given time.

For these reasons, DoT considers it may be appropriate that a removable sign or sticker be attached to the outside of the bus which identifies the responsible operator of the bus at the time.

##### Type of information to be displayed

Information may include:

* the person or operator responsible for the bus service
* the accreditation or registration numbers for the operator issued by the Safety Director
* the contact details of the responsible person
* information regarding the type of bus service the bus offers
* identification of the bus driver.

##### Summary

Identification information would assist the regulator in compliance monitoring and enforcement by identifying bus services. Section 7.6 further assesses the impacts of requiring all operators to display identifying information on their buses. This information would include the name and accreditation/registration number of the operator.

DoT will also consider the merits of requiring accredited operators to display restricted-issue bus number plates on all their vehicles (status quo).

## Records

Records and record keeping requirements may support effective compliance monitoring and enforcement of the Bus Safety Act and its regulations by the Safety Director by ensuring that the Safety Director is able to access evidence of compliance with the law. Section 54 of the Bus Safety Act enables the Safety Director to request an accredited or registered bus operator to provide the Safety Director information relating to the safety of the bus service operations.

Records are an important requirement to operationalise the legislative arrangements established under the Bus Safety Act. Section 72 of the Act provides that regulations may be made in relation to prescribing the keeping and the form of any records or other document as may be necessary for the administration of the Act. Requiring records to be kept ensures that the Safety Director is able to inspect them for the purposes for compliance monitoring and enforcement of requirements specified in the Act and its regulations. Regulations can ensure access to certain information which otherwise may not be kept as a record, and include matters relating to:

* conditions of accreditation
* maintenance management system
* management information system
* annual audit of bus service operations
* annual vehicle inspections.

The type of records required is dependent on the specific information that is needed for bus operators to demonstrate compliance with requirements under the Bus Safety Act and its regulations.

In order to consider options relating to prescribing record keeping requirements, it is necessary to consider what records should be kept, who should be required to keep those records and the manner in which records must be kept.

##### What records should be kept?

The types of records that could be required to be kept under the proposed regulations should reflect the information that may be needed to conduct an audit or investigation of a bus operator to determine whether that operator has complied with their obligations under the Bus Safety Act. This would include compliance with:

* the general safety duties under the Act
* conditions of accreditation or registration
* requirements prescribed under the regulations (e.g. inspections and management systems)

To ensure that a bus operator is compliant with their general safety duties under the Bus Safety Act, records relating to the following could be required:

* record of the name, address, driver licence number and driver accreditation of each person who drives a bus operated by the bus operator – this information could be used to ensure that drivers are appropriately qualified to provide safe bus services.
* documents produced as part of an MIS and MMS, including audits – this information could be used to assess whether an operator is complying with their safety duty obligations and have the appropriate safety systems in place.

In the case of accreditation or registration conditions, the following records may be needed:

* evidence of compliance with conditions – if there are any conditions imposed on individual bus operators, then a requirement to retain records of compliance could assist in determining whether the operator has complied with their requirements.

In relation to bus inspections:

* record of registration number, vehicle identification number and seating capacity of each bus in the fleet of the operator – this information could be used to ensure that each bus in a bus operator’s fleet is undergoing a safety inspection.
* evidence of annual inspections undertaken for each bus – this information is needed to ascertain compliance with bus inspection requirements. However, DoT notes that this could also be achieved by requiring licensed bus testers to notify the Safety Director of each inspection and the outcomes of each inspection (which is a current requirement).
* evidence that a bus defect has been cleared – while the Safety Director may receive information from a licensed bus tester or records kept by the operator that a bus has undergone an inspection, in the event that a bus fails an inspection, it may be difficult for the Safety Director to ascertain how the bus operator rectified the issues identified as part of the inspection.

##### Who should keep records?

Based on the accreditation and registration schemes, there are two broad options relating to who should be required to keep prescribed records: accredited operators and registered operators.

Under the current Regulations, the status quo is that accredited operators are required to keep the records that are prescribed, and registered operators are not required to keep any records. However, there is merit in examining whether some or all records should be kept by all operators or a cohort of bus operators. The purpose of accreditation under the Bus Safety Act is to ensure that a person who operates a large commercial bus service or a local bus service has the competence and capacity to manage the risks to safety associated with operating the commercial bus service or local bus service. Accredited bus services are considered higher risk due the nature and size of their operations. Registered operators, on the other hand, may have a lower risk profile, as the services are generally non-for-profit and community-based operations or use smaller buses.

The requirements imposed on accredited operators under the Bus Safety Act are designed to be more onerous than the requirements imposed on registered operators. Given the greater responsibility and accountability expected of bus services operated by accredited operators, it follows that accredited operators need to be monitored more closely than registered operators in relation to certain matters by reference to the nature and extent of safety risks applicable to those services. This could mean that more evidence or records may need to be kept relating to their accreditation, including requirements proposed under new regulations. For example, this could include documents relating to compliance with conditions of accreditation and audit of the MMS and MIS. As registered operators are not subject to these requirements, there would be no corresponding records required to be kept.

All operators are required to undergo periodic bus safety inspections to ensure that vehicles used to provide a bus service are safe. Given the importance of a safe vehicle for providing a safe bus service, an option could be for all operators to provide to the regulator evidence relating to inspections and evidence that any defects identified during bus safety inspections are cleared (i.e. any defects identified are rectified). This will entail that both accredited operators and registered operators keep records relating the inspections of the vehicle and evidence of vehicle defect clearances. Alternatively, or in addition to operators keeping records, is for parties authorised to undertake bus inspections to provide information directly to the regulator on any bus inspections carried out by that party.

Other records that could be maintained by both accredited and registered operators include records of their bus fleet to assist with effective and efficient compliance monitoring of the vehicles used to provide a bus service.

##### Manner in which records should be kept

Providing flexibility to the industry to determine the manner in which records are kept helps to minimise the compliance costs of keeping records. The trade-off is that records held in a format that is inaccessible may hinder compliance and investigative work. For this reason, there is merit in prescribing the format that records should be kept. To ensure effective compliance monitoring and enforcement, records could be required to be kept:

* for a minimum period of time (e.g. one year, three years, or five years) to allow the regulator to access older records which may be pertinent to a specific purpose, and
* in the English language.

##### Summary

Based on the above considerations, Section 7.7 further assesses the impacts of three options for record keeping:

* Option 1 (status quo): Only accredited bus operators are required to keep a full set of records
* Option 2: Accredited operators required to keep a full set of records and registered bus operators required to keep a limited set of records
* Option 3: All bus operators are required to keep a full set of records

A full set of records would include:

* name, address, driver licence number and driver accreditation of each person who drives the bus operated by the operator
* record of each bus in the operator’s fleet, including vehicle registration number, vehicle identification number (VIN), and maximum carrying capacity of each bus
* record of total number of buses in the operator’s fleet
* any document required to demonstrate compliance with conditions of accreditation or registration
* any document produced as part of the MIS or MMS (or equivalent documentation relating to systems to ensure vehicle safety and safety of bus operations)
* any document produced as part of an annual audit of bus service operations
* evidence of roadworthy inspections for each bus
* evidence of any action to rectify a bus defect identified during the roadworthy inspection
* any other records required as a condition of accreditation or registration.

A limited set of records would include:

* record of each bus in the fleet, including vehicle registration number, vehicle identification number (VIN), and maximum carrying capacity of each bus
* record of total number of buses in the operator’s fleet
* evidence of inspections for each bus
* evidence of any action to rectify a bus defects or issue identified by a licensed bus tester during the inspection.

## Exemptions

Division 7A of Part 4 of the Bus Safety Act provides that the Safety Director may exempt operators from certain requirements of accreditation or registration. The purpose of exemptions is to reduce regulatory burden or provide for alternative means for complying with regulatory requirements where there may be circumstances where accreditation or registration of a person imposes a significant regulatory burden that is excessively onerous or unreasonable in the circumstances relating to the bus service operated. Exemptions are designed to reduce regulatory burden where there is a justified reason. An exemption is unique to a particular operator’s bus service and may be required for varying reasons.

The Bus Safety Act provides for making of regulations related to exemptions for persons from the requirement for registration or accreditation:

* Section 52B(2) and 52B(2)(b) of the Bus Safety Act specifies an application for exemption must be made in a manner and form approved by the Safety Director and contain any prescribed information.
* Section 52C(b) of the Bus Safety Act specifies the Safety Director must not grant an exemption unless satisfied that the application has demonstrated compliance with requirement prescribed in regulations (if any).
* Section 52D(2) of the Bus Safety Act provides that an exemption is subject to any conditions or restrictions prescribed by the regulations that are applicable to the exemption.
* Section 52(3) and 52E(3)(b) of the Bus Safety Act provides for an application for variation must be made in a manner and form approved by the Safety Director and contain any prescribed information.

Regulations are required to specify the procedural or information requirements relevant to an application for exemption. This includes:

* What should accompany all applications and variations for an exemption – important information required to apply for exemptions should include information relating to the identity of the relevant applicant, such as if the applicant is a natural person, partnership, unincorporated body, company or body corporate. Information should also include details relating to the exemptions and any accreditation or registration details of the applicant, if applicable.
* Any requirements or conditions prescribed as part of the exemption – including compliance with specified requirements (e.g. ensuring that drivers hold appropriate licences, buses comply with applicable vehicle standards, vehicle inspections requirements).

The purpose of the registration and accreditation scheme under the Bus Safety Act is to impose general safety duties on operators of bus services. DoT considers that any exemption should:

* not reduce the safe operation of bus services as this would contradict the objectives of the Bus Safety Act
* the applicant must still have sufficient competency and capacity to manage risks to bus safety
* the applicant has enough financial capacity or public risk insurance to cover any potential liabilities from accidents
* the applicant ensures that the bus driver holds an appropriate driver licence and driver accreditation under the Transport (Compliance and Miscellaneous) Act
* each bus complies with vehicle standards under the Road Safety Act
* comply with drug and alcohol polies under the Bus Safety Act
* comply with bus incident notification and investigations under the regulations.

Section 7.8 further assess the impacts of exemptions.

## Fees

There are a range of considerations for designing fees to recover the costs of regulation. This includes which industry participants should be required to pay fees, how costs should be recovered, the structure of fees and the level of cost recovery. These considerations and the resulting fee options for assessment are further explained below.

##### Which parties should be required to pay fees?

There are two types of bus operators, accredited bus operators and registered bus operators. Each bus operator is subject to different levels of regulatory activities undertaken by TSV. As mentioned previously in this RIS, accredited bus operators usually have larger and more complex operations and are generally considered higher risk. Therefore, these operators are subject to a greater number of regulatory interventions. This means that the time, effort and resources required by TSV to regulate this cohort of operators is greater. Registered operators, on the other hand, generally have less complex bus operations, such as providers of community or not-for-profit bus services. Their lower risk profile compared to their accredited counterparts means that they are subject to a lesser degree of regulatory interventions. In comparison to accredited operators, TSV may also spend less time monitoring compliance on individual registered operators.

However, notwithstanding the different levels of regulatory activities required to regulate accredited and registered operators, DoT will assess options where both accredited operators and registered operators are subject to fees under the proposed regulations.

##### What fees should be set?

In designing fees for recovering costs, it is necessary to consider what activities or transactions are subject to fees. There are some activities under the proposed regulations which DoT considers as options for setting fees.

An application for accreditation or registration is a regulatory activity where fees may be set. Applications are a transaction that must be completed by all prospective operators before TSV can grant the operator with permission to operate a bus service under the Bus Safety Act. The application process is an important part of TSV’s regulatory activity, as it assists TSV to establish the identity of the operator and, in the case of accredited operators, whether an operator is capable and has the capacity to operate a safe bus service. However, DoT notes that there are only regulation making powers under the Bus Safety Act to set fees for applications for accreditation. There are no powers under this Act to set application fees for registration. Therefore, the only option for application fees is for it to apply to accredited operators.

There are a range of other activities undertaken by TSV, such as dealing with enquiries, communication or information provision to industry stakeholders, complaints handling, and granting exemptions, the costs of which could be recovered by setting specific fees for service. It may not be appropriate to apply fees for these services as it may discourage compliance or open communication with the regulator.

Another option is to consider recovery of costs for activities that TSV undertake which cannot be tied to a specific regulatory function or service. There are many other regulatory activities that TSV must undertake in their role in regulating the bus industry that benefit the industry as a whole (when compared to applications, for example). In this case it may be appropriate to recover costs generally through an annual fee. There are powers under the Bus Safety Act for annual fees to be applied to both accredited and registered operators. As TSV’s role involves activities to ensure the safety of bus services operated by all operators, there are costs borne by TSV is regulating both accredited and registered operators. It follows that options should be considered for setting annual fees for both types of operators.

Notwithstanding an annual fee to recover general costs of regulating the bus industry, there may be specific regulatory activities (other than applications) that may be transaction based, and therefore able to be tied with a specific fee for service so that costs for these services can be recovered. Some examples include compliance inspections or audits performed by transport safety officers. These are identifiable and distinct activities in which TSV incur costs to administer. DoT notes that compliance inspections and audits are dependent on the focus of TSV’s compliance monitoring and enforcement activities and their assessment of a bus operator’s actions and measures taken to address safety risks. That is, if TSV considers that the obligations under the Bus Safety Act are not met that operator may deserve further investigation. This may increase the fees charged to that operator. Imposing a fee could act as an incentive for bus operators to ensure compliance with their safety obligations to avoid being subject to additional inspections or audits and the associated fee. On the other hand, setting a regulatory fee for such transaction may incentivise the regulator to conduct more compliance inspections and audits than is necessary in order to raise revenue. The nature of compliance inspections and audits could also change so that more inspections and audits could be conducted within existing resources. This could compromise the safety objectives of the Act and Regulations if inspections and audits were not conducted to a minimum standard. For this reason, DoT will not further consider fees for such transactions in this RIS but welcome the public’s views on the merits of such fees.

##### How should fees be structured?

There are a range of options to structure regulatory fees. Under the Bus Safety Act, there is a power to set specific fees, maximum and/or minimum fees, or scale fees according to some pre-determined metric.



Application fees

Generally, as is currently the case, application fees can be set on a per application basis. However, there are other options that could be considered, such as the payment of a fee upon approval of an application. Applications fees are paid together with an application when it is made (rather than approved), as it incentivises applicants to provide a complete application and ensure that the applicant is eligible for the regulatory permission before applying and disincentivises vexatious applications.

Another option is to scale the application fees based on the size of the operator (e.g. the number of buses a bus operator operates). The rationale for scaling application fees based on the size of the operator, is for regulatory fees to reflect the amount of time and resources that TSV puts into assessing an application. In this case, the proxy for time and effort is the size of the applicant. However, a limitation on this type of scaling is that the size of a bus operator may not necessarily be a good proxy for the amount of time and resources spent by TSV in assessing the operator’s application. For example, a larger operator may be more sophisticated and be knowledgeable on what is required to complete an application for accreditation and operate buses safely. Larger operators may have dedicated government liaison personnel that are trained in dealing with accreditation application matters. In this scenario, TSV may not need to spend as much time or resources in assessing the application or liaising with the operator to ensure that all documents required for the application are submitted. On other hand, smaller operators, while having less buses, may require more effort to be expended by TSV in assessing their application because these operators may have less experience of skills is applying for accreditation.

There are other potential unintended consequences of scaling application fees. It may incentivise prospective operators to become accredited as a smaller operator and expand operations and a later stage. This would mean that TSV would assess their competency to operate based on different factors and circumstances.

DoT considers that application fees should be set as a fixed fee which is paid on submission of the application.

Annual fees

There are several options available for structuring annual fees.

Annual fees may be fixed so that each operator pays the same annual fee regardless of the size or type of services the bus operator provides. This fee structure could be inequitable, as it may not necessarily represent the resources and effort involved with regulating different bus operators. For example, larger operators will usually have more buses and therefore may require more bus compliance inspections. In this case, the higher number of compliance inspections will mean TSV incurs higher costs to regulate that operator, when compared with a smaller operator with only a few buses. A fixed fee per operator may not reflect an equitable cost to regulate the operator.

Another option is to scale based on the size of the bus operations. The size of a bus operator could be proxied based on a number of different factors. The simplest way to scale the annual fee is by charging a fee for each bus operated by the bus operator. This is what currently occurs under the current Regulations. In this type of fee structure, the more buses operated by a bus operator, the larger the annual fee that must be paid by that operator. As TSV holds information on the number of buses operated by each bus operator, the fee charged per operator will be straightforward for TSV to determine and administer.

There are other scaling options, including scaling annual fees based on the number of kilometres travelled by an operator’s bus fleet. This metric could be used as a proxy for the size of the operations and is a metric that takes into account the utilisation of the buses (i.e. how often and how far each bus is used to provide a bus service). It could be a more accurate reflection of the scale of regulatory activities by TSV required to monitor compliance with and enforce the regulations. For example, a bus operator controlling a larger number of buses that uses each bus for only short distances or infrequently may not require as many compliance inspections because there is a lower risk of the vehicle deteriorating due to use on the roads. On the other hand, operators with a smaller number of buses that uses the bus for long haul distances or very frequently, may require a larger number of compliance inspections as there may be greater wear and tear on the vehicle’s components from greater use. The limitation of using this type of scaling factor is that this type of data is not prescribed as a record required to be kept by bus operators and, therefore, is not currently collected by TSV. In order to enable such a fee structure, operators would need to keep records of the distance travelled by each bus, and one way of achieving this is to require this record to be kept as a requirement of the regulations. There may be compliance costs for the industry associated with recording and providing this data to TSV. However, DoT would not expect this cost to be significant as a large proportion of operators would already keep this information or could collect this information at low cost. DoT does not recommend scaling fees according distance travelled unless there is an associated change to record keeping requirements for operators.

Another option for the structure of fees would be a combination of a fixed fee component (i.e. fee per operator) in combination with a scaling component (e.g. fee based on the number of buses or another pre-determined metric).

In the case of annual fees, DoT will assess the impact of annual fees that are set:

* On a fixed basis
* On a variable basis scaling with the number of buses operated

##### Level of cost recovery

In this RIS, DoT also considers options relating to the level of cost recovery for the regulatory fees. Generally, RISs are required to consider at least one option at full cost recovery. Therefore, DoT will consider an option that would seek to fully recover the costs of bus safety regulation.

Another option for consideration is to set fees at the current level of cost recovery – that is, to consider retaining the current level of cost recovery. Cost and revenue data provided by TSV suggests that the current cost recovery level is approximately 17 per cent. That is, based on the total aggregate costs attributed to bus regulatory activities under the current Regulations in 2018-2019, about 17 per cent of that cost is recovered through fees under those Regulations. This level, however, is significantly lower than full cost recovery. This suggests that the current fee structure may not be achieving the efficiency and equitable objectives compared to alternative fees which are set to fully recover the costs of regulation.

Other levels of cost recovery could be considered as a transitionary measure to full cost recovery. Fee levels could be increased over time to transition to full cost recovery. This approach would seek to achieve the efficiency and equity objectives of recovering costs over time. The benefit of this approach is that fee increases are gradual and bus operators are not immediately subject to a large increase in fees. Should DoT recommend an increase in fees, these measures could be adopted as part of an implementation strategy to reduce the impact of the increase in fees on operators. However, it is reasonable for DoT to assess options for partial cost recovery at a level that is not necessarily at a level that is the status quo (i.e. 17 per cent).

##### Summary

This section summarises the different options DoT will assess. These options are based on the discussion of available options identified in the previous section. DoT notes that there are other combinations of options available that could be further assessed. The options presented here are intended to be representative. While there are many different possible combinations of options, DoT is only presenting a summary of the major options under consideration.

DoT will consider three options for recovering the costs of processing applications and the general regulation for bus safety:

* Option 1 reflects the current structure and level of fees that are imposed. That is, an application fee is applicable to accredited operators, with the fee set on a per operator basis. This would mean that fees would only partially recover costs.
* Option 2 would include the current structure and level of fees but also include a new fee to be levied annually on registered operators. Fees would be set such that there is partial cost recovery (fees less than the costs incurred by TSV in administering all applications for accreditation and registration).
* Option 3 would set fees such that there is full cost recovery both through the application fee and an annual fee that is imposed on both accredited and registered operators.

Whilst there are a range of other combinations of options that could be further assessed as part of an impact assessment, DoT has decided to further analyse these three options in order to reduce the number of combinations of options for assessment. DoT considers that these three options are representative options that:

* Include a full cost recovery option (i.e. Option 3)
* Include options which seeks to recover a greater proportion of costs compared to the status quo (i.e. Options 2 and 3), and
* Include fees which recover costs from registered operators.

DoT has considered a range of options in relation to structuring fees but will not further assess the impacts some of these options as part of the RIS. The reasons are as follows:

* Fees for audits or inspections – fees for audits and inspections require further consideration and analysis to ensure that the potential incentives and negative effects of setting such fees do not outweigh the benefits of such a fee structure.
* Varying or scaling application fees according to different circumstances of the applicant – DoT considers that a fixed fee best achieves efficiency and equity objectives as the costs of processing application do not vary significantly across different applicants.
* Fees for bus operator registration applications – there is no legal basis under the Bus Safety Act to set application fees for registration. There would need to be an amendment to the Bus Safety Act to impose a fee that is paid by applicants for operator registration on submission of that application.
* Scaling annual fees by distance travelled –TSV does not currently have the data to implement this fee structure. Additionally, there may be only minor efficiency benefits if this metric was used to scale regulatory fees instead of the number of buses.
* Increasing fees over time to achieve full cost recovery over the long term – DoT has identified some factors that would indicate that a full review of fees should be undertaken at a later time. Should DoT recommend increasing cost recovery, then DoT will consider the best approach to implementing fee increases at that time. Increasing fees over time may be one such approach.
* Scaling annual fees for registered operators – whilst scaling annual fees would likely promote the objective of equity, a fixed fee better reflects the drivers of TSV costs for registered operators. For the average registered operator, fixed fees are similar to the average fee that would be paid under a fee structure with a fixed and variable component.

**Table 6‑1: Summary of fee options for further assessment**

|  |  |
| --- | --- |
| Option | Description |
| Option 1  (status quo) | **Current structure and level of fees**   * Accredited operators pay an application fee on the submission of that application. * Accredited operators pay an annual fee with a fixed component and a variable component that scales according to the number of buses operated. * Fees are set at current levels on a partial cost recovery basis (17 per cent) |
| Option 2 | **Current structure and level of fees with the inclusion of an annual fee for registered operators**   * Accredited operators pay an application fee on the submission of that application. * Accredited operators pay an annual fee with a fixed component and a variable component that scales according to the number of buses operated. * Registered operators pay a fixed annual fee * Fees are set on a partial cost recovery basis (34 per cent) |
| Option 3 | **Full cost recovery**   * Accredited operators pay an application fee on the submission of that application. * Accredited operators pay an annual fee with a fixed component and a variable component that scales according to the number of buses operated. * Registered operators pay a fixed annual fee * Fees are set on a full cost recovery basis |

# Impact Assessment

## Vehicle safety

### Bus standards

This section considers the impacts of prescribing bus safety standards for vehicles based on considerations discussed in Section 6.1.1. The proposed bus standards involve extending the ADRs to buses manufactured prior to 1988, as well as specifically setting standards for (status quo):

* bus stability in single deck buses
* the removal or prevention of condensation on a windscreen
* restrictions on exposed bars
* equipment to provide a driver with a view of all passengers in or on the bus
* safe luggage racks
* prescribed bulkhead behind the driver’s seat.

##### Expected benefits

The main benefit of bus standards is to provide a minimum level of quality to which buses are required to be maintained to. This is expected to improve safety outcomes by mitigating threats to safety or eliminating hazards.

The proposed standards address safety risks that may arise in the operation of buses. While the specific impacts of the standards are not known, DoT expects that the rate of fatalities and serious injuries to be lower with the bus standards in place.

The proposed regulations for bus standards also provide a mechanism by which regulators can ensure that buses continue to meet the relevant standards. By including the standards in regulations, it enables the safety regulator to conduct inspections of buses to ensure compliance.

The proposed regulations also extend the application of the ADRs to buses manufactured prior to 1988. For these buses, there will be benefits attributable to the proposed regulations, as the safety standards of the latest ADRs will extend its application to any bus manufactured prior to 1988 that wish to enter the industry. Without the proposed regulations, buses manufactured prior to 1988 will not need to be compliant with certain ADRs and therefore the safety benefits will not be realised.

The benefits may not be as significant for buses manufactured after 1988, as these buses already need to be compliant with the ADRs. For example, the requirement to fit fire extinguishers and safe luggage racks are consistent with existing ADRs. A bus manufactured after 1988 is already required to meet minimum safety standards, the benefits of these standards cannot be attributable to the proposed regulations.

Overall, the bus standards address a range of miscellaneous issues relating to the design of the bus itself. While each individual standard as a standalone standard is not expected to contribute significantly to the objectives of the proposed regulations to minimise incidents, fatalities and serious injuries, there is expected to be at least a moderate level of improvement to overall safety of bus services. There will also be benefits to bus safety, through more consistent and more effective enforcement, which, in turn, will assist with improved bus safety outcomes, although this cannot be quantified.

##### Expected costs

Currently operating buses

The proposed regulations are almost identical to those contained in the current regulations with respect to bus design and standards. Consequently, DoT assumes that all currently operating buses are compliant with these requirements and that no additional costs will be incurred in meeting the standards. Even against a base case of no regulations, some of the requirements still need to be met by buses by virtue of the current ADRs and Vehicle Regulations, including the requirement to fit fire extinguishers and to have safe luggage racks.

New bus entrants

The proposed regulations potentially give rise to compliance costs for new buses added to a fleet.

However, some of these requirements are also contained within the relevant vehicle standards. As mentioned previously, the requirement to fit fire extinguishers and safe luggage racks are consistent with existing ADRs for example. For this reason, all new buses should already be equipped to the latest standard. Consequently, DoT does not expect that these requirements will impose any additional costs where new buses are added to the fleet.

The proposed regulations also seek to extend the ADRs to buses manufactured before 1988. As this requirement has been in the existing Regulations, all existing buses manufactured are likely to already be compliant with the proposed regulations. Accordingly, DoT does not expect the proposed standards which would apply the current ADRs to buses manufactured prior to 1988 to impose any costs on the industry.

However, it is also necessary to consider whether any operators will decide to operate buses manufactured prior to 1988 but have not previously been used to provide a bus service (and therefore not previously subject to the latest ADRs). Such buses would not comply with the proposed standard and, therefore, costs would be incurred in modifying and fitting the bus to comply with the standard. Data from VicRoads show as a proportion of the approximately 19,616 buses on their registration and licensing records, about 2 per cent are buses manufactured prior to 1988. Using this same proportion on TSV data on the total number of buses as of 31 December 2019 (13,360 buses), 267 buses currently operating are assumed to be manufactured prior to 1988. Since this is a small number, it is not likely that an operator would decide to use buses built prior to 1988 for the purpose of providing a transport service. Nevertheless, the proposed standards may provide a disincentive against operators switching to older model buses or modifying existing, compliant buses to remove features required. Overall, DoT considers that the burden imposed by this regulation for older buses will be negligible.

There may be some additional costs for buses added to the fleet where the proposed regulations impose requirements above and beyond the requirements of the current ADRs. Examples in the proposed regulations include stability for single deck buses, restrictions on exposed bars, equipment (such as a mirror) to provide a driver with a view of all passengers in or on the bus, and prescribed bulkheads behind the driver. To the extent that new buses are not already manufactured to these specifications, there will be an additional burden imposed on the bus industry. However, DoT notes that a decision to develop the Third Edition ADRs was made following endorsement of recommendations by the Australian Transport Advisory Council (ATAC) for international harmonisation of vehicle safety standards. The recommendation involved ensuring that attention is given to the alignment of vehicle categories and particular ADRs with their international counterparts except where there is sufficient evidence to justify unique requirement. Given this mandate for ADRs to align with international standards, it is expected that newly manufactured buses will broadly align with current ADRs. Therefore, DoT does not expect the burden for these standards to be significant.

It is acknowledged that some maintenance costs may be incurred in order to ensure that the relevant equipment continues to be maintained in operating condition. For example, fire extinguishers are expected to be maintained in operating condition. This includes compliance with the Australian Standard AS 1851 “Routine Service of Fire Protection Systems and Equipment” which require that fire extinguishers are inspected, tested and serviced every 6 months. Based on quotes received from two fire extinguisher testing companies, an inspection, test and service costs approximately $5 to $15 per fire extinguisher test every 6 months. This cost, however, cannot be attributable to the regulations, as it is a requirement under the Australian Standards.

##### Summary

DoT expects the benefits to outweigh the costs because:

* the compliance costs associated with complying with the standards are minor
* the regulations address potential safety risks in buses that are not otherwise covered by the Vehicle Standards under the Road Safety Act or the Heavy Vehicle National Law.

For these reasons, DoT proposes that the regulations for bus standards be made.

### Requirements for maintaining vehicle safety

#### Safety systems for vehicle safety

This section considers the impacts of implementing safety systems in relation to the maintenance of buses based on considerations discussed in Section 6.1.2.1. The assessed options would require (status quo):

* accredited operators to implement systems and processes to be in place to ensure vehicles are inspected and maintained and defects are reported and cleared.

Note that the impacts associated with any records or documents produced as part of an MMS is considered under the impacts of records in Section 7.7.

##### Expected benefits

The proposed regulations require accredited bus operators to establish and maintain a maintenance management system (MMS) in relation to maintaining vehicle safety. Essentially, accredited bus operators will be required to actively put systems in place to ensure that the vehicles used in their bus service is safe. This should lead to improvements in managing the safety of the buses in an accredited operator’s fleet by ensuring that any deficiencies in the safety of a vehicle are promptly identified and rectified. This will minimise the number of incidents resulting from mechanical failures, which will ultimately lead to a reduction in injuries (serious or otherwise) or fatalities.

Since accredited bus operators already have a duty to ensure safety, so far as is reasonably practicable, the effects of implementing systems to ensure vehicles are appropriately maintained are implicit to the underlying safety duty. Therefore, the expected safety benefits will be linked to the actions undertaken to comply with the safety duty, such as performing vehicle inspections. It may be the case that accredited bus operators will already develop safety systems to ensure the safety of vehicles, in the absence of a specific requirement in regulations to develop an MMS.

In addition, even in the absence of regulations, an operator may already perform activities related to the maintenance of a vehicle, particularly in relation to those maintenance activities specified by the manufacturer or other sources deemed appropriate by the operator. Activities related to this requirement may be considered business as usual practice, so the benefits relating to requiring regular maintenance of vehicles may not necessarily be entirely attributable to the proposed regulations. While there may be some benefits to increasing maintenance of vehicle consistently across the whole bus fleet, the greater benefits likely arise from providing a backstop to marginally increase compliance with maintaining vehicles.

However, the purpose of the regulations is to ensure that the systems are implemented across all operators. DoT considers the proposed regulation is designed to complement the general safety duties scheme under the Bus Safety Act. The overall benefits directly attributed to the regulations will be difficult to ascertain.

The development and maintenance of an MMS will also aid the Safety Director in compliance monitoring and enforcement. The MMS document will provide a point of reference to transport safety officers undertaking audit of duty holders when investigating compliance with the safety duties. The transport safety officers will be able to assess how the duty holder proposes to manage certain safety risks and whether the duty holder has implemented the proposed mitigations and controls. This will also assist in improving safety outcomes.

There are clearly benefits to requiring a system be put in place for the inspection vehicles and to identify vehicle safety issues before they become an issue. DoT expects that the safety benefits in reducing bus safety incidents, fatalities and serious injuries will be moderate to high.

##### Expected costs

The main costs associated with this option are the administrative and compliance costs of establishing and implementing an MMS.

The proposed regulation for the MMS is an outcomes-based regulation and requires the operator to implement a maintenance system so that buses are maintained in a fit, serviceable and safe condition. This provides flexibility for the operators to set their systems based on their own bus operating model and fleet. This means there will be a range of costs incurred by each operator as each MMS will be different.

The current regulations provide for an MMS in accordance with requirements by the Safety Director, Currently, TSV require that an MMS document the following:

* clearly defining and documenting the accountabilities and authorities for persons involved in all the activities associated with the MMS
* each person who has a role under an MMS must be appropriately trained and have the required competence to perform that role
* prescribe maintenance activities as specified by the manufacturer or other sources deemed appropriate by the accredited operator
* prescribe an inspections regime for inspections
* establish processes to identify, record, report and address defects in buses.

The option considered is applying this requirement to accredited operators.

Administrative costs

There will be administrative costs related to developing and maintaining an MMS.

*Hourly labour costs*

The average total cost per bus operator of meeting the administrative aspects of the above regulatory requirements can be calculated using average hourly wage rates and applying an appropriate multiplier in respect of on-costs.[[12]](#footnote-13)

*MMS development*

It is assumed that the time taken to develop an MMS will take approximately 10 hours. This includes time to develop systems to ensure all buses are to be maintained in a fit, serviceable and safe condition and, for the purposes of this analysis, DoT will assume that an MMS will include the documentation and processes required under the current TSV requirements for developing an MMS.

All current accredited bus operators are already required to have an MMS in place, so only new accredited operators will need to develop an MMS. That is, all existing accredited bus operators will continue to use the maintenance system they already have in place for the maintenance of their bus fleet (as required under the existing regulations which prescribes MMS to be in accordance with requirements by the Safety Director). Therefore, DoT will assume that existing accredited operators do not incur the costs of developing a new MMS. The proposed requirements relating to an MMS is less prescriptive than what is required under the existing Regulations. This change will allow for flexibility in how the safety system is developed for each operator. This supports the assumption that existing accredited operators with an MMS developed under the existing Regulations will still be compliant with the proposed regulations, and so will not be required to develop a new MMS.

Based on TSV data from 2016 to 2019, there is an average of 40 new accreditations granted per year. This means that, for the purposes of this analysis, DoT will assume 40 accredited operators per year will be required to develop an MMS.

*MMS maintenance*

All active accredited operators will be required to maintain an MMS, which include an annual audit of their MMS to identify any deficiencies in their systems. It is expected that maintaining an MMS will not be as onerous as developing an MMS and is assumed to take approximately 4 hours.

There were 667 active accredited operators as of 31 December 2019. The assumed future annual growth rate for accredited operators is 1 per cent.[[13]](#footnote-14) [[14]](#footnote-15)

*Overall MMS administrative costs*

Table 7‑1 summarises the assumptions used for calculating the administrative costs of the MMS requirement.

**Table 7‑1: MMS cost parameters for accredited operators**

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Number of operators** | **Annual growth rate of operators** | **Resource cost** |
| Develop MMS | Average of 40 new applicants per year | N/A | 10 hours  ($763.70) |
| Maintain MMS | 667 active operators | 1% | 4 hours  ($305.48) |

Table 7‑2 summarises DoT estimates of the administrative costs. Based on a real discount rate of 4 per cent, DoT estimates the 10-year net present value (NPV)[[15]](#footnote-16) of the compliance costs for new accredited operators to develop an MMS is approximately $0.25 million. The equivalent annual cost (EAC) is approximately $0.03 million. DoT also estimates the 10-year NPV of the costs for all accredited operators to maintain an MMS is approximately $1.81 million and the EAC is approximately $0.22 million.

**Table 7‑2: NPV and EAC for accredited operators to develop and maintain MMS**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Develop MMS | $0.25m | $0.03m |
| Maintain MMS | $1.81m | $0.22m |
| Total | $2.06m | $0.25m |

Compliance costs

There are also compliance costs associated with implementing the activities covered by requirements for an MMS. Specifically, this may include:

* inspections
* maintenance
* defect reporting and clearance.

*Inspections*

An inspections regime in an MMS may involve the following:

* pre-trip inspections
* vehicle safety inspections
* roadworthy inspections.

Accredited operators are already required to undertake annual roadworthy inspections of their buses under the Bus Safety Act, so DoT will exclude this cost as it is not attributable to the proposed regulations. DoT will not further consider these inspections as part of this RIS.

Pre-trip inspections are inspections carried out prior to the first passenger trip on each operating day. This is meant to be a quick inspection, usually done by the driver or another person before the shift starts to identify if there are any obvious faults to the vehicle. Therefore, DoT will assume that pre-trip inspections take on average 10 minutes per inspection.

Based on TSV data from 2016 to 2019, the assumed future annual growth rate for buses introduced into the fleet and operated by accredited operators is 1 per cent.[[16]](#footnote-17)

Table 7‑3 outlines the assumptions made relating to the calculation of costs relating to conducting pre-trip inspections.

**Table 7‑3: MMS pre-trip inspection cost parameters for buses operated by accredited operators**

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Number of buses as of 31 December 2019** | **Annual growth rate of buses** | **Labour cost** |
| Pre-trip inspections | 7,302 | 1% | 10 minutes  ($12.73) |

An additional assumption that is needed is the likely the frequency of use of a bus throughout the year. A bus might not be used every day of the year, and there may be a range of days per year that any given bus may operate. The frequency of use will impact the number of pre-trip inspections undertaken. DoT will assume that vehicle usage will fall within following ranges:

* low use (e.g. courtesy bus service) may only operate one to two days per week (or 52 to 104 days per year).
* medium use (e.g. tour and charter bus service) may operate from two to five days per week (or 104 to 260 days per year)
* heavy use (e.g. commercial route bus service) may only operate from five to seven per week (or 260 to 360 days per year[[17]](#footnote-18)).

These ranges take into account that the fleet of buses operated by accredited operators may not be used often (“low use”) to being used almost daily (“high use”). Given that accredited bus operators operate commercial or local bus services, it is more likely that the number of pre-trip inspections will fall into the medium to heavy use category. Although there may be some operators who operate infrequently. DoT does not have commercial data to accurately estimate vehicle usage, which is why costs will be estimated based on broad categories.

Table ***7*‑*4*** summarises the results of the calculations and presents the 10-year NPV and EAC values for all accredited operators under a range of different levels of bus utilisation, based on a real discount rate of 4 per cent. For illustrative purposes, the calculations assume the full fleet of accredited bus operators are operating under each of the usage criteria (i.e. calculations based on 100 per cent of buses operated by accredited operators within each of the low use, medium use, and high use categories). This provides an indication of the lowest feasible cost and highest feasible costs for accredited bus operators.

**Table 7‑4: NPV and EAC for MMS pre-trip inspections**

|  |  |  |  |
| --- | --- | --- | --- |
| **Usage** | **Inspections per year per bus** | **NPV** | **EAC** |
| Low use | 52 – 104 days | $42.9m – $85.9m | $5.29m – $10.6m |
| Medium use | 104 –260 days | $85.9m – $214.7m | $10.6m – $26.4m |
| High use | 260 – 360 days | $214.7m – $297.3m | $26.4m – $36.7m |

Another component of the MMS is vehicle safety inspections. These are inspections by a mechanic engaged by the operator or outsourced to another mechanic. There are maximum recommended intervals for inspections specified by the vehicle manufacturer or any other relevant source (if the manufacturer does not specify inspection intervals or there is no other relevant source, the inspections interval is either three months, or 20,000km for a bus less than five years old, or 10,000km for a bus that is five years old or more or has travelled more than 500,000km, whichever occurs first). It is assumed that this inspection will take about 1 hour per bus. For the purposes of this RIS, in the absence of information on every bus’s specified manufacturer inspection interval or distance travelled by each bus, it is assumed that the inspection interval for buses operated by accredited bus operators is once in every three months or four inspections per bus per year. Note that the frequency of the vehicle safety inspections regime may be higher in cases where a bus has travelled either 20,000km or 10,000km earlier in the circumstances listed above. DoT is seeking feedback on whether the inspection interval of every 3 months is appropriate.

Table 7‑5 outlines the assumptions made relating to inspection costs related to vehicle safety inspections.

**Table 7‑5: MMS vehicle inspection cost parameters for buses operated by accredited operators**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Number of buses as of 31 December 2019** | **Annual growth rate of buses** | **Inspections per year per bus** | **Resource cost** |
| Vehicle safety inspections | 7,302 | 1% | 4 | 1 hour  ($76.37) |

Based on a real discount rate of 4 per cent, Table 7‑6 shows that the 10-year NPV and EAC for accredited operators to implement vehicle safety inspections is $19.8 million and $2.4 million, respectively.

**Table 7‑6: NPV and EAC for vehicle safety inspections**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Vehicle safety inspections | $19.8m | $2.4m |

*Maintenance*

In relation to maintenance, an operator is required to perform maintenance activities specified by the manufacturer or other sources deemed appropriate by the operator. As discussed earlier in this section, activities related to this requirement can be considered a business as usual practice, as it is expected that operators would be undertaking maintenance as specified by the manufacturer as a matter of course (e.g. to avoid warranty issues etc.). For this reason, the costs of a vehicle maintenance regime will not be considered a burden imposed by the regulations.

*Defect reporting and clearance*

The costs associated with the requirements relating to defect reporting and clearance of defects are already considered under sections of the RIS relating to records, incidents notification and vehicle standards.

##### Summary

The vehicle is a critical input into the safety of the bus service. If left not adequately maintained, the vehicle may contribute to a greater number of incidents or may not be able to mitigate the consequences of an incident as effectively. This will lead to higher rates of fatalities and injuries (serious or otherwise) compared to a scenario where vehicles are regularly maintained. The costs associated with a regulatory requirement to develop and maintain safety systems for vehicle maintenance are $2.06 million and the costs to comply with those systems are $62.7 million to $317.1 million over the life of the regulations (i.e. a 10-year period). DoT notes that many operators would have incurred these costs regardless of the proposed regulation, as it is good practice to regularly maintain vehicles. Therefore, the costs estimated presented here reflect the upper bound of costs imposed on the industry.

DoT does not have information of the possible level of benefits attributable to the proposed regulation. In part, this is due to the fact that the regulation is already in place. This proposed regulation will be further considered in Section 7.1.2.3 using break-even analysis methodology.

#### Roadworthy inspections

This section considers the impacts of two options relating to the roadworthy inspection of each bus operated by an operator based on considerations described in Section 6.1.2.2. The options under consideration are:

* Option 1 (status quo): All buses subject to annual roadworthy inspections (noting that annual inspections for buses operated by accredited operators is the base case).
* Option 2: All buses subject to annual roadworthy inspections and a power for the Safety Director to require any operator to conduct additional inspections if the Safety Director considers it appropriate to do so based on a risk assessment of that operator.

Both options would require (status quo):

* buses to be inspected by a Licensed Bus Tester (LBT)
* buses to be inspected according to the vehicle standards for buses in the Road Safety (Vehicles) Regulations (i.e. equivalent to a roadworthy inspection) and any additional requirements under the Bus Safety Act.

##### Expected benefits

The mechanical condition of the bus fleet is a significant contributor to bus safety. Regular inspections by a qualified, independent party are widely seen as an important and effective means of identifying mechanical faults, defects and failures in a vehicle. Once identified and rectified, DoT expects there would be lower rates of fatalities and serious injuries with the proposed regulations.

From Table 3‑2 it can be seen incidents relating to the condition of a vehicle (i.e. mechanical failures and fires) make up only a small proportion of all bus safety incidents (just under seven per cent of total incidents), this may suggest that the current regime of inspections is somewhat effective in ensuring that high standards are achieved with regard to this particular aspect of bus safety.

The benefits of roadworthy vehicle inspections are the avoided costs of mechanical failures. It is important to note that the number of mechanical failure incidents currently observed still occurs even with the inspections (and MMS) regime in place. This means that without a roadworthy inspections regime the number of incidents may be higher. Given these considerations, DoT expects the impact of roadworthy inspections on reducing bus safety incidents relating to mechanical failures, as well as minimising the incidence of fatalities or serious injuries, is moderate to high.

##### Expected costs

*Option 1 (status quo)*

Option 1 effectively imposes a requirement on registered operators to have their buses undergo a roadworthy inspection on an annual basis. The base case is no roadworthy inspection required to be undertaken for this cohort of bus operators.

As of 31 December 2019, there are 6,058 active buses operated by registered operators. Under this option, these buses and any new buses introduced into a registered operator’s fleet of buses would need to undergo a roadworthy inspection by a licensed bus tester. Based on TSV data from 2016 to 2019, the average annual growth rate for new vehicles operated by registered operators is 6 per cent.

DoT does not expect there to be significant opportunity cost of time for buses operated by registered operators when the vehicle is taken out of the fleet to undergo a roadworthy inspection by an LBT. While most operators aim to maximise vehicle utilisation, the level of utilisation is highly dependent on the demand for the bus service. Annual inspection requirements provide registered operators a two-week window around the anniversary date in which to take their bus to undergo a roadworthy inspection (i.e. a roadworthy inspection cannot occur earlier than 7 days or later than 7 days after the fixed internal inspection date). This affords the registered operator flexibility within this two-week time period to have their bus inspected. This reduces or minimises the impact of taking the vehicle out of operation to have the vehicle serviced, as there is an opportunity for the operator to time the roadworthy inspection to coincide with a time when the vehicle would not be utilised anyway. In addition, as registered operators include community transport operators and not-profit service providers, DoT does not expect there to be significant forgone revenue when a vehicle is taken out of the fleet to be inspected. Therefore, for the purposes of this RIS, the opportunity cost is not expected to be high.

Based on an analysis of market rates, DoT estimates the inspection fee by a licensed bus tester is $300 per inspection. The assumptions used in the calculation of costs parameters are shown in Table 7‑7.

**Table 7‑7: Inspection cost parameters for buses operated by registered operators**

|  |  |  |  |
| --- | --- | --- | --- |
| **Operator type** | **Number of buses as at 31 December 2019** | **Annual growth rate of registered buses** | **Other costs** |
| Registered | 6,058 | 6% | $300 |

Based on these assumptions, DoT estimates that that Option 1, which would require annual roadworthy inspections of buses operated by registered operators, would cost $21 million in NPV terms (over 10 years) and $2.6 million in EAC.

**Table 7‑8: NPV and EAC for annual inspections for buses operated by registered buses operators**

|  |  |  |
| --- | --- | --- |
| **Inspection frequency** | **NPV** | **EAC** |
| Annual | $21m | $2.6m |

*Option 2*

Under Option 2, TSV would have discretion to require more frequent roadworthy inspections if this is warranted based on an assessment of the risk profile of that operator. This would apply to both accredited bus operators and registered bus operators and would mean that an operator would be required to have a bus inspected at the frequency as directed. For example, this could mean biannually or quarterly. Since DoT has not conducted a full risk analysis of the bus operators and their fleet, the full impact of this option is unknown. The compliance costs attributable to this option, over and above that of Option 1, will depend on:

* the number of operators required to have their vehicles inspected more frequently
* the frequency of inspections required, and
* the duration of the period whereby operators are subject to more frequent inspections.

DoT has estimated the compliance costs of an inspection as approximately $300 per bus. Therefore, the aggregated additional compliance costs will equal to the cost of inspected a bus multiplied by the number of buses required to undergo an additional roadworthy inspection.

##### Summary

DoT has estimated that an annual roadworthy inspection regime would impose $21 million in compliance costs on registered operators over the life of the regulations. Approximately 6,000 buses would need to be inspected annually. DoT has also considered regulations which would permit the Safety Director to require additional roadworthy inspections of an operator if, based on an assessment of risk, such additional inspections are warranted. While DoT is unable to quantify the additional compliance costs of this option (i.e. Option 2), additional costs are only incurred if the operator is identified as operating unsafely. If an operator adequately maintains and repair their vehicles, then no additional costs will be incurred.

DoT does not have good data to estimate the likely benefits associated with a roadworthy inspection regime for registered operators. For this reason, DoT further considers Option 1 using break-even analysis methodology in Section 7.1.2.3.

#### Break-even analysis

The previous sections identified the expected benefits and calculated the expected costs of interventions relating to vehicle inspections (both in terms of mandatory annual roadworthy inspections and implementing safety systems for vehicle maintenance). In order to assist in making recommendations on the proposed regulations, tools such as net present value or benefit-cost ratio can be used to determine whether an intervention should go ahead. A proposed intervention has merit if the intervention has a positive net present value (greater than zero), or if the benefit-cost ratio is greater than one. However, since the efficacy of the policy intervention is not known, it is not possible to derive these estimates without making several strong assumptions.

In order to assist decision making about the merits of the proposed regulation, a break-even analysis methodology can be used to complement the analysis. A break-even analysis provides an indication of the level of benefits the community would need to observe for the proposed intervention to ‘break even’ (i.e. the benefits of the intervention would be equal to the costs of the intervention). In the case of the options being considered, specifically, this involves a consideration of how many fatalities and serious injuries would need to be avoided for the intervention to be worthwhile.

DoT estimates that the costs of interventions relating to safety systems for vehicle maintenance for accredited bus operators and mandatory annual roadworthy inspections for buses of registered operators, are as follows:

* $0.25m per annum to develop and review an MMS and $7.69m to $39.1m per annum to comply with an MMS
* $2.6m per annum for mandatory annual roadworthy inspections for buses operated by registered operators.

Note that some of the costs estimated above may not be entirely attributable to the regulations. Some operators may implement safety systems irrespective of the regulations as part of good practice to regularly maintain vehicles.

DoT expects that the interventions will reduce the number of mechanical failures in buses used to provide a bus services and contribute to reductions in fatalities and serious injuries. The values of avoiding deaths and serious injuries can be estimated in a number of ways. For the purposes of the analysis, DoT will use parameter values developed by the Australian Transport Assessment and Planning (ATAP) for fatalities and serious injuries estimated using a willingness to pay approach (outlined in Table 7‑9). For illustrative purposes, DoT will use the urban values.

**Table 7‑9: Estimated costs by injury type using the willingness to pay approach, June 2013**

|  |  |  |
| --- | --- | --- |
| Injury severity | Urban | Non-urban |
| Value of statistical life (VSL) | $7,425,629 | $7,342,167 |
| Value of serious injury (VSI) | $361,733 | $226,025 |

Source: Australian Transport Assessment and Planning Guidelines

These parameter values can be used to calculate the number of fatalities that need to be avoided or the number of serious injuries that need to be avoided in order for the two interventions under consideration to ‘break even’. That is, for the benefits of the intervention to equal the costs of the intervention. Table 7‑10 summarises these calculations. In the case of the proposal to require to an MMS, there must be a reduction of between 1 to 5 fatalities per year or 21 to 105 serious injuries per year for the intervention to ‘break even’. For the annual inspection regulations, there must be a reduction of up to 1 fatality per year or approximately 7 serious injuries per year for that intervention to ‘break even’. In calculating these estimates, DoT has assumed that under the upper bound of the estimates, there is a high utilisation rate of buses by accredited operators.

**Table 7‑10: Summary of results of break-even analysis for MMS and annual inspections**

|  |  |  |  |
| --- | --- | --- | --- |
| **Intervention** | **EAC** | **Avoided Fatalities** | **Avoided serious injuries** |
| MMS | $7.94m – $39.35m | 1 to 5 | 21 to 105 |
| Annual inspections | $2.6m | Up to 1 | ≈7 |

It is necessary to consider whether this range of benefits is realistic and achievable. To provide context for the analysis, Table 7‑11 below shows the number of vehicle fault incidents and the corresponding fatalities or serious injuries from 2011 to 2019. This provides a picture of the ratio of fatalities to serious injuries that a mechanical failure or fire is likely to cause. Out of a total 252 incidents that were a result of a vehicle fault incident, zero resulted in a fatality, and three resulted in a serious injury. Based on this data, it is assumed that mechanical failures and fires primarily results in a serious injury and less likely to result in a fatality.

**Table 7‑11: Vehicle fault incidents resulting in a fatality or serious injury – 2011-2019**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Vehicle fault incident** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| Mechanical Failure | 8 | 12 | 9 | 6 | 10 | 17 | 25 | 27 | 20 | **134** |
| Fatality |  |  |  |  |  |  |  |  |  | **0** |
| Serious injury | 1 | 1 |  |  |  |  |  | 1 |  | **3** |
| Fire | 11 | 13 | 12 | 14 | 15 | 13 | 18 | 16 | 6 | **118** |
| Fatality |  |  |  |  |  |  |  |  |  | **0** |
| Serious injury |  |  |  |  |  |  |  |  |  | **0** |

Source: TSV

DoT also makes the following observations:

* In comparison to current serious injury rates caused by mechanical failures, the reduction in the number of serious injuries needed to break even for both options appear to be much higher than the current level of serious injuries. However, it is hard to determine what the true serious injury rate would be in the absence of regulations.
* On a per accredited vehicle basis (noting the regulations would apply to 7,305 buses operated), an MMS would imply for every 1,000 buses operating, approximately three to fourteen serious injuries would need to be avoided per year.
* On a per registered vehicle basis (noting the regulation would apply to 6,058 buses operated by registered operators), a yearly inspection for vehicles operated by registered operators would imply for every 1,000 buses operating, one to two serious injuries would need to be avoided each year.
* For context, a statistical summary of road trauma in Australia published by BITRE showed that in 2016 there were 2.1 hospitalised injuries per 1,000 registered motor vehicles (includes car, trucks, light commercial vehicles and buses).[[18]](#footnote-19)

An important indicator of the contribution of the interventions relating to vehicle inspections to the level of performance being achieved is the number of defects being detected by a licensed bus tester during the course of the inspection programme mandated by the regulations. Table 3‑11 shows that there is still a significant number of items failed when buses are presented for their annual roadworthy vehicle inspections. While these failures may not have resulted in incidents involving a fatality or serious injury, it suggests that more could be done to improve safety in bus services. In particular, DoT recommends that measures to ensure that mechanical failures and defects are minimised continue in the proposed regulations.

The purpose of requiring both roadworthy inspections and accredited operators to implement systems for maintaining vehicles is to identify and rectify mechanical failures and faults relating to the vehicle at the source. This will minimise the number of fatalities, serious injuries and other injuries and incidents that may occur from a vehicle fault.

In relation to roadworthy inspections, given that Option 2 targets risks and does not apply generally, DoT recommends this option be adopted in the proposed regulations.

## Safety of bus operations

DoT has identified a range of options to address a variety of safety risks that relate to the safe operation of bus services, as described is Section 6.2. The merits of these options are considered further in this section.

### Safety systems for bus operations

This section considers the impacts of implementing a safety system in relation to the operation of bus services based on considerations discussed in Section 6.2.1. The assessed option would require (status quo):

* accredited bus operators to implement systems and processes to actively document and manage safety risks in relation to their bus operations.

Note that the impacts associated with any records or documents produced as part of an MIS is considered under the impacts of records in Section 7.7.

##### Expected benefits

The regulations propose that accredited bus operators establish and maintain a management information system (MIS) in relation to their operations. Accredited bus operators will be required to actively document and manage safety risks associated with their bus operations. This should lead to an improved understanding and management of safety risks in the context of the bus services operated by the accredited operator. Ultimately, and in turn, this should lead to improvements in the safety of the bus services provided by the commercial bus service and local bus service sectors as risks and hazards are appropriately managed for this sector.

Since accredited bus operators already have a duty to ensure safety, so far as is reasonably practicable, the expected benefits to this requirement are integrated with this general safety duty. Given the size and complexity of some of the bus services operated by accredited operators (commercial and local bus services), it may be the case that these operators would already develop systems and processes to manage safety. As such, DoT considers the proposed regulation is designed to be complementary to the safety duties scheme under the Bus Safety Act.

The development and maintenance of an MIS will also aid the Safety Director in compliance monitoring and enforcement. Documents as part of an MIS will provide a point of reference to transport safety officers undertaking audit of duty holders when investigating compliance with the safety duties. Transport safety officers will be able to assess how the duty holder proposes to manage certain safety risks and whether the duty holder has implemented the proposed mitigations and controls. This is also expected to lead to improved safety outcomes by ensuring the regulator has clarity on actions required by operators to improve the safety of their operations.

The benefits to requiring a system be put in place to actively identify and document bus operational issues before they become an issue are difficult to quantify. To the extent that regulations improve compliance with the Bus Safety Act and allow for improvements in monitoring and enforcement of the safety duties under that Act, it is expected that an MIS will realise a moderate to high level of benefits in meeting the objectives of reducing bus safety incidents, fatalities and serious injuries.

##### Expected costs

There will be costs involved with establishing and maintaining an MIS. The main costs associated with this option is the administrative and substantive compliance costs associated with the management systems.

Administrative costs

The proposed regulations require that an MIS contain the following matters:

* Safety policy
* Governance and internal control arrangements
* Accountabilities and authorities
* Information management
* Communication of safety information and issues
* Hazard, risk and change management
* Emergency management plan
* Competence management
* Incident reporting and investigation
* Management information system audit arrangement and processes.

There will be costs associated with both the development of an MIS and the periodic maintenance and review of the MIS.

*MIS development*

DoT assumes that the time taken to develop an MIS will take approximately 25 hours. Only new accredited operators will incur the costs associated with the development of an MIS. This includes time to consider all matters mentioned above relating to developing an MIS.

As the proposed requirements relating to an MIS are similar to what is already required under the current regulations, existing accredited operators already have a developed MIS, so will not be required to develop a new MIS.

*MIS maintenance*

The maintenance costs for an MIS would include an annual audit of the MIS to identify any deficiencies in the systems. This cost applies to all actively accredited operators. It is expected that maintaining an MIS is not expected to be as onerous on operators once the MIS is set up. This activity is assumed to take approximately 10 hours.

*Overall MIS administrative costs*

Table 7‑12 outlines the assumptions used for calculating the costs of the MIS requirement.

**Table 7‑12: MIS cost parameters for accredited operators**

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Number of operators** | **Annual growth rate of operators** | **Labour input cost** |
| Develop MIS | Average of 40 average new applicants per year[[19]](#footnote-20) | N/A | 25 hours  ($1,909.25) |
| Maintain MIS | 667 active operators | 1% | 10 hours  ($763.70) |

Table 7‑13 shows that, based on a real discount rate of 4 per cent, the 10-year NPV for all accredited operators to develop an MIS is estimated to be approximately $0.64 million. The EAC for all newly accredited operators to develop an MIS is approximately $0.08 million. Assuming an annual growth rate of 1 per cent of active accredited operators, the 10-year NPV for all accredited operators to maintain an MIS is estimated to be approximately $4.5 million. The EAC for all accredited operators to maintain an MIS is approximately $0.55 million.

**Table 7‑13: NPV and EAC to develop and maintain MIS for accredited operators**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Develop MIS | $0.64m | $0.08m |
| Maintain MIS | $4.5m | $0.55m |

Substantive compliance costs

Some of the matters covered under the requirement for an MIS are mostly administrative in nature and do not require ongoing substantive compliance costs, such as development of a safety policy, governance and internal control arrangement, accountability and authorities. While there may be some additional compliance costs beyond the purely administrative costs in establishing the process or documentation relating to the specific matter, these additional compliance costs may relate to what is already required more broadly under the Bus Safety Act. For this reason, DoT is not including these costs as attributable to the requirement to prepare a MIS.

Other matters required to be complied with will be analysed and assessed in other sections of this RIS. Information management requirements relating to records and their compliance costs will be covered under the benefits and costs analysis under the Records section of this RIS. Additionally, the compliance costs relating to incident reporting and investigation is covered under the Incident Reporting section of this RIS.

##### Summary

Requirements to implement systems and processes are intended to complement the general safety duty obligations imposed on the industry. Documenting and following these systems is expected to lead to better risk management practices by bus operators. DoT estimates the compliance costs associated with the systems are approximately $5.14 million over the life of the regulations. DoT considers that these are reasonable costs in the context of improving bus safety and recommends that the regulations be made.

Note that some of the costs estimated to implement systems to ensure the safety of bus operations could be attributed to the obligations under the Bus Safety Act, rather than wholly attributable to the proposed regulations. As such, the estimated compliance costs attributed to the regulations may be lower than the estimated $5.14 million over the life of the regulations. The extent to which costs may be attributable to the Bus Safety Act (in the absence of supporting regulations) are not able to the quantified, although DoT expects it to be substantial.

### Maximum number of passengers

This section considers the impacts of regulations relating to the maximum carrying capacity of a bus, as described in Section 6.2.2. The assessed option would require (status quo):

* the bus operator to determine the maximum carrying capacity of the vehicle based on an assessment made by the manufacturer of the vehicle or licensed bus tester
* the bus operator to display a sign advising what the maximum carrying capacity of the bus is
* the signs to be displayed on all buses with 13 or more seats.

##### Expected benefits

The purpose of imposing requirements on bus operators is to make clear the maximum safe loading of a bus. This is important as different makes and models of buses will likely have different safe carrying capacities. Additionally, if any modifications have been made to the bus, then the safety performance of the bus in relation to carrying capacity may be affected. Accordingly, any declaration made by the original manufacturer in respect of that capacity may be out of date.

This measure informs the driver of the maximum carrying capacity of a bus and is intended to affect the behaviour of the driver during the operation of the bus. Drivers should not be accepting more passengers on a bus than the vehicle is able to carry safely. DoT notes that not all buses are the same and are likely to have different carrying capacities. The benefits of the proposed regulation are likely to be greater for operators that run different configurations of buses where information about the safe carrying capacity may not be readily available to the driver. It is intended that the proposed regulation will minimise the safety risks of a bus carrying in excess of its maximum carrying capacity.

DoT expects that these measures will assist in reducing loss of life or serious injury arising from overloaded buses. For example, if a bus is not able to stop in time in hazardous traffic conditions, an overloaded bus is likely to create a higher incidence or severity of injury. Although the consequences of overloading are considered significant, DoT considers the likelihood of overloading to be relatively low (e.g. overloading may only occur peak period or on popular routes). Given these considerations, the overall benefits of imposing requirements relating to maximum capacity will be relatively low.

##### Expected costs

The expected costs of the proposed regulation under consideration involves compliance costs to verify the maximum carrying capacity and to acquire and display the sign.

DoT expects that the costs associated with determining or verifying the maximum carrying capacity are minimal as this value is, in the majority of cases, determined by the manufacturer as a matter of course during manufacture of the bus. The costs for the operator to verify and record (i.e. physically checking the bus for the compliance plate where the maximum carrying capacity is specified) are unlikely to be significant.

The proposed regulations for displaying a notice of the maximum carrying capacity only applies to buses with seating positions for 13 or more adults, including the driver. A desktop analysis of quoted prices of vehicle signs advertised on private company websites indicates the cost of a sign ranges from $10 to $50 per vehicle. For the purposes of this RIS, the mid-point of this range, $30 per sign, will be taken as the average cost. DoT will also assume that the installation of the sign takes about 10 minutes.

Many, though not all[[20]](#footnote-21), buses with seating for 13 or more adults (including the driver) are operated by accredited bus operators. According to data provided by VicRoads’ Registration and Licensing, the proportion of buses with 13 or more seats is approximately 59 per cent. Using this proportion for the 13,360 buses operated by active accredited and registered bus operators (as at 31 December 2019), DoT estimates there are 7,882 buses that seat 13 or more adults as at 31 December 2019.

Table 7‑14 outlines the parameters for calculating the compliance costs of the maximum passenger sign requirements. New buses entering the industry will also need to install signs identifying the maximum number of passengers. Based on TSV data, the annual growth rate for all buses (accredited and registered) is estimated to be approximately 3.1 per cent.

**Table 7‑14: Maximum passenger sign cost parameters for buses with 13 or more seats**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Bus type** | **Number of buses (as at 31 December 2019)** | **Annual growth rate of buses** | **Labour cost** | **Cost of sign** |
| 13 or more seat | 7,882 | 3.1% | 10 minutes  ($12.73) | $30 |

Based on a real discount rate of 4 per cent, the 10-year NPV and EAC for all operators of all buses with 13 or more seats to comply with the proposed regulation relating to maximum passenger signs is $0.44 million and $0.054 million respectively, as outlined in Table 7‑15 below.

However, noting that the proposed regulations relating to maximum passenger signs is a continuation of the current regulations, DoT also considers that operators of 13 or more seat buses already in their fleet will already have complying maximum passenger signs installed. As such, this RIS also considers the costs applicable to only new vehicles entering the industry, with the 10-year NPV and EAC for new buses the comply with the proposed regulation being $0.1 million and $0.012 million respectively, as outlined in Table 7‑15.

**Table 7‑15: NPV and EAC for maximum passenger signs**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Maximum passenger signs (all buses) | $0.44m | $0.054m |
| Maximum passenger signs (new buses only) | $0.1m | $0.012m |

##### Summary

DoT recommends that the regulations continue to prescribe requirements for operators to determine the maximum carrying capacity of buses they operate and install signs advising what that capacity is. This will provide better information to drivers. DoT estimates that the compliance costs of this regulation for bus introduced into the fleet amount to $0.44 million over the life of the regulations.

### Alcohol and other drugs

This section examines the merits of continuing the status quo of requiring that bus drivers do not have alcohol or drugs present in their blood or breath immediately before, or while, driving a bus, based on considerations discussed in Section 6.2.3. As the additional impacts beyond the status quo (i.e. above what is already required in relation to alcohol and other drugs under the Road Safety Act and the Bus Safety Act) are expected to be minimal and these impacts are not considered as significant as other areas of the proposed regulations, the benefits and costs relating to the proposed regulations for alcohol and other drugs will only be assessment qualitatively in this section.

The primary purpose of the proposed regulations is to enable the enforcement of those regulations by the regulator and Victoria Police. This is achieved by imposing a requirement on the driver before the driver has commenced driving the vehicle. By restricting the presence of alcohol and drugs immediately before operation of the bus, it enables the testing of drivers prior to the commencement of that driver’s shift. As the impairing effects of alcohol or drugs is well established, such restrictions will mitigate the number of incidents resulting from a driver driving under the influence of alcohol or drugs. The expected benefits would include the avoidance of potential loss of life or injury from driving while impaired. The proposed regulations would support the efforts by governments to improve road safety. DoT notes that given the existing requirements outlined in Section 3.4.2 relating to alcohol and other drugs in the Bus Safety Act, as well as the Road Safety Act, the incremental benefits that can be attributed to requirements under regulations is considered to be relatively low.

DoT does not expect there to be significant compliance costs associated with the proposed regulation. Bus operators under the Bus Safety Act have general safety duties, which imply that bus operators are required to put in place measures to reduce or mitigate the risks associated with driving under the influence of alcohol or drugs. Additionally, Part 5 of the Bus Safety Act also requires that all bus operators develop, maintain and implement an alcohol and drug management policy. This Part also requires that an operator’s alcohol and drug management policy specify that a driver must not have alcohol or drugs present immediately before, or while, driving a bus.

DoT recommends that the proposed regulations regulate the use of alcohol and drugs of bus drivers as it will assist with compliance monitoring and enforcement by the regulator and Victoria Police.

### School buses

This section considers the impacts of requiring all school buses to be equipped with warning light and signs, consistent with the Vehicle Regulations based on considerations discussed in Section 6.2.4.

DoT is considering the merits of two options:

* Option 1 (status quo): adopt warning lights and sign requirements equivalent to current Victorian requirements under the current Bus Safety Regulations
* Option 2: adopt warning lights and sign requirements to align with NSW standards for school buses.

##### Expected benefits

The purpose of warning lights and sign equipment is to alert road users to the presence of children around a bus that has stopped to pick up or drop off children. The benefits of such equipment are to reduce the incidence of motorists colliding with children. Children may not take as much care and precautions around the road as adults. Warning lights and signs help to alert motorists to the possibility of children in and around a bus when the bus is either picking up or dropping off children. This will mitigate the risk of a collision between a child and a motor vehicle. Both options fulfil this function, so DoT expects there to be a reduction in fatalities and serious injuries to children compared to a scenario of no requirements to install and operate warning lights and signs. While DoT does not have data to estimate the likely rate of fatalities and serious injuries under a scenario of no regulations, DoT expects the benefits to be moderate, given these requirements would not apply to the whole fleet of buses in the industry.

There may be some differences in the quantum of benefits attributable to the two options being considered. The first option requires school buses be fitted with complying warning lights and signs, consistent with the Vehicle Regulations for school buses. In comparison, the NSW standards also requires, in addition to the Vehicle Regulations, headlights to flash while warning lights and signs are in operation. NSW school buses are also required to display a speed limit sign of 40 km/h. Motorists slowing down to 40 km/h will reduce the likelihood of a collision involving a child. DoT notes that in school areas the speed limit is already 40 km/h at times when children are starting and finishing school. Therefore, the benefits of displaying a 40km/h sign on a school bus will be greater in pick-up and drop-off points outside of these 40km/h school areas and lesser in school areas.

##### Expected costs

The primary compliance costs associated with this requirement is the cost of purchasing and installing the warning lights and signs. DoT, based on an analysis of market prices, estimates the costs of school bus warning lights and signs to be approximately $600 to $700 (this includes 2 signs at $50 each, 2 lights at $100 each, and devices and other fittings for flashing the warning lights at $300 to $400). DoT notes that all current buses used to provide a school bus service are fitted with the correct warning lights and signs, and therefore would comply with Option 1. Therefore, for the purposes of this analysis, DoT will assume that no new compliance costs will be incurred under this option. DoT also notes that Option 1 is consistent with the Road Safety (Vehicles) Regulations for complying lights to be fitted to school buses. There will be new buses that would need to have warning lights and signs installed in the vehicle. Based on the expected growth in the sector (approximately 1 per cent per annum), DoT estimates that 6 to 7 buses would incur such costs each year. Installation of the lights and signs is assumed to take up to 30 minutes (equivalent to $38.19 in labour costs). Therefore, operators would incur approximately $638.19 to $738.19 for each bus to comply with the requirement.

In the case of Option 2, all bus operators who provide a school bus service would need to fit additional equipment to the bus. That is, a device to flash headlights while the other lights and signs are in operation and speed sign displaying a “40”. All buses used to provide a school bus service would need to be fitted with this equipment. Based on an analysis of market prices for equipment, the costs of purchasing an additional sign and a device to flash headlights (to ensure compliance with the NSW standards) is estimated to be $350 ($50 for the sign and $300 for the device to flash headlights). DoT estimates that the number of buses that would need to upgrade signs is in the order of 700 buses, with the growth rate of such buses at 1 per cent reflecting the demand for those services. The assumptions for Options 2, which represent costs additional to what is required under Option 1 (status quo), is outlined in Table 7‑18 below.

There may be some minor costs incurred in the operation of the lights under both options, although this is expected to be relatively negligible.

**Table 7‑16: School bus cost parameters of NSW standards (Option 2) that are additional to what is required under current Victorian standards (Option 1)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Bus type** | **Number of buses (estimated as of 31 December 2019)** | **Annual growth rate of buses** | **Labour cost** | **Cost of equipment** |
| Buses used to provide a school bus service | 700 | 1% | 30 minutes  ($38.19) | $300 - $350 |

Based on a real discount rate of 4 per cent, the 10-year NPV and EAC for installing additional equipment to comply with the NSW standards for school bus lights and signs is between $0.26 million to $0.3 million and between $0.031 million to $0.036 million respectively, as outlined in Table 7‑17 below.

**Table 7‑17: NPV and EAC for compliance with NSW standards for school bus lights and signs**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Compliance with NSW standards for school bus lights and signs | $0.26m - $0.3m | $0.031m - $0.036 |

The proposed regulations would require that the driver ensures the lights or hazard warning devices operate when the bus is stationary on a highway for the purposes of picking up and setting down school children. As the standards for the lights and signs under the Road Safety (Vehicles) Regulations require the warning lights and devices to operate automatically (unless switched off by the driver), there are no compliance costs imposed on drivers to ensure the warning lights and devices are operating.

The driver must also cease to operate the vehicle if the warning lights or device fails, which may add costs to the industry, as there will be costs to the industry to seek a replacement bus for the bus to continue operating the bus service, as well as disruptions to passengers who must wait for a new bus with operational lights and devices to transport them. However, DoT notes that any costs associated with equipment failure can be mitigated by the bus operator by undertaking regular checks and maintenance of equipment installed in the bus. For this reason, it is not counted as a cost.

##### Summary

DoT expects that requiring specific warning lights and signs to be displayed on a bus when transporting children will reduce the incidence of crashes involving children around buses. Both options under consideration achieve this aim. However, Option 2 involves adopting a new standard for warning lights and signs, which means that an additional burden would be placed on operators in installing new lights and signs in the order of $0.26 million to $0.3 million over the life of the regulations. DoT does not have data to establish whether the NSW standard for warning lights and signs will achieve further reductions in fatalities or serious injuries involving children around buses compared to Option 1. In comparison to Option 2, DoT notes that Option 1 imposes relatively less compliance burden on existing operators.

For these reasons, DoT recommends Option 1 which is to continue with the current standard for lights and signs for school buses.

## Notifiable incidents

This section considers the impacts of prescribing certain incidents as a notifiable incident under the Bus Safety Act. As described in Section 6.3, a notifiable incident under this option is an incident which resulted, or had the potential to result, in:

* the death of, or serious injury to, any person
* damage to any property
* a loss of control of the bus
* a person requiring immediate treatment as an in-patient in a hospital
* attendance by a police officer or health professional

Under this option, a notifiable incident includes, but is not limited to:

* collision between the bus and any person, vehicle, infrastructure, or other property
* implosion, explosion or fire
* mechanical failure
* divergence from the highway
* uncontrolled movement of a bus
* an incident involving the threat of terrorism
* alleged assault
* suspected or attempted self-harm
* terrorist attack
* a circumstance where the driver of the bus is in contravention of the bus operators’ alcohol and drug management policy.

The types of incidents or situations in which a bus safety incident must be reported under this option is broadly equivalent to the status quo. As such, the expected impacts of the notifiable incidents are based on the assessment of the current benefits and costs of notifiable incidents.

DoT will further consider the impacts of subcategorising when an incident needs to be notified to the Safety Director, based on the seriousness of the incidents, as follows:

* oral notification, as well as written notification within 72 hours (status quo, but for all incidents)
* written notification within 72 hours
* written notification on a monthly reporting basis.

##### Expected benefits

The expected benefits of the requirement to notify the Safety Director of an incident is that it:

* enables the Safety Director to respond to and investigate incidents involving bus services in a timely manner
* provides the Safety Director with data to implement a risk-based regulatory compliance monitoring and enforcement regime,
* helps inform future policy development, and
* acts as a disincentive for bus operators to operate unsafely.

By receiving information about an incident in a timely manner, the Safety Director has the option of further investigating an incident. In addition, under the current regulations, the Safety Director may also require the operator to conduct their own investigation into the incident.

In addition, the information collected on incidents will in aggregate provide the Safety Director with data to implement risk-based regulatory compliance monitoring and enforcement activities. For example, should the regulator observe that a number of safety incidents are occurring with a certain bus sector (e.g. tour and charter or community bus service) or associated with a certain bus operator, then the Safety Director can target its resources to address safety issues where they are needed most. The data may also reveal certain trends across the industry.

Reported incidents may also help inform future policy development, such as the development of codes of practice to target incidents perceived as higher risk or the development of regulations.

Incident notification requirements may give rise to ancillary safety benefits. A requirement for bus operators to notify the Safety Director of bus incidents may also change the behaviour of a bus operator. For example, a bus operator may actively try to reduce the likelihood of a prescribed incident occurring more than other types of safety incidents not prescribed, in order to avoid having to report on the incident to the Safety Director.

DoT notes that non-compliance with this requirement may affect the level of benefits achievable. It is possible that some bus operators may avoid reporting on an incident if, for example, the person has committed an offence. A consequence of not being notified promptly is that the Safety Director would not be able to undertake a timely investigation. This risk is mitigated, in part, by the Safety Director relying on alternative sources of information, such as reports and information through information sharing arrangements with Victoria Police.

Based on the considerations outlined above, the greatest beneficial impacts on bus safety are largely indirect. The effects of notifiable incidents are largely derived from impacts relating to compliance monitoring and enforcement of safety, ensuring any breaches in bus safety are detected and compliance by operators with requirements that improve safety is increased. This, in turn, may improve safety outcomes overall for the bus industry. The direct benefits of improvements to safety through incentivising bus operators to operate safely so as to avoid the need to report on the incident to the Safety Director is likely to be relatively smaller. Overall, DoT expected that there will be a moderate impact on benefits in reducing bus safety incidents, fatalities and serious injuries.

##### Expected costs

In general, there are costs associated with implementing the notification systems, and ongoing costs associated with notifying the regulator.

DoT considers that the implementation costs incurred by TSV are expected to be minor. The reason for this assessment is that the main implementation costs have already been incurred as there is already a requirement to notify the regulator of certain incidents. However, there may be some adjustments to existing systems necessary to implement the proposed regulations. TSV may be required to implement changes to its current website. In addition, the regulator may also need to provide additional scripts to call-centre employees enabling the new information to be recorded.

The main ongoing costs associated with this option are the costs of providing information to the regulator when a prescribed incident occurs. These costs are incurred by the industry when involved in a notifiable incident. The compliance costs depend on and are affected by the frequency of reporting and the ease of making a notification.

The costs of providing information is also influenced by the type and amount of information required to be provided to the regulator. At a minimum, the regulator will require sufficient information to be able to identify the parties involved in the incident and the circumstances of the incident, such as the information outlined earlier in this section.

Ongoing costs relating to the notification of incidents will depend on the time taken for each notification as well as the number of notifications made by the industry per year. Currently, TSV require the following information to be provided in a web-based notification form:

* Name of bus operator
* Accreditation/registration number
* Description of events leading up to the incident and the incident itself
* Vehicle registration number
* When the incident happened

Other information that may be provided include:

* Where the bus was travelling from
* Where the bus was travelling to
* What services attended (e.g. ambulance, police, fire brigade)
* Type of incident (e.g. collision, slip, trip or fall, mechanical failure etc.)
* Type of bus service (e.g. commercial, community, private, local, hire and driver courtesy etc.)
* Location of incident
* Whether any persons were killed or seriously injured as a result of the incident
* Whether there was a loss of control of the bus or significant damage to property
* Whether an alcohol and/or drug test was conducted on the driver/employee
* Whether the bus operator has or will convene an investigation into the incident

Based on the information required on the online notification of bus incident form, DoT estimates that it would take between 15 minutes to 30 minutes per incident to notify the Safety Director. The time taken takes into account the fact that different incidents may require different levels of effort to report (e.g. an operator may find it easier to provide details to the Safety Director relating to a person tripping or falling inside a bus than providing details relating to a collision, which may involve multiple vehicles and/or multiple injuries).

In order to estimate the number of notifications that will be made in future years, this RIS assesses the current level of incidents and notifications, as well as possible future trends in incidents. During the period from 2011 to 2019, an average of 406 incidents occurred per year (see Table 3‑2). All incidents recorded by TSV are made through notifications required under the current regulations. Based on Table 3‑2, there does not appear to be any clear long-term trend in terms of the total number of bus incidents over the last 10 years, although the number of incidents did appear to decrease over the last four years. Successful measures to improve safety, such as effective regulations that targets safety and improvement in an operator’s system for managing safety, may contribute to a decrease in the number of incidents in the future. On the other hand, a growth in the bus industry could result in more bus safety incidents, as more buses could result in more incidents reported. Given this uncertainty, for the purposes of this RIS, the number of notifications in future years will be based on the historical average of 406 notification per year.

**Table 7‑18: Notification cost parameters for all operators**

|  |  |  |
| --- | --- | --- |
| **Activity** | **Average number of notifications per year** | **Labour cost** |
| Notifications | 406 | 15 to 30 minutes  ($19.09 to $38.19) |

As shown in Table 7‑19 below, based on a real discount rate of 4 per cent, the 10-year NPV for all operators to comply with the proposed notifications requirement is estimated to be approximately $0.065 million to $0.13 million. The EAC is estimated to be approximately $0.008 million to $0.02 million.

**Table 7‑19: NPV and EAC for notifications**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Notifications | $0.065m – $0.13m | $0.008m – $0.02m |

One of the changes proposed in the draft regulations and introduced in Section 6.3, is to permit operators to report certain incidents on a monthly basis. There may be some reductions in cost (compared to the status quo) associated with allowing bus operators to report on incidents on a monthly basis, as bulk reporting means that several incidents can be reported at once. DoT considers monthly reporting may reduce the compliance costs by allowing for economies of scale when writing notifications, however given that the general information required per incidents will be the same regardless of when the incident is reported, the size of the reduction in compliance costs will be low.

##### Summary

Incident notifications are intended to improve the level of information available to the regulator in order for it to undertake its functions. DoT estimates that the compliance costs associated with incident reporting is in the range of $0.065 million to $0.13 million over the life of the regulations. Since the compliance costs are relatively low, DoT is recommending that the proposed regulations be made.

## Bus incident investigation

This section considers the impacts of the proposed powers to the Safety Director to direct bus operators to investigate a bus safety incident (status quo), based on considerations discussed in Section 6.4.

##### Expected benefits

Bus incident investigation powers may be exercised following an incident and the purpose of such investigations is to complement the Safety Director’s own investigative work. Investigations, effectively, support the operator’s compliance with their general safety duties under the Bus Safety Act. DoT expects that a bus operator’s investigation would determine the causes of an incident and reveal potential measures to mitigate or eliminate risks to safety in the bus operator’s operations. It enables operators to review their policies and procedures to minimise the occurrence of similar bus safety incidents in the future.

Accordingly, DoT expects safety to be improved as threats to safety are mitigated or eliminated. It also assists with informing the Safety Director of safety matters to consider in future as a result of the investigation. This is expected to drive safety improvements in the industry and reduce regulator costs by directing regulator resources to safety matters considered higher risk.

However, since the specific requirements will be directed at a particular operator (at the direction of the Safety Director), the improvements to safety is expected to be relatively low overall. In addition, in the absence of the regulations, operators may already have an incentive to investigate bus safety incidents to ensure the safety, as required under the Bus Safety Act, so the benefits of investigations conducted by bus operators cannot be entirely attributed to the proposed Regulations.

##### Expected costs

Bus incident investigations only occur when the Safety Director exercises the power to direct an operator to investigate an incident. Therefore, the costs associated with conducting bus incident investigations are only borne by those who have been directed.

Currently, bus incident investigations are conducted by TSV officers (internal) or by the bus operator (external). Table 7‑20 shows the number of bus investigations conducted by operators per year during the period 2011 to 2019. The average number of investigations during this period is 27 investigations per year.

**Table 7‑20: Total bus investigations per year – 2011-2019**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Investigations** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** | **Ave.** |
| **Count** | 23 | 25 | 30 | 32 | 28 | **138** | **27** |

Source: TSV

Table 3‑2 shows that incidents relating to vehicle safety (i.e. mechanical failures and fires) make up almost seven per cent of total incidents. Incidents relating to bus operational factors (i.e. incidents as a result of human factors), make up the remaining 93 per cent of incidents. Based on an average of 27 operator-conducted investigations conducted per year, DoT assumes that an average of one to two investigations per year involve investigations of mechanical failures, and the remaining 25 to 26 investigations involve reviews of operational and safety policies.

The costs of an investigation may vary depending on the type of investigation that is required. In the case of investigations of incidents as a result of mechanical failure (e.g. brake failures, fire etc.), the costs of the investigations may include the cost of hiring engineers and mechanics to investigate and rectify any defects or issues.

Investigations of incidents that relate to the operational aspects of the bus service (e.g. collisions, bus rollaway, assaults, drug and alcohol etc.) may include costs associated with operators interviewing staff, examining records and reviewing safety policies and procedures in place to determine the cause of the incident and way to prevent similar incidents occurring in future. Larger operators usually have OH&S advisers to conduct investigations.

##### Summary

DoT notes that it is difficult to appropriately quantify the costs associated with this regulation, despite the availability of information relating to the number and type of investigations that may occur during any given year. TSV has advised that investigations are not overly onerous, particularly for registered operators. It should also be noted that a bus safety investigation acts as a means to address potential safety issues and minimise safety risks in the operations of bus services. Therefore, DoT considers the burden imposed cannot be absolutely attributed to the regulations alone – investigations inform a considerable part of the general bus safety duties under the Bus Safety Act in ensuring that bus services are safe.

Notwithstanding the uncertainty as to the compliance costs attributable to the regulations, DoT is recommending that the regulations be made.

## Requirements for accreditation and registration

This section considers the impacts of regulations to support the accreditation and registration scheme based on considerations discussed in Section 6.5. Specific requirements include powers for the Safety Director to collect information and documents relating to the application for bus operator accreditation and registration (status quo).

Both accreditation and registration are requirements imposed under the Bus Safety Act and the matters that must be considered before granting either accreditation or registration are also specified in the Bus Safety Act. For this reason, DoT will assess the likely administrative burden imposed as a result of the proposed regulations.

##### Expected benefits

The benefits of regulations to support an accreditation and registration scheme for bus operators is to ensure that the information or procedural requirements relevant to the application is provided to the Safety Director. In the case of an application for accreditation, the Safety Director must consider whether the applicant has the competence and capacity to operate a bus service safely. For an application for registration, the Safety Director must grant the application unless the applicant is already accredited or should be accredited instead of registered. The benefits are therefore the improved effectiveness and efficiency of administering bus safety laws which may reduce the costs of regulatory activities by the regulator. While these benefits are unable to be reasonably quantified, the overall effects on safety is expected to be low relative to other measures relating to safety.

##### Expected costs

All bus operators are required to be either accredited or registered. Since accreditation and registration is perpetual, once accredited or registered, there is no requirement for renewal of accreditation or registration.

**Table 7‑21: Number of accreditation and registration applications granted per year – 2011-2019**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Operator type** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total** |
| Accredited | 5 | 28 | 70 | 160 | 291 | 42 | 41 | 43 | 40 | **720** |
| Registered | 829 | 636 | 126 | 113 | 160 | 213 | 183 | 131 | 157 | **2,548** |
| **Total** | **834** | **664** | **196** | **273** | **451** | **255** | **224** | **174** | **197** | **3,268** |

Source: TSV

The average number of applications for accreditations from 2016 to 2019 is 40 applications per year.[[21]](#footnote-22) The average number of applications for registration from 2016 to 2019 is 171 applications per year.[[22]](#footnote-23)

*Costs associated with making an application for bus operator accreditation*

The application for accreditation is required to be accompanied by the following information (in the case of an application on behalf of a company):

* company incorporation details and names of directors
* copies of roadworthiness certificates for each bus to be operated
* dates of any previous licence, registrations or accreditations held in relation to the operation of a bus service
* copy of the applicant’s MIS
* copy of the applicant’s MMS
* documentary evidence of completion of approved training course, if applicable
* evidence as to whether applicant has been found guilty of a tier 1, tier 2 or tier 3 disqualifying offence
* evidence as to whether the application is subject to reporting obligations under the *Working with Children Act 2005*
* evidence relating to the applicant’s insolvency, and
* whether the applicant has been accredited to operate bus services in another State or territory.

DoT estimates the time it takes to complete an application for accreditation is up to 8 hours. The amount of time required is likely to increase or decrease with the size of the operator (e.g. larger operators will be required to provide more information).

The administrative costs include the costs of obtaining and collating required documentation, completing and submitting forms, responding to any queries from a letter from the regulator etc. Most of the information required to be provided should be information already available to the applicant. The costs of making an application do not include the compliance costs associated with the legislative and regulatory requirements for accreditation. For example, the substantive requirements relating to complying with the MIS and MMS requirements are not counted under the accreditation and registration component of the proposed regulations – these are considered under the Vehicle Safety and Safety of Bus Operations sections of this RIS.

In order to provide evidence of whether the applicant has been found guilty of a disqualifying offence, the applicant may need to be subjected to a background police check. The cost of a Police Records Check is $48.90[[23]](#footnote-24).

*Costs associated with making an application for bus operator registration*

In contrast, the process for application for registration is simpler than applications for accreditation. Since less information is required to be provided, the time for completing an application for registration is likely to be less onerous. The application for registration is required to be accompanied by the following information (in the case of an application on behalf of a company):

* company incorporation details and names of directors
* name of a contact person involved in the bus operations, with whom the Safety Director is entitled to communicate
* copies of roadworthiness certificates for each bus to be operated
* dates of any previous registrations or accreditations held.

Given the nature of the information that will be required to be included on an application for registration, DoT believes that gathering and submitting the above materials will take one hour to complete, on average. It should be noted, in this context, that the great majority of operators seeking registration are likely to be smaller operators of only one bus, while the remaining group will also operate only a small number of buses in most cases.

The assumptions used to calculate costs of making an application are outlined in Table 7‑22 below.

**Table 7‑22: Applications for accreditation and registration cost parameters**

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Number of applications per year** | **Labour costs** | **Other costs** |
| Application for accreditation | 40 | 8 hours  ($610.96) | $48.90 |
| Application for registration | 171 | 1 hour  ($76.37) | $0 |

Based on a real discount rate of 4 per cent, the 10-year NPV and EAC for applications for accreditation and registrations are outlined in Table 7‑23 below.

**Table 7‑23: NPV and EAC for applications for accreditation and registration**

|  |  |  |
| --- | --- | --- |
| **Activity** | **NPV** | **EAC** |
| Application for accreditation | $0.2m | $0.027m |
| Application for registration | $0.1m | $0.013m |

##### Summary

Regulations are needed to prescribe what must be included in applications for both accreditation and registration. DoT estimates that the compliance costs of collecting this information totals $0.3 million over the life of the regulations. Since this information is need by the Safety Director in order to decide on applications, DoT is recommending these regulations.

## Identification

This section considers the impact of regulations requiring the operator to display information relating to the person responsible for the provision of a bus service, based on considerations discussed in Section 6.6. This section considers two options (note that these options are not mutually exclusive):

* All bus operators are required to display identification details using a sign, sticker or any other label on the bus (new requirement).
* Accredited bus operators are required to have bus-specific number plates on buses operated by that operator (status quo).

##### Expected benefits

The display of identifying information is intended to assist TSV in identifying buses being used to provide a bus service (i.e. those buses that are within the scope of the regulatory scheme). Accordingly, it is needed primarily for compliance monitoring and enforcement. It is expected that better identification would improve enforcement efficacy by enabling officers of the regulator to better identify services and who is responsible for those services. It would simplify any enforcement action (such as issuing infringement, improvement or prohibition notices) should any action need to be taken and will potentially lead to improved safety outcomes by incentivising operators to operate safely since the operator can more easily be identified.

There may also be a benefit in the form of increased public confidence in the safety of bus services. The display of a number plate would signal to users of bus services that the bus service is regulated and, by implication, safe. There is some limited anecdotal evidence from the commercial passenger vehicle sector that number plates have a value other than for enforcement purposes. As part of the implementation of commercial passenger vehicle reforms in 2017 and 2018, hire car operators posited that the “VHA” number plates that hire cars were required to display has brand value.  The claim was that customers would seek out vehicles with such number plates for passenger transport services with an expectation of higher quality services. In response, the Government made “VH” plates available as an option for commercial passenger vehicle operators.

Given these measures are largely to enable improvement in compliance monitoring and enforcement of the bus safety laws, the effects on safety is expected to be low relative to other measures relating to safety.

##### Expected costs

There are some compliance costs associated with installing a sign, sticker or label on the vehicle. The exact costs will depend on the method employed by the operator to comply with the requirement. A desktop analysis of quoted prices of vehicle signs advertised on private company websites shows the costs of acquiring a sign ranges from $10 to $50 per vehicle. For the purposes of this RIS, DoT will assess the compliance costs using the mid-point of this range (i.e. $30 per sign). There also may be costs associated with installing the sign, label or sticker on the vehicle. The labour costs may vary depending on the type of solution employed (e.g. whether temporary or permanent solutions are used). However, for the purposes of the analysis of the costs, DoT will assume that it takes approximately 10 minutes to install a sign. On the basis that each bus will require a sign, the estimated industry costs for this requirement is $0.57 million. DoT notes that there may already be some buses already compliant with the proposed requirement (as a legacy requirement under legislation prior to the *Bus Safety Act 2010*), however, the estimated costs are still likely to be the upper bound of compliance costs.

New buses entering the industry will also need to comply with this requirement. Based on TSV data, the average annual growth rate for all buses (accredited and registered) is estimated to be approximately 3.1 per cent. Table 7‑24 outlines the assumptions for calculating the NPV of costs of the identifying sign requirements.

**Table 7‑24: Identifying signs cost parameters for all buses**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Bus type** | **Number of buses (as at 31 December 2019)** | **Annual growth rate of buses** | **Labour cost (installation)** | **Cost of sign** |
| All buses | 13,360 | 3.1% | 10 minutes  ($12.73) | $30 |

The 10-year NPV of the proposed regulations relating to identification is estimated to be approximately $0.74 million, with an EAC of $0.091 million.

Fees for number plates are set under the Road Safety Act. The fee for a number plate for a bus is $38. Since this is the same fee for a standard issue number plate and all motor vehicles are required to display a number plate, DoT will assume that there are no additional compliance costs with displaying a different number plate.

If there are vehicles that are displaying a standard issue number plate and would be required to swap number plates, then there may be some costs associated with removing the existing number plates and then installing the new number plates.

##### Summary

DoT is recommending that all bus operators be required to display a sign identifying the operator of the bus while the bus is in service. DoT expects that the benefits, which will improve enforcement efficiency, outweighs the costs of implementing the regulatory requirement.

In the case of bus specific number plates, DoT notes that if there is identifying information displayed on the vehicle, then bus specific number plates are unlikely to further assist TSV officers in compliance monitoring and enforcement. DoT recognises that there may be some benefit to the community in the form of increased public confidence in the safety of bus services provided in Victoria. DoT has not included this requirement in the draft regulations for consultation. However, DoT seeks the community’s views on the merits of requiring number plates to be displayed.

## Records

This section considers the impacts relating to requirements for bus operators to keep prescribed records, based on considerations discussed in Section 6.7. DoT will consider and assess the following options in relation to record keeping:

* Option 1 (status quo): Only accredited bus operators are required to keep a full set of records
* Option 2: Accredited bus operators required to keep full set of records and registered bus operators required to keep limited set of records (new requirement for registered operators to keep a limited set of records).
* Option 3: All bus operators are required to keep a full set of records (new requirement for registered operators to keep a full set of records).

All options being considered would require all accredited operators to keep a full set of records (status quo). A full set of records include the following:

* Name, address, driver licence number and driver accreditation of each person who drives a bus operated by the operator
* record of the details of each bus, including vehicle registration number, vehicle identification number (VIN), and maximum carrying capacity of each bus
* record of total number of buses in the fleet
* any document required to demonstrate compliance with the conditions of accreditation or registration
* any document produced as part of the MIS and MMS (or equivalent documentation relating to systems to ensure vehicle safety and safety of bus operations)
* any documents produced as part of an annual audit of bus service operations
* evidence of roadworthy inspections for each bus
* evidence of any action to rectify bus defects identified during a roadworthy inspection
* any other records required as a condition of accreditation or registration.

Option 2 considers whether registered operators should keep a limited set of records. The limited set of records would include records of the following:

* record of vehicle registration number, vehicle identification number, and maximum carrying capacity of each bus
* record of total number of buses in the fleet
* evidence of roadworthy inspections for each bus
* evidence of any action to rectify bus defects identified during the roadworthy inspection.

Option 3 considers whether registered operators should keep the full set of records equivalent to the full set of records required to be kept by accredited operators outlined above.

All options being considered require that records are to be kept in English and a for a minimum of 3 years (status quo).

##### Expected benefits

The primary benefit of the record-keeping requirement is to enable the regulator to access data and information for the purposes of compliance monitoring and enforcement. More effective compliance monitoring and enforcement is expected to improve compliance with regulatory requirements. The intent of the regulatory requirement is to improve safety outcomes for the bus industry.

Record keeping will also ensure that accredited bus operators are able to demonstrate compliance with conditions of accreditation as well as their systems for managing safety. The flow-on effect is that it will create an incentive for safety to be appropriately considered by accredited operators, which will improve safety outcomes for the bus industry, as measured by a reduction in the number of incidence of fatalities or injuries.

The level of benefits may differ across options being considered by DoT. The reason is that different types of records would be required to be kept by different operators under each option.

Option 1, which is equivalent to the current regulations, requires accredited operators to keep records that reflect the regulatory obligations imposed on that cohort of the bus industry. This includes records relating to safety systems implemented by that operator and maintenance, repair and inspection of the vehicle.

Option 2 would require registered operators to keep some limited set of records, in addition to accredited operators keeping a full set of records. DoT expects that TSV’s compliance monitoring and enforcement effort would benefit from registered bus operators keeping at least records relating to the inspection and maintenance of buses under the control of the operator.

In contrast, Option 3 extends the full records currently required to be kept by accredited operators to registered bus operators (i.e. all bus operators to keep a full set of records). There is likely to be little merit in requiring these records to be kept either because the records would not exist (e.g. registered operators may not be required to implement the same systems and procedures as accredited operators) or the level of risk attributable to the registered operator would not be the same as for an accredited operator.

While records improve compliance monitoring and safety by ensuring that the regulator has a means to check whether operators are complying with their obligations under the Bus Safety Act and the proposed regulations, the effects on improving safety is expected to be low relative to other measures relating to safety.

##### Expected costs

The primary costs associated with the record-keeping requirement are the compliance costs of keeping specified records.

Having regard to the types of records described under the full set of records required to be kept by accredited operators, internal estimates conducted by DoT estimates that the record keeping provisions would impose an administrative cost of approximately 10 hours per accredited operator per year. Given that registered operators generally have a smaller fleet of buses (and likely engage less drivers who drive buses operated by registered operators), DoT estimates that the full record keeping provisions will impose an administrative cost of approximately 6 to 8 hours per registered operators per year.

Having regard to the types of records described under the limited set of records required to be kept by registered operators, internal estimates conducted by DoT estimates that the record keeping provisions for registered operators would impose an administrative cost of approximately one to two hours per operator per year. This is having regard to the fewer number of records required to be kept for certain record types (e.g. less buses and drivers to keep records of), as well as fewer types of types of records required to be kept (e.g. not required to keep records of safety systems or demonstrating compliance with conditions).

Table 7‑25 outlines the cost parameters for calculating costs of keeping records for accredited and registered operators.

**Table 7‑25: Record keeping cost parameters for accredited and registered operators**

|  |  |  |  |
| --- | --- | --- | --- |
| **Option** | **Number of active operators as of 31 December 2019** | **Annual growth rate of operators** | **Labour cost** |
| Option 1 (status quo) | 667 accredited operators | 1% | Full records: 10 hours ($763.70) |
|  | 2,501 registered operators | 4.7% | No records |
| Option 2 | 667 accredited operators | 1% | Full records: 10 hours ($763.70) |
|  | 2,501 registered operators | 4.7% | Limited records: 1 to 2 hours  ($76.37 to $152.74) |
| Option 3 | 667 accredited operators | 1% | Full records: 10 hours ($763.70) |
|  | 2,501 registered operators | 4.7% | Full records: 6 to 8 hours ($458.22 to $610.96) |

Based on a real discount rate of 4 per cent, the 10-year NPV and EAC for the record keeping requirements for accredited and registered operators under the different options are outlined in Table 7‑26 below.

**Table 7‑26: NPV and EAC for record keeping requirements**

|  |  |  |  |
| --- | --- | --- | --- |
| **Option** | **Operators** | **NPV** | **EAC** |
| Option 1 (status quo) | Accredited operators | $4.5m | $0.56m |
|  | Registered operators | $0.0m | $0.0m |
| Option 2 | Accredited operators | $4.5m | $0.56m |
|  | Registered operators | $2.0 to $4.1m | $0.25 to $0.5m |
| Option 3 | Accredited operators | $4.5m | $0.56m |
|  | Registered operators | $12.4m to $16.5m | $1.5m to $2.0m |

Table 7‑27 shows a comparison of the total 10-year NPV and EAC under each option.

**Table 7‑27: Comparison of estimated costs for record keeping options**

|  |  |  |
| --- | --- | --- |
| **Option** | **NPV** | **EAC** |
| Option 1 (status quo) | $4.5m | $0.56m |
| Option 2 | $6.5m to $8.6m | $0.81m to $1.06m |
| Option 3 | $16.9m to $21m | $2.06m to $2.56m |

Notwithstanding the above costs, DoT considers that the compliance costs cannot be entirely attributable to the regulations. This largely reflects the fact that most of the records required to be kept would, in the absence of a regulatory requirement, already be kept as part of the management of any normally efficient bus service operation.

##### Summary

Based on the analysis, DoT considers that Option 2 is the preferred option. That is, it is recommended that accredited bus operators be required to keep the full set of records and the registered bus operators be required to keep a limited set of records. Option 2 achieves the objectives of improved compliance outcomes and minimises compliance costs on the industry.

## Exemptions

This section considers the impacts of regulations which give TSV power to exempt bus operators from certain regulatory requirements based on considerations discussed in Section 6.8. This is a continuation of the status quo.

##### Expected benefits

The purpose of regulatory exemptions is to reduce regulatory burden on bus operators where the operator:

* has substantially complied with legislative or regulatory requirements, or
* compliance with regulatory requirements is unreasonable given the circumstances of the bus operator.

Therefore, the expected benefit of regulatory exemptions is the avoided compliance costs of the regulatory requirement being exempted. The regulatory requirements that are exempted will vary with each exemption granted and therefore the avoided compliance costs will also vary across bus operators.

However, it should be noted that the proposed exemption powers do not grant the operator the right to reduce the safety of the bus service. Bus operators continue to have general safety duties under the Bus Safety Act and therefore will still need to make sure the service they are operating complies with other applicable regulatory requirements.

Given the above considerations, and the fact that exemptions will only apply to a low number of operators who apply for an exemption, providing for exemptions allows for a reduction in regulatory burden (a benefit to the operator) and will pose a negligible risk to the safety of bus services due to careful considerations of the general safety duties under the Bus Safety Act when granting exemptions.

##### Expected costs

There are some costs associated with obtaining a regulatory exemption. The primary cost of obtaining a regulatory exemption is the administrative cost of applying for that exemption. As part of the application process, the applicant will need to provide basic details such as identifying information relating to the operator and information about the regulatory exemption sought.

Based on information provided by TSV, there have only been two exemptions granted to operators between 2014 to 2019. TSV granted:

* An exemption to an operator to use a different maximum safe carrying capacity sign other than what is required under the Bus Safety Act and the regulations. In this case, the sign was still required to be displayed, and the exemption was granted on the size of characters used for the sign.
* An exemption to an operator to conduct fewer vehicle safety inspections than required under the requirements of a maintenance management system. This exemption was granted to an operator of alpine buses, as the buses operated were only used for approximately 4 months in the year.

##### Summary

Overall, operators will assess the merits of the exemption when considering applying for an exemption. In cases where the reduction in compliance costs outweighs the regulatory burden of making an application, a bus operator has an incentive to apply for an exemption. Otherwise, the operator will continue to be subject to the usual requirements under the Bus Safety Act and its regulations. Given this represents a reduction in regulatory burden and no decrease in safety, DoT considers there will be a net benefit to the industry associated with having exemption requirements in regulations.

## Fees

In the previous sections, DoT identified that the costs of bus safety regulation could be recovered through regulatory fees, including by imposing fees to accompany the submission of an application for accreditation and annual fee imposed on bus operators. In order to assess the various options to recover the costs of bus safety regulation, DoT will employ multi-criteria analysis.

### Methodology

*Summary of approach for multi-criteria analysis*

Under a multi-criteria analysis, the various options under consideration are assessed against the base case and scored against specific criteria. Each criterion is given a weighting, and each option’s score for that criterion is adjusted based on this weighting. The sum of the weighted score represents the total score for that option. The option with the highest total score would represent the preferred option.

DoT will compare fee options and score those options by reference to the base case to assess whether the expected outcome resulting from each option represents a positive or negative change relative to the base case.

*Criteria for assessment*

DoT proposes to use the following criteria to assess the various fee options:

* Efficiency: The extent to which the option promotes or improves the way the resources are allocated within the economy. This is generally achieved when the prices charged reflect the actual costs of service provision. In this case, regulatory fees need to reflect the cost of regulation to avoid the distortions associated with the recovery of costs from the general taxpayer.
* Equity: There are two types of equity. Vertical equity is the notion that those who are more able to pay fees or charges should contribute more than those who are not. Horizontal equity is achieved when individuals from the same group pay the same amount in taxes.
* Compliance: Safety is the primary objective of the regulations. If cost recovery and fee setting choices have negative impacts on compliance or reduce regulatory effectiveness, then it is reasonable to expect there may be negative impacts on safety outcomes.

Each criterion must be weighted Table 7‑28 summarises the proposed weights to be used for the fee analysis. The criteria of efficiency and equity have been given greater weight as these criteria are the primary considerations for designing and setting fees. This also means that a lesser weight will be attached to the compliance criterion. Regulatory fees are not directly intended to improve safety outcomes (that is the role of the underlying regulations) but rather as a measure to recover the costs of regulations. DoT notes that there may be an indirect effect on safety if, for example, fees are set too high and there are unintended consequences where operators avoid regulatory obligations. Accordingly, the effect of fees on compliance and safety will also be considered albeit at a lower weighting.

**Table 7‑28: Proposed criterion weights for multi-criteria analysis of fee options**

|  |  |
| --- | --- |
| Criterion | Proposed weights |
| Efficiency | 40% |
| Equity | 40% |
| Compliance | 20% |

*Criteria scoring*

For each fee option under consideration, a score will be assigned depending on the expected impact of the option on each of the criteria measured relative to the base case. A rating scale from -10 to +10 (as shown in Table 7‑29 below) will be applied against each criterion. The base case has a zero score on all criteria.

The fee options will be compared and rated by reference to whether the expected outcome resulting from the option represented a positive or negative change relative to the base case. To arrive at the weighted scores for each option, the raw scores will be multiplied by their allocated weighting to give a weighted score.

**Table 7‑29: Options assessment criteria ratings for fees**

|  |  |
| --- | --- |
| Type of change | Range of possible scores |
| Negative change | -10 to -1 |
| Significantly worse than the base case | -10 |
| Moderately worse than the base case | -5 |
| No change | 0 |
| Positive change | +1 to +10 |
| Moderately better than the base case | +5 |
| Significantly better than the base case | +10 |

### Assessment of options

In this section, the three options for recovering the costs of assessing applications for accreditation and other general costs incurred as part of administering the Bus Safety Act. DoT has estimated these costs at $4.4 million.

The three options are summarised in Table 7‑30. This table also outlines the fee amounts for each fee under each option in fee units and 2019-20 dollar values. An estimate of the revenue expected to be collected and the cost recovery level is also provided.

**Table 7‑30: Summary of fees and estimated revenue under each fee option**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Fee type | Proposed fee in fee units | Proposed fee in 2019-20 values | Estimated Revenue | Cost Recovery level (%) |
| **Option 1** | Application fee for accreditation applications | 40 | $592.40 | $0.023m |  |
|  | Annual fee for accredited operators | 20 fee units plus 5.5 for each bus operated | $1,106.48\* | $0.74m |  |
|  |  |  | **Total** | $0.761m | 17% |
| **Option 2** | Application fee | 40 | $592.40 | $0.023m |  |
|  | Annual fee for accredited operators | 20 fee units plus 5.5 fee units for each bus operated | $1,106.48\* | $0.74m |  |
|  | Annual fee for registered operators | 20 fee units | $296.2 | $0.74m |  |
|  |  |  | **Total** | $1.5m | 34% |
| **Option 3** | Application fee | 200 fee units | $2,962 | $0.12m |  |
|  | Annual fee for accredited operators | 59.2 fee units plus 16.3 fee units for each bus operated | $3,278.11\* | $2.19m |  |
|  | Annual fee for registered operators | 59.2 fee units | $740.50 | $2.19m |  |
|  |  |  | **Total** | $4.48m | 100% |

\* Calculated based on the average number of buses operated per accredited operator across the industry (i.e. approximately 10.95 buses per accredited operator).

For the purpose of the multi-criteria analysis, an assessment of options against each criterion is undertaken in the following sections.

*Efficiency criterion*

All three options recover some or all costs of regulating for bus safety, so all options would score positively on the efficiency criterion. That is, these options will score higher than the base case. However, there are some differences between the options in the extent to which the efficiency objective is achieved.

Option 1 seeks to recover costs partially and costs are only levied on accredited operators and applicants for accreditation. DoT notes that the costs that are recovered are paid by the persons who give rise to the costs, namely the applicants for accreditation and accredited operators. However, the costs of regulation that is attributable to registered operators are not recovered under this option. These costs would need to be recovered through general taxation and there may be a misallocation of resources if operators chose to seek registration instead of accreditation to avoid paying the regulatory fees. These factors suggest that Option 1 only partially achieves the efficiency criterion, as while it recovers 17 percent of overall costs, it recovers 19 per cent of costs that are attributable to the administration of the accreditation applications. Therefore, Option 1 is assigned a score of +3.

On the other hand, Option 2 seeks to recover approximately 34 per cent of the costs attributable to bus safety regulation. Accordingly, under Option 2, the contribution made by the general public through general taxation is less and therefore Option 2 would be more efficient than Option 1. In addition to the fees that would be levied under Option 1 (that is, fees for accreditation applications and an annual accreditation fee), an annual fee would be levied on registered operators. This fee would seek to recover a portion of the costs that are attributable to the regulation of registered operators. Therefore, DoT scores this option a score of +5, reflecting the percentage of cost recovery and that registered operators make some contribution to costs of regulation.

Option 3 seeks to recover costs fully through three different regulatory fees (an application fee and annual fees for accredited operators and registered operators). The fees under Option 3 are set such that each fee imposed reflects the costs incurred to the extent possible. However, DoT notes that the majority of revenue that is estimated to be recovered is proposed to be levied through the imposition of an annual fee. Since specific fees are not proposed to be levied for different regulatory activities, Option 3 may not achieve the efficiency objective compared to a fee structure where fees are levied on more granular transactions. Therefore, Option 3 is assigned a score of +8, as it promotes efficiency as far as possible through a general annual fee and application fee.

*Equity criterion*

Under all options, the application fee for submitting an accreditation application is fixed. From a vertical equity perspective, a fixed application fee may be less equitable if there are operators who have the ability to pay a higher fee. Equally, there may be some operators such as those in the non-for-profit sector, where is it appropriate to set a lower fee to promote the provision of those services to the community. However, from a horizontal equity perspective, a fixed application fee treats applicants equally. DoT notes that all applicants for accreditation are not yet operating bus services (since they do not have regulatory permission to do so), and from this perspective, applicants should all be treated similarly. However, there may be some variation in how much time is spent by TSV in assessing applications for accreditation, therefore, it may be more equitable if applicants who required more consideration and assessment by TSV pay a higher fee. However, when the application is submitted TSV cannot observe how much input it will require to assess an application, so for this reason DoT considers that a fixed application fee is an appropriate structure of fees.

In the case of annual fees, one difference between the three options is that Options 2 and 3 levy an annual fee on registered operators whereas Option 1 does not. Therefore, there is some inequity between accredited and registered operators in how costs are recovered under Option 1 since registered operators do not contribute towards the recovery of costs. In comparison, Options 2 and 3 seek to recover costs from both accredited and registered operators. As a result, DoT considers that Options 2 and 3 better achieve the efficient criterion.

The other difference is that the structure of annual fees is such that accredited operators pay a scaling fee based on the number of buses operated and registered operators pay a fixed annual fee. This means that, on average, accredited operators would pay a higher fee compared to registered operators. This is appropriate in the context of equity because:

* Registered operators generally have smaller operations compared to accredited operators.
* To the extent that operating a smaller number of buses correlates with having less complex operations, within the cohort of accredited operators, the operators who operate more buses will pay a higher fee.
* Operators with larger fleets may have a higher capacity to pay regulatory fees.

In summary, in the context of the equity criterion:

* Option 1 does not impose an annual fee on registered operators.
* Options 2 and 3 differentiates annual fees between accredited operators and registered operators.
* All options impose a variable fee to differentiate between accredited operators.
* All options impose a fixed application fee for accreditation applications.

Based on these factors, DoT assigns Option 1 a score of +5, and Options 2 and 3 a score of +7 for the equity criterion.

*Compliance criterion*

The imposition of fees for regulatory services in and of itself is not expected to improve safety outcomes. However, DoT will consider the effect of the imposition of fees may have on compliance outcomes. An excessive fee may deter bus operators from obtaining accreditation or registration and incentivise operating outside of the law. Any non-compliance with the accreditation or registration requirement would make it difficult for the regulator to conduct compliance monitoring and enforcement. Since one of the purposes of accreditation and registration is to identify operators of bus services, any disincentives to being an accredited or registered operator would indirectly impede the safety objective.

Comparing the three options, Option 3 would see accredited bus operators pay higher fees for applying for accreditation and higher annual fees. DoT considers that there is a possibility that the scale of this fee may deter some bus operators from gaining an accreditation or registration. Similarly, under Options 2 and 3, there would be a new annual fee for registered operators. To the extent that a new fee will act as a deterrent to compliance, there may be a small negative impact of Options 2 and 3 on compliance.

While the imposition of fees may create some disincentive to comply with the law, DoT notes that there are other factors that incentivise compliance. This includes the penalties for being found guilty and being convicted of an offence related to being unaccredited and unregistered, and the level of compliance monitoring and enforcement that TSV undertakes to ensure overall compliance with the law. For this reason, DoT does not expect that the imposition of new fees will have a significant effect on compliance and therefore score Option 1, 2 and 3: 0, -1 and -2 respectively.

**Table 7‑31: Summary of multi-criteria analysis for fee options**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Efficiency (weighting: 40%) | | Equity (weighting: 40%) | | Compliance (weighting: 20%) | | Total |
|  | Raw score | Weighted score | Raw score | Weighted score | Raw score | Weighted score |  |
| Option 1 | +3 | +1.2 | +5 | +1.6 | 0 | 0 | 3.2 |
| Option 2 | +5 | +2 | +7 | +2.8 | -1 | -0.2 | 4.6 |
| Option 3 | +8 | +3.2 | +7 | +2.8 | -2 | -0.4 | 5.6 |

### Summary

Table 7‑31 summarises the results of the multi-criteria analysis. Based on the analysis, the option which bests promotes efficiency, equity and compliance is Option 3. Option 3, in comparison to the status quo, would seek to recover costs fully from the bus industry and impose a new fee on registered operators.

However, earlier in this document DoT has noted that there are some factors which would suggest that the implementation of this option should be delayed. Specifically, DoT has observed that TSV’s regulatory functions have changed (i.e. responsibility for rail safety regulation and domestic commercial vessel regulations have been fully transferred to national regulators). The transfer of responsibilities is likely to affect the cost base for TSV generally, as resources may be redirected to other uses. This will likely affect the indirect costs attributable to bus safety regulation. DoT has also noted that possible future legislative reforms, based on proposals arising from the industry, DoT and other public service agencies, would affect the bus industry and the regulator. This would affect the cost base for bus safety regulation. While the Government has not yet made a decision in respect of any such proposals, DoT would expect that regulatory fees would need to be reconsidered following the implementation of any reforms.

DoT has undertaken an analysis of the costs of bus safety regulation based on costs incurred during the 2018-19 financial year, and also considered different fee structure and levels and the relative merits of those structures and levels. DoT welcomes any feedback on the interim analysis undertaken.

For these reasons, DoT is recommending that fees do not change at this time and is committing to undertaking a full review of regulatory fees within three to five years. DoT considers that this timeframe is appropriate having regard to the time that may be needed to undertake any organisational restructure, and the implementation of any reforms. Additionally, in the current environment of the COVID-19 pandemic, there is considerable uncertainty in relation to planning and priorities, but DoT considers a timeframe of three to five years sufficient to undertake a review of regulatory fees.

# Preferred option

This section of the RIS provides a summary of the proposed regulations.

## Summary of the proposed regulations

The analysis conducted indicates that there is merit in regulating certain aspects of bus services in relation to safety. The requirements would form part of the proposed Bus Safety Regulations 2020. The draft regulations are available for comment.

The structure of the proposed regulations is as follows:

### Preliminary matters

This section of the proposed regulations outlines the objectives, authorising provisions, commencement, revocations and definitions applicable to the proposed regulations.

### Bus safety duties

The following regulations are proposed:

* A regulation which requires the operator of a bus service to determine, in accordance with the carrying capacity determined by the manufacturer or licensed bus tester, the maximum number of passengers that may be safely carried on the bus and to display a notice of that number.
* A regulation which requires the operator of a bus service to ensure that each bus complies with each bus standard applicable (unless exclusions applies).
* A regulation which prescribes the fitting of warning lights and signs on school buses.
* A regulation which prescribes the fitting of fire extinguishers in accordance with the regulations or ADRs and maintenance of fire extinguishers on a bus.
* A regulation which requires accredited bus operators and registered bus operators to display their accreditation or registration number in a position, colour and size that is clearly visible.
* A regulation which requires drivers to operate lights, signs or other device fitted to a school bus.
* A regulation which requires that bus drivers must not have alcohol or drugs present immediately before or while driving a bus.

### Registration

The following regulations are proposed:

* A regulation which requires the applicant to nominate a contact person if the applicant for registration is not a natural person.
* A regulation which prescribes information that must be contained in an application for registration.
* A regulation which specifies the form and content of a certificate of registration.

### Accreditation

The following regulations are proposed:

* A regulation which specifies the application fee and annual accreditation fee.
* A regulation which specifies documents and other matters that must accompany an application for accreditation.
* A regulation which prescribes conditions of accreditation. Conditions include that the operator:
  + complies with bus safety duties set out in the regulations
  + establishes, maintains and complies with MIS and MMS
  + conducts an annual audit of their MIS and MMS
  + not deface or alter the certificate of accreditation
  + pay the annual accreditation fee.

### Exemptions

The following regulations are proposed:

* A regulation which prescribes information that must be contained in an application for exemption.
* A regulation which specifies requirements for exemptions. Information required must include evidence that:
  + the provision from which the exemption is sought imposes a regulatory burden that is excessively onerous or unreasonable
  + the granting of the exemption will not reduce the safe operation of the bus service
  + the applicant has sufficient competence and capacity to manage risks to bus safety
  + the applicant has sufficient financial capacity or public risk insurance to meet potential accident liabilities.
* A regulation relating to conditions of exemptions. Conditions include that the operator:
  + keep a copy of the notification of exemption and produce the notification to the Safety Director on request
  + must notify the Safety Director if there are any changes with respect to the exemption or the bus service
  + ensure the bus driver holds an appropriate driver licence and is a holder of a driver accreditation under the Transport (Compliance and Miscellaneous) Act
  + ensure that bus safety inspections are still carried out
  + use buses that comply with applicable vehicle standards under the Road Safety Act
  + comply with alcohol and drug management policy under the Bus Safety Act
  + comply with notification and bus incident investigation requirements under the regulations.
* A regulation which prescribes information that must be contained in an application for variation of an exemption.

### Record keeping for bus operators

The following regulations are proposed:

* A regulation which requires an accredited operator to retain certain records, in English and for at least 3 years, unless otherwise specified by the Safety Director. Records include:
  + name, address driver licence number and driver accreditation of each person who drives the bus operated by the accredited operator
  + record of vehicle registration number, vehicle identification number, and maximum carrying capacity of each bus
  + record of the total number of buses in the fleet of the accredited operator
  + any document required to demonstrate compliance with conditions of accreditation
  + any document produced as part of the MIS or MMS
  + any document produced as part of the annual audit of bus service operations under the regulations
  + evidence of inspections for each bus
  + evidence of any action to rectify a bus defect or issues identified by a licensed bus tester during the inspection
  + any other records that the accredited bus operator is required to keep as a condition of accreditation.
* A regulation which requires a registered operator to retain certain records, in English and for at least 3 years, unless other specified by the Safety Director. Records include:
  + record of vehicle registration number, vehicle identification number, and maximum carrying capacity of each bus
  + record of the total number of buses in the fleet of the registered operator
  + evidence of inspections for each bus
  + evidence of any action to rectify a bus defects or issue identified by a licensed bus tester during the inspection.
* A regulation relating to the disclosure of records by accredited bus operators.

### Bus inspections

The following regulations are proposed:

* A regulation which specifies the manner in which bus inspections must be carried out for accredited operators, including that:
  + the inspection must be carried out by a licensed bus tester
  + the Safety Director may fix intervals at which the bus operator must ensure a licensed bus tester conducts bus safety inspections
* A regulation which specifies the manner in which bus inspections must be carried out for registered operators, including that:
  + the inspection must be carried out by a licensed bus tester
  + the inspection may be carried out annual or the Safety Director may fix intervals at which the bus operator must ensure a licensed bus tester conducts bus safety inspections
* A regulation which enables the Safety Director to exempt a bus operator from a bus safety inspection if that bus has undergone a satisfactory safety inspection outside Victoria.
* A regulation which specifies requirements of licensed bus testers when carrying out safety inspections.
* A regulation which requires a licensed bus tester to provide an inspection report to the Safety Director, if requested by the Safety Director.

### Reporting and investigation of bus incidents

The following regulations are proposed:

* A regulation which specifies prescribed incidents for the purposes of section 65 of the Bus Safety Act.
* A regulation which prescribes the manner and timeframe in which categories of incidents must be notified to the Safety Director:
  + category 1 incident – orally as soon as possible after the operator becomes aware that an incident has occurred, followed by in writing within 72 hours after the occurrence of the incident
  + category 2 incident – in writing within 72 hours after the occurrence of the incident
  + category 3 incident – in a written report provided monthly within 5 days of the last day of each calendar month.
* A regulation which prescribes the manner and form in which bus operators must undertake a bus incident investigation if directed by the Safety Director.

### Penalty units

Table 8‑1 outlines the penalties associated with breaches in the proposed regulations.

**Table 8‑1: Penalty units associated with breaches in the proposed regulations**

|  |  |  |  |
| --- | --- | --- | --- |
| **Regulation** | **Description** | **Penalty Units** | **Dollar Value (2020-21)** |
| Reg. 6(2) – Maximum number of passengers | Operator must display notice of the maximum number of passengers | 5 penalty units | $826.10 |
| Reg. 7(1) - Bus standards | Operator must ensure that each bus used to provide the bus service complies with each applicable bus standards | 20 penalty units | $3,304.40 |
| Reg. 8(1) – Devices for school buses | Operator of school bus must ensure complying lights and signs fitted to bus | 20 penalty units | $3,304.40 |
| Reg. 9(1) – Fire extinguishers | Operator must ensure fire extinguishers are provided on bus in accordance with requirements for that bus | 10 penalty units | $1,652.20 |
| Reg. 9(2) – Fire extinguishers | Operator must ensure fire extinguishers fitted on bus are operational | 10 penalty units | $1,652.20 |
| Reg. 10(1) – Signage – accreditation number | Accredited bus operator must display accreditation number on bus | 10 penalty units | $1,652.20 |
| Reg. 10(3) – Signage – accreditation number | Person must not display accreditation number unless bus is used by accredited bus operator with that accreditation number | 10 penalty units | $1,652.20 |
| Reg. 11(1) – Signage – registration number | Registered bus operator must display registration number on bus | 10 penalty units | $1,652.20 |
| Reg. 11(3) – Signage – registration number | Person must not display registration number unless bus is used by registered bus operator with that registration number | 10 penalty units | $1,652.20 |
| Reg. 12(2) – Device must operate | Driver of school bus must ensure each light, sign or other device operates when bus is stationary | 10 penalty units | $1,652.20 |
| Reg. 12(5) – Device must operate | Operator must not allow bus to be used for school bus service before light, sign or other device is operational | 20 penalty units | $3,304.4 |
| Reg. 13 – Driver must not have alcohol or drugs present | Driver must not have alcohol or drugs present in the driver’s blood or breath immediately before or while driving a bus | 10 penalty units | $1,652.20 |
| Reg. 31(1) – Retention of records | Accredited bus operator must keep records in a safe and secure location for specified period | 10 penalty units | $1,652.20 |
| Reg. 31(2) – Retention of records | Registered bus operator must keep records in a safe and secure location for specified period | 10 penalty units | $1,652.20 |
| Reg. 31(3) – Retention of records | Operator must keep records in the English language | 10 penalty units | $1,652.20 |
| Reg. 32(1) – Disclosure of records | Accredited bus operator must not make a record of, disclose to any person, or make use of driver records except without consent or otherwise authorised or required | 20 penalty units | $3,304.4 |
| Reg. 39(1) – Bus incident investigation | Operator must comply with direction to undertake investigation into bus incident | 2 penalty units | $330.44 |
| Reg. 39(3) – Bus incident investigation | Operator must commence investigation within 7 days of direction | 2 penalty units | $330.44 |
| Reg. 40(2) – Bus incident investigation report | Bus operator must provide investigation report to Safety Director within specified time | 5 penalty unit | $826.10 |

## Impact on small business

The purpose of this section is to analyse the proposed regulations and assess whether any elements of the proposed regulations impose a disproportionate burden on small businesses operating in the commercial passenger vehicle industry.

### Structure of the industry

The bus service industry for which these regulations apply is made up of:

* accredited bus operators
* registered bus operators.

Generally, registered bus operators are likely to be small businesses such as community or not-for-profit bus services, hire and drive bus services and commercial or courtesy mini-buses.

### Which requirements have potential effects on small businesses?

Of the requirements imposed by the proposed regulations, the following have the most significant impact on small businesses:

* safety inspections
* notifying prescribed incidents to the Safety Director.

Some requirements that impose a significant burden are only imposed on accredited bus operators. This includes requirements to establish and maintain an MIS and MMS. Accredited bus operators are generally not considered to be a small business, and therefore the impact of these requirements will not be considered further in this section.

### Do the proposed Regulations place a disproportionate burden on small businesses? How is this mitigated?

Small businesses may be disproportionately affected by regulations, especially where the scale of operations in the business means that small businesses:

* are unable to sufficiently interpret regulatory requirements
* find that the resources required to comply with regulatory requirements are higher relative to the size of their operations and/or cost/revenue base
* are less able to keep pace with regulatory change.

DoT has considered the impact of the proposed regulations on small business when reviewing and designing the proposed regulations.

As indicated in previous sections of this RIS, regulatory requirements under the Bus Safety Act and regulations are structured based on whether a bus operator is accredited or registered. More regulatory requirements are imposed on accredited operators.

DoT notes that any registered operators who are also small businesses, have a lower number of regulatory requirements to comply with. In addition, the existing regulatory requirements that are imposed on registered operators, such as an annual roadworthy inspection and incident notification, are prescriptive requirements which do not require significant interpretation.

As part of this RIS, DoT is also recommending and seeking feedback on some new requirements to be imposed on registered operators. These requirements are displaying a sign on the bus with the registration number of the operator and keeping some records in relation to the operator’s business and operations. DoT has considered what the minimum regulatory obligations is necessary to achieve the objectives (e.g. improved compliance monitoring and enforcement) and does not expect that these requirements to have a disproportionate effect on small businesses, For example, registered operators are likely to already keep some records in relation to their drivers and vehicles used to provide bus services. While there is a compliance burden, DoT does not expect small businesses to be disproportionately affected.

Some accredited operators may also be small businesses. In general, there are more obligations imposed on accredited operators and some of these obligations are less prescriptive and require the operator to implement systems, procedures and/or processes. Such requirements are more complex and require greater interpretation. Accordingly, it may be more difficult for operators to comply. The purpose of not being prescriptive is, in part, so that the complexity of systems, processes and procedures scale with the complexity of operations and the nature of safety risks that must be managed. The primary obligations of this nature are the requirements to implement an MIS and MMS. DoT notes that these proposed regulations are also in the current Regulations. To ensure that operators are able to understand their obligations, TSV has prepared guidance materials such as factsheets, case studies, and examples of systems.

For all operators, TSV also has a role in ensuring that any operator is able to understand and comply with regulatory obligations. Accordingly, TSV can take steps to make it easier for operators to comply. This includes preparing and disseminating guidance material or taking advantage of technology and IT systems so that it is faster and simpler for operators to submit information to the regulator. These measures will also assist small businesses.

## Statement of compliance with National Competition Policy

### Background

The National Competition Policy agreements set out specific requirements arising out of new legislation adopted by jurisdictions which are party to those agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle which must be applied to both existing legislation under the legislative review process, and to proposed legislation:

*The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:*

*(a) The benefits of the restriction to the community as a whole outweigh the costs; and*

*(b) The objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

*Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).*

Therefore, all RISs must provide evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations. The Organisation for Economic Co-operation and Development (OECD) Competition Assessment Toolkit provides a checklist for identifying potentially significant negative impacts on competition in the RIS context. This is based on the following four questions:

* Does the proposed regulation limit the number or range of suppliers?
* Does the proposed regulation limit the ability of suppliers to complete?
* Does the proposed regulation limit to the incentives for suppliers to compete?
* Does the proposed regulation limit the choices and information available to consumers?

According to the OECD, if all four of these questions can be answered in the negative, it is unlikely that the proposed regulations will have any significant negative impact on competition and further investigation of competition impacts is not likely to be warranted.

### Assessment

From the analysis of the costs and benefits, there may be some barrier to entry imposed by the proposed regulations. There are two broad areas of costs imposed by the proposed regulations that may pose a barrier to entry – the costs of entry and costs of continuing to operate a bus service. The costs of entry imposed by the regulations include the application fees, administrative costs of applying for accreditation or registration, and the development of an MIS and MMS. The costs of conducting a bus service includes costs associated with maintaining an MIS and MMS, bus safety incident notification requirements, record keeping requirements and roadworthy inspection costs (in the case of registered operators). Both these types of costs affect an operator’s decisions on whether they think it is worthwhile to enter the bus industry based on their own assessment of benefits and costs. If the assessment is that the costs are too large relative to the benefits, the operator will not enter the bus industry. These costs may be particularly onerous on small businesses.

Nonetheless, these compliance costs are necessary to ensure the safety of bus services. In recommending the proposed regulations, DoT has considered the minimum regulations required to achieve the objectives of the proposed regulations (refer to Section 4 for further discussion on the objectives). Broad consideration was given to assessing the relative risks of various cohorts of bus industry participants so that the costs would not place a disproportionate burden on certain sectors of the industry without due consideration to the impacts on both safety outcomes and costs. As such, the costs, and consequential barriers to entry, are justified in this context.

# Implementation

TSV will be the primary regulatory agency to implement the proposed regulations. Other agencies will be involved in the compliance monitoring and enforcement of bus safety laws such as Victoria Police.

## Making of the proposed Regulations

Following the public comment period, DoT will consider all submissions and comments made by stakeholders on the proposed regulations. After this, DoT will submit its final recommendations to the Minister for Public Transport for approval. The Minister for Public Transport will publish a notice of decision in the Government Gazette and in newspapers which will outline the changes in the exposure draft of the proposed regulations. DoT expects the regulations to be made before the current Regulations expire in October 2020.

## Role of the regulator and other agencies

### Powers of the regulator and transport safety officers

Provisions contained in the *Transport Integration Act 2010*, and the *Transport (Safety Schemes Compliance and Enforcement) Act 2014* empower the Director, Transport Safety and transport safety officers to draw from a hierarchy of regulatory tools in relation to compliance and investigatory powers for buses.

These include infringement notices, improvement notices (which require a duty holder to remedy a safety breach) and in more critical circumstances, prohibition notices (which enable the Safety Director to prohibit the duty holder from carrying out an unsafe activity until the situation is remedied). In each case, failure to comply with any of these notices is an offence.

### Victoria Police

Victoria Police has an important role to play in promoting road safety and actively enforcing the requirements of the Road Safety Act and its regulations. Victoria Police have powers under the Road Safety Act to enforce laws in relation to all users and vehicles on Victorian roads including buses and bus drivers.

Victoria Police also has a role in ensuring the safety of buses under the Road Safety Act. For example, Victoria Police perform drug and alcohol tests to ensure that drivers of buses, within the meaning of the Road Safety Act, maintain a zero BAC.

Victoria Police are also empowered to enforce the requirements of the Bus Safety Act. Consequentially, and subject to priorities and resources, the police have a role in compliance monitoring and enforcement of bus safety laws.

In the past, TSV has conducted joint compliance monitoring and enforcement operations with Victoria Police. While Victoria Police have powers under the Bus Safety Act, TSV are the primary regulator of bus safety under the Bus Safety Act and its regulations. The joint efforts by TSV and Victoria Police are chiefly to combine efforts to comprehensively enforce road safety under the Road Safety Act. This option still could be exercised in the future.

### WorkSafe

WorkSafe is the regulator responsible for workplace safety and administers the OHS Act. The safety duties under the Bus Safety Act are based on the duties under the OHS Act. There are provisions in the Bus Safety Act that provide that to the extent of any inconsistency between the Bus Safety Act and the OHS Act, the OHS Act prevails. This provision recognises WorkSafe’s role in being the state’s primary workplace safety regulator and that other safety schemes should not be inconsistent or conflict with the OHS Act. In effect, this means that WorkSafe could enforce safety requirements in buses as they are also workplaces. In practice, the majority of compliance monitoring and enforcement is undertaken by TSV as the specific regulator for bus safety as it is resourced to undertake this function. However, WorkSafe could investigate more serious safety breaches, if, in the circumstances having regard to competing priorities, it is warranted.

## Changes to processes and systems

In order to implement the proposed regulations, TSV may be required to make a range of changes to their processes. In particular, guidance will need to be provided to accredited and registered bus operators on the incremental changes under the proposed regulations.

The regulations are proposed to introduce new obligations for registered operators to keep records, as well as introducing new types of records that need to be kept by accredited operators. TSV will have a role in ensuring that all operators are aware of these new requirements.

The regulations create different categories of bus incidents that need to be reported to TSV at different times, depending on the type and seriousness of the incident. TSV will need to provide guidance to bus operators on the new incident reporting scheme to ensure that operators are aware of which bus safety incidents falls within which category.

In addition, new signage requirements will need to be communicated to the industry to ensure industry is aware of what is required to comply.

In general, TSV will largely build on and modify existing systems to implement the new regulations, meaning that the cost of implementing the proposed regulations is not expected to be significant. Many systems for the collection and storage of data have already been built, therefore minor changes may be required to capture and store any new data or aggregates of data in a meaningful way.

Any changes to processes required, as well as guidance provided to the industry on the changes for the proposed regulations, will be made after the proposed regulations are approved but prior to commencement of the proposed regulations.

There may also be an opportunity for TSV to improve systems and processes more generally. For example, TSV could assess the way that it collects and analyses information to better inform its regulatory operations, such as compliance monitoring and enforcement. Such improvements could assist DoT in future legislative and regulatory reviews.

As part of the development of this RIS and the draft regulations, DoT has identified some opportunities to improve the way that it collects and analyses information for policy development. This includes undertaking deeper analysis of data, collecting data from a wider range of sources, or integrating data from multiple sources (e.g. using VicRoads or Victoria Police data together with TSV data collected). The benefit of this approach is it enables greater insight into trends that are occurring, and enables better decision making as the benefits and costs of alternative options are known with better accuracy. DoT notes that it is not always possible to collect perfect information in all circumstances, but endeavours to investigate opportunities to make these improvements following the implementation of the regulations to inform future regulatory reviews and reviews of other transport portfolio schemes.

## Timing of commencement

The existing Bus Safety Regulations will expire on 12 October 2020. DoT expects that the actual commencement of the proposed regulations will be prior to this date.

Given the substantive safety duties will largely remain unchanged (as a function of the overarching safety duties scheme under the Bus Safety Act), TSV is expected to continue compliance monitoring and enforcement of the bus safety laws during transition from the expiring regulations to the proposed regulations.

DoT and TSV will communicate with the industry regarding the commencement of the new regulations, and the approach to compliance monitoring and enforcement before the new regulations commence.

## Communication and consultation

TSV will undertake to provide updates and communication to the industry in a variety of ways such as via its website, letters to stakeholders and other stakeholder forums.

TSV will be the primary agency to undertake communication and consultation with the industry and the public to implement the new regulations.

# Evaluation Strategy

## Purpose of an evaluation

It is important to undertake an evaluation of the proposed regulations to assess whether the proposed regulations are the appropriate intervention to meet their identified objectives. An evaluation strategy is a strategy that outlines how the evaluation of the proposed regulations will be undertaken.

The proposed regulations are largely a remake of the existing set of bus safety regulations. An evaluation of the proposed regulations will need to consider the performance bus services industry, including bus operators, bus drivers, passengers and the broader community generally.

## The approach to evaluation

### Timing, evidence and monitoring

The *Subordinate Legislation Act 1994* provides for the automatic revocation of regulations after ten years of operation. In addition, the Act requires that a RIS is are prepared and that there is appropriate public consultation undertaken to provide the community with an opportunity to comment when regulations are proposed to be made.

The Department of Transport will review the operation of the proposed regulations before the sunset date of the proposed regulations (i.e. ten years from the date of making). The review will evaluate the effectiveness of the proposed regulation and inform the preparation of the possible future RIS, if regulations are still considered necessary to achieve the objectives.

The Department will be responsible for undertaking the review and would commence approximately 12 to 18 months before the expiry of the proposed Regulations in 2030. The Department will undertake the evaluation drawing on information and input from the TSV. This includes compliance monitoring and enforcement data, and information and data kept by the industry as records.

DoT has also indicated that a future review of regulatory fees will be undertaken. There are several factors and circumstances such that DoT is recommending that the structure and levels of fees do not change at this time. However, DoT is committing to undertaking a full review of fees within three to five years of the commencement of the proposed Regulations. DoT considers that this timeframe is appropriate having regard to the time that may be needed to undertake any organisational restructure, and the implementation of any reforms. Additionally, in the current environment of the COVID-19 pandemic, there is considerable uncertainty in relation to planning and priorities, but DoT considers that a timeframe of three to five years sufficient to undertake a review of regulatory fees. As part of this review, DoT will examine and assess the efficiency of the cost base associated with bus safety regulation, and a range of options for the recovery of costs. Information assessed to date, and submissions made for the purposes of consultation on this RIS will inform this review.

### Objectives of the regulatory proposal

DoT’s objective in making the proposed regulations (as discussed in Section 4) is to promote and improve the safety of bus services provided in Victoria while minimising regulatory and compliance costs to industry and enabling effective enforcement of bus safety laws.

Accordingly, the proposed approach to the evaluation involves:

* identifying the proposed regulations that are relevant to the specific objective
* identifying indicators – the changes in outputs or outcomes providing an indication that the objectives of the intervention are being achieved
* identifying the baseline data – the data that will be collected prior to the commencement of the intervention, that will be used as the basis of the analysis
* data to be collected – the data that will be collected after the commencement of the intervention, with this data assessed against the baseline data
* the evaluation will consist of a comparison of the outputs and outcomes post-implementation against the baseline data

In terms of the proposed regulations, the evaluation will consider whether the requirements relating to management systems, annual inspections and incident reporting is still appropriate or whether the industry is adopting different approaches to managing safety.

The safety of accredited and registered bus services needs to continue to be monitored. This includes monitoring whether there are proportional levels of safety incidents between accredited and registered bus services.

### Baseline data

The evaluation will be informed by the current data available in relation to:

* data on safety outcomes in the bus industry, including fatalities and serious injuries
* vehicle inspections which includes the results of the inspections and actions taken to address identified defects and issues
* bus safety incidents, and
* other compliance, investigative and enforcement activities conducted by the regulator.

### Information and data to be collected

The regulator has the power to monitor data on incidents which have an impact on driver and passenger safety in the bus industry through:

* audits of bus services, including data on the number of infringements, improvements notices and prohibition notices
* reports from notifiable incidents to the regulator.

Information and data to assess the effectiveness of the proposed regulations will be collected through:

* safety audits
* vehicle inspections, and
* investigations arising from incidents notified to the regulator.

##### Current data limitations

DoT notes that, as part of the development of this RIS, there have been some difficulties in accessing data and gaining insights from that data. There are measures that could be taken to address these issues to improve the data that is available for analysis and to help improve decision making. Therefore, for the purpose of future regulatory reviews, in addition to the data that has been collected, there are additional data sources that could be sourced or different assessment methodologies that could be applied to existing data.

There are some issues that are temporary or limited to this review of the regulations. For example, some data was not available or collected in time to inform the review of the regulations. DoT can address this by commencing collection and collation of data earlier in the process of reviewing the regulations. Another issue which is not expected to affect future regulatory reviews is TSV’s adoption of a new database in 2018 for recording and reporting information. DoT found that some data was incomplete and not suitable for presenting in this RIS. While this affected how some data is presented in this review, DoT does not expect that it would affect future reviews.

Other data limitations relate to working with data across different databases and systems. For example, VicRoads holds data on vehicle registrations and vehicle owners, which include information on the manufacturer and make of different buses. There can be some difficulty in matching databases when data is collected in relation to different regulatory schemes. In the case of regulating for bus safety, the Bus Safety Act regulates vehicles that have a seating capacity for 10 or more adults and are used to provide a bus service. On the other hand, the vehicle registration system under the Road Safety Act defines buses as vehicles with capacity for more than 13 adults. Effectively, this means that some ‘buses’, which have capacity between 10 to 12 adults could be captured as conventional passenger motor vehicles. The VicRoads system also does not record whether buses are used for private purposes or used to provide a bus service. Other factors that need to be considered are that some vehicles which seat 10 to 12 persons may also be used as a commercial passenger vehicle to transport wheelchair accessible persons, and this would not be captured in the VicRoads database.

There may be opportunities to access and align currently available data with data collected by Victoria Police in relation to bus safety, including incidents relating to alcohol and drugs and incidents that result in a fatality or serious injury. While Victoria Police have powers to enforce bus safety laws under the Bus Safety Act and its regulations, Victoria Police plays a greater role in enforcing the requirements of the Road Safety Act. The data collected during Victoria Police’s compliance monitoring and enforcement of the road safety laws is within the context of road safety law, not necessarily bus safety law. For this reason, data collected and used by Victoria Police may not necessarily align with what is required to analyse the efficacy of bus safety laws.

While DoT has taken best endeavours to ensure the veracity of the data used for analysis, there are some limitations. DoT will consider investigating opportunities to ensure that these limitations are addressed. This includes opportunities to resolve discrepancies in data systems between DoT agencies (i.e. TSV and VicRoads), and well as improvement in inter-agency data sharing, particularly in relation to Victoria Police’s compliance monitoring and enforcement of the road safety and bus safety laws.

##### Quantifying benefits

In a number of cases, DoT has been unable to ascertain, with certainty, the extent of benefits that are attributable to certain interventions. In part, this is because some regulatory requirements have been in place for many years and it difficult to estimate the counterfactual (i.e. determine what would happen in the absence of regulations). For DoT to be best placed to conduct future evaluations, the following measures could be taken:

* Deeper analysis of incidents and investigations – some of the data presented in Section 3 of this RIS is aggregated data. Access to more granular records and analysis of the causes of incidents or contributing factors would better inform the potential benefits of regulatory options. DoT would need to budget and resource this task appropriately. However, preparations could be done as part of forward planning for future regulatory reviews.
* International or jurisdictional comparisons – safety data and trends in other jurisdictions may provide some further insights into estimating the counterfactual. However, a number of other jurisdictions have similar regulatory schemes, so such data may not provide a good indication of the relative performance of the Victorian bus safety regulations compared to other jurisdictions.

##### Technology and data

There may also be future technological and regulatory developments that could affect the extent of data that is accessible to DoT. This includes the proliferation of connected and automated vehicles. As the technology utilised in vehicles improves, some of this data may be accessible to government for policy and planning purposes. Such developments may also have an impact on the safety performance of the industry, as operators and drivers could have better tools to manage safety risks. There is some uncertainty as to when the developments may come into effect, but there may be some improvements within the next 10 years.

Nonetheless, as technology is continually evolving and the regulatory landscape continually changes, there may be opportunities unknown to DoT now, but which may present new and innovative ways in the future for DoT to gather and analyse bus safety data. DoT will continue to monitor and assess these opportunities as they arise.

### Key performance indicators

Safety outcomes are measured through the number of deaths, injuries and vehicle incidents. In terms of the safety of buses, the number of deaths, injuries and vehicle incidents resulting from bus operations will be the main indicators of performance.

An indicator of whether the industry is actively managing safety risk is whether the industry is adopting innovative ways of addressing safety risks. This could be assessed through the MIS and MMS maintained by accredited bus operators. This could give some insight into how the industry is ensuring safety. DoT could seek stakeholder input, via interviews or surveys, to inform how this is changing.

Accordingly, measures of success include maintaining levels of safety outcomes that are at least as good as current levels. For example, observing no increase or even a decreasing number of incidents resulting in fatalities or serious injuries as a proportion of total buses or vehicle kilometres. Observing no increase in incidents of fatalities or serious injuries in absolute terms may not be appropriate given the number of bus operated by accredited or registered operators are continually changing. If an increase in bus safety incidents is in proportion to an increase in buses, then this does not necessarily indicate a deterioration of bus safety.

Any observed distinct upward trend over a period or a spike in a short period of time above the ongoing average for a specific incident type indicates there may be issues with the interventions used to minimise those bus safety incidents. This may warrant a review of the proposed regulations or the compliance monitoring and enforcement of the proposed regulations. Note that any trend or spike in incidents must take into account the number of buses to get a sense of the proportionate change.

A key consideration of the evaluation will be assessing the interplay between various interventions available to government. For example, the procurement of route bus services, developing codes of practices and education campaigns or improving bus stopping infrastructure. The availability of comprehensive data that relates to safety outcomes and actions that are undertaken will inform the evaluation to ensure that any improvements in safety are attributed appropriately.

# Consultation

A range of parties were consulted in the development of the proposed regulations.

The Department of Transport reviewed the current Bus Safety Regulations together with Transport Safety Victoria (TSV) to understand where there are opportunities for improvement, or to reduce regulatory burden. Consultation with TSV identified several areas of improvement, which largely related to measures to improve their compliance monitoring and enforcement effort. This includes the availability of and access to information relating to the bus fleet of operators, records of vehicle safety for registered operators, ability to identify the person responsible for the provision of a bus service during on-road enforcement and providing clarity on incidents required to be notified. These improvements have been addressed in the proposed regulations.

DoT also consulted with Road Safety Victoria (RSV) in respect of the vehicle standards present in the Bus Safety Regulations. Road Safety Victoria is an administrative unit within the Department of Transport. No substantive issues were identified with the interaction of the additional vehicle standards in the Bus Safety Regulations and the ADRs, the Australian Light Vehicle Standards or the heavy vehicles standards in the Heavy Vehicle National Law.

Early consultation with industry stakeholders was undertaken by DoT, giving specific attention to the incremental changes in the proposed regulations from the existing Regulations, and the providing rationale for these changes. Industry stakeholders consulted prior to the release of this RIS include the Bus Association of Victoria, and certain bus operators.

## Stakeholder questions

DoT seeks specific feedback on the following matters in this RIS:

*School buses (refer to Section 7.2.4 for further discussion)*

Is there merit in adopting the NSW standard for school bus lights and signs in Victoria? Why or why not?

Would you support adopting the NSW standard for school bus lights and signs on Victorian buses?

*Identification (refer to Section 7.6 for further discussion)*

Do you support the removal of the requirement to display specific accredited bus number plates? Why or why not?

## Next steps

Stakeholders are invited to make formal submissions or comments on the RIS and the proposed regulations. Submissions may present analysis of alternative options and recommend changes to the proposed regulations.

Submissions are required to be made in writing and submitted on the Department’s consultation website, [Get Involved](https://getinvolved.transport.vic.gov.au/). Submissions must be provided to the Department on or before 13 August 2020.

After the consultation period, the Department will consider all feedback received from stakeholders and the community and consider whether any changes to the proposed regulations are required. The Department will make recommendations to the Minister about the final form and content of the regulations for the Minister to make the final decision.

A public notice on the Minister’s decision will be made, with the new regulations proposed to commence later in 2020.

Authorised by the Hon. Ben Carroll MP

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This document is also available in an accessible format at getinvolved.transport.vic.gov.au

1. See Division 17 of Part 8 of Schedule 2 of the Road Safety (Vehicles) Regulations 2009 [↑](#footnote-ref-2)
2. Note on data: The Bus Safety Act and the Bus Safety Regulations came into effect on 31 December 2010. As part of the commencement of the new bus safety scheme, there were transitionary measures in place to reduce the implementation burden on the industry. For this reason, some data, such as compliance and applications data, for years 2011 to 2015 presented in this RIS may differ from later years. [↑](#footnote-ref-3)
3. Serious injury is considered by TSV as an injury in which an ambulance is called to attend. [↑](#footnote-ref-4)
4. Other refers to a range of minor and miscellaneous issues identified as contributing to incidents relating to mechanical failures. This may include a multitude of specific mechanical failures that are not categorised under a specific category, e.g. failures relating to battery, gearbox, transmissions etc. [↑](#footnote-ref-5)
5. TSV has provided inspection data from 2011 to 2019. Data for years 2011 to 2014 has been omitted since there has been transitional arrangements to the new regulatory scheme. Data for years 2018 to 2019 has been omitted since there is incomplete data due to the transition to a new TSV database for data collected as part of TSV’s regulatory functions. [↑](#footnote-ref-6)
6. See Division 18 of Part 8 of Schedule 2 of the Road Safety (Vehicles) Regulations 2009 [↑](#footnote-ref-7)
7. Note on data: Accredited operators under the old scheme were deemed to be accredited at the commencement of the new bus safety scheme, with deeming lasting for up to 5 years. During this transition period, those bus operators wishing to continue their operations were required to apply for full accreditation under the Bus Safety Act. The spike in accreditations granted in 2014 and 2015 are a result of the deeming provisions expiring and operators applying for accreditation under the new scheme. [↑](#footnote-ref-8)
8. https://www.dtf.vic.gov.au/sites/default/files/2018-01/Cost-Recovery-Guidelines-Jan2013\_0.pdf [↑](#footnote-ref-9)
9. The annual accreditation fee applicable to an operator is based on the formula (5.5 fee units x (B – 1) + 20 fee units, where B is the number of buses proposed to be operated by the bus operators. The average fee unit applied to all active accredited operators was derived by determining the average number of buses operated by accredited operators (i.e. total buses operators by accredited operators divided by the total number of accredited operators) [↑](#footnote-ref-10)
10. Note that the seating capacity for adults are able to accommodate seating for children. [↑](#footnote-ref-11)
11. See Division 17 of Part 8 of Schedule 2 of the Road Safety (Vehicles) Regulations 2009 [↑](#footnote-ref-12)
12. The hourly labour cost used throughout this RIS is based on the ABS average weekly earnings for adults of full-time ordinary hours of $1,658.40 (see ABS Cat. 6302.0 Average Weekly Earnings, Australia, Nov 2019). Assuming the average number of hours worked by full-time employees is 38 hours per week, this implies an average hourly wage rate of $1,658.40 ÷ 38 = $43.64. As recommended by the Victorian Guide to Regulation, this hourly wage rate can be multiplied by 1.75 in order to account for on-costs, including non-wage labour costs such as superannuation, long service leave etc. as well as the costs of office space, office equipment and the like. This implies a total hourly labour cost of $43.64 x 1.75 = $76.37. [↑](#footnote-ref-13)
13. Annual growth rate estimated based on data from 2016 to 2019. Data prior to 2016 is excluded due to the spike in accreditations granted in 2014 and 2015 as a result of deeming provisions from the old bus accreditation scheme expiring and operators applying for accreditation under the new scheme. [↑](#footnote-ref-14)
14. The annual growth of active accredited operators (1 per cent) will generally be lower than the number of new applicants per year (40 applicants). The number of active accredited operators reflect net effects of industry entry and industry exit and includes factors such as consolidation of operators or an operator transferring from accreditation to registration within the industry. Applications represent industry entry only. [↑](#footnote-ref-15)
15. The NPVs calculated throughout this RIS assumes an annual discount rate of 4 per cent. All NPVs referred to in this RIS is over a 10-year period and corresponds to the life of the proposed regulations. [↑](#footnote-ref-16)
16. Data prior to 2016 is excluded due to the spike in accreditations granted in 2014 and 2015 as a result of deeming provisions from the old bus accreditation scheme expiring and operators applying for accreditation under the new scheme. [↑](#footnote-ref-17)
17. Note that buses operating on average seven days per week will still be out of service a few days per year for regular maintenance and inspections. [↑](#footnote-ref-18)
18. <https://www.bitre.gov.au/sites/default/files/Road%20trauma%20Australia%202018%20statistical%20summary.pdf> [↑](#footnote-ref-19)
19. Average accreditations granted per year is taken as the average from 2016 to 2019. Data prior to 2016 is excluded due to the spike in accreditations granted in 2014 and 2015 as a result of deeming provisions from the old bus accreditation scheme expiring and operators applying for accreditation under the new scheme. [↑](#footnote-ref-20)
20. Non-commercial bus services with vehicles that have 10 or more seats, including the driver, are not required to be accredited. These operators are registered. [↑](#footnote-ref-21)
21. Note on data: Accredited operators under the old scheme were deemed to be accredited at the commencement of the new bus safety scheme, with deeming lasting for up to 5 years. During this transition period, those bus operators wishing to continue their operations were required to apply for full accreditation under the Bus Safety Act. The spike in accreditations granted in 2014 and 2015 are a result of the deeming provisions expiring and does not represent a long-term trend in applications granted for accreditation. [↑](#footnote-ref-22)
22. Note on data: The number of applications for registration in 2011 to 2015 are considered outliers and are not included in the average applications. This is because during these years there was a large influx of registrations due to the commencement of the new bus safety scheme 2010 which introduced a new registration scheme for the mini-bus sector of the industry. [↑](#footnote-ref-23)
23. Based on 3.3 fee units from Schedule 3 of Victoria Police (Fees and Charges) Regulations 2014. [↑](#footnote-ref-24)