



# Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015

Regulatory Impact Statement

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# 1 Executive Summary

## **Name of Department**

Department of Economic Development, Jobs, Transport and Resources

## **Name of Proposal**

Transport (Compliance and Miscellaneous)(Conduct on Public Transport) Regulations 2015

## **Form of Regulatory Change Proposed in this Regulatory Impact Statement (RIS):**

Replacement of sunseting regulations

## **Has VCEC assessed the RIS as meeting the Victorian Guide to Regulation requirements?**

Yes

## **Is small business (<20 staff) specifically affected?**

No

## **Are regional areas specifically adversely affected?**

No

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The actions and behaviours of passengers on public transport may have a significant effect and impact on other passengers and the transport system. As a result, governments have made regulations controlling the conduct of persons on public transport to limit undesirable passenger behaviour in line with community expectations.

The *Transport (Compliance and Miscellaneous) Act 1983* provides the Minister for Public Transport with the power to recommend that the Governor in Council make regulations that prohibit unsafe conduct and conduct that negatively impacts on the amenity of other public transport users.

The purpose of these regulations is to support the efficient operation of transport networks by avoiding safety incidents that cause disruption and harm. The regulations also seek to maximise the attractiveness of public transport to prospective users with a view to encouraging the use of public transport, and in turn, reducing pressures and demands on other parts of the transport system.

The Department has prepared this Regulatory Impact Statement (RIS) to inform consideration of the exposure draft of the regulations that are proposed to replace two sets of regulations that expire on 28 June 2015 (refer to Section 2.1). The release of the exposure draft of the proposed regulations and this RIS is intended to provide public transport users and other stakeholders with the opportunity to have their say. You are invited to make written submissions to the Department by email or by post (refer to Section 2.4 for details). The public comment period closes on 1 June 2015.

## **Why are regulations needed?**

The regulations can be grouped into broad categories relating to the outcomes the regulations aim to achieve:

- improving safety;
- preserving and enhancing amenity; and
- avoiding damage to public transport property, equipment and vehicles that are needed to provide public transport services.

There are two reasons that help explain (and justify) why regulation has been needed to support the achievement of these outcomes: imperfect information and negative externalities.

*Imperfect information*

The level of information public transport users hold in relation to the risks and safety characteristics of choices available to them may not always be complete (i.e. "imperfect"). Accordingly, people may make decisions that they would not otherwise make if they were fully aware of the risks and potential outcomes. An example is when a passenger protrudes a body part or an object from a passenger vehicle. A passenger may not be fully informed about the likely hazards and may underestimate the likelihood of injury caused to either themselves (e.g. from hitting an oncoming object or vehicle while the passenger vehicle is in motion) or injury caused to third parties (e.g. from a protruding object striking a person waiting on the platform at a train station).

### *Externalities*

An "externality" may arise when the unsafe behaviour of a passenger imposes economic costs on others, such as public transport operators, drivers or users. The individual, when making the decision to engage in the conduct, does not take into account the potential negative impact ("externality") his or her behaviour could have on others. For example, a person wishing to catch a train takes a risk and crosses train tracks in front of an oncoming train while the boom gates are down. The train driver brakes as a preventative nature and this causes some of the passengers of the train to bump into each or fall over. The train and all its passengers experience a minor delay while the incident is reported.

In the example, the person crossing the tracks is driven by his or her own self-interest and is not accountable for the consequences he or she causes. Give the same situation, the person would most likely repeat the misconduct unless there is reason to rethink his or her behaviour.

The presence of externalities and the effects of imperfect information have been used to justify the use of regulation to address unsafe and antisocial conduct. In most cases, regulation is used to complement other measures such as education campaigns and engineering controls.

The key issue considered in this RIS is whether there continues to be a need to regulate, and if so, what type of regulation will be most effective in reducing misconduct while minimising the level of burden that regulations impose.

### **The potential consequences of misconduct**

The type of economic costs vary with the conduct of concern and could include:

- injury or fatality costs borne by public transport users, drivers, or the general public;
- costs borne by emergency services when attending to deaths or injuries, including personal risks borne by workers in emergency services;
- delay costs to other commuters or road users as a result of incidents causing delays to public transport; and
- lower use of public transport and higher use of road networks – amplifying congestion impacts

On average there are approximately 15 fatalities and 100 serious injuries linked to the operation of trains, trams and buses each year. A causal factor in a large proportion of the incidents that result in deaths and injuries is unsafe conduct.

Certain conduct by passengers impacts directly on the safety of other users. For example, creating an obstruction on public transport may cause another passenger to slip, trip or fall. Medical expenses are not borne by the person creating the obstruction but instead are borne by the injured passenger.

In other cases, unsafe conduct may not impact directly on drivers or passengers, but may impose indirect costs on other public transport users and users of other transport alternatives that are affected by delays to operation. For example, a passenger train is unable to continue services until emergency services arrive to attend to an injured passenger on the train, which may divert passenger trips onto the road network, increasing road congestion and causing delays to road users.

The size of these economic impacts may be substantial. For example, over the four years between 1 January 2010 and 31 December 2014, there were 2490 recorded incidents of vandalism on the metropolitan train network, and these incidents impacted, on average, approximately 5 trains every

incident, and, on average, caused 21.6 minutes of delay to passengers. Similarly, over the same period, there were 4718 recorded incidents of trespass on the metropolitan network. These incidents impacted, on average, approximately 7 trains and caused 29.8 minutes of delay to passengers. The delays amount to tens of millions of dollars in lost time per year<sup>1</sup>.

### What options are available?

There are a number of options available to government to address the identified problem:

- regulation;
- education and the provision of information;
- increasing the presence of staff on public transport and at premises;
- making passenger conditions of travel; or
- utilising engineering innovations and solutions.

### Stakeholder Questions:

*Have all relevant options available to address the problems been identified? If not, what other options are available?*

The benefits and costs of using these options to address the following categories of conduct have been considered. The assessment is summarised in the sections that follow. Due to the nature of the regulations, it has not been possible to quantify the costs and benefits of the regulations and alternative options in a meaningful way. As a result, this RIS discusses the nature of the costs and benefits of the regulations in a qualitative manner, and provides indicative costs and benefits of the options where available.

### ***Creating obstruction and endangering others (see sections 3.2.2 and 6.3.1 for further discussion)***

Under this category of conduct, the following regulations are relevant:

- Conveying or bringing things likely to endanger (regulation 7)
- Throwing or dropping things (regulation 9)
- Creating obstructions (regulation 10)
- Carriage of bicycles (regulation 11)

The discussion in section 3 of this RIS identified that passengers may bring items onto public transport that are either dangerous or cause an obstruction. There is a private benefit to be gained by engaging in this conduct – it may avoid, for example, the cost of a taxi, courier or delivery van. The risk it creates and the costs this conduct could potentially impose on others is not relevant to the decision making of the individual.

The assessment of the Department is that information campaigns and self-regulation based on better information will not be sufficient to deter this type of unsafe conduct – the private benefit to be gained by the individual will justify the behaviour. Indeed, it is reasonable to expect that without some form of intervention, a small proportion of passengers will continue to engage in this conduct. Regulation is seen as necessary to deter this conduct, reduce safety risks and reduce the potential for disruption and delay.

A number of variations to the proposed regulations were considered. Specifically, consideration has been given to providing more certainty about what objects or things are likely to create an obstruction. The purpose of considering these options is to identify whether there is scope to reduce the subjectivity in compliance, compliance monitoring and enforcement.

The current regulations are subjective in relation to the carriage of bicycles. Passengers are permitted to carry bicycles on public transport subject to the bicycle not creating an obstruction (e.g. not

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<sup>1</sup> Source: Metro Train Melbourne

blocking passengers from entering or leaving public transport). The proposed regulations prohibit the carriage of bicycles on trams and buses and prohibit the carriage of bicycles on metropolitan trains only at the first door of the first carriage. These requirements are currently imposed as conditions of travel, however, passengers continue to bring bicycles on trams and buses despite the conditions of travel, and Authorised Officers (AOs) have only had limited success in enforcing the conditions because there is no sanction available. By making an explicit regulation in respect of this matter, infringement penalties are able to be issued to offending passengers. This is expected to increase compliance with this requirement.

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate behaviours that create obstructions or endanger others? Why or why not?*

*Do you support or oppose the proposed regulations? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

*Do you support or oppose the proposed prohibition on the carriage of bicycles on trams and buses? Why or why not?*

*Do you support or oppose the proposed prohibition on the carriage of bicycles near the first door inside the first carriage of metropolitan trains? Why or why not?*

**Entering, travelling or riding public transport in an unsafe manner (see sections 3.2.3 and 6.3.2 for further discussion)**

Under this category of conduct, the following regulations are relevant:

- protruding part of body or object (regulation 8)
- riding bicycles etc. on public transport vehicle (regulation 12)
- driving, riding or parking a vehicle on public transport premises (regulation 13)
- unauthorised entering and leaving vehicles and premises (regulation 14)
- travelling or mounting places not intended for travel (regulation 15)

The design of rolling stock has changed over time making it more difficult to enter, mount and/or travel on public transport in an unsafe manner. For example, doors are designed to prevent passengers from forcing them open, the design of the outside of trains, trams and buses make mounting and riding public transport vehicles difficult, and even the areas between carriages on trains have been re-engineered to eliminate or minimise safety risks as passengers are unable to access the outside of the rolling stock on those vehicles. Additionally, new carriages have windows that are unable to be opened by passengers, eliminating the incidence of protrusions from those vehicles.

Such engineering innovations are alternatives to regulatory solutions, and are arguably more effective than any other available intervention in improving safety outcomes. Regulatory solutions are decreasingly necessary as newer vehicles and rolling stock are procured, manufactured and introduced into the fleet and older vehicles and rolling stock are transitioned out of the fleet. It is important to note, however, that engineering innovations have a long lead time, and are implemented over a number of years. Accordingly, the assessment is that alternative interventions are also required as the risks are unable to be entirely mitigated by engineering solutions at the present time. Therefore, it is necessary to consider additional options and interventions.

It is possible to increase the number of staff to monitor the actions of individuals on public transport. The assessment is that while an increase in supervision may assist with a reduction in the number of safety incidents, without regulatory powers to enforce the requirements, staff supervision alone may be of limited benefit. Additionally, considering the large size of the public transport network, this option is cost-prohibitive. Without other interventions (such as regulatory powers) a very high number of staff would be required to sufficiently deter individuals from participating in this conduct merely through supervisions alone.

Similarly, an education campaign could be employed to highlight the risks of travelling on public transport in an unsafe manner. This has been done in the past in conjunction with the option of regulating conduct. However, individuals that ride public transport in an unsafe manner, in many cases, do so deliberately (i.e. thrill seekers) so the option of providing better information to these individuals could reasonably be expected to be of little or no effect.

Taking these considerations into account the Department has reached the conclusion that regulations are still required to deter this type of conduct.

The proposed regulations increase the scope of the current conduct regulations to cover additional types of risks not previously covered. For example, in areas where riding wheeled recreational devices, such as skateboards, on public transport is permitted, it is important that persons obey traffic control signs or do not ride in a manner that may cause injury or endanger others.

**Stakeholder Questions:**

*Do you support or oppose the proposed regulations relating to entering, travelling or riding public transport? If not, why?*

*Are the right behaviours captured by the regulations? Why or why not?*

***Interfering with equipment (see sections 3.2.4 and 6.3.3 for further discussion)***

Under this category of conduct, the following regulations are relevant:

- interference with gates and doors (regulation 16)
- operating equipment or vehicle (regulation 17)
- applying brake or emergency device (regulation 18)
- interference with prescribed equipment (regulation 19 and schedule 2)

A variety of equipment is used to support the provision of public transport services. Some equipment is used for ticketing purposes and other types of equipment are used to operate public transport vehicles and infrastructure. Additionally, some equipment, such as ticket barriers, doors and emergency devices are provided for use by passengers. The safe and proper operation of equipment on public transport vehicles and premises is important for the safe and efficient operation of the public transport system.

Where equipment is provided for use by passengers for safety purposes, such as a communications link with the driver of the train, it is important to have the equipment operational. In other cases where the equipment does not serve a safety function, non-functioning equipment causes inconvenience and delays. For example, a faulty ticketing gate or reader causes passengers to queue at the remaining functioning ticketing gates.

The presence of transport operator staff, PSOs and AOs on public transport vehicles and around public transport premises is likely to reduce the incidence of the public, either inadvertently or deliberately, interfering with equipment. However, the Department considers that some form of regulatory intervention is also required.

The proposed regulations prohibit the operation of equipment unless the person has a reasonable excuse (e.g. if there is an emergency). There are some small costs to individuals associated with the proposed regulations (e.g. individuals are restricted from interfering with equipment). However, these costs are outweighed by the benefits of the proposed regulations which are a reduction in delays to public transport services and avoided repair and maintenance costs incurred by passenger transport operators.

**Stakeholder Questions:**

*Do you support or oppose the proposed regulations relating to interfering with equipment? Why or why not?*



*Are the right behaviours captured by the regulations? Why or why not?*

***Crossing railway or designated tramway tracks (see sections 3.2.5 and 6.3.4 for further discussion)***

Under this category of conduct, the following regulations are relevant:

- crossing tracks by pedestrians (regulation 22)
- driving or riding across tracks (regulation 23)
- stopping or standing on crossings between boom gates (regulation 24)
- entering pit between platforms or entering onto tracks (regulation 25)

There is some level of under-appreciation of risks and risk-taking when individuals cross railway tracks, especially at designated crossing areas such as at level crossings. In particular, there are a large number of near misses with pedestrians and road vehicles, and in some cases there are also serious consequences such as fatalities and serious injuries. These incidents continue to occur despite the current regulations in place.

The features of the current infrastructure network influences the safety profile of railway corridors and crossing areas and affects the likelihood of pedestrians and road vehicles crossing unsafely (or taking risks). One option is to undertake to remove dangerous levels crossing to improve road and pedestrian safety by undergoing grade separation of the interface between the rail track and the road. The costs of grade separations to remove level crossings are large. The government has made commitments to remove 50 of the most dangerous level crossings in Victoria, but due to the long timeframes associated with such projects, and given that the commitment does not cover all level crossings, alternative interventions are also required to address any residual risks.

Alternatively, there are other infrastructure improvements that can be made to ensure that pedestrians are unable to cross railway tracks or designated tramway tracks. Improvements include fencing, pedestrian bridges or tunnels, active warning signals or gates. These types of improvements ensure that pedestrians are aware of the risks (some crossings make use of flashing lights to alert passengers to the fact that a train is approaching), or control behaviour (gates open and shut when a train is approaching). It is noted that pedestrians and persons in road vehicles continue to take risks even when infrastructure is provided to ensure that tracks are not crossed.

Accordingly, notwithstanding the government's commitment to continually upgrading and improving infrastructure and technologies at levels crossings to improve public safety, infrastructure improvements do not entirely remove the risks relating to crossing railway tracks. Individuals continue to take risks, and further mechanisms are required to maximise safety outcomes.

An option that may be effective if combined with the proposed regulations is to increase supervision around problem areas, such as "high risk" level crossings. In the past CCTV cameras have been used as a compliance monitoring and enforcement tool where CCTV cameras have helped to identify owners of motor vehicles that have broken the law in relation to stopping at level crossings. Moreover, increasing the presence of adequately trained AOs at high risk locations can reasonably be expected to increase compliance.

The expected benefits of the proposed regulations are a reduction in injuries and fatalities and a reduction in delays to services where incidents cause services to cease or be interrupted. On the other hand, the proposed regulations will impose costs on individuals who wish to cross tracks unsafely. The cost are in the form of small delays to travel to these individuals.

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate the crossing of railway tracks and designated tramway tracks by pedestrians and motor vehicles? Why or why not?*

*Do you agree with the assumption that some individuals continue to take risks around level crossings and railway tracks? Why or why not?*

*Do you support or oppose the proposed regulations relating to crossing railway or designated tramway tracks? Why or why not?*

***Anti-Social Behaviour (see sections 3.3.1 and 6.3.5 for further discussion)***

Under this category of conduct, the following regulations are relevant:

- indecent, obscene language and behaviour (regulation 26)
- committing a nuisance (regulation 27)
- drinking liquor or possessing an open container of liquor (regulation 31)
- spitting (regulation 34)

This category of conduct covers a wider variety of passenger conduct that is contrary to the customs of society. Such conduct could include assaults, indecent language, indecent exposure, sexual harassment and theft. Some of this conduct is already prohibited by state laws as crimes.

The purpose of the conduct regulations in this area is to deter anti-social behaviour. However, the cause of anti-social behaviours is complex and the effectiveness of using regulation to address these behaviours is likely to be limited. For example, while drinking alcohol on a public transport vehicle is prohibited, intoxicated passengers are not prohibited from travelling on public transport. Intoxicated passengers or passengers that are under the influence of drugs are just as likely to engage in anti-social behaviour as those drinking alcohol. The regulations provide no means to address this source of risk. Given this, there are reasonable grounds to doubt the effectiveness of the prohibition on alcohol consumption. This is particularly so when the act of consuming alcohol in itself does not cause any problems.

In the case of anti-social conduct which is already criminalised, there is a question as to whether transport laws should also regulate this conduct. One of the benefits of doing so is providing AOs with compliance monitoring and enforcement capabilities in relation to this conduct. The transport conduct regulations do not cover the field of criminal behaviour, since AOs do not have the requisite training to deal with more serious situations.

The proposed regulations are required to address the external effect of anti-social actions and behaviours of individuals on others.

Alternative interventions are employed to reduce the incidence of anti-social behaviours. In public places, increased oversight and supervision exists in the form of CCTV cameras. Such monitoring may deter individuals from anti-social behaviour. Additionally, PSOs also play a role in the safety of passengers at railway stations at night.

Such efforts in increased supervision are expected to be more effective in combination with the proposed regulations because there are individuals who will continue to engage in anti-social behaviour unless there is a creditable threat that those supervising can actually take action.

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate anti-social behaviour on public transport? Why or why not?*

*Do you support or oppose the proposed regulations which address anti-social behaviour on public transport? Why or why not?*

*Would you support or oppose regulations prohibiting eating and drinking generally on public transport? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

***Seating (see sections 3.3.2 and 6.3.6 for further discussion)***

Under this category of conduct, the following regulations are relevant:

- feet on seats or other furniture (regulation 35)
- vacating designated special needs seats (regulation 43)
- vacating seat for persons with special needs (regulation 44)
- vacating area designated for wheelchairs (regulation 45)
- occupying unreserved seats (regulations 46)

There is a certain level of etiquette expected in public places, including public transport vehicles and premises, to provide a seat or vacate an area for those with special needs. It is also a community expectation that one person may only occupy one seat (including not putting feet on seats or removing personal belongings).

Complaints made to PTV, YT and MTM continue to highlight cases where special needs passengers have been unable to access designated seating. The proposed regulations require all persons to vacate seats (whether it is a designated seat or not) for persons with special needs. While there is reason to question the effectiveness of regulations in this area the Department has assessed on balance that there is sufficient grounds for making an enforceable obligation on able bodied users of seats to vacate their on request of persons with special needs.

Placing feet on furniture may impact on amenity by preventing another passenger from occupying a seat. Additionally, dirty feet may make the seat dirty and unsuitable for use. The secondary effect of the latter is that the passenger transport company incurs some cost in cleaning and maintenance of the furniture in the public transport vehicle or premise. On balance, the Department has assessed that there should continue to be a prohibition of feet on seats notwithstanding the consideration of alternative less absolute regulatory options.

**Stakeholder Questions:**

*Do you agree that persons with special needs should be given priority for seating on public transport? Why or why not?*

*Do you agree with the assumption that not all passengers vacate seats to persons with special needs? Why or why not?*

*Do you agree that there is a continued need to regulate the placing of feet on furniture on public transport? Why or why not?*

*Do you support or oppose the proposed regulations relating to seating on public transport? If not, why? Do you support or oppose alternative less absolute forms of regulation?*

***Smoking (see sections 3.3.3 and 6.3.7 for further discussion)***

Under this category of conduct, the following regulations are relevant:

- smoking on public transport vehicles and premises (regulation 32)

Recognising the harmful effects of smoking and second-hand smoke, smoking in some places is banned by the Victorian government under the Tobacco Act 1987. Governments have also implemented further prohibitions that relate to smoking indoors, in sheltered places, at recreational areas or in a motor vehicles if an under 18 is present. It is in public places where smoke is contained that non-smokers are exposed to tobacco smoke and its harmful effects.

In general, the Tobacco Act 1987 expresses an intent for non-smokers in public places to not be made subject to tobacco smoke. To a certain extent, these offences reflect a widespread cultural acceptance in Victoria that smoking is harmful and produces many external costs.

There are already Federal and Victorian government initiatives that are targeted at reducing smoking rates generally. Examples include tax excises on cigarettes, the introduction of plain packaging for cigarettes, funding information and education campaigns designed to encourage smokers to quit and stop young people from starting smoking. For example, Quit, the Cancer Council and VicHealth campaigns.

Given a general cultural non-acceptance of smoking, it would seem contrary to the general perceptions that smoking should be restricted as much as possible in public places and where it may be likely to harm others. As public transport vehicles and premises are generally either enclosed places or places where people congregate, the proposed regulations would reflect the intent of the Tobacco Act 1987, amongst other social norms. It is proposed that the regulations prohibit smoking in all areas of public transport vehicles and premises.

A related matter is whether the current regulations should also apply to e-cigarettes. The Victorian Government has not yet expressed a policy position on e-cigarettes. It appears that the evidence is not yet clear about the potential risks and/or benefits of e-cigarettes, and there is debate about the issue at national and international level. The Department of Health and Human Services is monitoring developments and research concerning the potential risks and/or benefits of e-cigarettes.

**Stakeholder Questions:**

*Is there a need for government to regulate e-cigarettes on public transport vehicles and at public transport premises? Why or why not?*

*Do you agree that there is a continued need to regulate smoking in public transport premises? Why or why not?*

*Have the new regulations prohibiting smoking in all areas of train stations and platform tram stops been successful in improving amenity to passengers? Why or why not?*

*To what extent should smoking be prohibited on public transport vehicles and at public transport premises?*

*Do you support or oppose the proposed regulations relating to smoking on public transport vehicles and at specified public transport premises? Why or why not?*

**Noise (see sections 3.3.4 and 6.3.8 for further discussion)**

Under this category of conduct, the following regulations are relevant:

- musical instruments on public transport vehicles and premises (regulation 28)
- sound equipment on public transport vehicles and premises (regulation 29)
- selling and busking (regulation 30)

Sound and noise on public transport can be generated from a number of sources and passengers on public transport may value different sources of sounds and noises on public transport differently. Some may enjoy listening to another passenger playing a musical instrument whereas other passengers may dislike the music being played. For another person, the playing of music may impede a conversation with a friend.

It is not possible to design a regulation that takes into account the infinitely varying preferences for noise and silence. However, the proposed regulations intend to minimise the likelihood of unwanted noise that may have a negative impact on other passengers by prohibiting certain noise-producing activities. The proposed regulations also provide for the enforcement of the regulations. Accordingly,

there is an expectation that there will be a reduction in undesirable noise as a result of the proposed regulation.

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate sound and noise on public transport? Why or why not?*

*Do you support or oppose the proposed regulations relating to making noise on public transport? Why or why not?*

*Are the right behaviours captured in the regulations? Why or why not?*

**Animals (see sections 3.3.5 and 6.3.9 for further discussion)**

Under this category of conduct, the following regulations are relevant:

- animals on public transport vehicles and premises (regulation 39)
- animals on seats (regulation 40)
- animals not to stray (regulation 41)

The proposed regulations prohibit the carriage of animals unless exempted (e.g. guide dogs, assistance animals, small animals in a suitable container, and dogs on a leash and muzzled on a metropolitan train) and impose requirements on the owners of animals such as ensuring that the animals do not stray and cleaning up after animals.

The benefits of the proposed regulations are increased amenity to passengers (e.g. animals do not disturb the comfort of passengers by roaming on public transport). At the same time, the proposed regulations may impose a small compliance burden on individuals, since some animals may not be brought onto public transport and individuals have some obligations in relation to those animals when on public transport.

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate the carriage of animals on public transport? Why or why not?*

*Do you support or oppose the proposed regulations relating to the carriage of animals on public transport? Why or why not?*

**Damage (see sections 3.4 and 6.3.10 for further discussion)**

Under this category of conduct, the following regulations are relevant:

- damage to property (regulation 20)
- fires on public transport vehicles and public transport premises (regulation 21)
- graffiti (regulation 37)
- scratching and burning (regulation 38)

Vandalism, graffiti, fires, and scratching and burning are a significant issue for public transport operators and users. The cost of damage to public transport property are not borne by the perpetrator; the cost of damages is generally borne by the public transport operators.

There are a number of offences that criminalise vandalism and other damage to personal and public property. There are offences in the *Crimes Act 1958*, the *Summary Offences Act 1966* and the *Graffiti Prevention Act 2007*. Section 197 of the *Crimes Act 1958* and Section 9 of the *Summary Offence Act 1966* specifies it is an offence to damage any property. Section 5 of the *Graffiti Prevention Act 2007* specifies that a person must not mark graffiti on property if the graffiti is visible from a public place unless there is express consent to graffiti.

The proposed regulations overlap the existing offences in other legislation. The advantage of this option is that it enables AOs to undertake compliance monitoring and enforcement in relation to property damage. AOs are already provided with powers to enforce ticketing law and are able to concurrently monitor compliance and enforce conduct regulations.

Due to the better enforcement capability, the proposed regulations are expected to reduce the incidence of damage to public transport property. A reduction in the incidence of damage are expected to result in benefits such as:

- lower or avoided repair, maintenance or replacement costs which are incurred by public transport operators (e.g. when ticketing gates must be repaired when damaged or when vehicles are defaced and must be cleaned);
- a reduction in delays to passengers where vehicles are taken out of service for cleaning, repair or maintenance (e.g. when a train is taken out of service and the services that the train would otherwise would provide are cancelled requiring passengers to wait for the next service);
- lower or avoided costs to passengers not able to use public transport infrastructure (e.g. when transport seating is damaged to the point where it is unable to be used as a seat etc.); and
- improved perceptions of safety and amenity from a reduction in observed damaged property and graffiti.

#### Stakeholder Questions:

*Do you support or oppose the proposed regulations relating to damaging public transport property? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

#### Conclusion

Government departments and bodies, in conjunction with passenger transport operators, employ a variety of interventions to improve safety and amenity and avoid property damage. Some examples include procuring safer public transport vehicles, making improvements to infrastructure and implementing education and information campaigns.

Without these interventions, social norms will guide the behaviour of individuals using public transport or occupying public transport premises. The presence of operator staff, protective service officers and authorised officers for other purposes (i.e. enforcement of ticketing requirements) also encourages public transport users to do the right thing.

The Department observes, however, that despite the mix of interventions employed, an amount of unsafe and anti-social conduct continues, driven largely by self-interest. If there were no conduct regulations then it is reasonable to expect that the amount of misconduct would increase and there would be a corresponding increase in deaths, injuries, disruptions and delays.

Accordingly, the Department considers that, in general, regulations are still necessary in the vast majority of areas covered by the current regulations that will expire on 28 June 2015. Section 6 of this RIS explains the more detailed consideration of options undertaken by the Department when preparing the exposure draft of the proposed regulations for release.

It is proposed to remake the substantive provisions contained within *the Transport (Conduct) Regulations 2005* and the *Transport (Passenger Vehicles) Regulations 2005* and consolidate these provisions into a single set of regulations (i.e. the draft regulations). The content of the regulations will largely remain the same. However, there are some differences:

- the scope of some regulations have been extended to buses and bus premises
- the prohibition relating to gambling on public transport has been removed
- the requirement for students to vacate seats has been removed
- the regulations contain a new requirement for persons to vacate any seat for persons with special needs when requested.

- the regulations contain a new requirement prohibiting the carriage of bicycles on trams and buses, and near the first door of the first carriage of a metropolitan train.

## 2 Background

Government has various roles in the provision of public transport services in Victoria. Public transport services are provided by private passenger transport companies under franchise agreements and contracts entered into with government. The government plans for the development of transport networks and invests in road and rail infrastructure and in trains, trams, buses, stations and car parks. The government subsidises the provision of public transport services and regulates the operation and use of the system.

Legislation has traditionally been used by government to support public transport matters such as ticketing arrangements, improve safety outcomes and help maintain acceptable conduct on public transport vehicles and in public transport premises. The primary statute governing these matters is the *Transport (Compliance and Miscellaneous) Act 1983* (TCMA). It provides for a range of matters, including, for example, the accreditation of authorised officers and the specification of powers provided to authorised officers to enforce transport law.

The TCMA provides the Minister for Public Transport with the power to recommend that the Governor in Council make regulations that prohibit unsafe conduct and conduct that negatively impacts on the amenity of other public transport users. These conduct regulations support the efficient operation of transport networks by helping to avoid safety incidents that cause disruption and by maximising the attractiveness of public transport to prospective users. The aim is to ensure that Victorians are kept safe from harm and gives high priority to the rights of public transport users to feel safe and secure. This encourages use of public transport and reduces pressures and demands on other parts of the transport system.

The Department of Economic Development, Jobs, Transport and Resources (the "Department") advises the Minister for Public Transport on the development, operation and regulation of the transport system. For example, the Department ensures appropriate measures are in place for the safe and comfortable operation of public transport and that there are adequate and appropriately trained AOs deployed to enforce transport law. The Department has prepared this Regulatory Impact Statement (RIS) to inform consideration of the exposure draft of the regulations that are proposed to replace two sets of regulations that expire on 28 June 2015 (refer to Section 2.1).

Public Transport Victoria (PTV) is a statutory authority which manages the delivery of train, tram and bus services through contracts with Metro Trains Melbourne (MTM), Yarra Trams (YT) and a large number of bus companies. PTV, MTM and YT employ AOs to enforce the conduct regulations. PTV, MTM, YT, Transdev and Transport Safety Victoria (TSV) have provided information and assistance in support of development of this RIS. These entities and a range of other parties have been consulted on the development of the proposed regulations.

The release of this RIS and the exposure draft of the proposed regulations provides an opportunity for a broader range of stakeholders, including public transport users and the general public, to have their say on the future need for, and form of, the conduct regulations.

### 2.1 Regulating conduct on public transport

There are currently two set of regulations which regulate conduct on public transport: the *Transport (Conduct) Regulations 2005* which cover conduct on trains and trams and the *Transport (Passenger Vehicles) Regulations 2005* which cover conduct on buses<sup>2</sup>. Both sets of regulations set out the actions and behaviours that are prohibited or controlled on public transport vehicles and premises. The actions and behaviours potentially impact on the safety and amenity of passengers. The aim of

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<sup>2</sup> The Transport (Passenger Vehicles) Regulations 2005 also contains matters relating to commercial passenger vehicles (such as hire cars and special purpose vehicles). These regulations are not considered in this RIS.



the regulations is to control and limit these behaviours. The types of matters regulated by the conduct regulations are listed in Table 2.1.

The regulations have wide application. Conduct regulations apply to:

- all public transport vehicles including trains, trams and buses;
- public transport infrastructure such a railway stations, tram stops, associated buildings and land, including stops, shelters and car parking facilities; and
- railway and tram (light rail) tracks.

The regulations also apply in certain contexts to freight vehicles and freight infrastructure including buildings and land.

**Table 2.1: Summary of regulated conduct on public transport**

Safety	
Creating obstructions or endangerment	<ul style="list-style-type: none"> <li>■ Conveying or bringing things likely to endanger</li> <li>■ Throwing or dropping things</li> <li>■ Creating obstructions</li> <li>■ Carriage of bicycles</li> </ul>
Entering, travelling or riding public transport in an unsafe manner	<ul style="list-style-type: none"> <li>■ Protruding part of body or object</li> <li>■ Riding bicycles on public transport premises and vehicles</li> <li>■ Driving, riding or parking a vehicle</li> <li>■ No unauthorised entering or leaving vehicles and premises</li> <li>■ Travelling/mounting places not intended for travel</li> </ul>
Interfering with equipment	<ul style="list-style-type: none"> <li>■ Interference with gates and doors</li> <li>■ Operating equipment or vehicles</li> <li>■ Applying brake or emergency device</li> <li>■ Interference with prescribed equipment</li> </ul>
Crossing railway or designated tramway tracks and level crossings	<ul style="list-style-type: none"> <li>■ Crossing tracks by pedestrians</li> <li>■ Driving/riding across tracks</li> <li>■ Stopping or standing on crossing between boom gates</li> <li>■ Entering the pit between platforms or entering onto tracks</li> </ul>
Amenity	
Anti-social behaviour	<ul style="list-style-type: none"> <li>■ Indecent/obscene language behaviour</li> <li>■ Committing a nuisance</li> <li>■ Consuming alcohol</li> <li>■ Spitting</li> </ul>

Seating	<ul style="list-style-type: none"> <li>■ Feet on furniture</li> <li>■ Vacating designated special needs seats</li> <li>■ Vacating seats for persons with special needs</li> <li>■ Vacating area designated for wheelchairs</li> <li>■ Occupying unreserved seats</li> </ul>
Smoking	<ul style="list-style-type: none"> <li>■ Smoking</li> </ul>
Noise	<ul style="list-style-type: none"> <li>■ Playing musical instruments</li> <li>■ Operating sound equipment</li> <li>■ Busking</li> </ul>
Animals	<ul style="list-style-type: none"> <li>■ Animals on vehicles/premises</li> <li>■ Animals on seats</li> <li>■ Animals not to stray</li> </ul>
Other	<ul style="list-style-type: none"> <li>■ Selling goods and services</li> <li>■ Littering</li> <li>■ Placing luggage on seats</li> <li>■ Unauthorised travel and seating (1st class versus economy)</li> </ul>
Damage	
Damage	<ul style="list-style-type: none"> <li>■ Damage done to property</li> <li>■ Fires</li> <li>■ Graffiti</li> <li>■ Scratching/burning</li> </ul>

On 1 January 2015, a new scheme relating to non-commuter car parking commenced. The scheme restricts the use of car parking facilities to users of the public transport system. The scheme is being trialled for a limited time at key metropolitan railway station car parks.

## 2.2 Requirements of the Subordinate Legislation Act 1994

The preparation, making, publication and scrutiny of subordinate legislation must be undertaken in accordance with the *Subordinate Legislation Act 1994* (SLA). The SLA requires consultation to be undertaken (Section 6) in accordance with the guidelines issued by the Premier (Section 26) and for Regulatory Impact Statements (RIS) to be prepared (Section 7) unless it is appropriate for the Minister (Section 8) or the Premier (Section 9) to issue an exemption from the requirement to prepare a RIS. A RIS must include the requirements specified in Section 10 of the SLA which includes a reference to any requirements specified in the Premier's guidelines. The Victorian Guide to Regulation ("the guide") expands on the legislative requirements set out in Section 10 of the SLA and the Premier's guidelines. It provides more practical guidance on the preparation of RIS.

Section 10 of the SLA requires the responsible Minister to obtain independent advice on the adequacy of RIS before they are released for public consultation. The Victorian Competition and Efficiency Commission (VCEC) is responsible for reviewing the adequacy of RIS and providing independent advice. VCEC makes its assessment of adequacy relative to the guide.

## 2.3 Structure of the RIS

This RIS is structured to address the requirements of the *Victorian Guide to Regulation*.

- 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 identifies the various options available to address problems
- Section 6 assesses the relative merits of short listed options
- Section 7 details the preferred option, including the impact of the proposed regulation on competition and small business
- Section 8 explains the proposed approach to implementation and enforcement strategy
- Section 9 specifies the evaluation strategy

## 2.4 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 can be emailed to:

[transportconduct@ecodev.vic.gov.au](mailto:transportconduct@ecodev.vic.gov.au)

or posted to:

Transport Conduct Regulations  
Department of Economic Development, Jobs, Transport and Resources  
GPO Box 2392  
Melbourne Victoria 3001

Submissions must be provided to the Department on or before 1 June 2015.

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

Submissions will be published on the Department's website unless you clearly indicate that you would like all or part of your submission not to be published.

All content considered to be defamatory, vilifying or otherwise inappropriate will not be published.

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.

### 3 Nature and extent of the problem

The actions and behaviours of passengers on public transport and around public transport premises can have a significant effect and impact on other passengers themselves and the transport system generally. As a result, governments have made regulations controlling the conduct of persons on public transport and around public transport premises. The effect of the regulations is to control undesirable passenger behaviour on public transport vehicles and premises in line with community expectations. The conduct in question can vary considerably and can be grouped into broad categories relating to: safety, amenity, property damage and use of parking provided for commuters. The types of problems and issues that arise are different for each category of conduct.

#### ***General rationale for government intervention***

There is a presumption in favour of markets operating freely and allowing resource allocation in the economy to be driven by the choices of individuals. The reason is that markets provide the most efficient means of allocating goods and services to maximise the well-being of the community. Economic activity in competitive markets is normally efficient but there may be circumstances where the market does not deliver the most efficient outcome for society and where resources are not allocated efficiently. For example, this may occur when there is:

- imperfect information – where market participants do not have complete information or where information is held only by some market participants. This could lead to poor decision-making which could distort the quantity of the activity undertaken in comparison to a situation where participants had full information.
- externalities – 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.
- monopoly power – where there is a limited number of sellers or buyers which enable the market participants to extract “rents” or excess profits.
- public goods – goods and services that the market fails to provide enough of because it is not cost effective or practical to ensure that all consumers pay for their share.

The presence of these circumstances can cause the market to fail to provide efficient outcomes and may justify the need for government intervention, such as regulation.

In relation to conduct on public transport the key issues to consider are whether the decisions made by individuals to engage (or not) in certain types of conduct are well informed and fully take into account the potential consequences of this behaviour. If, for example, there is reason to believe that:

- decision making and the actions that follow are not based on a sound understanding of safety risks; or
- that the individual making the decision is not taking into account the potential impacts of conduct on third parties –

then there is merit in Government considering interventions to improve economic and social outcomes.

In order to ensure that government responses are appropriately targeted and proportional, the benefits of any interventions are generally required to outweigh the costs of those interventions. It is only in such circumstances that there can be a level of confidence that an intervention will produce a more efficient outcome overall, taking into account the economic and financial costs of regulation.

The nature and the extent of the problem for each of the categories of conduct under consideration are examined in the sections that follow.

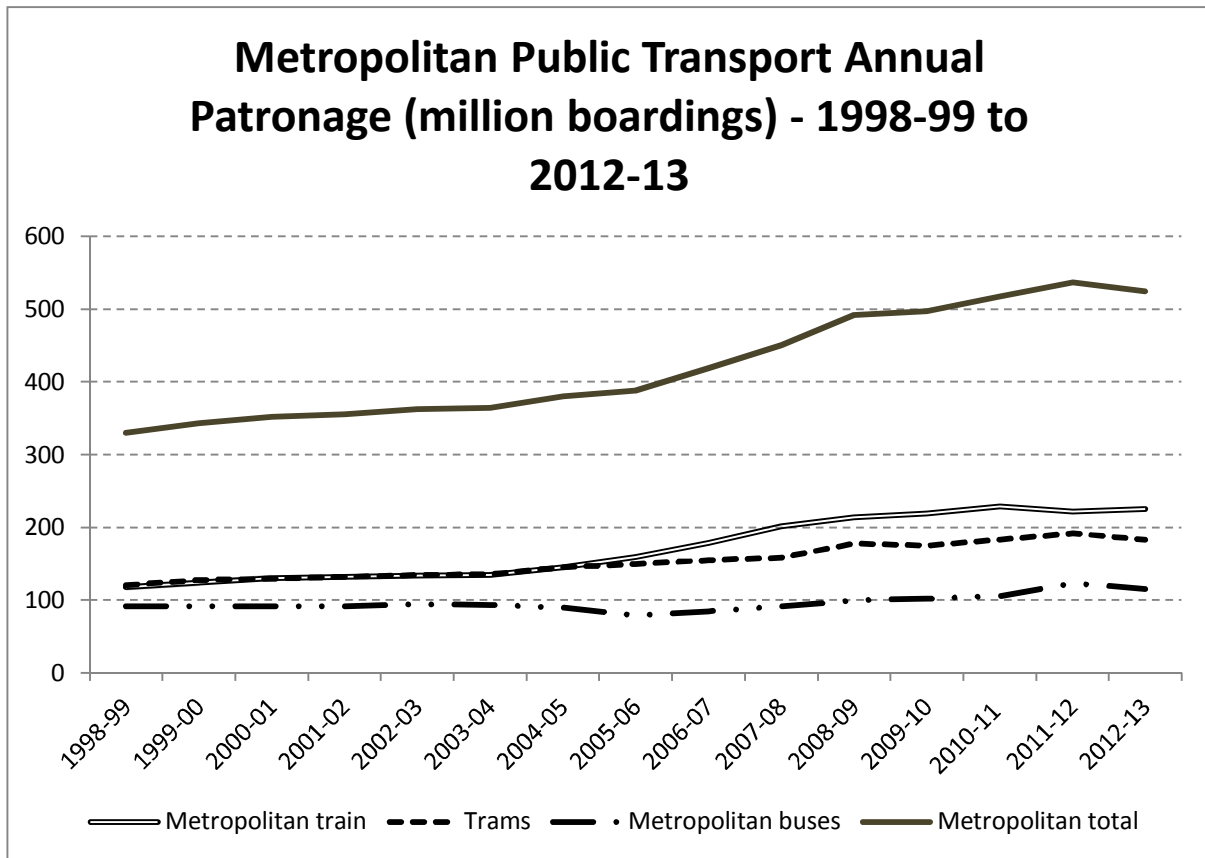
**Public transport in Victoria**

The following sections present information about the types of unsafe and anti-social conduct that the proposed regulations are aimed at addressing. For the reader to assess the significance of identified problems it is necessary to gain an understanding of the quantity of services provided by Victoria’s public transport network.

In metropolitan Melbourne, the public transport network consists of an electrified train network, an urban tram network and a wide variety of bus services. In regional Victoria, the public transport network consists of a train network and bus and coach services.

In total, it is estimated that 523.9 million passenger boardings on the metropolitan network and 29.4 million passenger boardings on the regional public transport network were undertaken in 2012-13.

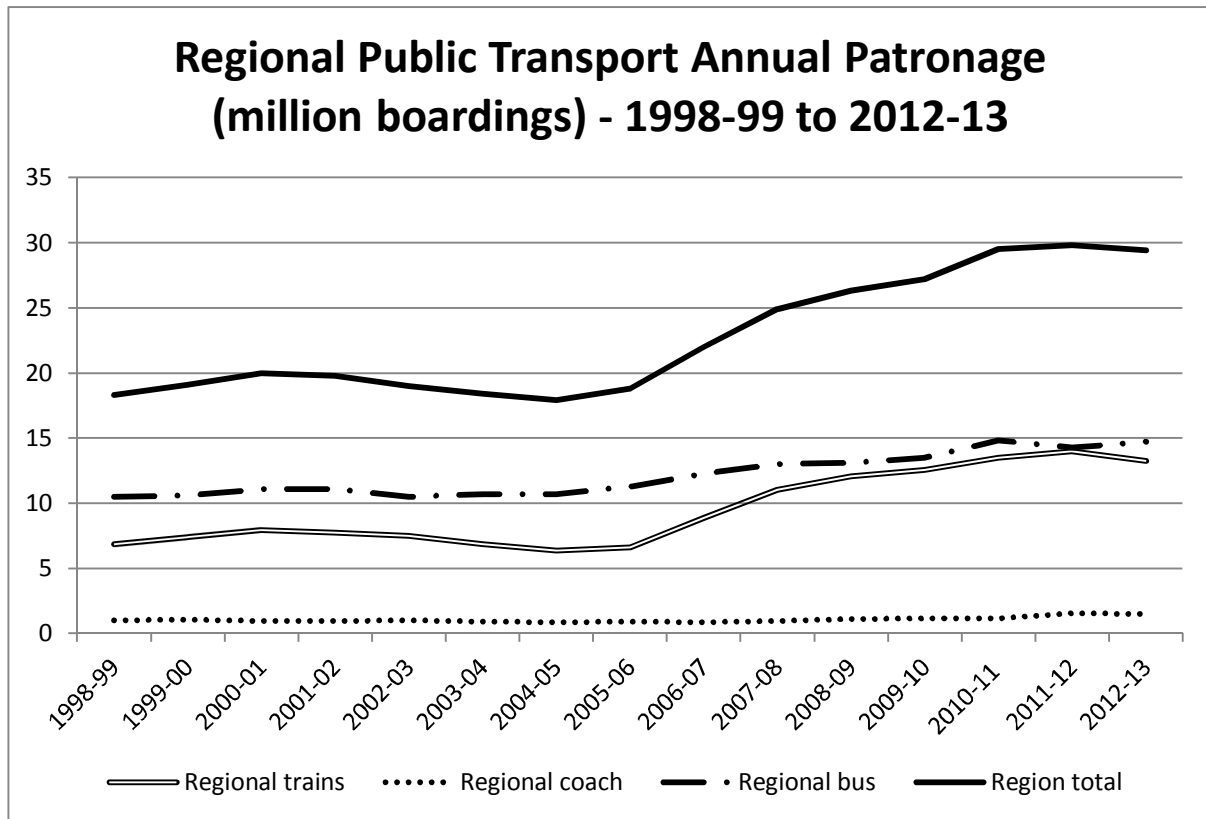
**Figure 3.1: Use of public transport in metropolitan Melbourne**



Source: Public Transport Victoria

As shown in Figure 3.1, there has been significant growth in the number of public transport services consumed over the period 1998-99 to 2012-13. This growth correlates with, but has generally exceeded, the growth in the population of metropolitan Melbourne. Figure 3.2 below indicates that there has been a similar trend in the growth in the use of public transport services in regional Victoria.

Figure 3.2: Use of public transport in regional Victoria



Source: Public Transport Victoria

Most of the trips undertaken on metropolitan and regional networks are trips to and from work in peak periods. If use of public transport was discouraged due to a real or perceived lack of safety or amenity then it is reasonable to expect that passenger trips would transfer to the road network, thereby amplifying current congestion problems.

### 3.1 Identifying the drivers of satisfaction with public transport services<sup>3</sup>

PTV undertakes regular surveys of public transport passengers to gauge the types of factors that are important to passengers in relation to public transport services. The Public Transport Customer Satisfaction Monitor queries passengers about their overall satisfaction with metropolitan and regional services and satisfaction with specific aspects of those services, such as:

- the running of services
- personal security
- provision of information
- design, space and comfort of rolling stock and vehicles
- conduct of AOs
- myki ticketing and the price of travel
- stations, tram stops and bus stops and shelters

The published reports provide a score on the overall satisfaction and also scores for the various aspects of the services. In addition, the reports also identify the drivers of overall satisfaction across

<sup>3</sup> See: [http://ptv.vic.gov.au/assets/PTV/PTV%20docs/Customer%20Satisfaction%20Monitor/PTV\\_CSM-Public-Release-Report\\_June-2014.pdf](http://ptv.vic.gov.au/assets/PTV/PTV%20docs/Customer%20Satisfaction%20Monitor/PTV_CSM-Public-Release-Report_June-2014.pdf), accessed 3 March 2015

transport modes and classify these according to primary, secondary and tertiary drivers depending on the degree to which that factor influences the score of overall satisfaction.

For all public transport services, the satisfaction surveys reveal that the primary driver of overall satisfaction with public transport services is the 'running of services'. This category incorporates factors such as running services on time, frequency of scheduled service, the number of cancellations, and the travel time of journeys. These factors may be influenced by the unsafe conduct by passengers where such conduct impacts on the operation of services.

Notably, the feeling of personal security is classified as a secondary driver of overall satisfaction for all public transport services. Some factors that influence this category include security on vehicles and rolling stock during the day and after dark, security at stations and stops during the day and after dark, and the visibility of security cameras. In addition, factors such as cleanliness of and litter in public transport vehicles have been identified as a tertiary driver of overall satisfaction of public transport services.

These factors are likely to affect people's choice in using public transport services. In the event that these factors are not sufficiently provided for, it is likely that, if suitable alternatives are available, passengers will switch to other transport modes such as using private motor vehicles or commercial passenger vehicles. Such changes in transport choices are likely to increase congestion on roads. Accordingly, it is important to ensure that any negative impacts resulting from passenger conduct are sufficiently addressed or avoided.

## 3.2 Dangerous and unsafe conduct on public transport

Dangerous and unsafe conduct may result in injuries or fatalities and can indirectly result in delays and disruptions on the transport network. Examples of unsafe conduct include:

- creating an obstruction such that other passengers are unable to move around public transport safely or freely (causing a slip, trip or fall);
- dropping or throwing an object at a public transport vehicle;
- crossing rail tracks at unsafe locations or in non-compliance with level crossing controls; and
- travelling in areas of a public transport vehicle not intended for passengers.

There are two types of market failures which provide a prima facie justification for government intervention to address dangerous and unsafe conduct: imperfect information and negative externalities.

### ***Imperfect information***

The level of information public transport users hold in relation to the risks and safety characteristics of choices available to them may not always be complete. Accordingly, people may make decisions that they would not otherwise make if they were fully aware of the risks and potential outcomes. An example is when a passenger protrudes a body part or an object from a passenger vehicle. A passenger may not be fully informed about the likely hazards and may underestimate the likelihood of injury caused to either themselves (e.g. from hitting an oncoming object or vehicle while the passenger vehicle is in motion) or injury caused to third parties (e.g. from a protruding object striking a person waiting on the platform at a train station).

Imperfect information arguments apply to passengers who generally avoid taking unnecessary risks, since these passengers would be expected to avoid undertaking unsafe conduct if better informed. However, these arguments are less applicable to persons who are risk seeking and deliberately engaging in unsafe conduct. This is an important point and explains why, for example, information campaigns are unlikely to be fully effective in addressing unsafe conduct. For this reason, a combination of interventions is often necessary to achieve desired safety outcomes.

### ***Negative externalities***

A negative externality may arise when the unsafe behaviour of a passenger imposes economic costs on others, such as public transport operators, drivers or users. The type of economic costs vary with the conduct and the externalities include:

- injury or fatality costs borne by public transport users, drivers, or the general public;
- costs borne by emergency services when attending to deaths or injuries, including personal risks borne by workers in emergency services; and
- delay costs to other commuters or road users as a result of incidents causing delays to public transport.

Certain conduct by passengers in and around public transport may have an impact on the safety of public transport operators, drivers or users. For example, creating an obstruction on public transport may cause another passenger to slip, trip or fall. Medical expenses are not borne by the person creating the obstruction but instead are borne by the injured passenger.

In other cases, unsafe passenger conduct may not impact directly on drivers or passengers, but may impose indirect costs on other road users and the general public from delays to operation. For example, a passenger train may be unable to continue services until emergency services arrive to attend to an injured passenger on the train, which may divert passenger trips onto the road network, thereby increasing road congestion and causing delays to road users.

The size of these impacts may be substantial. The costs may be significant to the individual, family and friends such as when there is loss of life. Alternatively, the costs may be widespread and be borne by many because public transport vehicles carry many passengers, all of whom may experience delay costs as a result of the same incident caused by unsafe conduct.

#### **3.2.1 Safety outcomes and data<sup>4</sup>**

##### ***Fatalities***

Data on fatalities associated with the operation of public transport system is presented in Figure 3.3 below. Data is disaggregated by public transport mode and covers the period from 2009 to 2013 (calendar years).

The causes of incidents on trams that resulted in fatalities were:

- collision with a person
- collision with road vehicle

The causes of incidents on trains (heavy rail) that resulted in fatalities were:

- assaults
- collisions (includes a collision with a missile, with a person, and with other train)
- level crossing collisions
- slips, trips and falls

The main causes of incidents on buses that resulted in fatalities were:

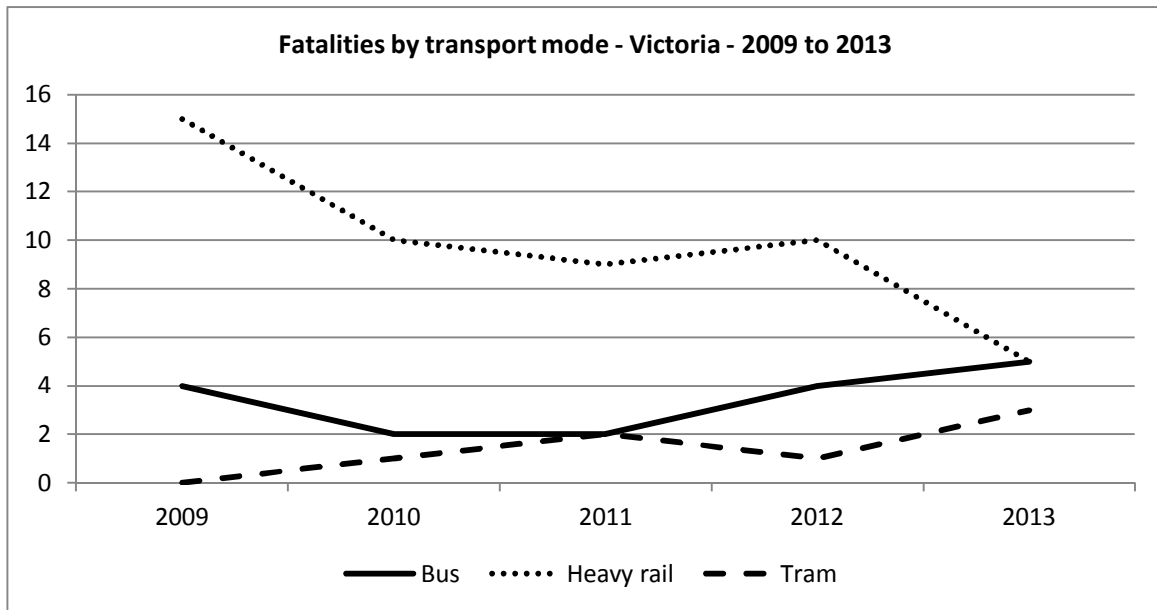
- collisions
- slips, trips and falls

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<sup>4</sup> The data and information presented in this section has been provided by Transport Safety Victoria. Readers should note that, in some cases, it is not possible to identify whether incidents relate to public transport or whether incidents relate to conduct of public transport passengers. Data is presented as it is recorded on the TSV database. The quality of the data is also dependent on the extent of reporting by transport operators.



Figure 3.3: Fatalities in Victoria reported to Transport Safety Victoria – 2009 to 2013



Source: Transport Safety Victoria

### ***Serious injuries***

Data on serious injuries is presented in Figure 3.4 below. Data is disaggregated by transport mode and covers the period from 2009 to 2013 (calendar years).

The main causes of serious injuries on trams were:

- collisions
- slip, trips and falls

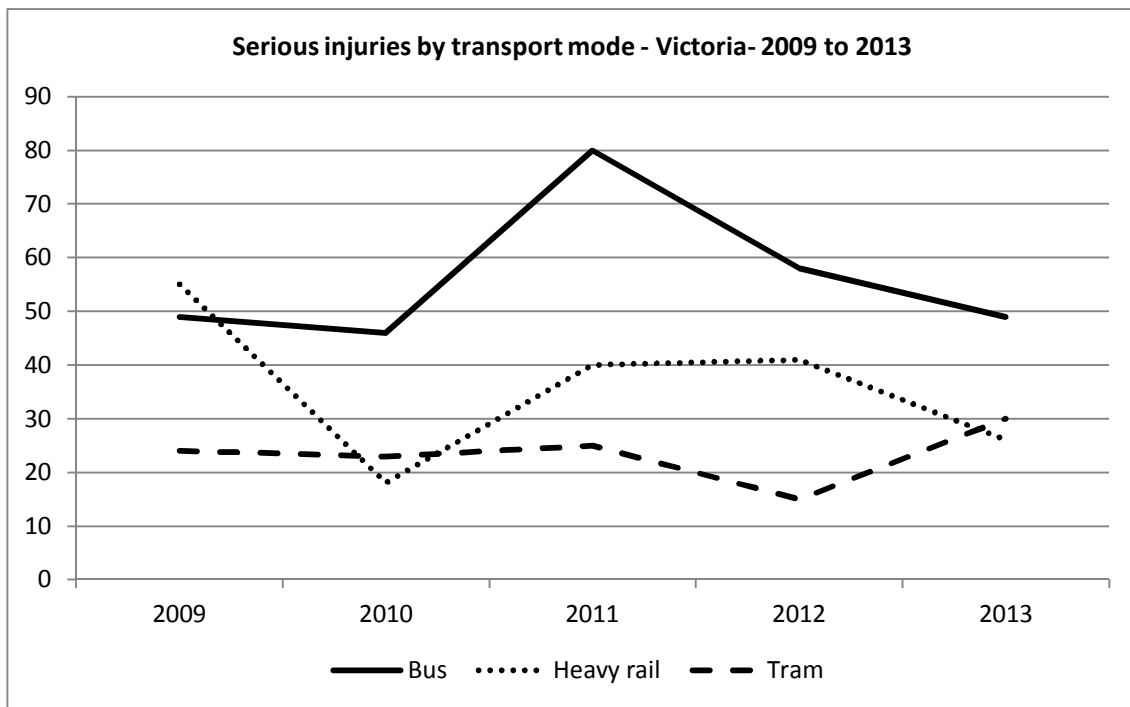
The main causes of serious injuries on trains (heavy rail) were:

- collisions
- slip, trips and falls
- assaults
- collisions at level crossings

The main causes of serious injuries on buses were:

- collisions
- slip, trips and falls

Figure 3.4: Serious injuries in Victoria reported to Transport Safety Victoria – 2009 to 2013



Source: Transport Safety Victoria

The important observation to make is that the absolute number of fatalities and serious injuries in each of the different modes is low relative to the number of passenger trips undertaken each year (refer to Figure 3.1 and Figure 3.2). Public transport is a very safe form of transport and compares favourably to transport by car, motorcycle, cycling and walking. This can be attributed to a number of factors, including safety features embedded in the design of infrastructure and vehicles. Safety regulation schemes developed for rail, tram and bus operators play a role in achieving this safety outcome. The enforcement of the conduct regulations also makes a contribution. In part, this RIS will assess the significance of the contribution these regulations make.

It should be noted that there is no reliable data on the number of minor injuries sustained by persons while travelling on public transport or when making use of the public transport system. Some injuries of this type are reported but the vast majority are not.

#### ***Data on unsafe and dangerous conduct***

In the sections that follow, data will be provided on the number of Reports of Non-Compliance (RoNC) and infringement notices issued to persons who engage in conduct that contravenes requirements specified in the conduct regulations. RoNC are issued by authorised officers employed by PTV, MTM, YT and some bus companies (e.g. Ventura). No fine is payable until the Department considers the details of the RoNC and makes the decision to issue an infringement notice.

The number of RoNC and infringement notices will differ to reflect instances where the Department has decided to not issue an infringement notice. This may occur in instances where there is some doubt that an offence has been committed.

The combination of RoNC data and infringement notice data provides an indication of the amount of unsafe and dangerous conduct on public transport vehicles and premises. This data will, however, significantly underestimate the amount of unsafe and dangerous conduct that is actually being undertaken because detected contraventions of the conduct regulations reflects the limited number of authorised officers employed. It also reflects operational decisions that are made about where to focus the attention of authorised officers.

Observing a low number of infringement notice issued for a specific offence, it may be tempting to conclude that the regulation has been successful in changing behaviour. That is, compliance with the regulation is high and not many infringement notices are issued as a result. In practice, it is not possible to validly reach this conclusion without the support of other evidence. A low number of RoNC and infringement notices may reflect the difficulty in detecting prohibited contact. A low number of notices may also reflect the limited amount of resources available to undertake compliance monitoring and enforcement activity.

The one conclusion that can be validly drawn from the observation that notices have been issued is that despite the presence of the regulations and compliance monitoring and enforcement activities, prohibited conduct is still being undertaken. A key question this RIS seeks to consider is whether it is reasonable to expect the level of prohibited conduct (and resultant consequences) would be higher if the regulations did not exist and/or were not enforced. If the consensus is "yes", then this provides a partial justification for continuing to regulate unsafe and anti-social conduct. To fully justify the decision to impose regulation it is also necessary to have a reasonable expectation that the benefits of regulation will exceed the costs.

### **3.2.2 Creating obstructions or endangering others**

#### ***Obstructions***

Public transport vehicles and premises, by their very nature, are shared by many passengers and are places that often can be crowded or congested. Due to the limited space in these areas, it is important that they are free from obstructions or things likely to obstruct or endanger. In a normal operational context, obstructions create a safety hazard. In an emergency, obstructions impede the ability to exit quickly and move away from danger. Equally, in an emergency situation obstructions may make the process of evacuation unsafe. Keeping public transport vehicles free of obstructions, therefore, helps ensure the safe and smooth operation of public transport.

Bicycles, due to their size, may cause obstructions to other passengers. For this reason there can be limitations on the carriage of bicycles on public transport. Bicycles are permitted, through conditions of travel, on metropolitan and V/Line trains but are not permitted on tram and bus services. Folding bicycles, which are bicycles that have small wheels and frame latches which allow the bicycle to be collapsed, are permitted on trains, trams and buses but only if folded and stored inside a bag or cover.

The carriage of bicycles may cause boarding and access issues for some passengers. On metropolitan trains, wheelchair passengers enter and exit trains through the first door of the first carriage of the vehicle. Passengers in a wheelchair are unable to access other parts of the train because the train driver needs to assist the wheelchair passenger on and off the carriage using a ramp. For this reason, it is important that this area remain available for wheelchair passengers and not be blocked by a passenger carrying a bicycle. This conduct may cause unnecessary delays as passengers may be required to move the bicycle to another area of the train before the driver can assist the passenger in the wheelchair to board the train.

### **Complaints Case Study**

Metro Trains Melbourne have received a number of complaints from passengers in relation to the carriage of bicycles on metropolitan trains. The following examples indicate the types of issues raised.

*"There is absolutely nowhere for a bike on a congested carriage during peak times with standing room only. It is high time this problem was taken seriously and addressed by Metro."*

*"I travel in Melbourne several times every week by wheelchair... There is nearly always at least one bike and often up to 3 or 4 in the front section of the train. As this is the only section I am able to travel in this often creates problems. Most bike riders seem to believe this is where they are supposed to travel... As there are more people with disabilities starting to travel more frequently I would ask that you find a way of ensuring that there is room for us on the trains."*

### ***Conveying things***

Conveying or bringing large and awkward items on public transport can create a safety hazard and in many cases will inconvenience other public transport users. Examples of such items include, explosive devices, improperly contained inflammable liquids or petrol contained in a fuel tank. If an incident occurs, such items may injure other passengers or damage public transport property. The dangers of this type of conduct are generally well understood by public transport users. For this reason, there have not been many identified instances where passengers have tried to move things on public transport that are likely to endanger or otherwise cause a problem. However, in 2013, there were 9 infringement notices issued in respect of this conduct, which indicates that a minor level of unsafe conduct continues.

### ***Riding in vehicles and on premises***

Riding bicycles, skateboards or other recreational devices in or on public transport vehicles is common and is an example of risk taking behaviour that is enjoyable to the rider, but can create potential dangers to others. The confined spaces of a passenger vehicle reduces the margins for operating error and increase the likelihood that if the rider falls, the rider and other public transport users will be injured. The type of conduct can also intimidate users of public transport premises and services and impact on amenity.

There is a broad appreciation and understanding of the risks created by this conduct. However, there continues to be a high number of infringement notices issued for the offence. For example, in 2013 the Department issued 145 infringement notices. There have been significant investments in public education campaigns aimed at addressing this type of behaviour (e.g. MTM's 'Dumb Ways to Die' campaign). However, the effectiveness of these programs is questionable because the individuals involved in such activities are likely to be not doing so in the absence of knowledge. Instead, they deliberately take risks without regard to the risks they potentially pose to others.

### **Complaints Case Study**

The following complaint made to Public Transport Victoria provides an example of passengers reporting their concern about their personal safety with respect to other people riding on public transport premises.

*"I see people riding their bicycles all the time and I've been almost run over a number of times, one of them while pushing my 3 month old baby in the pram... I've seen others jumping on the bicycle and riding on the platform... I find that the use of bicycles is very dangerous in those areas (platform and the underground crossing) and it needs some action to stop that behaviour".*

### ***Thrown objects***

Throwing objects from or at a passenger vehicle or dropping things from a passenger vehicle may cause harm or can create a distraction to the driver. Some passengers may not be fully informed of

the consequences of throwing or dropping objects from or at a vehicle, or protruding an object or body part from a vehicle. In other cases, reckless individuals may want to intentionally cause harm or inconvenience by participating in this conduct.

**Table 3.1: Incidents – missile throwing at trains**

	2011	2012	2013	2014
Missile Throwing (i.e. rock throwers)	97	65	71	62

Source: Metro Trains Melbourne

The data presented in Table 3.1 reflects reporting by MTM staff (e.g. train drivers) and therefore is unlikely to reflect the true extent of the problem. Drivers are unlikely to be fully aware of all instances when objects are thrown at (or from) trailing carriages. The incident data is supplemented by the complaint data MTM have maintained. While the absolute number of incidents is low when compared with the number of passenger services completed each year there is still a concerning number of incidents occurring. The throwing of objects clearly has the potential to cause significant harms to people. In 2012, a passenger suffered a serious injury as a result of a thrown missile by another passenger.

**Table 3.2: Complaints – missile throwing at trains**

	2010	2011	2012	2013	2014
Rock throwing	23	17	22	8	8

Source: Metro Trains Melbourne

### 3.2.3 Entering, travelling or riding public transport in an unsafe manner

The manner in which passengers travel in and around public transport vehicles and premises has implications for the safety of passengers and operators.

#### *Entering or leaving*

Entering or leaving a public transport vehicles or premises in an unauthorised or unsafe manner can have serious consequences. For example, there is a risk of injury of falling from height when attempting to leave a train that has not stopped at the appropriate railway platform to allow passengers to leave. Another example includes the risk of injury or death that arises if a passenger attempts to enter or exit a vehicle that is in motion.

The following tables provides information about the number of incidents relating to slips, trips and falls at platform interfaces (at platform, between platform and train, caught in train doors and to/from train). This data is used to highlight the potential risks and consequences of unsafe conduct when entering and leaving public transport in an unsafe manner.

In many cases, slips, trips and falls at platform interfaces do not result in a fatality or a serious injury but instead result in minor injuries. However, fatalities do occur and slip, trips and falls were a major cause of death associated with all modes of public transport. According to

Table 3.3, for slip, trip or fall incidents occurring at platform train interfaces, there was on average one fatality for every 1340 incidents, and on average one serious injury for every 55.8 incidents over the 2009 to 2013 period.

**Table 3.3: Slips, trips and falls on train platforms**

Slip, trip or fall at a platform train interface	2009	2010	2011	2012	2013
Incidents–	303	319	254	246	218
Fatality	1	0	0	0	0
Serious injury	11	0	3	9	1

Source: Transport Safety Victoria

The risk profile for trams is different. According to Table 3.4, for slip, trip or fall incidents occurring at platform tram interfaces, there was on average one serious injury for every 4.7 incidents over the same 2009 to 2013 period.

**Table 3.4: Slips, trips and falls on tram stops**

Slip, trip or fall at platform tram interface	2009	2010	2011	2012	2013
Incidents–	12	11	9	11	9
Serious injury	3	2	2	2	2

Source: Transport Safety Victoria

Slips, trips and falls can be caused by unsafe conduct but can equally be a product of other human factors such as distraction, lack of concentration and fatigue. It is therefore important to recognise that only a subset of slips, trips and falls are associated with contraventions of the conduct regulations.

### ***Protrusions***

Persons hanging objects or body parts from a public transport vehicle risk injuring themselves or other persons in proximity to the vehicle (e.g. protruding an object from a bus that can hit oncoming traffic). In recent years there have been a low number of infringement notices issued for protruding objects/body parts. In part, this can probably be explained by the majority of public transport users having a good understanding of the risks and there being no utility in exposing themselves or others to these safety risks. However, there continue to be examples of this conduct and there are cases where individuals have inadvertently and deliberately engaged in this conduct and caused serious injuries.

### ***Travelling on parts of vehicles not meant for passengers***

The consequences of travelling or boarding part of a public transport vehicle that is not designed to carry passengers (e.g. train surfing) can be very serious, and potentially fatal. Areas not designed for travel, such as on couplings between train carriages or on top of train carriages, do not have the preventative safety barriers in place to prevent injuries or falls. Two fatalities have been associated with train surfing over the last five years so there should be a good level of knowledge about the risks of engaging in this conduct. However, based on complaints data in Table 2.1, train surfing and coupling riding conduct appears to be growing.

**Table 3.5: Complaints about train surfing and coupler riding**

	2010	2011	2012	2013	2014
Train surfing	0	27	25	28	23
Coupler riding	0	0	0	9	17

Source: Metro Trains Melbourne

**Complaints Case Study**

There have been instances of passengers reporting observations of other passengers train surfing or coupler riding. In many cases, the reports are made out of concern for the well-being of the persons involved. The following provided examples of the types of reports made to transport operators:

*Customer reported seeing a number of youth train surfing near Glenroy station, riding on the rear couple [sic] of the train.*

*Customer reports seeing train surfing near Clayton station: "I noticed to [sic] girls jump off the back of the train, last carriage, on the outside. They were 'train surfing'."*

*Customer report near Windsor station: "I noticed 2 very young girls, about 15 years old, 'standing' on the [sic] back of the train giggling as the train left the station, I was gob smacked I couldn't [sic] believe what I was seeing. They were standing on the part that joins the trains together. My only thought was CCTV footage to try and locate the girls, perhaps save their lives in the future."*

Typically, individuals taking part in this conduct are characterised as risk or thrill seekers. Despite these individuals potentially being fully aware of the risks involved, it can be common for those participating in these activities to believe they are immune to common dangers and they may have a false sense of security about the consequences of their conduct. In these cases, the knowledge of the risks is not enough to deter the behaviour.

This conduct can cause delay to the public transport system when the:

- relevant public transport driver ceases operations upon discovering an individual travelling in an area not intended for passengers and subsequently requests that the relevant authorities (e.g. police) remove the individual from the unsafe area; or
- conduct results in injury or death and public transport operations cease until relevant emergency services deal with the situation.

The costs and inconvenience this conduct is likely to cause others provides the primary justification for prohibiting the conduct.

**Table 3.6: Selected infringements issued for entering, travelling or riding public transport in an unsafe manner**

	2007	2008	2009	2010	2011	2012	2013
Riding a bicycle etc. on a vehicle or premises	83	205	190	93	71	114	144
Exiting or entering through a wrong doorway or other than through entrance or exit provided for passengers or the public	449	797	770	509	480	423	300
Jumping or climbing over barrier <sup>5</sup>	-	186	380	389	559	752	601
Travelling on part of vehicle not meant for travel	181	275	325	233	291	295	223

Source: DEDJTR

<sup>5</sup> This offence commenced on 31 July 2006.



There have been an increasing number of infringements issued in relation to jumping or climbing over barriers. This can be attributed to increased compliance monitoring and enforcement efforts in relation to ticketing requirements and the presence of authorised officers outside of ticketing gates at key railway stations. It need not be an indication that this type of misconduct is increasing over time.

### 3.2.4 Interfering with equipment

A variety of equipment is used to support the provision of public transport services. Some equipment is used for ticketing purposes and other types of equipment are used to operate public transport vehicles and infrastructure. Additionally, some equipment, such as ticket barriers, doors and emergency devices are provided for use by passengers. The safe and proper operation of equipment on public transport vehicles and premises is important for the safe and efficient operation of the public transport system.

Where equipment is provided for use by passengers for safety purposes, such as a communications link with the driver of the train, it is important to have the equipment operational. In other cases where the equipment does not serve a safety function, non-functioning equipment causes inconvenience and delays. For example, a faulty ticketing gate or reader can cause passengers to queue at the remaining functioning ticketing gates.

The operation of other types of equipment, which is not intended for use by the public generally, may have operational implications for the public transport system. An example is a driver console which operates a public transport vehicle. If an individual were to operate a train or tram without the necessary training or skills, the person may cause a collision with another road user, or cause a passenger to injure themselves by braking the vehicle in an unsafe manner. Alternatively, if the equipment is damaged, vehicles must be taken out of use to be repaired, which causes unnecessary delays to users and imposes costs on transport operators.

**Table 3.7: Infringements issued for interference with equipment**

	2007	2008	2009	2010	2011	2012	2013
Interfering with automatic doors of vehicle without reasonable excuse	139	290	297	229	169	194	160
Interfering with gates or doors on premises without reasonable excuse	325	1,044	952	807	639	544	742
Moving, interfering or tampering with, or operating equipment or vehicle without permission of an authorised person	54	42	47	58	6	4	2
Applying a brake or emergency device on vehicle without reasonable excuse	0	3	0	1	1	2	2

Source: DEDJTR

### 3.2.5 Crossing railway or designated tramway tracks

Areas in and around railway tracks and light rail tracks (specified in the regulations as “designated tramway tracks”<sup>6</sup>) are inherently risky. Trains and trams can travel at very high speeds and require

<sup>6</sup> In the Transport (Conduct) Regulations, “designated tramway tracks” are lightrail tracks that run between the Whiteman Street tram stop and the St Kilda Station tram stop; and the tramway tracks that between from the Whiteman Street tram stop and the Port Melbourne tram stop

significant distances to come to a stop. Many sections of track have bends so it may be difficult for a driver to see a person unexpectedly crossing railway tracks and have enough time to stop. In addition, the operation of public transport at night time, in conjunction with limited lighting of the tracks, means that it is often difficult for drivers to see people crossing the tracks and to stop in time.

The physical profile of railway and light rail tracks means it can be difficult for pedestrians, vehicles and riders to traverse these tracks quickly and easily. Tracks, which are constructed of ballast, sleepers and rails (which are raised above the ballast), pose a slip, trip or fall hazard for people crossing. For this reason, where tracks intersect with roads and footpaths and pedestrian traffic is likely, the infrastructure is designed to provide safe crossing for pedestrians.

The pits between platforms are also difficult to traverse and exit due to some high level rail platforms (e.g. it is difficult to pull oneself up onto the platform from the pit). In some cases, the only way to exit a rail platform pit is to walk along the length of the railway platform and exit on either side of the platform. This poses significant risks of being hit by an incoming train if one cannot exit fast enough.

In addition, pedestrians, drivers and riders may miscalculate the risks or potential costs involved with crossing tracks at areas other than at the crossings provided. The consequences of an incident when crossing, such as stumbling on a railway when a train is approaching and being hit by the train, is significant. The consequences to an individual include injury or death, and the external costs include delays to the transport system. "Near misses" also impose costs, for example, when trains and trams brake to avoid the prospect of a collision, passengers standing in the vehicle may fall or bump into other passengers resulting in injuries.

**Table 3.8: Collision and near misses with persons at places other than level crossings**

Collision with trespasser	2011	2012	2013	2014
Fatality	4	5	1	3
Serious injuries	15	10	6	7
Railway trespass – near miss with person	390	386	322	307

Source: Metro Trains Melbourne

MTM keeps incident data relating to persons crossing railway tracks. There are two types of incidents: a collision with a person and a near miss with a person. Incidents are categorised further depending on whether a collision or a near miss occurs at a level crossing. Data is presented in the tables below.

**Table 3.9: Collisions and near misses with person at a level crossing**

Level crossing collision with a person	2009	2010	2011	2012	2013
Incidents–	10	5	7	4	5
Fatality	5	3	5	3	1
Serious injury	1	2	0	1	2
Near misses	91	105	123	121	182

Source: Transport Safety Victoria and Metro Train Melbourne

According to the data, it appears that the number of near misses for trespassers is much higher than the number of near misses at level crossings. This is likely to be due to better infrastructure at level crossings. It is also the case that persons who take the trouble to cross at designated crossings are more likely to act safely compared to those that are crossing railway lines by trespassing on railway premises.

Irrespective of whether persons cross tracks at designated crossings or not, the data indicates that despite widespread knowledge about the risks of crossing railways without adequate protection, or

contrary to warning system indications, the conduct is still being undertaken. It is likely to occur because people value their time and wish to take the shortest route to get to the platform so they do not miss the next train or get to the car park so they get in their car and go home. They miscalculate risks and disregard the potential impacts their behaviour could have on others.

**Complaints Case Study**

The following reports by the public to transport operators provide an example of the type of risks that some persons are willing to take by crossing at level crossings unsafely.

*Customer reported that a young girl squatting under the pedestrian boom gates to catch a City bound train. Upon confronting the young girl, stating that this conduct is not allowed, the young girl answered "I need to get the train, I don't care". Customer would like to see full gates installed to stop this from happening, because she sees people doing this regularly.*

*Customer reported that vehicles frequently travel through the Box Forest Road level crossing in Glenroy while the warning lights are flashing. Vehicles are not waiting for the boom light to turn off fully when the booms are up and are driving through when the boom gates are raising or lowering.*

The behaviour of car drivers at level crossings is driven by the same dynamics and for this reason it has been necessary to implement a range of measures to ensure that there is a clear way for trains and trams to pass. For example, it is unsafe for a driver or rider of a vehicle to stop on a level crossing between boom gates as an approaching train may strike the vehicle. Similarly, the crossing needs to remain clear if there are signs that a train or tram is about to enter the crossing, such as closed gates, an operating warning signal or device, observations that a train or tram is approaching, entering or is on the crossing. Priority is given to trains and trams because these vehicles require significantly longer distances to stop and do not have the capacity to alter their course.

The conduct of drivers, riders and pedestrians at level crossings are regulated by the conduct regulations but are also regulated by the *Road Safety Road Rules 2009*. The overlap in regulation is to allow authorised officers to enforce these rules in and around public transport areas.

Table 3.10 summarises the number of incidents in relation to level crossings and the number of fatalities and serious injuries that resulted from those incidents.

**Table 3.10: Consequences of collisions with road vehicles**

Level crossing collision with a road vehicle	2009	2010	2011	2012	2013
Incidents–	13	9	17	17	13
Fatality	2	0	0	3	1
Serious injury	4	0	9	5	1
Near miss	174	164	146	171	174

Source: Transport Safety Victoria and Metro Trains Melbourne

Over the 2009 to 2013 period, there was on average one fatality every 11.5 incidents, and on average one serious injury every 3.63 incidents. For level crossing collisions with persons, over the same period, there was on average one fatality every 1.82 incidents, and on average one serious injury every 5.17 incidents. By this metric, the consequences of a level crossing collision with a person are more serious than a level crossing collision with a road vehicle, with such incidents more likely to result in a fatality.

### **Obstructions of rail track**

To support the safe operation of public transport vehicles rail tracks must be free from obstructions. Table 3.11 presents the number of incidents relating to individuals trespassing on railway lines.

**Table 3.11: Deliberate fouling of railway lines**

Near miss	2011	2012	2013	2014
Railway trespass - trespasser foul line	735	857	928	1146

Source: Metro Trains Melbourne

Table 3.12 shows the number of infringements issued in relation to pedestrians crossing unlawfully at level crossings. The different infringements issued reflect the different circumstances in which the offence is committed and the type of infrastructure at the level crossing. On average, there are approximately 980 infringement issued per year to pedestrians who have crossed in an unsafe manner.

**Table 3.12: Infringements issued in relation to pedestrians crossing tracks**

	2007	2008	2009	2010	2011	2012	2013
Pedestrian crossing railway tracks when rail vehicle in sight or heard approaching	155	102	92	52	123	40	11
Pedestrian crossing railway tracks when warning signals or devices operating	344	276	694	255	1393	798	372
Pedestrian crossing railway tracks while gates closed	164	168	170	156	256	727	443
Walking through an area between boom gates when gates closed <sup>7</sup>	-	-	6	3	6	139	80

Source: DEDJTR

## 3.3 Passenger amenity on public transport

Passenger comfort and enjoyment on public transport can be affected by the actions and behaviours of other users of public transport. Examples of such actions and behaviours include: talking loudly, placing feet on seats, or spitting on others. It is likely that a passenger travelling on public transport will be affected by other users of the service in some way, negatively or positively.

The community holds expectations about how passengers should interact with other passengers. Social concepts such as manners and etiquette generally dictate how passengers behave, or do not behave, on public transport. However, there are cases where persons do not conform with community expectations. In these situations, governments have sometimes moved to control such behaviours in an endeavour to limit any negative impact on others.

In many cases, the desired user experience by passengers on public transport will vary considerably across individuals and reflects preferences over public transport travel. For example, one passenger may value quiet travel on public transport, whereas another passenger may enjoy the noises of a bustling and busy carriage full of passengers. An objective of regulating behaviours that affect amenity is to maximise the attractiveness of public transport as a travel option. If consistent and acceptable amenity outcomes can be achieved then this is likely to enhance patronage. Conversely, if

<sup>7</sup> This regulation commenced on 29 June 2008.

prospective public transport users feel unsafe or uncomfortable then this will impact negatively on public transport use, and by implication, may amplify congestion on the road network and other parts of the transport system.

### **Externalities**

A passenger who engages in anti-social behaviour typically would not take into account the effect their behaviour has on other passengers and the transport system in general.

The consequences of such conduct can vary widely. Passengers may experience inconvenience, for example, if forced to stand while riding a train instead of sitting due to a person placing feet on a public transport seat. Some passengers do not mind standing instead of sitting, whereas it may be important for some passengers, such as those with special needs, to have a seat available.

Passengers may feel discomfort if there are intoxicated and abusive passengers on-board public transport. If negative experiences persist, passengers may choose to use different transport options.

There is also the possibility that what might be regarded by some passengers as a negative experience may be regarded by others as a positive experience. For example, music being played by people for their own enjoyment may be enjoyed by some but may be intolerable to others.

#### **3.3.1 Anti-social behaviour**

The term anti-social behaviour encompasses a variety of conduct that is contrary to the customs of society. Such conduct could include assaults, indecent language, indecent exposure, sexual harassment and theft. Some of this conduct is already prohibited by state laws as crimes.

The effect of such conduct on other passengers can vary considerably. Some conduct, may make passengers uncomfortable (ie the passenger observes behaviour which makes the passenger feel intimidated or unsafe) or some of this conduct may result in the passenger being harmed.

Some prohibitions included in the conduct regulations effectively duplicate *Crimes Act 1958* and *Summary Offences Act 1966* offences. This is done to provide authorised officers with the power to enforce offences and to respond and sanction anti-social behaviours. Examples include:

- committing a nuisance or causing discomfort to others
- drinking alcohol
- selling or hawking goods or services
- spitting
- indecent language

The conduct regulations, however, do not seek to cover the full range of offences covered in the *Crimes Act 1958* and the *Summary Offences Act 1966*. It is not appropriate for authorised officers to play a role in the enforcement of more serious criminal offences, for example, when a violent act results in death. Such matters require action from the Victoria Police and are more properly dealt with by general criminal laws, not transport laws. Authorised officers are not trained to deal with such matters. The operational practice is to quarantine the relevant public transport vehicle or premises and request that members of the Victoria Police attend the scene.

Many complaints are received each year from public transport users about anti-social behaviours committed by other passengers or other persons. Table 3.13 and Table 3.14 provide information about complaints received by MTM and YT about anti-social behaviour on trains and trams.

**Table 3.13: Complaints about anti-social behaviours on metropolitan trains**

	2010	2011	2012	2013	2014
Assaults	39	29	2	1	1
Beggars	0	8	31	51	18
Drugs/chroming/alcohol consumption	53	71	60	67	49
Other anti-social behaviour on train	563	519	351	290	314
Other anti-social behaviour at stations and other property	196	229	187	182	243
Other violence	99	59	22	33	23

Source: Metro Trains Melbourne

The potential negative effects of some conduct is obvious because the conduct is inherently dangerous and likely to cause discomfort to all passengers who observe it (e.g. assaults). In the case of many amenity-related issues, the negative effects may not immediately be so clear. For example, drinking alcohol is generally socially acceptable. However, when conducted on public transport, the smell of alcohol may create an annoyance or lead to rubbish or spills dirtying public transport vehicles. Alcohol consumption on public transport also tends to correlate with other anti-social behaviours (such as aggressive behaviour towards others).

The example of eating and drinking on public transport can emphasise the wide variety of preferences that exist. A subset of existing public transport users are known to support a prohibition on eating and drinking in public transport vehicles because they do not like the smell of some types of food when travelling on public transport. On the other hand, some passengers may be indifferent.

**Table 3.14: Complaints about anti-social behaviours on trams**

Category of complaint	2014
Drugs	9
Gangs	3
Inappropriate Behaviour	36
Intimidation	67
Intoxication	37
Motorist Road Rage	2
Other	14
Violence	29

Source: Yarra Trams

**Table 3.15: Assaults on metropolitan trains or stations**

Sub-Category	2011	2012	2013	2014
Assault on a train	115	89	89	50
Assault on a platform	136	124	175	129

Source: Metro Trains Melbourne

**Complaints Case Studies**

*"A man got on the train at Keon Park and started going around to everyone on the carriage (I was in the last carriage of the train) and asked me and other commuters asking for 'change'. Going home last night from work, a young woman was approaching people on the train (including me) for money for 'food'... It has become beyond a joke as this has occurred on more than one occasion."*

*Customer reported that she was harassed by another women who was asking other passengers for money. Customer states that the passenger was approaching people and tapping on their shoulders to get attention. Customer was offended by the other passenger and didn't feel safe.*

*"Almost every time I travel there are members of the public who are highly intoxicated. Quite often they stick to themselves. However, today at around 3pm I was approached by a man with a bottle of wine in his hand. He had walked half way up the tram to where I was sitting and was standing in front of me so I could not walk pass or around him. He was trying to grab my hand and has slurred loud speech. He did not end up touching me but was very close and I felt very vulnerable and frightened."*

Infringements data in relation to anti-social behaviour is presented in Table 3.16.

There has been a large number of infringement notices issued to individuals for alcohol related offences on public transport, and indecent and obscene language and behaviour. This gives an indication of the extent of anti-social behaviour that occurs on public transport.

**Table 3.16: Infringements issued in relation to anti-social behaviour**

	2007	2008	2009	2010	2011	2012	2013
<b>Anti-social behaviour</b>							
Behaving in an obscene, offensive, threatening, disorderly or riotous manner	108	252	303	191	117	183	121
Using indecent, obscene, offensive or threatening language	956	1,663	1,457	981	921	1,195	1,007
Spitting related offences	46	81	73	51	41	40	42
<b>Alcohol on public transport</b>							
Various offences relating to drinking alcohol and possessing an open container of alcohol	1,982	4,175	4,027	3,348	3,605	4,154	2,240
<b>Selling and touting</b>							
Selling, offering for hire or touting	0	1	2	1	1	4	0

Distributing handbills, soliciting money or goods or busking	4	14	32	65	94	94	88
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Source: DEDJTR

### 3.3.2 Seating

#### ***Vacating seats for people with special needs***

Seating is made available to passengers on all forms of public transport. However, seating is limited and conditions of travel do not guarantee a seat for all passengers. Whether or not a passenger has access to a seat is dependent on the number of passengers that are using public transport at the time or the number of seats that are available on vehicles. Scarcity of seating on public transport means that a mechanism is needed to provide seats to those passengers who need them most.

In many cases, social etiquette mandates that particular privileges are provided to members of society who have special needs, due to age, disability, illness or pregnancy. This is reflected in the conduct regulations, where selected seats are prioritised for passengers with special needs. Such seats can be used by passengers generally, but in the event that seats are required by persons with special needs, most members of the community would consider that the seat should be vacated for that person. For many passengers, regulations are not required to encourage them to provide their seat to persons with special needs. However, other people with different values and beliefs need to be obliged to provide their seat to people with special needs. The conduct regulations provide a mechanism to ensure that seats are made available.

A small number of infringement notices have been issued in relation to vacating designated seats for persons with special needs. This should not be taken as an indication there is only a small problem in this area. Instead, it is necessary to acknowledge that this behaviour is most likely to occur in peak periods when seats are scarce and compliance monitoring and enforcement activities are unlikely to occur. Further, behaviours of persons who do not willingly vacate their seats is likely to change when under the direct supervision of an authorised officer – a request to vacate a seat in proximity to an authorised officer is unlikely to be ignored.

#### **Complaints Case Study**

A number of complaints have been made to PTV, YT and MTM in relation to seating on public transport. The complaints highlight the unwillingness of some passengers in giving up their seats to persons with special needs.

*"I am a special needs passenger, I use two walking sticks for mobility. However being able to access the special needs seating is near impossible. Last night I requested a passenger for the seat, only to be refused. No other seats were made available. The other passengers totally ignored my request."*

*"I'm 7 1/2 months pregnant and travel from Williams Landing to Flinders every week day and have [tried] asking for priority seating a few times and people just look at me and look away. So I have stopped asking to save myself the embarrassment."*

*"A close friend of mine is heavily pregnant and on many occasions is refused a seat. Not only is she not offered, when she asks she is refused which forces her to stand on every occasion."*

*"I travel on trains using my electric wheelchair. During peak travel times, I regularly cannot get onto the train because the front carriage, where the ramp is located, is full. I am often refused access to 2-3 trains in a row, particularly when previous services have been cancelled. Today, I was waiting at the train station for an hour. This happens often. "*

*An elderly customer on priority seating: "I would like Yarra Trams to do more to promote courtesy in reminding able-bodied young people to not sit in the 'priority' seats area at the front of the trams. Many times a week I stand all the way to work hanging on for dear life, while these young things sit in the 'priority' seats with not a care in the world."*



**Feet on seats**

Another issue that arises in relation to the availability of seating (more generally) is placing feet on seats. Placing feet on furniture may impact on amenity by preventing another passenger from occupying a seat. Additionally, dirty feet may make the seat itself dirty and unsuitable for use. The secondary effect of the latter is that the passenger transport company incurs some cost in cleaning and maintaining the furniture.

The problem arises when there is a scarcity of seats, such as during peak times. At off-peak times, seats are less scarce since there are less passengers on board, and a passenger could occupy a seat with their feet without preventing another passenger from using the seat. However, it is noted that if a person dirties the seat (e.g. if they have dirty shoes), then the passenger transport operator will still incur the external cost of cleaning and maintaining the seat.

Infringements data for this offence is present in Table 3.17. This offence is the most common offence to incur a transport conduct infringement. The observation is that there is a large number of passengers who continue to place their feet on seats despite the regulations. It is noted that the number of infringements are dependent on compliance monitoring and enforcement effort and the incidence is likely to be much larger than this.

**Table 3.17: Infringements issued for seating offences**

	2007	2008	2009	2010	2011	2012	2013
Placing feet other than on the floor or a part of a rail or road vehicle designed for the placing of feet	10,764	18,958	16,935	12,779	17,593	23,161	18,526

Source: DEDJTR

**Complaints Case Study**

Passengers have made complaints to PTV, YT and MTM in relation to feet on furniture and seats on public transport vehicles and in public transport premises. The following complaint highlights the nature of the problem:

*"I get on the 7.55 eltham train from Southern Cross and most mornings a school girl (about 15-17) gets on also. EVERY TRIP she has her feet AND school bag on the seat and is so rude to other travellers. This has been going on for at least six months. Its a busy train and she often refuses or will rudely move her feet and bag so other passengers can sit down."*

**3.3.3 Smoking**

Governments have banned smoking in public places in recognition of the harmful effects of smoking and second hand smoke on others. Typically, there are prohibitions on smoking indoors, in sheltered places or at recreational areas, including enclosed restaurants, enclosed workplaces, retail centres and patrolled beaches. Additionally, it is an offence to smoke in a motor vehicles if an under 18 is present. It is in these areas, where smoke is contained, that non-smokers are exposed to tobacco smoke and its harmful effects.

Regulation banning smoking applies to public transport vehicles and stations. Recently, smoking was prohibited in all areas of train stations. Previously, the prohibition only extended to covered areas of railway platforms and under tram and bus shelters. The effect of the new regulations is that any persons who wishes to smoke must move to areas outside of the train station, tram stop or bus stop.

The externality caused by smoking is well documented, and it is generally accepted that smoking has a negative impact on a person's health, and through second-hand smoke, imposes a negative impact on others nearby.

Of approximately 250 complaints made to YT in 2014, 14 were in relation to non-compliance with smoking laws on trams and at tram stops. Examples of complaints made to transport operators are presented in the form of case studies below.

A related matter is whether the current regulations should also apply to e-cigarettes. The Victorian Government has not yet expressed a policy position on e-cigarettes. It appears that the evidence is not yet clear about the potential risks and/or benefits of e-cigarettes, and there is debate about the issue at national and international level. The Department of Health and Human Services is monitoring developments and research concerning the potential risks and/or benefits of e-cigarettes.

In December 2014, the Commonwealth Department of Health released a Request for Tender to explore options to minimise the risks associated with the marketing and use of e-cigarettes in Australia. This project is being undertaken under the auspices of the Intergovernmental Committee on Drugs, which reports to the Mental Health, Drug and Alcohol Principal Committee of the Australian Health Ministers' Advisory Council. This research will contribute to informing possible directions for further regulation of e-cigarettes in Victoria.

**Stakeholder Questions:**

*Is there a need for government to regulate e-cigarettes on public transport vehicles and at public transport premises? Why or why not?*

The infringements data presented in Table 3.18 highlights the fact that there is a continuing problem in relation to smoking on public transport. That is, individuals continue to smoke where it has been expressly prohibited.

**Table 3.18: Infringements issued for smoking offences**

	2007	2008	2009	2010	2011	2012	2013
Smoking in or on rolling stock, a tram stop shelter or bus stop shelter, or a covered train platform	583	1,770	1,578	1,349	1,367	2,128	1,360
Smoking on public transport property where notice prohibiting smoking is displayed	0	18	67	96	106	141	73

Source: DEDJTR

**Complaints Case Studies**

A number of complaints have been made to PTV, YT and MTM in relation to smoking on public transport. A significant proportion of these also relate to passengers standing in the area between carriages and smoking.

*Customer complained about being subject to second-hand smoke at Kananook station, despite posters claiming the station is to be smoke free.*

*"I continually encounter people on the platform who smoke before their train departs... they are holding the train door open with their foot as to finish their cigarette... I shouldn't have to walk through a plume of smoke."*

*Customer states that she witnessed a group of young men standing between carriages and smoking. Customer states that they left the door open and smoke came into the carriage.*

*"We noticed someone smoking in between the carriages, my friends and I thought that that was bad... then a man around 50 started smoking inside our carriage. It filled the carriage with smoke."*

*"You absolutely need to make the tram stop areas non-smoker friendly. Most of the tram stops in Melbourne CBD have an abundance of smokers. This is a problem for non-smokers like myself as I can not [sic] avoid passive smoking. It is disgusting and a health hazard."*

### 3.3.4 Noise

Noise and sounds on public transport can be generated in a number of ways:

- talking between passengers;
- passenger talking on a mobile phone;
- passenger listening to music which can be heard by other passengers;
- passenger may be playing a musical instrument;
- baby or child crying or screaming

Passengers on public transport may value different sources of sounds and noises on public transport differently. Some may enjoy listening to another passenger playing a musical instrument where other passengers may dislike the type of music being played. For another person, the playing of music may simply impede a conversation with a friend.

Attempts have been made to segregate users until those that do and don't like noise. For example, in some countries there are 'quiet carriages' where noises are to be kept to a minimum. In other countries, talking on mobile phones is considered poor social etiquette on public transport – passengers are advised to turn phones on silent mode.

In many jurisdictions, including Victoria, buskers are permitted to play music on public transport, subject to obtaining a permit. In effect, market forces will then determine the extent to which noise is created. The more the busker is paid the more noise will be created, unless of course the busker is explicitly paid to stop.

By and large, many passengers already take into account the effects of errant noise on others and use headphones to limit the noise heard by other passengers.

There have been a small number of infringement notices issued for noise related conduct offences.

**Table 3.19: Infringements issued for noise related conduct offences**

	2007	2008	2009	2010	2011	2012	2013
Playing a musical instrument or sound equipment	8	8	5	4	7	2	3

Source: DEDJTR

### **Complaints Case Studies**

A number of complaints have been made to PTV, YT and MTM in relation to sources of noise and noise levels on public transport.

*"I would like to complain about young people playing their music too loud, even though they have headphones on, everyone can hear the music really loud and its [sic] not a nice sound to hear especially when a few different people are doing it around u. I have a list of complaints about how youngsters act on the train and i have tried telling metro staff at the stations but they say we cant [sic] really do anything. I want to have a peaceful train ride as im [sic] sure other people do as well"*

*"Please introduce SILENT carriages. An hour long commute can actually be productively used for reading, study or work if you are able to hear yourself think. No talking, music, children or phones allowed."*

### 3.3.5 Animals

Regulations exist to control the carriage of animals on the public transport network. The purpose of such regulations is to limit the exposure of animals to other passengers. Reasons for limiting the carriage of animals are based on controlling the possible negative effects of animals on passengers. Examples include phobias or allergies.

There are situations where animals are permitted to be carried, such as when animals are integral to the social well-being and inclusion of a person – i.e. when the animal is a guide dog (or similar categories of assistance animal). Further, animals are able to be brought onto public transport when they are sufficiently restrained, such as when animals are carried in a container or when dogs are restrained by a lead or harness and wearing a muzzle.

In circumstances where animals are permitted, passengers accompanied by animals would be reasonably expected to control the animal to limit any possible negative consequences. Such actions include preventing an animals from straying on public transport (either on the vehicle or stations etc.) or taking up seating space, or related to cleaning up after the animal.

#### **Complaints Case Studies**

A number of complaints have been made to PTV, YT and MTM about animals on public transport.

*"I was horrified to see dogs on the trains . One time there were 2 medium size dogs , muzzeld [sic] but they had done a wee and it was running down through the carraige [sic]. Owner did nothing. Another time a large big dame was sprawled out across the floor by the door. People had to step over it. It was not muzzled. Owners did nothing."*

There have been a small number of infringement notices issued to individuals for animal related offences. These are presented in Table 3.20 below.

**Table 3.20: Infringements issued for animals on public transport**

	2007	2008	2009	2010	2011	2012	2013
Allowing dog to occupy seat or preventing another person from using the seat	0	0	0	3	1	5	5
Failing to remove matter emanating from dog or other animal or from the animal's container	0	0	0	0	1	0	0
Unauthorised carriage of animals	0	0	0	0	2	0	0
Taking animal onto or into a rail or road vehicle or rail premises	0	3	5	2	4	4	6

Source: DEDJTR

### 3.3.6 Other

This category covers miscellaneous matters such as litter, luggage and unauthorised travel and seating.

The cleanliness of and litter in public transport vehicles and premises affect the amenity of public transport to users. It is not unreasonable to assume that passengers on public transport value cleanliness, given it is generally social acceptable to be in a clean environment. In addition, prohibitions of littering included in the conduct regulations effectively duplicate Section 45E of the *Environmental Protections Act 1970*. This is to ensure that AOs have the power to respond and

sanction littering offences on public transport vehicles and premises. Littering creates a negative externality to passengers that travel on public transport. It also creates a negative externality to public transport operators in the form of cleaning and maintenance costs due to cleaning up the litter.

Luggage of passengers may be placed on public transport vehicles in such a way that may cause an obstruction or limit the space available to other passengers of public transport vehicles.

### 3.4 Damage to public transport property

Vandalism, graffiti, fires, and scratching and burning are a significant issue for public transport operators and users. The cost of damage to public transport property is unlikely to be borne directly by the perpetrator and is generally borne by public transport operators.

For example, Metro Trains Melbourne estimates that approximately \$6.96 million was spent on cleaning graffiti and undertaking repairs on trains and property caused by malicious damage in 2012-13 and approximately \$5.87m was spent in 2013-14. Additionally, YT reports that \$950,000 was spent in 2014 on vandalism and graffiti, compared to \$800,000 in 2013.

**Table 3.21: Cases of graffiti on metropolitan trains recorded by MTM**

	2011	2012	2013	2014
Reports of graffiti	718	340	510	379

Source: Metro Trains Melbourne

The cost of damage from graffiti is not limited to the direct cost of cleaning and repairing damage to vehicles and facilities. Removing vehicles from service for unplanned cleaning or repair is an example of the potential indirect cost of vandalism and can have a significant impact on the efficient operation of the public transport system.

Other indirect costs may include:

- the cost of providing substitute transport for passengers when public transport vehicles or property are damaged;
- the cost of designing and implementing security measures to prevent and deter such activities, such as additional security guards, CCTV and security cameras;
- service delays or cancellations and associated revenue loss from cancelled services;
- reduced revenue from lower patronage due to perceived reduction in personal safety and security from property damage; and
- the possible injury or death of those causing damage as a result of trespass.

#### **Complaints Case Studies**

The following are examples of the types of complaints made in relation to property damage:

*Customer called to report vandalism on board the train from South Morang. The customer noticed 3 people slashing seats on the train.*

*Customer complaint on graffiti: "Why is the removal of such filth left so long that the scum responsible have won with their rubbish exposed for all to see. It should be instantly defaced if removal is going to take a number of weeks. Sick to death of being surrounded by vandalism that is being left in place because nobody cares about instant removal."*

*"What is being done to stop vandalism at Mitcham station? In the short time that Mitcham station has been graffiti has been spreading rapidly, all surfaces of the cutting have now been vandalised and it is starting to spread into the station buildings."*

The number of infringement notices issued for property damage related conduct offences indicates a relatively low number when compared to some other conduct offences. However, these figures may

be not representative of the incidence of vandalism on public transport but of the level of resourcing able to be given to the enforcement of these offences. It may also be representative of the difficulty with proving a property damage related offence.

**Table 3.22: Infringements issued for damage-related conduct offences**

	2007	2008	2009	2010	2011	2012	2013
Damage to property	8	15	11	17	7	2	7
Fires	3	16	11	5	19	9	8
Graffiti	15	22	27	17	20	17	1
Scratching or burning	0	0	2	3	2	4	3

Source DEDJTR

### 3.5 Indicative effects of delays to the transport system

As indicated in preceding sections, one of the consequences of incidents relating to unsafe conduct or conduct affecting amenity is the impact of such incidents on the transport system. These consequences typically arise in the form of delays to public transport services, and delays to one service can impact on other public transport services in the network. Delays can also increase congestion on the road network.

Delays to the public transport system are caused when the:

- driver of a public transport vehicle ceases operations in response to an incident – an example of this is when a person is found riding a train in an unsafe manner and the driver is required to cease operation of the vehicle until the person is no longer at risk or emergency services are called in to respond to the incident; or
- incident results in injury or death and relevant emergency services are called in to deal with the situation.

Depending on the nature of the incident, delays to an individual service can be in the order of five minutes to an hour. The wider impacts, such as the impacts on other public transport services, depend on the frequency of services at the time of the incident. For example, at peak periods, an incident can affect a number of services on a line or route. In addition, depending on the location of the incident, other lines and routes can also be affected.

The extent of the impact on the public transport system can be illustrated using a few sample incidents on a metropolitan train service. The examples use a number of inputs and assumptions as follows:

- at peak times, approximately 800 passengers are on-board a metropolitan train – the standard for a full load is approximately 798 passengers and can reach up to 900 passengers at peak times if the rolling stock is overloaded
- at off-peak times, there are approximately 300 passengers on-board a metropolitan train
- at peak times, services are run every five minutes and at off-peak times services are run every 15 minutes

The first example relates to a minor incident which causes a 15 minute delay to a train service. If this incident were to occur at off-peak times, the incident would cause a delay to passengers on board that service. No other services would be affected since there is time between the other services. Accordingly, the delay would impact 300 passengers. At peak times, a 15 minute delay is likely to impact other services on the network. In this example, this type of incident can delay two other services if services are run every five minutes. Accordingly, the delay could impact up to 2400 passengers.

Another example is when incidents cause about an hour delay to services. Such a delay can occur when emergency services are required to investigate and deal with situations. At off-peak times, an hour delay is likely to have an impact on other services on the network. If services are running every 15 minutes, then a delay of this magnitude is likely to, based on the above assumption, affect up to three other services on the line. Such a delay would affect approximately 1200 passengers.

At peak times, an hour delay has significant impacts on the transport system. Based on the assumption that services are run every five minutes, an hour delay to one service could be expected to affect at least eleven other services. Accordingly, up to 8800 passengers can be affected by a single incident at peak times.

The two general examples alone highlight the potential impact of incidents resulting from unsafe conduct, conduct affecting amenity, or property damage on the metropolitan train network.

Data provided by MTM illustrates the real (not potential) effects of incidents. This is presented in Table 3.23. The data covers the period between 1 January 2010 and 31 December 2014. The table shows the average number of trains impacted and the average number of delays associated with different types of incidents. It appears that, of the types of incidents presented, motor vehicle collisions have a greater impact on train services and cause greater delays to passengers. On the other hand, incidents such as vandalism do not cause as much delay per incident as other incident types but the frequency of these incidents means that the overall effect on operations is substantial.

**Table 3.23: Impact of incidents on metropolitan train services**

Incident type	Average number of incidents per year (between 1 Jan 10 to 31 Dec 14)	Average number of trains impacted per incident	Average number of minutes delay per incident
Trespass (including near misses with persons)	1,180	6.9	29.8
Vandalism	623	5.1	21.6
Motor vehicle collisions	107	10.5	47.3
Assaults	43	4.8	25.7

Source: Metro Trains Melbourne

It is evident that longer delays, which relate to the severity of the incident, impede other services from running on the transport system. External effects are also exacerbated at peak times when there are more passengers using the transport system.

### 3.6 Non-commuter parking at 'park and ride' facilities

Railway station car parks are car parks that are located adjacent to railway stations which are provided free of charge. The car parks are primarily provided for users of public transport to provide them with better access to public transport and are sometimes referred to as 'park and ride' facilities.

Endemic parking issues at busy railway station car parks generally fall into two categories. These are parking contrary to road rules requirements and parking for reasons unconnected with public transport. Both issues have become more significant following increases in public transport patronage, particularly on the metropolitan network.

Examples of parking contrary to the road rules include parking on a nature strip or areas other than in a bay. Authorised Officers have been provided with powers to report people for road rules parking offences<sup>8</sup>.

The Minister for Public Transport, other members of Parliament and MTM had received numerous complaints about the use of public transport car parks by people who do not use public transport.

The problem is particularly acute at busy stations, where the scarce spaces for genuine users of public transport may be significantly reduced by people who do not use public transport. Spaces are used by people who work near the facility, shoppers and others using local facilities in preference to short-term or paid parking. The result is that genuine users must park elsewhere, incurring extra travelling time or cost. The provision of car parking is critical to encourage and enable people to use public transport. However, it has been difficult to exclude non-commuters from using the parking facilities provided.

### 3.7 Summary

There are two different underlying rationales that justify consideration of government intervention:

- One is the information gaps that exist and the effects this has on decision making by individuals. The potential risks and consequences of unsafe conduct are often underestimated.
- Another rationale is the external costs that certain conduct can impose on others. In relation to unsafe conduct, an incident can impact on passengers of public transport, passenger transport operators and the general public more widely. In relation to conduct affecting amenity, the conduct of passengers may impose external costs on other passengers.

The consequences of the conduct can be significant. Incident can (and have) resulted in death and injury. Incidents can also cause significant delays to large numbers of passengers. Further if amenity of public transport is not maintained then passengers may switch to using their cars, amplifying the congestion problems already experienced in the morning and afternoon peaks.

For all of these reasons it is reasonable to conclude that nature and extent of the problem justifies consideration of the merits of government intervention. The sections that follow (refer to Section 5 and 6) consider the options available and whether it is reasonable to expect that the benefits of interventions will exceed the costs they impose.

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<sup>8</sup> See section 87 of the Road Safety Act 1986. This provision relates to the service of parking infringement notices



## 4 Objectives

For the purposes of the analysis in this RIS, the objectives are:

- promote safe behaviours around public transport vehicles and premises to minimise the extent of harms caused to individuals and others
- facilitate comfortable and convenient travel for passengers on public transport
- minimise the extent of damage to public transport property
- minimise transport network impacts

These objectives are consistent with the objectives specified in the proposed regulations and in transport legislation. The stated objectives of the proposed regulations are to—

- regulate the conduct of persons on, and in relation to, trains, trams, buses and public transport premises having regard to safety, fairness and community standards;
- facilitate comfortable and convenient travel for passengers on public transport;
- require persons crossing railway tracks or tramway tracks or otherwise interacting with tracks to do so in a safe manner;
- require persons travelling in or on trains, trams and buses or being on public transport premises to—
  - behave safely and in a way that does not cause harm, or is not likely to cause harm, to themselves or others;
  - behave in a way that does not unnecessarily disturb others;
  - use public transport equipment in a way that does not cause harm, or is likely to cause harm, to themselves or others;
  - not damage property;
- regulate the parking of motor vehicles at designated park and ride facilities.

The regulations supports the achievement of general transport system objectives specified in the *Transport Integration Act 2010* (TIA). In particular, the proposed regulations would make a contribution to the safety and health and wellbeing objective (Section 13) and the efficiency, coordination and reliability objective (Section 12).

The safety and health and wellbeing objective specifies that the transport system should:

- seek to continually improve the safety performance of the transport system through—
  - safe transport infrastructure;
  - safe forms of transport;
  - safe transport system user behaviour;
- avoid and minimise the risk of harm to persons arising from the transport system; and
- promote forms of transport and the use of forms of energy which have the greatest benefit for, and least negative impact on, health and wellbeing.

The efficiency, coordination and reliability objective is to facilitate network-wide efficient, coordinated and reliable movements of persons and goods at all times. The TIA further specifies that the transport system should provide predictable and reliable services journey times and minimise any inconvenience caused by disruptions to the transport system. One means of improving reliability and avoiding inconvenience is to minimise the disruptions to transport system operations that are a consequence of unsafe conduct and conduct that results in property damage. The proposed regulations aim to support the achievement of this objective.

## 5 Options

There are a number of interventions that government, its agencies and public transport operators could potentially take to address safety and amenity issues on public transport vehicles and around public transport property. The following sections consider the options available.

### 5.1 Types of interventions

#### 5.1.1 Regulation

One approach to addressing the identified problems is to prohibit some conduct on public transport and on public transport premises. The regulations specify the type of conduct and the circumstances where and when the conduct is permitted or prohibited. The regulations also specify the penalties that are applicable.

To be effective, compliance with the regulations needs to be monitored and enforced. The amount of compliance monitoring and enforcement effort employed needs to be sufficient enough to deter non-compliance. In other words, to be effective, prospective offenders need to perceive that if they engage in prohibited conduct, there is a distinct possibility that they will be caught and that penalties will be imposed.

#### 5.1.2 Education and the provision of information

There should be no doubt that the education system has a role to play in addressing a wide range of unsafe and dangerous passenger conduct by ensuring that individuals have an appreciation and understanding of risk. Equally, the education system plays an important role in enhancing amenity and promoting social cohesion by reinforcing social values and norms.

Specific education campaigns which provide better information to the public about the dangers and risks associated with certain types of passenger conduct can be an effective in encouraging voluntary changes in behaviour by the public. Such campaigns are effective in circumstances where behavioural choices are based on a misunderstanding of risk and cause and effect. Information campaigns can also enhance peer pressure to conform to behavioural norms. However, this type of intervention is not effective when individuals are aware of the risks but engage in dangerous conduct anyway because they get utility from taking risks (e.g. train surfers).

There are many forms of education and information that could be employed. On one hand, informational devices, such as posters and signs, could be displayed in public transport vehicles or at public transport premises. For example, signs could be placed at locations where crossing rail tracks is particularly dangerous. Alternatively, television, radio, internet advertising and social media could be used to convey information or deliver educational messages. Victorian public transport operators have been identified as innovators in this area, with the 'Dumb Ways to Die' campaign winning a number of awards as well as being very popular on social media such as YouTube. Another successful campaign was implemented in Queensland. Queensland Rail launched an educational campaign called 'Train etiquette – super simple stuff', using illustrations to demonstrate the simplicity of train etiquette.<sup>9</sup>

Education campaigns can be an effective tool in changing public perception and behaviours. However, it is noted that education campaigns are typically not undertaken in isolation. Instead, they are often designed to complement regulation, which is enforced to ensure maximum efficacy.

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<sup>9</sup> See <http://www.queenslandrail.com.au/aboutus/mediacentre/campaigns/pages/trainetiquette.aspx>, accessed 3 March 2015

### 5.1.3 Increased staff presence

This option would rely on employing staff for the purposes of providing customer service and supervisory activities. The increase in staffing levels could improve passenger perception of safety and amenity on public transport. It could also reduce the extent of unsafe or anti-social conduct on public transport as it is possible that people will be less likely to engage in this type of behaviour under increased supervision.

In considering this option, it is necessary to consider whether greater staff presence alone is sufficient to deter unsafe or anti-social behaviour or whether staff require regulatory powers (i.e. powers to issue infringement notices, request to leave etc.) to increase the efficacy of having more staff.

There are also a number of choices to be made in terms of the number, location and time when staff are made available. Combinations of these factors will affect the benefits and the costs of this option.

### 5.1.4 Conditions of travel

In general, providers of goods or services impose terms and conditions as part of the contract or transaction. Under these terms and conditions, the consumer is given entitlements to use the good or service but are also required to comply with the conditions of the good or service or risk being excluded. In other words, the ability to consume a good or service is subject to complying with terms and conditions. An example includes dress-codes at some restaurants, bars and clubs – these establishments may refuse entry if a specified dress-code is not complied with.

The conditions of travel could cover matters that are currently covered in the conduct regulations. In the event that there is a contradiction between a condition and a regulation, the regulation would take precedence. Some of the conditions that apply currently are described in Section 6.1.1.

Under this option, passenger transport companies would be required to take civil action against passengers who contravene the conditions. Alternatively, passenger transport companies could request that passengers leave public transport vehicles or premises and exclude them using public transport services. However, the provider of public transport services, the passenger transport company, may not have effective mechanisms to exclude passengers from using public transport. For example, the only impact of requiring a person to exit a service may be to delay the individual by 10 minutes (when the next service arrives).

In general, a disadvantage of using this option to address safety and amenity issues is the limited nature of the civil sanctions available. The actions that can be taken and the sanctions that could be imposed may not be sufficient to deter or modify behaviour.

This civil approach may, however, be effective in addressing property damage associated with unsafe and anti-social behaviour. In some cases where the damages suffered are significant seeking damages through the courts could be an effective method for making offenders internalise the costs caused by their actions. However, public transport companies are unlikely to seek damages in instances where the amount of property damage caused by an offender is less than the costs associated with taking court action. So property damage associated with minor acts of vandalism and the like are unlikely to be effectively addressed using this option in isolation. Arguably alternative sanctions, such as imposing a financial penalty by issuing an infringement notice under regulations, are required to ensure compliance with desired behaviours in these areas.

### 5.1.5 Engineering solutions

The design of infrastructure and public transport vehicles is evolving over time to improve safety, efficiency, comfort levels and the experience of public transport users. Modern trains, trams and buses are fully air-conditioned and do not have windows that open thereby largely eliminating the risk that passengers will hang or position objects or body parts outside of vehicles and risk injury to themselves and others. Modern trains, trams and buses also include features such CCTV that, in part, mimic the effects of having increased staff presence and supervision. It is more difficult to enter and ride on parts of modern vehicles that are not intended for passenger use. In other cases access has

been increased but safety has been improved – for example, it is now very unlikely that a person could fall under a passenger train when using doors and platforms when moving between carriages.

Safety features included in public transport infrastructure are also improving all the time, when new investments are made or when aging infrastructure is replaced. For example, an option to limit unsafe rail crossing incidents or incidences that occur when persons enter the pits between platforms may be to install infrastructure that physically prevents persons from crossing tracks or entering pits between platforms. This could include the installation of high fences along rail and tramway track corridors.

“Platform screen doors” may also be installed on train or tramway track platforms to screen the platform from the train or tram, with an automated door opening to allow passengers to embark or disembark the train or trams. This particular approach has been implemented in several international locations, including London, Singapore, St Petersburg, Barcelona and Taipei, to reduce safety risks and impede attempted suicides.

## 5.2 Identifying fit for purpose solutions

For each of the potential interventions identified in the preceding sections there are sub-options available to enable approaches to be tailored to particular problems in order to reduce the direct cost impacts on government and public transport companies and minimise the cost of compliance. While the previous section explores the types of interventions available, consideration needs to be given to the option or combination of options that are best suited to address the specific problems identified in Section 3 of this RIS.

As a matter of principle it is not necessary or optimal to prohibit certain types of conduct in all circumstances. The problems associated with placing feet on seats is a prime example. An option would be to only prohibit feet on seats during certain times (e.g. during peak periods) or only make it an offence to put feet on seats if another passenger requests to use the seat, which is the approach currently adopted in relation to bags on seats. In order to avoid seats getting soiled by dirty shoes, an alternative is to limit the conditions in which a passenger is allowed to place their feet on seats (e.g. feet on seats only allowed if no shoes are worn). A further alternative is to rely on peer pressure and self-regulation of conduct. While it is expected that this may result in some seats being soiled by dirty shoes a critical question is whether the impact on public transport companies is any more or less than the impact of permitting food and drink (which is often spilled) to be consumed in public transport vehicles.

The example shows that there is a question about the scope of regulation. That is, does a particular problem require a regulatory solution or not? In circumstances where the nature of the problem is limited to a lack of knowledge about risks and poorly informed decision making then educational campaigns are likely to be the preferred solution. However, as explained in Section 3, a proportion of unsafe or dangerous conduct can be attributable to risk taking behaviour or deliberate conduct that is anti-social in nature. Again, using the issue of feet on seats as the example, a person may be placing his feet on seats facing towards him as a method of discouraging others to sit in his proximity. Such a person may seek to intimidate others to preserve space for his own comfort. In such circumstances, reliance on self-regulation, for example, is unlikely to be effective and the provision of information is unlikely to lead to a change in preferences and practices. Accordingly, faced with the realistic prospect of such a scenario, regulation is likely to be only option that could reasonably be expected to have some effect – if there is an expectation that the probability that non-compliance will be detected is high.

A large range of sub-options were considered during the development of the regulations. These are discussed in Section 6.

### 5.3 Consideration of intervention types

Given the relative merits of alternative options presented above, it is proposed to further consider the costs and benefits of the following intervention options:

- Prohibiting selected conduct on public transport, providing exceptions and qualifications as necessary to limit the effect of the regulation to circumstances where a person's actions potentially impact on others (i.e. option to regulate should be driven by presence of externalities).
- Increasing information and educating the public on safety risks and social acceptable conduct is the preferred solution in some circumstances where the conduct of concern is largely attributable to lack of knowledge or miscalculation of risk. It is noted that in many cases education is complementary to regulation and will be implemented in tandem.
- Implementing prohibition on types of conduct using conditions of travel and civil remedies is a valid approach and worthy of consideration to address a subset of problems identified in Section 3, in particular, damage to property.

The assessment is that the option to increase staff presence in the absence of regulation is likely to only have limited effects if used in isolation. This is because there is no credible threat that authorised officers could take action to address unsafe or dangerous behaviour or anti-social behaviour that may impact on amenity. Instead, the option to increase the number of authorised officers is more properly seen as a sub-option under one of the feasible options, each of which may be constructed as a mutually exclusive option.

The assumption is that engineering solutions will continue to be implemented to the extent that the incremental cost of design features that improve safety and amenity can be justified by reference to expected benefits. Engineering solutions are well suited to dealing with a subset of the problems identified in Section 3 but do not provide a complete solution. More importantly, the implementation of engineering solutions is undertaken over a long period of time as the fleet of public transport vehicles is replaced and the stock of infrastructure is replaced. The continuation of regulation and other interventions is therefore needed, at minimum, as a transitional measure.

### 5.4 Controlling non-commuter parking at 'park and ride' facilities

Ticketing technology means that enforcement officers are now able to confirm whether a person has used the public transport system, since the myki system stores information about when a person 'touched on' or 'touched off'. Accordingly, compliance monitoring and enforcement of prohibitions on non-commuter use of car parking facilities is now more feasible than previously.

On 30 September 2014, the government made regulations to restrict the use of park and ride facilities (designated railway station car parks) at key locations. The regulations commenced on 1 January 2015 for a six to nine-month trial period.

The current trial will investigate whether it is cost effective and practicable to implement the compliance monitoring and enforcement strategy that has been developed. The trial will also enable the collection of data on the true nature and extent of the problem.

The regulations establish parking controls at six problem stations by creating three park and ride-specific parking offences (summarised below).

There are three offences. These are:

- Leaving a vehicle parked in a designated park and ride facility during 6 a.m. and 7 p.m. on a business day without using public transport while the vehicle is parked.
- Removing a vehicle which has been parked in a designated park and ride facility during 6 a.m. and 7 p.m. on a business day without having used public transport while the vehicle was parked.

- Failing to comply with a request to produce a valid ticket when removing a vehicle from a designated park and ride facility, if the vehicle has been parked in the facility during 6 a.m. and 7 p.m. on a business day.

The stations are:

- Box Hill
- Burwood
- Camberwell
- Heidelberg
- Highett
- Murrumbeena

It is noted that initial results of the trial indicate that the main causes of improper use of commuter car parking at Highett and Burwood stations (i.e. construction activity in close proximity) have ceased and the problem at these stations largely no longer exists. For this reason, there is consideration of whether the trial should continue at these stations.

Stakeholder Questions:

*Are there any other railway stations that should be subject to the trial regulations? If so, please provide reasons.*

## 6 Assessment of options

### 6.1 Methodology

#### 6.1.1 The base case

The Victorian Guide to Regulation requires that for new or sunseting regulations, the base case is assumed to be that no conduct regulations exist (“zero” base case). This is the benchmark against which the proposed regulations and alternatives must be assessed. The safety and efficiency outcomes when there are no regulations (base case) are compared to the safety and efficiency outcomes when there are regulations (change case) to determine the benefits and costs. The base case constitutes the constant in the analysis against which various options are compared. The comparative analysis is aimed at identifying which change option maximises net benefits.

Establishing the base case requires an analysis of what could reasonably be expected to occur in the absence of any conduct regulations. i.e. How would behaviour change? How would this impact on safety and efficiency outcomes?

Many of the regulations present in the existing regulations have been in place for a long time so it is difficult to observe or estimate what would happen in the absence of regulations. An approach to addressing this problem is to make observations about the differences in outcomes achieved in other jurisdictions where regulations of the type under consideration are not in place and use the outcomes achieved in that jurisdiction as the base case for the analysis. However, there a number of problems with this approach.

Firstly, as indicated by Table 6.1 that follows, the type of conduct regulations under consideration are widely used in other Australian jurisdictions and in other comparable jurisdictions. So identifying a jurisdiction that does not have conduct regulations in place is difficult (albeit there are differences in the specific content of regulations).

**Table 6.1: Comparison of conduct regulations across jurisdictions**

Jurisdiction	Applicable transport conduct laws and regulations
New South Wales	Passenger Transport Regulation 2007
Queensland	Transport Operations (Passenger Transport) Regulation 2005 Transport Infrastructure (Busway) Regulation 2002
Western Australia	Public Transport Authority Regulations 2003
South Australia	Passenger Transport Act 1994 Passenger Transport Regulations 2009
Auckland, New Zealand	Auckland Transport Public Safety and Nuisance Bylaw 2013
Singapore	Rapid Transit Systems Regulations 1987
Hong-Kong (China)	Mass Transit Railway Corporation Bye-Laws
Los Angeles, CA, USA	Los Angeles County Metropolitan Transportation Authority Metro Rules

New York City, NY, USA	New York City Transit Rules of conduct
New Jersey, USA	New Jersey Administrative Code, ch.16:83, "Conduct and Safety of the Public in the Use of NJ TRANSIT Equipment and Facilities"
Ontario, Canada	Metrolinx By-Law No. 2

Secondly, in circumstances where it is possible to identify a jurisdiction that does not have conduct regulations, relevant data on the number of incidents and their consequences are not generally kept. As a result, the experience of such jurisdictions is not able to be readily used to inform the establishment of the base case.

Thirdly, even if the another jurisdiction does not have conduct regulations but does collect and maintain some data on safety incidents, the experience in those jurisdictions reflects the particular features of their public transport networks and values and social norms of the population of prospective users. A systematic and objectified analysis of this issue would require that the influence of these variables is controlled and removed. This is not possible because of significant gaps in the data that is available.

The conclusion, therefore, is that it is not possible to construct a base case that reflects observed behaviour in circumstances where conduct regulations are not in place. Instead, it is necessary to consider each matter that a regulation may be proposed to address and make assumptions about what conduct would occur in the absence of regulation. The assumptions are necessarily speculative but are informed by a consideration of the incentives individuals face and, by implication, the likely behavioural response to a given circumstance. Importantly, this RIS seeks feedback on how reasonable the assumptions are and invites written submissions to put forward alternative assumptions that should be considered.

There are a number of factors that will influence the base case, or the level of conduct that is expected to occur without regulations in place, such as:

- requirements imposed under existing legislation
- social norms and etiquette
- the presence of protective services officers and authorised officers

### ***Requirements already imposed***

A number of current transport conduct offences overlap with offences in the *Crimes Act 1958* and the *Summary Offences Act 1966*. So in the absence of passenger conduct regulations, individuals will not be permitted to undertake certain types of conduct (e.g. property damage, public nuisance or reckless endangerment). These offences can be enforced by members of Victoria Police and protective services officers (PSOs).

The *Transport (Compliance and Miscellaneous) Act 1983* also prohibits some conduct on trains and trams. These are generally more serious offences relating to public transport and include:

- taking animals on trains and trams
- placing things on railway tracks
- mounting or riding a part of a train not intended for travel
- applying brakes or using emergency devices without reasonable excuse
- stopping a rail vehicle while in motion
- operating equipment

Passenger transport operators are able to stipulate contractual conditions of travel that passengers are contractually obliged to adhere to. Additionally, the Secretary of the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) may make implied conditions of the contract



between passenger transport operators and passengers. These conditions are located in the *Fares and Ticketing Manual* and relate to ticketing matters, such as the price of a ticket, ticketing zones and the use of the myki ticketing system.

The conditions also prohibit some passenger conduct on public transport, including:

- the carriage of dangerous goods, bicycles and surfboards on public transport
- the use of motorised vehicles
- the carriage of animals
- eating and drinking on V/Line trains and coaches

### ***Social norms and etiquette***

The degree to which individuals in society comply with the implicit rules that society makes will also affect the extent of the undesired conduct on public transport. Such social norms generally dictate how members of society should behave, directing behaviours that are both encouraged and discouraged. For example, giving up a seat to an elderly person is a behaviour that society encourages, and stealing from a person is a behaviour that is discouraged by society.

In most cases, an individual's actions and behaviours usually align with society's norms and etiquette, and this is because the individual also hold those beliefs. However, it may be case that an individual conforms to some social norms but not others. The observation is that the majority of society conforms to social norms but there also is a minority who do not observe these norms. The matters contained in the conduct regulations have essentially been put in place to address the minority in the community who do not follow such norms.

### ***The presence of PSOs and AOs***

PSOs are trained officers who patrol railway stations after dark. PSOs are recruited to provide greater safety for the public. PSOs have similar powers to police officers but are only allowed to use these powers at specific places such as train stations and areas around train stations, including car parks, roads that give access to stations. PSOs are able to enforce laws contained in the *Crimes Act 1958* and the *Summary Offences Act 1966* as well as transport offences.

Without conduct regulations, AOs would patrol the public transport system and enforce ticketing requirements on public transport. AOs would have some powers to enforce conditions of travel, whether made by the passenger transport operator or the Secretary of DEDJTR in the *Fares and Ticketing Manual*.

The presence of both PSOs and AOs is also likely to have some deterrence effect and reduce the incidence of unsafe conduct, anti-social conduct, and damage to property. However, the deterrence effect will depend on the extent to which these officers are available to enforce requirements. For example, PSOs only are available to enforce the law at railway stations, and after dark. At other time, PSOs do not patrol railway stations and similarly PSOs are not available to enforce the law on trams or buses.

The deterrence effect associated with AOs may also be limited. This is because AOs do not have powers to enforce general criminal law and because AOs numbers are limited and small relative to the size of Victoria's public transport networks. The deterrent effect is a product of the probability of detection and the value of the sanction that is expected to be applied. For regulations to be effective in providing deterrence there probability of detection needs to be sufficiently large to constitute a credible threat. If not, the risk of detection and the imposition of a sanction will be disregarded.

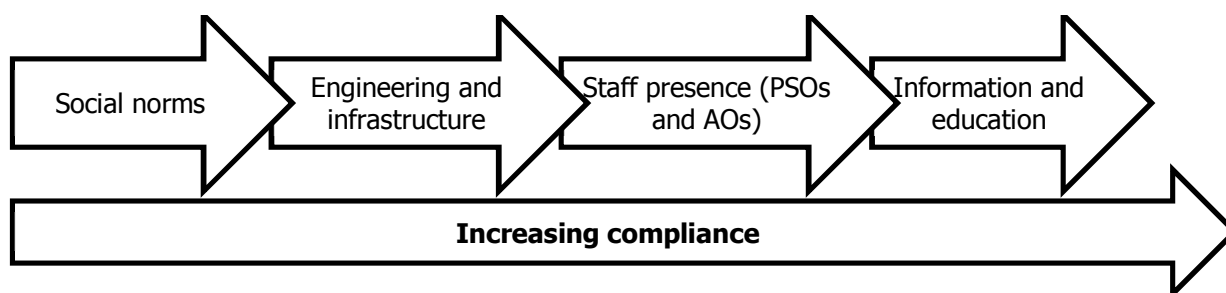
Stakeholder Questions:

*To what extent have PSOs been successful in increasing safety and amenity for public transport users? To what extent do AOs present a deterrent effect for unsafe behaviour and behaviour affected amenity?*

**Summary**

The various factors discussed above will affect the behaviour of individuals in different ways and change safety and amenity outcomes on public transport. However, these factors are not sufficient in addressing the problems identified in Section 3, and further interventions are required.

**Figure 6.1: The incremental effect of various factors on compliance**



**6.1.2 Assessing the merits of the options available**

Previous Sections of this RIS have described the nature and extent of the problem and the various options available to address the problems with unsafe and anti-social conduct.

The Victorian Guide to Regulation requires that RISs objectively assess the merits of feasible options that are available. The preferred method is to undertake a cost-benefit analysis of the options. In this method, the costs and benefits of options are identified and quantified. It is preferred to undertake the analysis in this way because it objectively assesses the merits of the options available.

For much of the conduct under consideration in this RIS, the benefits and costs of the interventions are intangible and are therefore difficult to quantify using the usual techniques. As a result, this RIS will make an assessment of the costs and benefits on a qualitative basis. The following sections will consider each category of conduct and discuss the pros and cons of the available options.

**Criteria**

While this RIS will qualitatively assess the merits of the available options, it is important to set criteria that will guide decision making. The criteria relate to the objectives of the proposal and also relate to the costs of the various proposals.

The following criteria will be used in the assessment:

- improvement in safety outcomes: the extent to which the option reduces the number of incidents and the number of fatalities and injuries
- improvement in amenity outcomes: the extent to which the option reduces the incidence of anti-social conduct on public transport or overall amenity for passengers is improved
- reductions in the incidence of property damage: the extent to which the option reduces the costs of property damage on passenger transport operators (or government)
- reduction in impacts on the transport network and system: the extent to which delay costs to the transport network are reduced or minimised
- costs to government: the extent to which the option imposes costs on the government
- costs to individuals: the extent to which the option imposes costs on individuals

- costs to passenger transport companies: the extent to which the option imposes costs on passenger transport operators

Readers should note that not all criteria will be relevant to all conduct considered in later sections. For example, interventions to address conduct which affects the amenity of passengers may not improve the safety outcomes but may have benefits in relation to reducing network delays.

## 6.2 Identification of costs and benefits

In this section, the costs and benefits of the available options will be identified and discussed.

### 6.2.1 The proposed regulations

The proposed regulations prohibit specified conduct on public transport. Accordingly, the main cost to individuals who use public transport is that individuals are unable to behave in an unrestricted fashion. For a subset of the proposed regulations, the regulations require the individual to obtain “appropriate written authorisation” to engage in the conduct. For these regulations, individuals also incur some small administrative costs to obtain this permission. Under the proposed regulations, individuals intended to engage in the following conduct are required to obtain written authorisation:

- lighting a fire in or on public transport premises
- playing a musical instrument in or on a public transport vehicle or public transport premises
- operating sound equipment in or on a public transport vehicle or public transport premises
- selling any thing, hiring any thing, touting for custom, hire or employment
- distributing handbills, soliciting money or goods or busking in or on a public transport vehicle or public transport premises; or
- writing, drawing a word, representation, character or affixing a poster on any public transport vehicle or public transport premises.

Regulation imposes costs on governments in relation to compliance monitoring and enforcement. These costs apply regardless of the purpose of the conduct regulation, and are in addition to the individual costs that result from different conduct regulations. These include:

- costs associated with hiring staff to enforce the regulations;
- infringement processing activities of passenger conduct offences; and
- costs to display information in relation to the proposed conduct offences.

There are a number of parties who are able to enforce the regulations including the Victoria Police, PSOs, and authorised officers. Enforcement of the regulation is largely undertaken by AOs who are employed by public transport operators. AOs issue RoNC, which summarises the non-compliance alleged and other relevant information. This is forwarded to the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) which determines whether to issue an infringement notice to the alleged offender, if documentation is complete. The cost of staff in DEDJTR to process RoNC and issue infringement notices is a cost of the proposed regulations to government. In the case of Victoria Police and PSOs, infringement notices are issued directly on the spot.

The costs associated with compliance monitoring and enforcement by AOs are incremental. AOs are already engaged to enforce ticketing regulations, and would be patrolling the public transport network without the conduct regulations in place. Accordingly, a decision to explicitly enforce conduct regulations would represent an opportunity cost, as AOs would choose between compliance monitoring and enforcement activities in relation to ticketing requirements or conduct requirements. In many cases, both can be undertaken at the same time.

In addition, the passenger transport operators will incur costs to display information in relation to the conduct regulations that are in place. Information is displayed inside public transport vehicles and at stations and stops to alert the public to the type of conduct that is prohibited under the regulations and the extent of the penalty that offenders could be liable for. For example, under regulation 32 of

the proposed regulations, passenger transport operators are required to ensure that 'no smoking' signs are displayed on public transport premises.

To cover the fleet of public transport vehicles and public transport infrastructure, it is estimated that anywhere between 7,600 and 37,000 signs may need to be replaced.<sup>10</sup> There are two types of costs: printing costs of the signs and the installation costs of the signs. These costs may lie between \$100,000 and \$300,000 depending on the number of signs that need to be replaced or installed.

The benefits that may arise depend on the conduct that is proposed to be regulated. For conduct that is unsafe, the expected benefits are an improvement in safety outcomes, such as a reduction in fatalities and serious injuries. For example, regulating pedestrian crossings at level crossings is expected to reduce risk taking behaviour and, accordingly, reduce the number of deaths and injuries associated with this conduct.

For amenity related conduct, the benefits are a general improvement in the comfort and amenity of passengers when using public transport. For some conduct, a benefit is the avoided cleaning and maintenance costs incurred by passenger transport operators due to dirty seats or litter in public transport vehicles and premises.

Prohibiting conduct that damages public transport property is expected to reduce the repair, maintenance and cleaning costs that passenger transport operators will incur. Additionally, there may be some improvements in visual amenity if the incidence of property damage is reduced.

In all cases, there are additional benefits that accrue to passengers of public transport in the form of a reduction in delays associated with an incident. Incidents can cause an increase in travel time to passengers where public transport operations are ceased, and can also cause increased road congestion (e.g. at a level crossing or when a tram or bus is delayed and blocks other traffic).

### 6.2.2 Increasing information and educating the public on conduct

The benefits of this option are similar to the types of benefits that arise under the proposed regulations option. That is, the benefits are:

- in terms of unsafe conduct – a reduction in the incidence of injuries and fatalities and a reduction in delays;
- in terms of conduct impacting amenity – increased amenity and comfort for passengers due to a reduction in relevant non-complying conduct; and
- in terms of property damage – lower repair, maintenance and cleaning costs and lower delay costs.

The purpose of providing information is to achieve voluntary changes in behaviour with the extent of the benefits dependent on the efficacy of information campaigns in altering behaviour. The Department considers that the provision of information is not as effective as regulating conduct and imposing penalties on offenders. The reason is that the underlying problem associated with the conduct is the effect on others rather than an a gap in knowledge and information. Providing more or better information may not fully address the identified problems with passenger conduct on public transport. In addition, individuals may deliberately conduct themselves in an unsafe manner or in a way that disturbs others. Therefore, providing those individuals with more or better information is not likely to change the behaviour of individuals. As a result the benefits of this options are not expected to be as large as regulating conduct.

Nevertheless, information campaigns are frequently used to raise awareness and reinforce the message. In addition, for some passenger conduct where the external effects of conduct on other passengers are small, information and education campaigns may be sufficient. For example, the 'model commuters' campaign highlighted the benefits of moving down the carriage of a train to make

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<sup>10</sup> Estimate is based on the assumption that 2 to 10 signs are required on average on public transport vehicles and 2 to 6 signs are required at railway stations. Fleet size and stations data are sourced from Public Transport Victoria's website. See <http://ptv.vic.gov.au/about-ptv/victoria-s-pt-network/network-statistics/>, accessed 27 March 2015

room for others. For this type of conduct, it may not be appropriate or necessary to regulate such behaviour.

The costs associated with information campaigns are the costs of production, publication and distribution. These costs would be incurred by the government. The costs of information campaigns can vary considerably, and are largely dependent on the target audience (e.g. schools, general public etc.), the type of media used (e.g. pamphlets, posters, billboards, social media, radio, television), duration, types of conduct targeted by the campaign etc. By way of example, PTV advise that the total campaign expenditure for the recent 'model commuters' campaign in 2013-14 financial year was \$350,000.

It is noted that since this option relies on voluntary changes in behaviour and does not explicitly prohibit conduct on public transport, this option does not impose any direct costs to the public or individuals.

### 6.2.3 Implementing prohibited conduct through conditions of travel

Under this option, passenger transport operators implement contractual conditions of travel that passengers must adhere to or risk civil remedies.

Passenger transport companies would incur some upfront costs in developing conditions of travel. Depending on the franchise or contractual arrangements with the government, some of those costs could be passed onto the government.

The passenger transport operator will also incur ongoing costs relating to enforcement of the conditions of travel. The costs of compliance monitoring and enforcement effort will depend on the approach taken. Passenger transport operators may be able to use AOs to enforce contractual conditions of travel. In the absence of conduct regulations, AOs would be employed to undertake compliance monitoring and enforcement activity in relation to ticketing requirements.<sup>11</sup> An alternative option for passenger transport operators is to employ additional personnel to make clear the responsibilities over enforcement of statutory or regulatory requirements and contractual requirements.

The benefits expected to result from this option are dependent on the conditions that passenger transport operators impose. On the assumption that passenger transport operators implement conditions that mirror the proposed regulations then the types of benefits that may be realised will mirror those associated with the proposed regulations. However, some of the conduct relates to the actions and behaviours of persons who are not passengers, and accordingly conditions of travel may not be an effective way of changing their behaviour. For example, persons who trespass onto a holding area for trains and vandalise trains. As a result, the benefits of this option may not be as large as those attributed to the proposed regulations.

Further, the extent of the benefits are dependent on the efficacy of civil remedies in ensuring compliance with the contractual conditions. There are a few options available to passenger transport operators. Under this option, an AO would ask the person engaging in the conduct to stop and if the person continues the conduct, the person would be breaching the conditions of the contract with the passenger transport operator. The passenger transport operator could then either sue the passenger for a breach of contract or the AO, acting as an agent of the passenger transport operator, could use civil removal powers to remove the passenger from the vehicle or premises.<sup>12</sup>

However, such mechanisms may be of limited use in ensuring compliance. Given the nature of public transport services, it may be difficult to cost-effectively exclude passengers if they have breached a condition of contract. For example, if removed from public transport, the passenger could board the next service and continue to engage in the conduct. Alternatively, passenger transport operators may

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<sup>11</sup> See Transport (Ticketing) Regulations 2006.

<sup>12</sup> Authorised officers have restricted statutory powers to remove persons from public transport. These powers would not be available to authorised officers if enforcing contractual conditions of travel.

avoid suing passengers for breaches of contract, given the expense associated with suing passengers in court and the frequency of the breaches of conduct. As a result, the expectation is that the size of the benefits associated with this option will not be as large compared to the benefits associated with regulating conduct.

The characteristics of criminal penalties mean that regulation is superior, since the government is able to adjust the criminal penalty to ensure compliance with regulatory requirements. This can be done in two ways. The first is by changing the probability of getting caught through increased compliance monitoring and enforcement (e.g. AOs are able to more frequently monitor compliance at locations where conduct issues have been identified). The second is to increase the amount of the penalty. In comparison, with civil sanctions, the only option is to seek damages from the individual. While sanctions for criminal behaviour are set commensurate with the offence, it is possible civil penalties may not be appropriate in all circumstances.

On the whole, the assessment is that making conditions of travel to address problems relating to passenger and public conduct is not as effective as regulating this conduct directly.

## 6.3 Consideration of options to address the identified problems

The following sections consider the merits of various available options to address undesirable passenger conduct on public transport identified in Section 3 of this RIS.

### 6.3.1 Creating obstruction and endangering others

The discussion in Section 3 identified that passengers may bring items onto public transport that are either dangerous or cause an obstruction.

The Fares and Ticketing Manual, which contains the conditions determined by the Secretary of DEDJTR, restricts the carriage of some items on public transport. Specifically, the following are prohibited on public transport, and would continue to apply in the absence of regulation:

- dangerous goods such as flammable liquids, firearms, explosives, and corrosive or acidic chemicals
- bicycles on trams, metropolitan buses and regional town buses
- surfboards or bicycles on metropolitan trains in an area near the first door of the first carriage (this area is designated for customers in wheelchairs)
- motorised vehicles such as a petrol-driven bicycles

The Department considers that regulations will be still be necessary to sufficiently address the problems in this area and a number of variations to the proposed regulations were considered. Specifically, consideration was given to providing the public with more certainty in relation to a number of matters contained in the proposed regulations. For example, the regulations could prohibit the types of objects that are deemed to cause obstructions or the types of things or objects that are likely to cause injury. The purpose of this is to reduce the subjectivity in compliance monitoring and enforcement.

The current regulations are subjective in relation to the carriage of bicycles. Passengers are permitted to carry bicycles on public transport subject to the bicycle not creating an obstruction (e.g. not blocking passengers from entering or leaving public transport). However, on trams and buses, it is difficult to envisage a situation where bicycles would not be blocking an entrance/exit.

A regulatory option considered was the degree to which the carriage of bicycles should be regulated. One option is to outright prohibit the carriage of bicycles on public transport. This option may be attractive given the likelihood of a bicycle causing an obstruction and blocking entrances and exits. Further, public transport vehicles, in some cases, are not appropriately equipped for the carriage of bicycles, given the space constraints of public transport vehicles. For example, the space available on a tram is generally not sufficient, and is very likely to inconvenience other passengers.

The proposed regulations prohibit the carriage of bicycles on trams and buses and prohibit the carriage of bicycles on metropolitan trains only at the first door of the first carriage. As noted above, these requirements are currently imposed as conditions of travel. The observation is that passengers continue to bring bicycles on trams and buses despite these conditions, and that AOs have had limited success in enforcing the conditions when undertaking compliance monitoring and enforcement activities. Passengers refuse to move locations when requested by AO in accordance with the conditions and the threat of action through the courts to enforce the conditions is not credible. By making a regulation in respect of this matter, infringement penalties are able to be issued to offending passengers. This is expected to increase compliance with this requirement.

It is also possible to reduce subjectivity by prohibiting the carriage of large items such as bags or luggage. While this would reduce subjectivity in the regulations, this regulation would impose an unnecessary burden on public transport users relative to the benefits. The reason is that the carriage of such items has not been identified as a problem to other passengers, and passengers would be forced to find alternative transport to move or carry such items or forgo transporting those items.

In addition to regulation, it is possible to provide the public with better information to address the information asymmetries relevant to this conduct. For example, the public could be educated in relation to:

- the types of things and objects that can cause obstructions or injure and endanger others;
- the safety risks and likely consequences associated with bringing such objects; or
- the inconvenience to other passengers of this type of conduct.

However, such information campaigns may be of limited effect in changing behaviour, since the primary problem associated with this conduct is the effect on other passengers. Passengers may be fully aware of the risks involved but may still continue the conduct. An information campaign may be able to address an imperfect information, but the Department’s assessment is that regulations are required to address deliberate misconduct.

<b>Effects of different approaches to address obstructions or endangerment to others</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve safety outcomes by reducing the incidence of obstructions etc. and associated slips, trips and falls on public transport</li> <li>■ improve amenity by promoting best utilisation of available space by limiting obstructing objects and things, as well as providing the greatest opportunity for wheelchair passengers to board the first carriage of metropolitan trains</li> <li>■ reduce the extent of service delays in the wider public transport network</li> <li>■ impose small intangible costs on individuals</li> <li>■ incremental costs to government of AOs monitoring compliance and enforcing regulations while enforcing ticketing requirements</li> </ul>
An information campaign:	<ul style="list-style-type: none"> <li>■ informs the public about the risks involved with obstructing and endangering others</li> <li>■ improves safety and amenity outcomes, however the size of the benefits is expected to be lower than benefits from proposed regulations</li> <li>■ costs to government associated with developing and implementing campaign</li> </ul>

Summary of regulatory options – Creating obstructions and endangering others		
Key question and considerations	Options	What are the arguments for or against the option?
<p>Is the offence relating to creating obstructions too subjective? Should the regulations cover other items?</p> <ul style="list-style-type: none"> <li>■ A number of goods or items may cause an obstruction on public transport, and authorised officers are required to exercise discretion</li> <li>■ Restrictions on the carriage of bicycles are already imposed as a condition of travel. However, the conditions have been difficult to enforce.</li> </ul>	<p>Prohibit the carriage of bicycles on public transport</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Improves capacity and access for passengers</li> <li>■ reduces subjectivity of regulation relating to creating obstructions</li> <li>■ Provide for the effective enforcement of the conditions of travel</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes intangible costs on individuals as bicycles are not able to be transported</li> </ul>
	<p>Prohibit the carriage of large and bulky items on public transport (e.g surfboards, pushers and prams, luggage)</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ reduce subjectivity of regulation relating to creating obstructions</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ imposes large burden on the public and forces passengers to find alternative forms of transport when carrying large items</li> </ul>
<p>Where should the prohibition of bicycles apply?</p> <ul style="list-style-type: none"> <li>■ Bicycles carried at the first door of the first carriage of a metropolitan train cause inconvenience to passengers in a wheelchair</li> <li>■ Trams and buses generally have greater space constraints than trains and obstructions are more likely to inconvenience other passengers</li> </ul>	<p>Prohibit bicycles on trams, buses and trains (i.e across all public transport)</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ improves capacity and access for passengers</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ imposes burden on the public and forces passengers to find alternative forms of transport when using bicycles especially on metropolitan trains</li> </ul>
	<p>Prohibit bicycles on trams and buses and only at the first door of the first carriage on trains</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ improves capacity access for some passengers</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ imposes some burden on the public and forces passengers to find alternative forms of transport when using bicycles</li> </ul>
<p>When should the prohibition on the carriage of bicycles apply?</p> <ul style="list-style-type: none"> <li>■ Bicycles on public</li> </ul>	<p>Prohibit the carriage of bicycles at all times</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ reduces subjectivity of when prohibition of bicycles are in place</li> </ul> <p>Against</p>



transport are most likely to create obstructions or an annoyance at peak times		<ul style="list-style-type: none"> <li>imposes large burden on the public and forces passengers to find alternative forms of transport when using bicycles</li> </ul>
	Prohibit the carriage of bicycles at peak times	<p>For</p> <ul style="list-style-type: none"> <li>allows passengers to use public transport when using bicycles at certain times</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>requirement may be difficult to enforce if there is crowding on vehicles and authorised officers are unable to board public transport</li> <li>imposes burden on the public and force passengers to find alternative forms of transport when using bicycles</li> </ul>

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate behaviours that create obstructions or endanger others? Why or why not?*

*Do you support or oppose the proposed regulations? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

*Do you support or oppose the proposed prohibition on the carriage of bicycles on trams and buses? Why or why not?*

*Do you support or oppose the proposed prohibition on the carriage of bicycles near the first door inside the first carriage of metropolitan trains? Why or why not?*

**6.3.2 Entering, travelling or riding public transport in an unsafe manner**

The design of rolling stock has changed over time making it more difficult to enter, mount and travel on public transport in an unsafe manner. For example:

- doors are designed to prevent passengers from forcing them open;
- the design of the outside of trains, trams and buses make mounting and riding public transport vehicles difficult;
- the areas between carriages on trains have been re-engineered to eliminate or minimise safety risks; and
- new carriages have windows that are unable to be opened by passengers, thereby eliminating the incidence of protrusions from those vehicles.

Such engineering innovations are alternatives to regulatory solutions, and are arguably more effective than any other available intervention in improving safety outcomes. The need to regulate or intervene in other ways is declining as newer vehicles and rolling stock are procured, manufactured and introduced into the fleet and older vehicles and rolling stock are transitioned out of the fleet.

It is important, however, to note that engineering innovations have a long lead time, and are implemented over a number years. In addition, older public transport vehicles are still in use. Accordingly, the Department considers that alternative interventions are still required as the risks are unable to be entirely mitigated by engineering solutions at the present time.

Therefore, it is necessary to consider other options.

It is possible to increase the number of staff to monitor the actions of individuals on public transport. While an increase in supervision may assist with a reduction in the number of safety incidents, without regulatory powers to enforce the requirements, staff supervision alone may be of limited benefit. Additionally, considering the large size of the public transport network, this option is cost prohibitive. Without other interventions (such as regulatory powers) a very high number of staff would be required to sufficiently deter individuals from participating in this conduct. Also, staff would be required to cover all public transport services or those lines or routes which are identified as high risk for this conduct.

Similarly, an education campaign could be employed to highlight the risks of travelling on public transport in an unsafe manner. This has been done in the past in conjunction with the option of regulating conduct. Given that part of the underlying problem is a misunderstanding of the risks of engaging in this conduct, this may improve safety outcomes. However, the observation is that individuals that ride public transport in an unsafe manner, in many cases, do so deliberately, and the option of providing better information to these individuals may have limited effect.

Regulatory solutions are still required to deter this type of conduct.

In particular, the Department considers it is necessary to ensure that regulations are available to address unsafe travel on public transport, such as train surfing or coupling riding. The proposed regulations are drafted in a way that seeks to cover all possible means of unsafe travel. The Department considers that the costs associated with such regulations are small and are outweighed by the benefits, which are a reduction in the incidents associated with such conduct.

The proposed regulations also increase the scope of the current conduct regulations to cover additional types of risks not previously covered. For example, in areas where riding wheeled recreational devices, such as skateboards, on public transport property is permitted, it is important that persons obey traffic control signs or do not ride in a manner that may cause injury or endanger others. This is reflected in regulation 13 (4) and (5) in the proposed regulations. Another example is widening the scope of regulation to include buses and bus premises.

On balance, the regulatory solutions, in combination with adequate resources for well-trained AOs to monitor and enforce the regulatory requirements, are expected to ensure a reduction in injuries and fatalities and a reduction in delays to public transport services resulting from incidents.

<b>Effects of different approaches to address entering, travelling or riding public transport in an unsafe manner</b>	
Engineering solutions:	<ul style="list-style-type: none"> <li>■ improves safety outcomes by eliminating and mitigating safety risks through changes in the design of public transport</li> <li>■ are implemented over time as passenger transport operators and government procure rolling stock and vehicles for use as public transport</li> </ul>
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve safety outcomes and reduce delays by reducing the incidence of individuals riding on public transport in an unsafe manner</li> <li>■ provides the option to government to enforce regulatory requirements</li> <li>■ impose small intangible costs on individuals</li> </ul>
Information campaign:	<ul style="list-style-type: none"> <li>■ inform the public about the risks involved with travelling on public transport in an unsafe manner</li> </ul>

	<ul style="list-style-type: none"> <li>■ improves safety outcomes, however the size of the benefits is expected to be lower than benefits from proposed regulations</li> <li>■ imposes costs on government in developing an information campaign</li> </ul>
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**Stakeholder Questions:**

*Do you support or oppose the proposed regulations relating to entering, travelling or riding public transport? If not, why?*

*Are the right behaviours captured by the regulations? Why or why not?*

**6.3.3 Interfering with equipment**

The presence of transport operator staff, PSOs and AOs on public transport vehicles and around public transport premises is likely to reduce the incidence of the public, either inadvertently or deliberately, interfering with equipment. For example, staff are posted at ticketing barriers at some train stations to assist with passengers operating this equipment, and at the same time, staff deter passengers from damaging or interfering with the operation of this equipment.

Without regulatory intervention, passenger transport operators may be able to sue individuals for damaging equipment or causing delays to the public transport network. The legal costs associated with this may deter passenger transport operators. For this reason, the effectiveness of seeking to enforce conditions of travel and common law property rights to deter this conduct is likely to be limited.

Another option is to increase the scope of supervision over passengers on public transport and at stations and stops. The form of oversight could be in the form of increasing the number staff undertaking this duty, including where stations or stops are not staffed but which contain equipment (i.e. myki readers). An alternative is to make better use of CCTV infrastructure by advertising its existence and using footage to identify and sanction persons damaging or interfering with equipment.

The Department’s assessment is that to the extent that increased oversight is successful in providing a deterrence effect, then this may be a feasible option. However, it is also noted that it would be cost prohibitive to cover the entirety of the transport network with more staff. Moreover, it is already widely known that CCTV coverage of public transport vehicles and infrastructure is comprehensive, yet unsafe and anti-social behaviour continues – suggesting that the effectiveness of this approach to deterrence is limited.

Equally, this behaviour also continues notwithstanding the existence of the current regulations. It may be possible to conclude that the regulatory option is also limited in affecting behaviour for this conduct. However, the benefit of the regulatory option is the provision of powers to take action and more easily sanction conduct, for example, by issuing on the spot fines, which would otherwise be unavailable without regulations in place.

In determining the form that regulation should take, regulations relating to equipment need to recognise that passengers should be permitted to use equipment as intended. For example, in relation to the prohibition on interfering with gates and doors, an option is available to prohibit this conduct in all circumstances. However, individuals may have a reasonable excuse to interfere with gates and doors (e.g. if there is an emergency). Accordingly, it is preferable to provide flexibility to persons, i.e. a legal defence, in such situations rather than being constrained.

There are also choices about which equipment should be covered by the regulations. It is possible, for example, to focus the regulation on prohibiting use of or interference with equipment that is critical to the safe, efficient and effective functioning of the public transport system. Equipment that is ancillary to the operation of the public transport system (e.g. speaker system on bus) should

arguably still be protected from malicious damage and vandalism but contraventions need not attract the same penalties.

There are some small costs to individuals associated with the proposed regulations as individuals are not able to act as they otherwise would - some individuals get "thrills" and other forms of utility from engaging in this conduct. However, these costs are outweighed by the benefits of the proposed regulations which are a reduction in delays to public transport services and avoided repair and maintenance costs incurred by passenger transport operators.

<b>Effects of different approaches to address interfering with equipment</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ reduce delays in the transport system associated with equipment failures and interference</li> <li>■ impose small intangible costs on individuals</li> <li>■ provides the option to government to enforce requirements</li> </ul>
Increased supervision:	<ul style="list-style-type: none"> <li>■ has a deterrence effect on individuals reducing the negative outcomes of interference with equipment</li> <li>■ imposes increased costs on passenger transport operators</li> </ul>

<b>Summary of regulatory options – Interfering with equipment</b>		
Key question and considerations	Options	What are the arguments for or against the option?
<p>Are there situations where it is reasonable for the public to interfere with the operation of equipment?</p> <ul style="list-style-type: none"> <li>■ There may be situations where an individual may have a reasonable excuse to interfere with equipment such as gates or doors when there is an emergency</li> </ul>	Prohibit all interference except where the individual has a 'reasonable excuse'	<p>For</p> <ul style="list-style-type: none"> <li>■ Provides a legal defence to individuals when this conduct has reasonably occurred</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes intangible costs on individuals since individuals are unable to interfere with equipment (for whatever reason)</li> </ul>
	Prohibit interference/use of equipment in all circumstances	<p>For</p> <ul style="list-style-type: none"> <li>■ Reduces the subjectivity of regulation</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes intangible costs on individuals where use of the equipment is reasonable or justified</li> </ul>
<p>What types of equipment should be subject to the regulations?</p> <ul style="list-style-type: none"> <li>■ The public may have easier access to some equipment compared to others.</li> </ul>	Prohibit the interference/use of all equipment	<p>For</p> <ul style="list-style-type: none"> <li>■ Reduces the subjectivity of regulation</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes intangible costs on some individuals since individuals are unable to interfere with equipment (for whatever reason)</li> </ul>

<ul style="list-style-type: none"> <li>Interference with some equipment may have greater implications for the operation of the public transport system</li> </ul>	<p>Only prohibit use of or interference with equipment that is critical to the public transport system</p>	<p>For</p> <ul style="list-style-type: none"> <li>protects the integrity of equipment and transport network</li> <li>intangible costs imposed on individuals are not as great as alternative options</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>no capacity to enforce regulation for equipment not covered by regulation if equipment has been interfered with</li> </ul>
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**Stakeholder Questions:**

*Do you support or oppose the proposed regulations relating to interfering with equipment? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

**6.3.4 Crossing railway or designated tramway tracks**

The analysis in Section 3 revealed that there is some level of risk-taking and an under-appreciation of risks when individuals cross railway tracks, especially at designated crossing areas such as at level crossings. In particular, there are a large number of near misses with pedestrians and road vehicles, and in some cases there are also serious consequences such as fatalities and serious injuries. These observations are made with the current regulations in place.

The infrastructure currently in place influences the safety profile of railway corridors and crossing areas and affects the likelihood of pedestrians and road vehicles crossing unsafely.

One option is to undertake to remove dangerous levels crossing to improve road and pedestrian safety by undergoing grade separation of the interface between the rail track and the road. The costs of grade separations to remove level crossings are large. As an example, the cost of the grade separation at Springvale Rd in Springvale was in the order of \$159 million. Such infrastructure projects are funded on their individual merits and the government prepares extensive business cases to examine the economic benefits and costs of such projects. The safety profile of level crossings affects these evaluations. The government has made commitments to remove fifty of the most dangerous level crossings. However, the Department considers that alternative interventions are required to address the residual safety risks, since the commitment does not cover all level crossings and there are long timeframes associated with the implementation of such infrastructure improvement programs.

Alternatively, there are other infrastructure improvements that can be made to ensure that pedestrians are unable to cross railway tracks or designated tramway tracks. Improvements include fencing, pedestrian bridges or tunnels, active warning signals or gates. These types of improvements ensure that pedestrians are aware of the risks (some crossings make use of flashing lights to alert passengers to the fact that a train is approaching), or control behaviour (gates open and shut when a train is approaching). It is noted that pedestrians and persons in road vehicles continue to take risks even when infrastructure to ensure that tracks are not crossed is provided. This demonstrates that infrastructure improvements of this type do not entirely remove the risks relating to crossing railway tracks, and further interventions to achieve desired safety outcomes are required.

The option available to passenger transport operators to enforce contractual conditions of travel will have limited effect as the individuals undertaking the conduct are not always public transport users.

In the past CCTV cameras have been used as a compliance monitoring and enforcement tool. For example, CCTV cameras have helped to identify owners of motor vehicles that have broken the law in relation to stopping at level crossings. However, in this case it is reasonable to expect that CCTV will be of limited use because pedestrians cannot be easily identified (i.e. no number plates) meaning the ex-post enforcement using this technology is likely to be of limited effectiveness. Instead, an option that may be effective if combined with the proposed regulations is to increase supervision around problem areas, such as "high risk" level crossings.

In addition, government has the option to initiate an education campaign to highlight the risks of unsafe conduct. Some members of the public may underappreciate the nature of the risks involved with crossing tracks (e.g. when a train is near and approaching), and providing better information may be effective. However, in situations where individuals are fully informed of the risks, but continue to undertake the conduct, information campaigns will be of limited value compared to regulating conduct. This option is likely to be effective in conjunction with the proposed regulations since there may be misinformation in relation to the risks of crossing tracks.

If an individual crosses tracks when a train is approaching, the driver of the train is likely to respond by braking heavily. This action then may cause a slip, trip or fall hazard for passengers on-board the train. While non-compliance with the proposed regulations means that these situations may still continue, the proposed regulations provides the government with an enforcement option if these occurrences become too widespread.

Therefore, the proposed regulations, when implemented with other measures such as information campaigns and increased enforcement, are likely to provide the best means to improve safety outcomes and to reduce the external effects of incidents on the transport system.

The expected benefits of the proposed regulations are a reduction in injuries and fatalities and a reduction in delays to services where incidents cause services to cease operation or be interrupted. On the other hand, the proposed regulations will impose costs on individuals who wish to cross tracks unsafely. The costs are in the form of small delays to travel to these individuals.

<b>Effects of different approaches to address crossing railway or designated tramway tracks</b>	
Grade Separations:	<ul style="list-style-type: none"> <li>■ improve safety outcomes by eliminating safety risks at level crossings by separating the road and rail interface</li> <li>■ are undertaken over time and the government assesses the economic merits of these on a case by case basis</li> <li>■ impose large costs on government</li> </ul>
Infrastructure improvements:	<ul style="list-style-type: none"> <li>■ improve safety outcomes by providing better information to passengers in respect of whether a train is approaching and when it is safe to cross rail tracks</li> <li>■ impose large costs on government</li> </ul>
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve safety outcomes by reducing the incidence of crossing related injuries or fatalities by addressing the externality</li> <li>■ reduce the number of network delays in the wider public transport network</li> <li>■ provides the option to government to enforce requirements</li> <li>■ impose small intangible costs on individuals</li> </ul>
An information campaign:	<ul style="list-style-type: none"> <li>■ inform the public about the risks involved with unsafe</li> </ul>

	<p>crossing of railway tracks</p> <ul style="list-style-type: none"> <li>■ government incurs costs in developing an information campaign</li> <li>■ improves safety outcomes, however the size of the benefits is expected to be lower than benefits from proposed regulations</li> </ul>
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**Stakeholder Questions:**

*Do you agree there is a continued need to regulate the crossing of railway tracks and designated tramway tracks by pedestrians and motor vehicles? Why or why not?*

*Do you agree with the assumption that some individuals continue to take risks around level crossings and railway tracks? Why or why not?*

*Do you support or oppose the proposed regulations relating to crossing railway or designated tramway tracks? Why or why not?*

**6.3.5 Anti-Social Behaviour**

As discussed in Section 3.3.1, the type of conduct under this category overlaps to some degree with the offences already covered under the *Crimes Act 1958* and the *Summary Offences Act 1966*. It is noted that the current conduct regulations and the proposed regulations do not duplicate these offences entirely. A reason for this is that AOs do not have sufficient training to deal with all incident and situations that may occur. If a serious incident occurs, operational practice is for AOs to escalate the matter to Victoria Police. For conduct that is less serious, AOs are able to issue RONC to the person, which is highly likely to be followed by the issuance of an infringement notice and an obligation to pay a fine.

Given the observed number of infringements issued in relation to anti-social behaviours, the base case level of anti-social behaviour will be at least the number of reported infringements as this indicates that individuals are still participating in this conduct irrespective of the presence of the current conduct regulations, Summary Offences Act and Crimes Act.

Alternative interventions are already employed to reduce the incidence of anti-social behaviours. In public places, increased oversight and supervision exists in the form of CCTV cameras. Such monitoring may deter individuals from anti-social behaviour. Additionally, PSOs also play a role in the safety of passengers at railway stations at night. Such efforts in increased supervision are expected to be more effective in combination with the proposed regulations. The regulations provide the government with the option to more effectively sanction individuals that engage in this type of behaviour. By contrast, moral suasion through oversight and peer pressure are likely to only have limited effect.

The purpose of the conduct regulations in this area is to deter anti-social behaviour. However, the cause of anti-social behaviours is complex and the effectiveness of using regulation to address these behaviours is likely to be limited. For example, while drinking alcohol on a public transport vehicle is prohibited, intoxicated passengers are not prohibited from travelling on public transport. Intoxicated passengers or passengers that are under the influence of drugs are just as likely to engage in anti-social behaviour as those drinking alcohol. The regulations provide no means to address this source of risk. Given this, there are reasonable grounds to doubt the effectiveness of the prohibition on alcohol consumption. This is particularly so when the act of consuming alcohol in itself does not cause any problems.

The counter argument is that regulations should be used to reinforce expectations about what behaviour is acceptable and what behaviours are not. There is a community recognition of the myriad

of social problems, such as violence and assault, which can arise from excessive alcohol consumption. The act of enforcement sends a signal to others that consuming drugs or alcohol and associated conduct will not be tolerated. By contrast, permitting the consumption of alcohol on public transport would legitimise drinking on public transport and could possibly result in some of the violence that manifests in clubs and pubs transferring onto public transport vehicles and premises. This would reduce safety, amenity and may discourage the use of public transport.

The proposed regulations permit alcohol consumption when the alcohol is purchased and consumed in places on public transport vehicles and public transport premises where this conduct has been specifically authorised. This exception has been provided recognising that some long haul V/Line services have alcohol available to passengers, and there have been no reports of problems associated with the consumption of alcohol in these situations.

In the case of anti-social conduct which is already criminalised, there is a question as to whether transport laws should also regulate this conduct. One of the benefits of doing so is providing AOs with compliance monitoring and enforcement capabilities in relation to this conduct. However, as mentioned in earlier sections, the transport conduct regulations do not cover the field of criminal behaviour, since AOs do not have the requisite training to deal with more serious situations.

Equally, there may be other anti-social conduct that could be regulated such as eating and drinking. Operators may have some sympathy for considering the option to prohibit eating and drinking on public transport vehicles given that it would reduce cleaning and maintenance requirements associated with spilled food, drink and rubbish. However, operators would recognise that such a prohibition may impact on public transport use, or alternatively, may be difficult to enforce. Importantly, as indicated by the data provided in Section 3, there are more significant matters that should be given priority. Accordingly, the Department is not recommending this for regulation. Instead, the regulation prohibiting littering may address such problems without imposing restrictions around eating and drinking on public transport.

One regulation not included in the proposed regulations is the regulation prohibiting gambling on public transport. This regulation is not proposed to be remade as there is little evidence of this conduct negatively affecting passengers on public transport.

In addition, the offence relating to indecent and obscene language and behaviour on buses has been aligned with the equivalent provision that applies on train and trams. That is, the offence on buses has been expanded to also include indecent, obscene and threatening language and indecent and riotous behaviour.

The expected benefits of the proposed regulations are increases in amenity and comfort to passengers. Given the overlap of the proposed regulations and the existing legislation, the proposed regulations are expected to impose a minimal compliance burden on the public.

<b>Effects of different approaches to address anti-social behaviour</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ increase amenity and comfort to passengers</li> <li>■ provides the option to government to enforce requirements more effectively</li> <li>■ overlap with similar offences in crimes legislation</li> <li>■ impose minor intangible costs on individuals</li> </ul>
Increasing supervision:	<ul style="list-style-type: none"> <li>■ discourages anti-social behaviour by individuals</li> <li>■ imposes costs on passenger transport operators</li> </ul>



**Stakeholder Questions:**

*Do you agree there is a continued need to regulate anti-social behaviour, such as indecent and obscene language and behaviour or the consumption of alcohol, on public transport? Why or why not?*

*Do you support or oppose the proposed regulations which address anti-social behaviour on public transport? Why or why not?*

*Would you support or oppose regulations prohibiting eating and drinking generally on public transport? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

**6.3.6 Seating**

There is a certain level of etiquette expected in public places, including public transport vehicles and premises, to provide a seat or vacate an area for those with special needs. It is also a community expectation that one person may only occupy one seat (including not putting feet on seats). However, it is noted that the adherence to these expectations can be variable. The number of infringement notices issued for placing feet on seats (see Section 3) is particularly large. Given that these observations are made with the current regulations in place, the assessment is that without regulations at least this level of conduct would continue to occur. In addition, complaints made to PTV, YT and MTM continue to highlight cases where special needs passengers have been unable to access designated seating.

It should be noted that PTV has recently begun a 'Model Commuters' education campaign to inform passengers on exceptional commuter behaviour. An element of the campaign is to highlight good etiquette with respect to offering seats to people who may need a seat.

The proposed regulations require all persons to vacate seats (whether it is a designated seat or not) for persons with special needs when requested to do so. An alternative to this is making the regulation absolute, that is, a person must vacate a seat even when not requested to do so. However, in practice, this may be difficult to enforce, as it may not be clear that a person is a person with special needs and that the individual is committing an offence.

There are alternative seating regulations that could be made to ensure that seats are provided to certain passengers which are not included in the proposed regulations. For example, priority could be given to full-fare paying passengers versus concession ticket passengers or students. Such regulations impose intangible costs on passengers as seating choices are restricted. However, the benefits of such regulations are not clear cut. The different ticket types do not reflect a different entitlement to a seat on public transport. Concession tickets are provided to a variety of persons in the community. In some cases, concession holders may also be a person with a special need.

There are also issues with the seating requirements in the current regulations. In the case of the current requirement for a student to vacate a seat<sup>13</sup>, an offence is only committed if an authorised person requests the student to vacate a seat and the student does not comply with this request. If another passenger makes this request and the student does not comply, an offence is not committed. Accordingly, the benefits of this regulation are limited to when authorised officers are available to make the request. The regulation could be redrafted so that an offence is committed if any person requests a student to vacate a seat. However, it may not be appropriate or effective to impose criminal sanctions on a student for not vacating a seat to another passenger. It may be more appropriate to focus on information and education to address this behaviour. Therefore, this regulation is not included in the proposed regulations.

<sup>13</sup> See regulation 12 of the *Transport (Conduct) Regulations 2005*: Students to vacate seats.

The Department considers that at a minimum persons with special needs should have seating available when using public transport, and the proposed regulations support this. However, the regulatory solutions are not suitable to address other possible problems associated with seating allocation.

Similarly, it is important to ensure that persons in a wheelchair have sufficient access to areas designated for wheelchair use.

In reference to feet on seats, one option is to provide exceptions to the proposed regulations in which passengers are permitted to place their feet on seats. For example, this could include only allowing feet on seats if the passenger's shoes are clean or if the passenger is travelling in off-peak period. While such an option would minimise the costs of the regulation imposed on individuals who would wish to place their feet on seats, the disadvantage of this type of regulation is that it increases the subjectivity and hinders compliance monitoring and enforcement effort (i.e. reduces the chance of a successful prosecution due to its subjectivity). Accordingly, this is not a recommended alternative.

As an alternative to regulation, these specific requirements can be implemented as conditions of travel, however, conditions of travel may not be an effective option for passenger transport companies for the reasons outlined in section 6.2.3. In the case of conditions relating to seating, passenger transport operators would need to ensure that, when requested, seats are made available.

Therefore, the proposed regulations are likely to provide the best means to improve seating amenity for passengers in general and passengers with special needs.

In addition to the proposed regulation, the government may further promote the 'Model Commuters' campaign to highlight social etiquettes on public transport vehicles and premises. This option is likely to be effective in conjunction with the proposed regulations.

The benefit of the proposed regulation is reducing the negative externalities arising from discomfort to those with special needs that require a seat. It will also reduce the likelihood of any discomfort experienced by passengers who want a seat but is unable to sit because someone is occupying more than one seat. Although there is a certain extent to which it is a social norm provide seats for special needs passengers and not occupy more than one seat, the proposed regulations will deter those individuals who may otherwise find it acceptable to not observe seating etiquette. In addition, individuals with special needs may feel more comfortable asking for a seat if regulations are in place requiring passengers to give up their seat when requested.

<b>Effects of different approaches to address seating</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve amenity and comfort of passengers by regulating conduct</li> <li>■ provides the option to government to enforce requirements</li> <li>■ impose small intangible costs on individuals</li> </ul>
An information campaign:	<ul style="list-style-type: none"> <li>■ informs the public about the appropriate seating etiquette on public transport</li> <li>■ improve amenity and comfort of passengers, however, given this relies on voluntary changes in behaviour, the size of the benefits is expected to be lower than the proposed regulations</li> <li>■ government incurs costs in developing an information campaign</li> </ul>
Conditions of travel:	<ul style="list-style-type: none"> <li>■ improves amenity and comfort to passengers</li> <li>■ requires passenger transport operators to seek civil damages</li> </ul>

Summary of regulatory options – Seating		
Key question and considerations	Options	What are the arguments for or against the option?
<p>To what degree should the regulations specify the situations in which seats must be vacated?</p> <ul style="list-style-type: none"> <li>■ Scarcity of seating on public transport means that a mechanism is needed to provide seats to those passengers who need them most</li> <li>■ There have been situations where people with special needs are unable to obtain a seat</li> </ul>	<p>Require passengers to vacate a seat for passengers with special needs</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Provides seating to passengers who need the seat more than others</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes some small intangible costs on individuals who are required to give up their seats</li> </ul>
	<p>Require concession ticket passengers to vacate a seat for other passengers</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Provides seating in preference to full fare paying passengers</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ imposes intangible costs on passengers who hold a concession ticket as they are required to give up their seat</li> <li>■ In some cases, a concession ticket passenger may also be a passenger with a special need</li> </ul>
	<p>Require students to vacate a seat to other passengers</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Provides seating in preference to non-students</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Current regulation has been difficult to enforce</li> </ul>
<p>In what situations should feet on seats and furniture be prohibited?</p> <ul style="list-style-type: none"> <li>■ There may be situations where an individual is unable to use a seat due to another passenger having their feet on seats and furniture</li> <li>■ Dirty feet and shoes reduce amenity to other passengers and impose cleaning costs on passengers transport operators</li> </ul>	<p>Prohibit feet on seats and furniture at all times</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Reduces subjectivity in the regulation</li> <li>■ Greater amenity to other passengers as seats are clean and made available to other passengers</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Impose intangible costs on passengers who would like to place feet on seats</li> </ul>
	<p>Prohibit feet on seats and furniture when the passenger’s shoes are clean or if the passenger is travelling in the</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ This conduct is permitted when it is least likely to affect other passengers</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Option is subjective and may be</li> </ul>

	off-peak period	difficult to enforce
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**Stakeholder Questions:**

*Do you agree that persons with special needs should be given priority for seating on public transport? Why or why not?*

*Do you agree with the assumption that not all passengers vacate seats to persons with special needs? Why or why not?*

*Do you agree that there is a continued need to regulate the placing of feet on furniture on public transport? Why or why not?*

*Do you support or oppose the proposed regulations relating to seating on public transport? If not, why? Do you support or oppose alternative less absolute forms of regulation?*

**6.3.7 Smoking**

Recognising the harmful effects of smoking and second-hand smoke, smoking in some places is banned by the Victorian government under the *Tobacco Act 1987*. As discussed in Section 3.3.3, there are already prohibitions on smoking indoors, in sheltered places, at recreational areas or in a motor vehicles if a person under 18 is present. It is in these places, where smoke is either contained or in a recreational area where many people may congregate, that non-smokers are exposed to tobacco smoke and its harmful effects. To a certain extent, the offences in the Act reflect a widespread cultural acceptance in Victoria that smoking is harmful to health and produces many external costs.

There are already Federal and Victorian government initiatives that are targeted at reducing smoking rates generally. Examples include taxes on cigarettes, the introduction of plain packaging for cigarettes, funding information and education campaigns designed to encourage smokers to quit and stop young people from starting smoking, and supporting their efforts to reduce smoking.

Given the observed number of infringements issued for smoking related offences (see Section 3), many smokers are still participating in this conduct irrespective of the presence of the current conduct regulations, offences under the Tobacco Act and other government initiatives. The Department considers that regulations are still necessary. Complaints made to PTV, YT and MTM continue to highlight cases of unwelcome smoking on public transport vehicles and premises.

Variations to the proposed regulations have been considered. A key consideration is the scope of the prohibition. On 1 March 2014, regulations commenced which extended the areas in which smoking is prohibited to all areas of train stations and raised platform tram stops. Prior to the amendments, the smoke free zones were covered areas of train platforms and under covered tram and bus shelters. The rationale for this change was to ensure consistency with other smoking prohibitions in health legislation and regulations, and to reduce the subjectivity of the regulations. Authorised officers advised that individuals would dispute whether an offence was committed based on the location of the individual (i.e. whether the individual was actually in a covered area or not). The new regulations reduced this subjectivity.

The proposed regulations prohibit smoking in all areas of public transport vehicles and premises. Thus, an option could be to narrow the scope of regulation to only certain areas. The prohibition on smoking could be restricted to only covered areas of public transport premises. Alternatively, smoking could be permitted only in designated areas.

In general, regulations relating to smoking impose compliance costs on individuals. Restrictions on the location of smoking mean that individuals are required to move to an area where smoking is not

restricted or forgo smoking. The wider the prohibition, the more costs that are imposed on individuals. For example, when smoking is prohibited at railway stations, smokers would be required to relocate at an area near a railway station if they wish to smoke while waiting for their public transport service.

On the other hand, the effect of the regulations is to keep public transport vehicles and premises free from smoke. The benefits are improved amenity to passengers and avoided health harms to other passengers. The wider the prohibition, the more areas of public transport vehicles and premises that are free from smoke. Although, the benefits associated with the prohibition are likely to be greater in enclosed spaces than open areas.

Given a general cultural non-acceptance of smoking, the expectation is that smoking should be restricted as much as possible in public places and where it may be likely to harm others. As public transport vehicles and premises are generally either enclosed places or places where people congregate, the proposed regulations would reflect the intent of the *Tobacco Act 1987*, amongst other social norms.

As an alternative to regulation, the specific prohibitions in relation to smoking could be implemented as conditions of travel. For reasons outlined in Section 5, the Department considers that the conditions of travel do not appear to be sufficient in addressing smoking problems.

Given that broader government initiatives already exist to reduce the incidence of smoking more generally, the proposed regulations are likely to provide the best means to reduce the likelihood of smoking on public transport vehicles and premises. The proposed regulations will deter those individuals who otherwise may continue to smoke on public transport, despite government initiatives and wider community expectations.

The benefit of the proposed regulation is reducing the negative externalities from second-hand smoke ranging from reducing the discomfort to reducing negative health effects that can materialise over time. It may also improve the health outcomes of smokers by reducing the number of places where smokers are allowed to smoke, which could trigger a reduction in smoking rates in general.

The option of regulation imposes costs on government in relation to compliance monitoring and enforcement. In addition, passenger transport operators are required by the proposed regulations to ensure that 'no smoking' signs are displayed on public transport premises, and passenger transport operators will incur costs in comply with this requirement. However, the Department notes that, to the extent that passenger transport operators are already compliant with the current requirements to display signs, the compliance cost associated with remaking this regulation is zero.<sup>14</sup>

<b>Effects of different approaches to address smoking</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve amenity and comfort of passengers of public transport by reducing the incidence of second hand smoke</li> <li>■ provides the option to government to enforce requirements more effectively</li> <li>■ impose small intangible costs on individuals</li> </ul>
Other Government initiatives:	<ul style="list-style-type: none"> <li>■ address both demand side factors and supply side factors in smoking</li> </ul>

<sup>14</sup> Indicative estimates of the costs of displaying and erected signs on public transport vehicles and premises was provided in section 6.2.1.

Summary of regulatory options – Smoking		
Key question and considerations	Options	What are the arguments for or against the option?
<p>To what extent should a prohibition on smoking apply across public transport premises?</p> <ul style="list-style-type: none"> <li>■ The effects of second hand smoke may be more harmful in indoor or undercover areas than outdoor areas</li> </ul>	<p>Prohibit smoking in all areas of public transport vehicles and premises</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Greater amenity to passengers and avoid health harms to other passengers</li> <li>■ Reduces subjectivity in the prohibition on smoking</li> <li>■ Consistent with other smoking legislation and regulation</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes a greater burden on individuals than does a more limited ban (individuals must relocate to another area)</li> </ul>
	<p>Prohibit smoking in public transport vehicles and under covered or in non-designated areas of public transport premises</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ Provides some amenity to passengers and avoids health harms to other passengers</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes a burden on individuals who must relocated to another area, but to a lesser extent than does a total prohibition</li> </ul>

**Stakeholder Questions:**

*Do you agree that there is a continued need to regulate smoking in public transport premises? Why or why not?*

*Have the new regulations prohibiting smoking in all areas of train stations and platform tram stops been successful in improving amenity to passengers? Why or why not?*

*To what extent should smoking be prohibited on public transport vehicles and at public transport premises?*

*Do you support or oppose the proposed regulations relating to smoking on public transport vehicles and at specified public transport premises? Why or why not?*

**6.3.8 Noise**

In determining the base case, it is relevant to note acceptable social norms with regards to noise. It is generally accepted that persons should be able to enjoy a positive ambience and amenity in the public, without excessive or nuisance noise in a public space.

This is reflected in legislation and local council by-laws which relate noise levels and noise-producing activities. For example, the *Environment Protection (Residential Noise) Regulations 2008* specify the

types of residential noises (e.g. electric power tools, musical instruments, lawn mowers) that are prohibited during certain times.

The proposed regulations are not inconsistent with the intent of the above regulatory examples, with certain noises considered unreasonable on public transport vehicles and premises.

One option to address noise on public transport is to segregate users between those that do like noise and those that don't like noise by creating 'quiet carriages' where noises are to be kept to a minimum.

While this may be an attractive option, this may be limited in its effectiveness. Quiet carriages are only able to be implemented in on trains which are compartmentalised. Some newer trains used on the metropolitan train network, where train carriages are interconnected, would not be suitable for this application. In addition, this would not be possible on trams and buses.

There is also a question as to how the noise requirement would be enforced. On V/Line trains, quiet carriages are not enforced by V/Line itself and must be self-enforced by other passengers. While this may be effective on the V/Line network, this approach may not be successful on the metropolitan train network - especially where there is over-crowding on peak services. During the peak periods the priority is on ensuring that space is made available to transport the maximum number of passengers efficiently rather than limiting use of space based on preferences over noise.

The purpose of providing information is to achieve voluntary changes in behaviour and the extent of the benefits is dependent on the efficacy of information campaigns in altering behaviour. While the benefits of this option are similar to the types of benefits that may arise under the proposed regulations option, the Department considers that the provision of information is not as effective as regulating conduct and imposing penalties on offenders.

This is because information campaigns may be limited in effectiveness. Addressing noise related conduct attempts to reduce the negative externalities arising from the discomfort of some passengers to listening to unwanted noise. However, an information campaign which informs the public of these external costs of the behaviour may not be useful in changing behaviour.

Some individuals may participate in noise related activities as their intention is to create external costs for other passengers (e.g. playing loud music to purposely annoy other passengers). On the other hand, some individuals who participate in noise related activities may believe their conduct produces a positive externality regardless of the cost information provided. The effects of noise generation are inherently subjective unless the amount of noise generated passes accepted thresholds of how much noise exposure is harmful to human health. The Department considers that some individuals would continue with this conduct, and without regulation there would be no option to sanction this behaviour.

The costs associated with an information campaign are the costs of production, publication and distribution. These costs would be incurred by the government. The costs of information campaigns can vary considerably, and are largely dependent on the target audience, the type of media used, duration, types of conduct targeted by the campaign etc.

It is not possible to design a regulation that takes into account the infinitely varying preferences of people for noise and silence. Given that a primary purpose of the regulations is to maximise the attractiveness of public transport to users, regulation should err on the side of silence and prohibit, to the extent deemed necessary, loud noise sources that are likely to impact on the amenity of others. To maximise amenity and the attractiveness of public transport a broad prohibition on 'excessive' noise producing activities is the preferred approach.

The benefit of the proposed regulation is reducing the negative externalities arising from unwanted noise for passengers. The proposed regulations prohibit noise-producing activities that are perceived to be disruptive (e.g. playing music on a loudspeaker on a crowded train). While some individuals evidently find this conduct acceptable the regulations will make it clear that it is not.

The proposed regulations impose costs on individuals who derive benefits from certain noise related activities. For example, passengers may derive benefits in the form of enjoying listening to another person play musical instruments or watching busking activities on the train platform. The proposed regulations will prohibit these noise related activities and thus impose a cost on those individuals.

<b>Effects of different approaches to address noise</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve amenity and comfort of some passengers by reducing the incidence of errant noise</li> <li>■ impose small intangible costs and some small administrative costs on individuals</li> <li>■ provides the option to government to enforce requirements</li> </ul>
An information campaign:	<ul style="list-style-type: none"> <li>■ informs the public about the external effect of errant noise on other passengers</li> <li>■ government incurs costs in developing an information campaign</li> <li>■ improve amenity and comfort to passengers, however, given this relies on voluntary changes in behaviour, the size of the benefits is expected to be lower than the proposed regulations</li> </ul>
'Quiet carriages':	<ul style="list-style-type: none"> <li>■ segregate passengers based on those wish to travel in quiet and those who are indifferent to noise</li> <li>■ may be difficult to implement on trams and buses and some metropolitan trains</li> </ul>

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate sound and noise on public transport? Why or why not?*

*Do you support or oppose the proposed regulations relating to making noise on public transport? Why or why not?*

*Are the right behaviours captured in the regulations? Why or why not?*

**6.3.9 Animals**

Without regulations in place, passengers would be free to take on board any animal onto public transport.

The proposed regulations prohibit the carriage of animals unless exempted (e.g. guide dogs, assistance animals, small animals in a suitable container, and dogs on a leash and muzzled on a metropolitan train) and impose requirements on the owners of animals such as ensuring that the animals do not stray and cleaning up after animals. The proposed regulations also extend the scope of the prohibition of dogs on seats (on vehicles) in the current regulations<sup>15</sup> to animals generally.

<sup>15</sup> See regulation 21 of the *Transport (Conduct) Regulations 2005*



The benefits of the proposed regulations are increased amenity to passengers (e.g. animals do not disturb the comfort of passengers by roaming on public transport). At the same time, the proposed regulations may impose a small compliance burden on individuals, since some animals may not be brought onto public transport and individuals have some obligations in relation to those animals when on public transport.

Alternatives to the proposed regulations include providing information and education campaigns to encourage owners of animals to take greater care of the animal on public transport (i.e. ensure that the animal does not stray and that animals is cleaned up after). This option is not considered as effective as the proposed regulations in increasing amenity for other passengers. The content of the proposed regulations could also be implemented as a condition of travel. The merits of this approach are discussed in section 6.2.3.

An option considered during the development of the proposed regulations is that of an outright ban on the carriage of animals on public transport. However, it was foreseeable that this would significantly impact on the mobility of persons with special needs satisfied in part or in full through the use of assistance animals. It would also have significant impacts on pet owners who perhaps due to low income do not own a vehicle that can be used to transport the animal as required.

<b>Effects of different approaches to address animals</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ improve amenity and comfort of passengers by reducing the external negative impacts of animals</li> <li>■ impose small intangible costs on individuals</li> <li>■ provides the option to government to enforce requirements</li> </ul>

<b>Summary of regulatory options – Animals</b>		
Key question and considerations	Options	What are the arguments for or against the option?
What types of animals should be prohibited on public transport?	Prohibit all animals on public transport	<p>For</p> <ul style="list-style-type: none"> <li>■ Reduces subjectivity in the regulations</li> <li>■ Provides for easier enforcement</li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes intangible costs on individuals since no animals are able to be transported on public transport</li> </ul>

	<p>Prohibit animals on public transport other than guide dogs and assistance animals</p>	<p>For</p> <ul style="list-style-type: none"> <li>■ This option is less restrictive than a blanket prohibition</li> <li>■ This option is consistent with the requirements of the <i>Disability Discrimination Act 1992 (Cth)</i></li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ Imposes some intangible costs on individuals as animals are unable to be transported on public transport</li> <li>■ There may be difficulties in understanding what an assistance animal is</li> </ul>
	<p>Prohibit animals on public transport unless exempted as follows:</p> <ul style="list-style-type: none"> <li>■ a guide dog,</li> <li>■ an assistance animal,</li> <li>■ a small animal placed in a container, or</li> <li>■ a dog restrained by a lead and muzzle (on a metropolitan train).</li> </ul>	<p>For</p> <ul style="list-style-type: none"> <li>■ Permits the carriage of animals in limited circumstances</li> <li>■ This option is consistent with the requirements of the <i>Disability Discrimination Act 1992 (Cth)</i></li> </ul> <p>Against</p> <ul style="list-style-type: none"> <li>■ imposes some intangible costs on individuals</li> <li>■ There may be difficulties in understanding what an assistance animal is</li> </ul>

**Stakeholder Questions:**

*Do you agree there is a continued need to regulate the carriage of animals on public transport? Why or why not?*

*Do you support or oppose the proposed regulations relating to the carriage of animals on public transport? Why or why not?*

**6.3.10 Damage**

The proposed property damage offences overlap with offences in the *Crimes Act 1958*, the *Summary Offences Act 1966* and the *Graffiti Prevention Act 2007*. Section 197 of the *Crimes Act 1958* and Section 9 of the *Summary Offence Act 1966* provides it is an offence to damage any property. Section 5 of the *Graffiti Prevention Act 2007* specifies that a person must not mark graffiti on property if the graffiti is visible from a public place unless there is express consent to graffiti.

This means that in the absence of passenger conduct regulations, property damage related conduct will still be prohibited. However, AOs do not have the power to enforce the abovementioned offences. These offences can only be enforced by members of the Victoria Police and PSOs (limited to

designated places such as railway stations). The effect of having no conduct regulations, therefore, is that prohibitions against property damage conduct cannot be enforced by AOs.

However, in the absence of conduct regulations, AOs will still be present on public transport vehicles and premises to enforce ticketing offences. This will have the effect of a base level of staff supervision, which, as mentioned previously, may deter individuals participating in property related conduct offences.

While the enforcement of criminal laws relating to damage of property is undertaken by Victoria Police, resources available to members of the Victoria Police are scarce. Additional compliance monitoring and enforcement effort by AOs can complement enforcement activities undertaken by police officers. This is one of the arguments for the option to regulate.

Passenger transport companies have an incentive to reduce the incidence of property damage in order to reduce their costs. Transport operators have employed various methods. For example, MTM has recently invested in a new technology which senses when paint is being sprayed at graffiti hotspots in combination with new camera software which, over time, learns patterns of normal movements, then sends an alert when something unexpected happens. These measures are likely to prevent property damage related offences occurring regardless of the presence of conduct regulations.

It is also possible for passenger transport operators to make conditions of travel prohibiting damage to property. This option is limited in two ways.

The first limitation relates to who the conditions of travel apply to. Property damage can occur both inside public transport vehicles and associated infrastructure (e.g. stations and stops), or where passengers are generally not permitted (e.g. depots or holding areas for public transport vehicles). Vandalism and graffiti can also occur when the perpetrator is not travelling on public transport (e.g. where individuals graffiti the side of a tram on the street). In these situations, the conditions of travel are not directly applicable.

The second limitation relates to the enforcement options available to the passenger transport operators. If a passenger is caught vandalising, the options to the passenger transport operator include suing for breach of contract or removing the person from the vehicle. There are also costs associated with seeking civil action to recover damages against the perpetrator. In practice, public transport companies are unlikely to seek damages in instances where the amount of property damage caused by an offender is less than the costs associated with taking court action.

The conditions of travel may therefore only be effective in reducing damage caused by passengers on public transport vehicles and at public transport premises. As such, the benefits arising from this option will not be as large as the proposed regulations.

Alternatively, the government could implement information campaigns targeted at reducing the incidence of damage to public transport property. The purpose of providing information is to achieve voluntary changes in behaviour. The extent of the benefits is dependent on the efficacy of information campaigns in altering behaviour.

It is expected that the effectiveness of information campaigns would be limited. The types of actions and behaviours covered by property damage are, by and large, already criminalised. As such, it is expected that individuals who damage property are fully aware that the conduct is prohibited. Moreover, the external cost of the damage is usually, for whatever reason, the primary purpose of the behaviour.

The assessment is that the provision of information is not as effective as regulating conduct and imposing penalties on offenders. As a result, the benefits of this option are not expected to be as large as regulating conduct.

The option to regulate this conduct, overlapping existing offences in other legislation is the preferred option. The advantage of this option is that it enables AOs to undertake compliance monitoring and

enforcement in relation to property damage. AOs are already provided with powers to enforce ticketing law and are able to spend effort to enforce conduct regulations.

A reduction in the incidence of damage is expected to result in benefits such as:

- lower or avoided repair, maintenance or replacement costs which are incurred by public transport operators (e.g. when ticketing gates must be repaired when damaged or when vehicles are defaced and must be cleaned);
- a reduction in delays to passengers where vehicles are taken out of service for cleaning, repair or maintenance (e.g. when a train is taken out of service and the services that the train would otherwise would provide are cancelled requiring passengers to wait for the next service);
- lower or avoided costs to passengers not able to use public transport infrastructure (e.g. when transport seating is damaged to the point where it is unable to be used as a seat etc.); and
- improved perceptions of safety and amenity from a reduction in observed damaged property and graffiti.

The proposed regulations overlap with existing criminal offences relating to the damage of property and, therefore, the proposed regulations do not significantly increase the compliance burden on the community. To the extent that the proposed regulations are not already covered by general criminal laws (i.e. if there are gaps in regulations), the proposed regulations imposes cost on those individuals by prohibiting the conduct in question.

<b>Effects of different approaches to address property damage</b>	
The proposed regulations:	<ul style="list-style-type: none"> <li>■ reduce repair, maintenance and cleaning costs on passenger transport operators</li> <li>■ reduce delays to the transport system</li> <li>■ impose small intangible costs on individuals</li> <li>■ provide the option to government to enforce regulatory requirements on public transport more effectively</li> </ul>
Information campaigns:	<ul style="list-style-type: none"> <li>■ inform the public about the effect of damage to public transport property</li> <li>■ cannot address externality market failures</li> <li>■ government incurs costs in developing an information campaign</li> </ul>
Increasing staff presence:	<ul style="list-style-type: none"> <li>■ discourages damage of public transport property</li> </ul>
Conditions of travel	<ul style="list-style-type: none"> <li>■ require passenger transport operators to seek damages through civil means</li> </ul>

**Stakeholder Questions:**

*Do you support or oppose the proposed regulations relating to damaging public transport property? Why or why not?*

*Are the right behaviours captured by the regulations? Why or why not?*

## 7 Preferred option

The analysis conducted in Section 6 indicates that the preferred option is for the government to regulate conduct offences on public transport vehicles and premises. The draft regulations are available for comment.

Specifically, it is proposed to remake the regulations in relation to managing unsafe conduct, conduct that impacts amenity, and conduct relating to property damage.

The structure of the draft regulations is as follows:

- Part 1 of the regulations contain preliminary matters (objectives, authorising provisions and definitions)
- Part 2 relates to conduct affecting safety.
  - Division 1 establishes general conduct offences including offences related to creating obstructions and endangerment, and entering travelling and riding public transport in an unsafe manner.
  - Division 2 establishes offences relating to interfering with equipment or property including damage to public transport property.
  - Division 3 establishes offences relating to crossing railway and tramway tracks.
- Part 3 relates to conduct affecting amenity and damage of public transport property. The Part establishes offences relating to anti-social behaviour, noise, smoking, animals, feet on seats and furniture, and damage of public transport property.
- Part 4 relates to seating on public transport vehicles. The Part establishes offences relating to vacating seats on public transport.
- Part 5 relates to parking at designated park and ride facilities. The Part establishes offences relating to the use of park and ride facilities by non-commuters.
- Part 6 relates to miscellaneous provisions
- Schedule 1 contains the list of railway station car parks that are designated park and ride facilities for the purposes of Part 5 of the regulations
- Schedule 2 contains the list of prescribed equipment for the purposes of regulation 19

It is proposed to remake the substantive provisions contained within *the Transport (Conduct) Regulations 2005* and the *Transport (Passenger Vehicles) Regulations 2005* and consolidate these provisions into a single set of regulations (i.e. the draft regulations). The content of the regulations will largely remain the same. However, there are some differences:

- the scope of some regulations have been extended to buses and bus premises
- the prohibition relating to gambling on public transport has been removed
- the requirement for students to vacate seats has been removed
- the regulations contain a new requirement for persons to vacate any seat for persons with special needs when requested.
- the regulations contain a new requirement prohibiting the carriage of bicycles on trams and buses, and near the first door of the first carriage of a metropolitan train.

Table 10.2 in Appendix A summarises the content of the proposed regulations and identifies the changes to the regulations by reference to the current conduct regulations in place.

### 7.1 Impact on small business

Regulatory Impact Statements are developed to ensure that regulation in Victoria is proportionate, appropriate targeted and provides net-benefits to the community. In addition to these considerations,

it is important to examine the impact on small business because the compliance burden often falls disproportionately on that sector of the economy.

The proposed regulations govern the conduct of individual passengers travelling on public transport vehicles. It is not expected that Victorian small businesses will be adversely impacted by the proposed regulations.

## 7.2 Competition assessment

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:

- The benefits of the restriction to the community as a whole outweigh the costs; and
- 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).*

The proposed regulations in this RIS do not: limit the number or range of supplies; limit the ability of suppliers to compete; or reduce the incentive of suppliers to compete vigorously. This assessment is confirmed in the analysis of the costs and benefits. The proposed regulations aim to regulate the conduct of passengers on public transport and person who occupy public transport premises. The regulations are not expected to impact on transport operators and any expected compliance costs are minor in nature.

## 8 Implementation plan

### 8.1 Compliance monitoring and enforcement strategy

Enforcement procedures for the new conduct offences will be the same as the procedures for existing offences. A detailed discussion of current enforcement procedures is provided below.

Currently some conduct offences that apply on trains, trams and at rail premises do not apply on buses and at bus premises. Since some offences that apply to trains, trams and rail premises are not in place for buses and bus premises, there is currently no power to issue official warnings or infringement notices or impose fines for unsafe and anti-social behaviours on buses and at bus premises.

### 8.2 Current enforcement procedures

The following persons are permitted by Section 212 of the TCMA to issue infringement notices to offenders:

- police officers
- a protective services officer
- a person who is authorised to issue transport infringement notices, i.e. authorised officers<sup>16</sup>

The process for issuing and serving infringement notices for offences is governed by the *Infringements Act 2006*. To complement the Act, the Attorney-General's Guidelines to the Infringements Act explain the fundamental elements on which the Infringements Act was prepared, and the manner in which responsibilities under that Act are to be exercised.

#### 8.2.1 Authorised Officers

Public transport offences are enforced by authorised officers who are either employed by the Department of Economic Development, Jobs, Transport and Resources (the Department), PTV or by passenger transport operators (that is, train, tram and bus operators, and the Bus Association Victoria).

Authorised Officers have certain statutory powers under the TCMA. For this reason, the officers are appointed by the Department following a comprehensive recruitment and selection process. Officers are trained in relevant areas of procedure and law, as well as in the application of their powers, responsibilities and law enforcement processes. Their authorisation is assessed and renewed periodically.

Officers are educated about the proofs required to substantiate public transport offences as part of existing comprehensive training. Officers must undertake ongoing training, including training on any new or amended offences. Officers must act in accordance with a Code of Conduct developed in partnership with the State Government and public transport franchisees. If an Authorised Officer breaches the Code, he or she may be subject to investigation and disciplinary action in accordance with the provisions of the TCMA.

#### 8.2.2 Non-compliance reports or infringement notices

As opposed to issuing 'on-the-spot' infringement notices, AOs employed by transport operators are required to complete a report of non-compliance when they detect a possible infraction against a conduct offence. After the report is completed by the Authorised Officer, it is checked by the AO's

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<sup>16</sup> In effect infringement notices are served by authorised officers in DEDJTR, not those employed by transport operators.

team leader and forwarded to the Department for consideration. AOs may exercise discretion at the point of interception.

This process is a requirement of the *Transport (Compliance and Miscellaneous) Act 1983*<sup>17</sup> and exists because AOs employed by transport operators are not provided with powers to directly issue infringement notices to a person who has committed an offence. The rationale behind this is that the AOs are employed by private passenger transport operators and are not employed in the public sector. Accordingly, it is not appropriate to provide AOs with such powers.

On receipt of a report of non-compliance, the Department's issuing officer takes a number of steps before generating a warning or an infringement notice. This includes inspecting and considering the information contained in the report. The issuing officer must ensure that the report contains sufficient evidence to enable him or her to form a reasonable belief that an offence has been committed against the relevant legislative provisions.

Issuing officers consider whether there are special circumstances that apply as defined by the *Infringements Act 2006*. These include factors such as a mental or intellectual disability, disease or illness, a serious addiction to drugs, alcohol or volatile substances and homelessness.

In appropriate cases, the alleged offender may be referred to a diversionary education course. This option is only available if a report of non-compliance has been made by an AO employed or engaged by the Department.

In this circumstance, where the issuing officer is not certain that the report of non-compliance should progress to the infringement notice stage, the matter is reported immediately to the officer's supervisor for assessment and determination. The supervisor may consider whether action other than issuing an infringement notice would be appropriate. Alternative actions include issuing an official warning or giving the offender the opportunity to attend a diversionary education course.

In more serious cases, the report may be referred to the Department's prosecutions unit for review.

An issuing officer will only issue an infringement notice if he or she has considered all of the factors listed above and determined that issuing an infringement notice (and subsequently a penalty) is the most appropriate action.

The infringements unit in the Department has advised that almost all non-compliance reports result in the issue of an infringement notice to the offender. The proportion of non-compliance reports that do not result in the issue of an infringement notice is statistically insignificant.

If the Department decides to withdraw an infringement notice and replace it with an official warning, this decision is only made after the original infringement notice is issued. For example, a person may request an internal review of the infringement notice and provide reasons for his or her conduct which may ultimately lead to the withdrawal of the notice.

### 8.2.3 Penalties for non-compliance

The penalty values presented in the draft regulations represent the maximum penalty that can be imposed through prosecution through the courts. The maximum penalty that may be set in the regulations is 20 penalty units. However, the maximum penalties that apply in the proposed regulations vary and some offences have maximum penalties which are lower than this amount. The penalty values are set according to the gravity of the offence. Penalty levels are also set to ensure consistency with similar offences in other legislation and regulations.

As detailed above, an alleged offender may also be issued an infringement notice. Infringement notices provide an effective and efficient deterrent to contravening rules, while also offering alleged offender the opportunity to minimise the penalty and burden incurred through participating in court proceedings.

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<sup>17</sup> See Division 2 of Part VII of the Act



Infringement penalties for transport offences are set in the *Transport (Infringements) Regulations 2010*. These regulations will also be amended to reflect the proposed regulations if the latter are formally made by the Governor in Council.

The infringement penalty or the 'on-the-spot' fine is usually set no more than 20 to 25 per cent of the maximum penalty in accordance with the Attorney-General guidelines for infringement penalties. In addition, minors are subject to the same maximum court penalty but receive a lower infringement penalty (0.5 penalty units – \$73.80 in 2014-15) in accordance with the Transport (Infringements) Regulations.

## 9 Evaluation strategy

As part of good-practice, it is important to regularly review regulation to assess whether regulation is the appropriate intervention to meet the objectives. An evaluation strategy is a strategy that outlines the way that the proposed regulations will be reviewed.

The Subordinate Legislation Act 1994 provides for the automatic revocation of regulations after ten years of operation. In addition, the Act requires that regulatory impact statements 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 review of the proposed regulations will be undertaken before the sunset date of the proposed regulations (i.e. ten years from the date of making). The review will inform the preparation of the possible future regulatory impact statement, if regulations are still considered necessary to achieve the objectives. The Department of Economic Development, Jobs, Transport and Resources will be responsible for undertaking the review.

### 9.1 Objectives of the regulatory proposal

The objectives of the proposal are to:

- promote safe behaviours around public transport vehicles and premises to minimise the extent of harms caused to individuals and others
- facilitate comfortable and convenient travel for passengers on public transport
- minimise the extent of damage to public transport property
- minimise transport network impacts associated with incidents resulting from unsafe or anti-social behaviour

### 9.2 Baseline data for evaluation

The data used to inform the preparation of this regulatory impact statement was drawn from a number of sources, including:

- data on incidents and safety and amenity outcomes recorded and kept by passenger transport operators
- data on safety outcomes received and recorded by Transport Safety Victoria
- data on public transport passenger complaints received by passenger transport operators and Public Transport Victoria)
- data contained in the Customer Satisfaction Monitor (Public Transport Victoria)
- data on transport conduct infringements issued and prosecutions undertaken by the Department

In addition, feedback provided by authorised officers also informs ongoing compliance monitoring and enforcement effort.

This data will continue to be available to inform the review of the regulations.

### 9.3 Key Performance Indicators

The safety and amenity outcomes achieved are a function of a number of interventions initiated by government and passenger transport operators. This needs to be kept in mind when undertaking an evaluation of this regulatory proposal.

Accordingly, measures of success include maintaining current levels of safety and amenity outcomes that are at least as good as current levels. For example:

- in relation to safety outcomes – observing no increase in incidents resulting in fatalities and serious injuries
- in relation to amenity outcomes – observing no increase in incidents affecting passenger amenity or no increase in complaints made by passengers in relation to amenity issues
- in relation to property damage – observing no increase in incidents resulting in property damage

A key consideration of the evaluation will be assessing the interplay between various interventions available to government and passenger transport operators. E.g. the procurement of rolling stock, developing education campaigns or improving infrastructure etc. The availability of comprehensive data that relates to safety and amenity outcomes and actions that are undertaken will inform the evaluation to ensure that any improvements in safety and amenity are attributed appropriately.

## **9.4 Trial of regulations to control non-commuter car parking**

The regulations which control non-commuter car parking at park and ride facilities are currently being trialled at six stations. The proposed regulations in relation to this matter are proposed to expire on 30 June 2017. The trial will provide an insight into the nature and extent of the problem and data will be collected to support the review of the trial. The Department of Economic Development, Jobs, Transport and Resources will conduct the evaluation of the trial.

### **9.4.1 Objective of the regulatory proposal**

The objectives of the proposal:

- ensure that parking spaces at park and ride facilities are made available for users of public transport

### **9.4.2 Data for evaluation**

The data arising from compliance monitoring and enforcement activities undertaken by authorised officers. This includes possible data on:

- the number of infringements issued to offenders
- the number of warnings given to alleged offenders
- the availability of parking at the time of compliance monitoring and enforcement activity

### **9.4.3 Key performance indicators**

The evaluation of the trial will draw on the data collected by authorised officers when undertaken compliance monitoring and enforcement activities. For example, the initial findings of the trial have revealed that the extent of the problem at Highett and Burwood railway stations is not as significant as initially expected. The reason is that the problem at these stations originated from temporary construction workers at locations near these stations. Such information will inform the consideration of potential approaches to address the problem (e.g. how to address temporary problems compared to enduring problems).

Some of the key performance indicators are:

- whether there has been a change in availability of car parking at the locations where the regulations apply.
- whether the use of park and ride facilities by non-commuters has decreased.

## 10 Consultation

The following stakeholders have been consulted as part of the review of the Transport (Conduct) Regulations 2005.

- Public Transport Victoria
- Metro Melbourne
- V/Line
- Yarra Trams
- Bus Association Victoria
- Transdev
- Victoria Police
- Australian Human Rights Commission

**Table 10.1: Summary of stakeholder views**

Yarra 10/9/14	Supported the ban on bringing bikes onto trams as bikes can create obstructions for passengers. The inclusion of an offence makes it clear to people that they cannot bring a bike onto a tram unless it is folded and in a bag.
	Supported extending the regulations so that assistance animals can be brought onto trams where necessary.
Metro 11/9/14	Supported the creation of a new offence for bringing bikes into the first door of the first carriage of a metropolitan train. Bikes in these areas often create obstructions for people in wheelchairs and can delay trains while drivers negotiate bikes while helping people in wheelchairs access the carriage.
	Agreed that the draft regulations will assist in maintaining a high standard of travel for public transport passengers.
V/Line 17/9/14	Recommended extending the amenity type offences to maintain standards passengers expect when travelling on trains, particularly long haul country trains.
	Supported inclusion of an offence for persons who do not vacate their seat, if requested, for people with special needs if all designated special needs seats are occupied
	Supported extending the regulations so that assistance animals can be brought onto V/Line trains where necessary
	Supported providing the ability for operators to put up signs prohibiting smoking on public transport premises
BusVic 25/9/14	Supported the consolidation of bus passenger conduct offences currently contained in the Transport (Passenger Vehicle) Regulations 2005 with train and tram passenger conduct regulations.
	Did not fully support discontinuing the gambling offence
Auth	Representatives of authorised officers supported maximum court penalties for certain offences being increased, for example, spitting at a person and protruding part of body

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Officers 30/9/14	from a moving vehicle.
Transdev 3/10/14	Supported the consolidation of bus passenger conduct offences currently contained in the Transport (Passenger Vehicle) Regulations 2005 with train and tram passenger conduct regulations.
Victoria Police 31/10/14	Supported the proposed regulations and current scope of police powers under the regulations.
PTV ongoing	Support the content of the proposed regulations.
Australian Human Rights Comm 11/3/15	Supported inclusion of reference to assistance animals in the proposed regulations.

The proposed regulations and supporting regulatory impact statement will be made available for a period of 31 days for public comment.

Following the public consultation process, public comment on the RIS and proposed regulations will be assessed by the Department of Economic Development, Jobs, Transport and Resources. A response will be provided to each person or organisation who makes comment through the public consultation process.

Analysis of public comment will be undertaken to ascertain whether changes should be made to the proposed regulations as a result of comments. The proposed regulations will be amended as required.

The Department will provide the Scrutiny of Acts and Regulations Committee with a copy of all public comment received and the Department's response to comments made, together with reasons for proposing further changes to the regulations or not making changes, as the case requires.

## Appendix A Comparison of major changes

The *Transport (Conduct) Regulations 2005* currently contain offences relating to passenger conduct in and around heavy rail and tram public transport services including vehicles and premises. Similarly, the *Transport (Passenger Vehicles) Regulations 2005* currently contain offences relating to passenger conduct on buses and related property. Both of these regulations expire on 28 June 2015, and it is proposed to remake the regulations and include the content of both the *Transport (Conduct) Regulations* and the *Transport (Passenger Vehicles) Regulations* in one set of regulations integrated for public transport vehicles and premises. As a result, the scope of a number of regulations has been broadened. Additionally, improvements to the regulations have been made by including a number of new regulations and refining existing regulations including through revocation. Table 10.2 summarises these differences.

**Table 10.2: Summary of changes to the regulations**

<b>SAFETY</b>	
<b>Creating obstructions or endangerment</b>	
Conveying or bringing things likely to endanger	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> <li>■ Narrows scope to an offence only if employee informed person in the course of the employer's duties that the thing is likely to injure/endanger</li> </ul>
Throwing or dropping things	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> </ul>
Creating obstructions	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> <li>■ Widens scope of regulation so person also must not do anything which is likely to cause an obstruction</li> </ul>
Carriage of bicycles	<ul style="list-style-type: none"> <li>■ New regulation</li> </ul>
<b>Entering, travelling or riding public transport in an unsafe manner</b>	
Protruding part of body or object	<ul style="list-style-type: none"> <li>■ No material change</li> </ul>
Riding bicycle etc. on public transport vehicles	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus vehicles</li> </ul>
Driving, riding or parking a vehicle on public transport premises	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> </ul>
Unauthorised entering and leaving vehicles and premises	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> </ul>
Travelling or mounting places not intended for travel	<ul style="list-style-type: none"> <li>■ Narrows scope of travelling or mounting part of vehicle not intended for travel to buses only</li> <li>■ Note: Section 221ZE(1) and 221ZD(1) of the TCMA makes this an offence on train or tram</li> </ul>

<b>Interfering with equipment</b>	
Interference with gates and doors	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> </ul>
Operating equipment or vehicle	<ul style="list-style-type: none"> <li>■ No material change, only apply to buses</li> <li>■ Note that Section 221ZH(1) of the TCMA makes this an offence on train or tram</li> </ul>
Applying brake or emergency device	<ul style="list-style-type: none"> <li>■ No material change, only apply to buses</li> <li>■ Note that Section 221ZF(1) of the TCMA makes this an offence in respect of a train or tram</li> </ul>
Interference with prescribed equipment	<ul style="list-style-type: none"> <li>■ New regulation so that the offence in the TCMA is enforceable</li> </ul>
<b>Crossing railway or designated tramway tracks and level crossings</b>	
Crossing tracks by pedestrians	<ul style="list-style-type: none"> <li>■ No material change</li> </ul>
Driving or riding across tracks	<ul style="list-style-type: none"> <li>■ Specifies this applies to vehicles and wheeled recreational devices</li> </ul>
Stopping or standing on crossing between boom gates	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include driving or riding a wheeled recreational device</li> </ul>
Entering pit between platforms or entering onto tracks	<ul style="list-style-type: none"> <li>■ No material change</li> </ul>
<b>AMENITY</b>	
<b>Anti-Social Behaviour</b>	
Indecent, obscene language and behaviour	<ul style="list-style-type: none"> <li>■ No material change</li> <li>■ Note wording change to now include indecent, obscene and threatening language for buses</li> <li>■ Note wording change to now include indecent and riotous behaviour for buses</li> <li>■ Note wording change to now include indecent behaviour for rail and trams</li> </ul>
Committing a nuisance	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include interference with comfort of another person on buses</li> </ul>
Gambling	<ul style="list-style-type: none"> <li>■ Removed</li> </ul>
Consuming alcohol	<ul style="list-style-type: none"> <li>■ No material change</li> </ul>
Spitting	<ul style="list-style-type: none"> <li>■ No material change</li> </ul>

<b>Seating</b>	
Feet on seats	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include buses</li> </ul>
Vacating designated special needs seats	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include buses</li> </ul>
Vacating seat for persons with special needs	<ul style="list-style-type: none"> <li>■ New regulation</li> </ul>
Vacating area designated for wheelchairs	<ul style="list-style-type: none"> <li>■ New regulation</li> </ul>
Occupying unreserved seat	<ul style="list-style-type: none"> <li>■ Widen scope of regulation to include buses</li> </ul>
<b>Smoking</b>	
Smoking	<ul style="list-style-type: none"> <li>■ No change</li> </ul>
<b>Noise</b>	
Musical instruments	<ul style="list-style-type: none"> <li>■ Change from requiring permission to requiring written authorisation to play musical instrument on buses</li> </ul>
Sound equipment	<ul style="list-style-type: none"> <li>■ New regulation now allows written authorisation to operate sound equipment</li> </ul>
Selling or busking	<ul style="list-style-type: none"> <li>■ No change</li> </ul>
<b>Animals</b>	
Animals on vehicles or premises	<ul style="list-style-type: none"> <li>■ Widens exceptions to this regulation to include assistance animals</li> <li>■ New sub-regulation allows an authorised person to ask person in charge of the animal to be removed if the animal is causing disturbance or acting in a manner that poses safety risks</li> </ul>
Animals on seats	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include all animals (not just dogs)</li> </ul>
Animals not to stray	<ul style="list-style-type: none"> <li>■ Widen scope of regulation to include buses</li> </ul>
<b>Other</b>	
Littering	<ul style="list-style-type: none"> <li>■ No change</li> </ul>
Placing luggage	<ul style="list-style-type: none"> <li>■ Widen scope of regulation to include buses</li> </ul>
Unauthorised travel and seating	<ul style="list-style-type: none"> <li>■ Widen scope of regulation to include buses</li> </ul>
<b>DAMAGE</b>	
Damage done to property	<ul style="list-style-type: none"> <li>■ Widens scopes of regulation to include bus premises</li> </ul>
Fire	<ul style="list-style-type: none"> <li>■ Widens scope of regulation to include bus premises</li> </ul>



Graffiti	<ul style="list-style-type: none"><li>■ New regulation now allows appropriate written authorisation to write or draw on public transport vehicle or premises</li></ul>
Scratching or burning	<ul style="list-style-type: none"><li>■ Widen scope of regulation to include buses</li></ul>

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