

Compliance and enforcement of minimum clearance spaces for electric lines

June 2022

Policy

About this policy

From 27 June 2022, Energy Safe Victoria (**ESV**) can issue infringement notices to persons who fail to comply with their responsibilities for ensuring trees are kept clear from electric lines as required by clause 3(1) of the [Code of Practice for Electric Line Clearance \(Code\)](#). Responsible persons include major electricity companies (**MECs**), local councils, and certain other land owners and electric line operators.

There are no changes to the tree clearance responsibilities under clause 3(1) of the Code, this simply represents an addition to the enforcement options we have available to address non-compliance.

This policy gives general information about the tree clearance responsibilities, and outlines our approach to compliance and enforcement of clause 3(1) of the Code given the introduction of infringements. It does not cover all of the tree clearance requirements under the [Electricity Safety Act 1998 \(Vic\) \(ES Act\)](#), the [Electricity Safety \(Electric Line Clearance\) Regulations 2020 \(Vic\) \(Regulations\)](#) and the Code, and is not a substitute for obtaining legal advice. Omission of any matter from this policy does not relieve responsible persons of their legal duties.

Summary

Contact between trees and electric lines can cause fires, electrocutions and power outages, which can result in loss of life or injury, property damage, economic costs and social disruption. Clause 3(1) of the Code aims to minimise the risk of contact by requiring responsible persons to ensure that no part of a tree for which they have clearance responsibilities is within the minimum clearance space at any time. While also a risk, clause 3(1) of the Code does not deal with instances where a tree falls and contacts an electric line from outside the minimum clearance space.

We regularly conduct inspections and audits, and may take enforcement action against a responsible person who has failed to comply with their tree clearance responsibilities under clause 3(1) of the Code. When deciding what, if any, enforcement action to take, we have regard to a range of factors such as:

- safety risks associated with the non-compliance;
- conduct of the responsible person; and
- contributing factors outside the control of the responsible person.

Responsible persons should expect to receive a notice requiring them rectify any unsafe situation within a specified timeframe, and will likely also receive an infringement notice for any non-compliance with clause 3(1) of the Code that poses a high safety risk unless there are extenuating circumstances. Situations that pose a high safety risk include, but are not limited to:

- intermittent or constant contact between a tree and a high voltage uninsulated electric line, regardless of whether it is in a hazardous or low bushfire risk area;
- intermittent or constant contact between a tree and a low voltage uninsulated electric line in a hazardous bushfire risk area; and
- constant contact between a tree and a low voltage uninsulated electric line in a low bushfire risk area.

We reserve our rights to issue an infringement notice or take other enforcement action for any non-compliance with clause 3(1) of the Code. We have regard to the requirements of procedural fairness when making decisions about compliance and enforcement matters.

Tree clearance responsibilities

The Code

The Code, which comprises Schedule 1 and Schedule 2 of the Regulations, specifies the tree clearance responsibilities around electric lines.

Clause 3(1) of the Code requires persons deemed responsible under the ES Act for keeping trees clear of electric lines (**responsible persons**) to ensure that, at all times, no part of a tree for which the person has clearance responsibilities is within the minimum clearance space for an electric line span. An electric line span refers to a section of electric line that runs between two adjacent supporting structures, such as two power poles.

Division 2 of the Code outlines requirements relating to the manner of cutting and removing trees. Notably, clause 10 of the Code requires a responsible person cutting a tree to, as far as practicable, cut the tree in accordance with *AS 4373 Pruning of amenity trees*.

A responsible person can engage a third party to undertake the necessary works on their behalf to keep trees clear of electric lines. However, this does not absolve the responsible person of their tree clearance responsibilities. Meaning that the responsible person remains liable for any non-compliance with clause 3(1) of the Code.

Responsible persons

Responsible persons are set out in sections 84 and 84A to 84D of the ES Act and include:

- MECs – for keeping trees clear of electric lines in their distribution areas unless another person or entity is the responsible person.
- Local councils – for maintaining trees on public land they manage and is declared for the purposes of the ES Act.
- Land owners or occupiers – for maintaining trees on their private property that may interfere with their own private electric line or a private electric line on an adjoining property.
- Other electric line owners or operators such as railway operators, wind and solar farms and large industrial sites.

The Regulations also require responsible persons, other than land owners or occupiers, to prepare and make publicly available on their websites an Electric Line Clearance Management Plan. The plan must detail how they will inspect, manage and maintain clearance of trees around electric lines, including how they will notify and consult with any affected persons. See regulations 9 and 10 of the Regulations for more information about these requirements.

Minimum clearance space

The minimum clearance space for an electric line span is determined in accordance with Part 3 of the Code. The minimum clearance spaces are not a 'one size fits all' approach and are determined based on a range of risk factors, such as:

- whether the electric line is in a hazardous or low bushfire risk area;
- whether the electric line is high or low voltage;
- whether the electric line is insulated or not; and
- the length of the electric line span.

For example, the minimum clearance space for an uninsulated low voltage electric line located in a low bushfire risk area and is less than 45 metres long may be 1 metre. Whereas the minimum clearance space for the same electric line span in a hazardous bushfire risk area may be 1.5 metres.

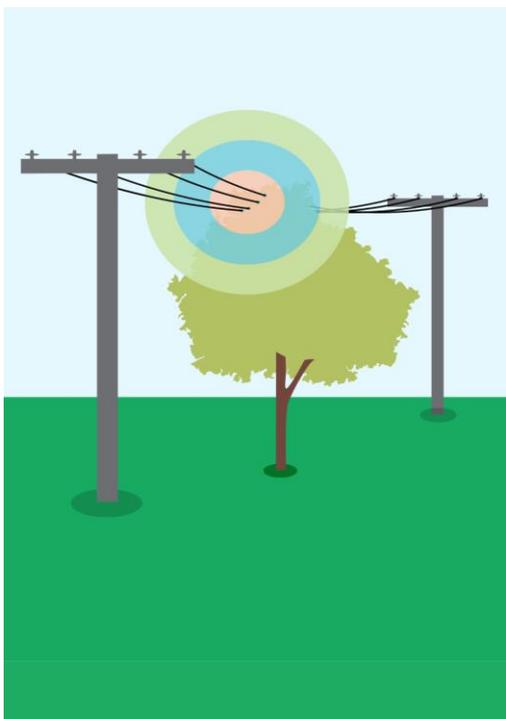
Responsible persons must ensure they understand the minimum clearance spaces that apply to their circumstances. See Part 3 of the Code for more information about minimum clearance spaces.

Compliance inspections and audits

We use a range of tools to ensure compliance with clause 3(1) of the Code. We educate responsible persons about their legal duties and the minimum clearance spaces for electric lines. We also conduct inspections to confirm trees are kept clear of electric lines and audits to confirm the systems used by responsible persons to manage their electric line clearance risks are fit for purpose. We apply a risk-based approach by focussing on areas that we consider to be higher risk given the inherent risk profile and data from previous inspections and audits, while also conducting random inspections and audits.

Where we identify an instance of non-compliance with clause 3(1) of the Code, we classify it as either major non-compliance or minor non-compliance as described in figure 1. These classifications, which are primarily based on the safety risks associated with the non-compliance, inform our regulatory response, including any enforcement action we may take.

Figure 1: Classification of non-compliance



Classification	Description
Major non-compliance	<p>There was vegetation present that was within the minimum clearance space and was a high safety risk. For example:</p> <ul style="list-style-type: none"> • Vegetation was in contact with an uninsulated electric line. • Vegetation could come into contact with an uninsulated electric line when taking into account environmental conditions such as movement or sway of the electric line or vegetation. • Anticipated growth of the vegetation over the next six months could result in either of the above circumstances arising.
Minor non-compliance	<p>There was vegetation present that was within the minimum clearance space but was a lower safety risk and was not considered a major non-compliance.</p>
Compliant	<p>There was no vegetation present or vegetation that was present was not within the minimum clearance space.</p>

Regulatory response and enforcement action

We can take a range of regulatory responses to non-compliance, including enforcement action, where we find that a responsible person has failed to comply with their tree clearance responsibilities under clause 3(1) of the Code. This includes issuing notices to responsible persons requiring trees to be cleared, requiring amendments to an Electric Line Clearance Management Plan (where applicable), issuing infringement notices, and/or prosecution.

In deciding what action to take, our priority is always to rectify unsafe situations and manage the safety risk to prevent harm to people or property, while also penalising offenders for proven misconduct where appropriate, and meeting community expectations about enforcement of the law.

Our general [Compliance and Enforcement Policy](#) provides a comprehensive statement of our objectives and the principles we apply in carrying out our compliance and enforcement activities. Table 1 sets out some of the factors we may take into account in determining the appropriate regulatory response for non-compliance with clause 3(1) of the Code.

Table 1: Some of the factors we may consider in deciding what action to take

Factors	Examples
Nature and seriousness of non-compliance	<ul style="list-style-type: none"> • Seriousness of the safety risk, including whether the non-compliance falls into the classification of major non-compliance or minor non-compliance as described in figure 1. • Whether the non-compliance relates to an isolated incident or systemic issues. • Whether there is evidence that the non-compliance involved recklessness or negligence.
Conduct of the responsible person	<ul style="list-style-type: none"> • When and how the non-compliance came to our attention. • The level of cooperation by the responsible person. • Whether steps have been taken by the responsible person to address the cause of, or rectify, non-compliance and manage the safety risk. • The compliance history of the responsible person. • Whether the compliance of the responsible person is more likely to improve in response to a particular regulatory response.
Other factors	<ul style="list-style-type: none"> • Whether there are any contributing factors that were outside the responsible person's control. • Whether a particular regulatory response will have any undesirable outcomes. • Consistency with our approach to other comparable levels of non-compliance.

Notice to take specified action

When we identify that part of a tree is within the minimum clearance space of an electric line span during our inspections, we are likely to issue a notice pursuant to section 86(1) of the ES Act requiring the responsible person to rectify the situation and achieve compliance with clause 3(1) of the Code within a specified timeframe.

Without limiting our right to also issue infringement notices or prosecute, we are more likely to issue a notice under section 86(1) without taking further enforcement action (subject to the responsible person complying with the notice) in the following circumstances:

- the non-compliance is a low safety risk such as those that are classified as minor non-compliance and relates to an isolated incident or is otherwise limited in scope;
- the responsible person fully cooperates, is transparent about the underlying cause of non-compliance and commits to undertake the necessary action to achieve compliance within the specified timeframe; and
- the responsible person has a good history of compliance and demonstrates willingness to undertake actions necessary to ensure future compliance.

Failure to comply a notice issued under section 86(1) is an offence, and the maximum penalties are:

- 200 penalty units for a natural person (equivalent to \$36,348 as at June 2022); or

- 1000 penalty units for a body corporate (equivalent to \$181,740 as at June 2022).¹

Instruction to amend Electric Line Clearance Management Plan

Where a responsible person has an Electric Line Clearance Management Plan, we may instruct the responsible person to amend the plan to address any concerns about the non-compliance occurring again in the future or any other issues relating to their management of tree clearance and electric lines.

Failure to comply with an instruction to amend an Electric Line Clearance Management Plan under regulation 10(4) of the Regulations is an offence, and the maximum penalties are 20 penalty units (equivalent to \$3634.80 as at June 2022).²

Infringement notices

From 27 June 2022, we can issue infringement notices to a responsible person for failing to comply with their tree clearance responsibilities under clause 3(1) of the Code.

The introduction of infringements does not change the legal duties of responsible persons. Instead, it expands our range of enforcement tools and gives us an alternative to prosecution when we consider a penalty for non-compliance is appropriate.

Without limiting our right to issue an infringement notice for any non-compliance with clause 3(1) of the Code, we are most likely to issue an infringement notice in circumstances where the non-compliance poses a high safety risk such as those classified as major non-compliance (see figure 1). For example:

- intermittent or constant contact between a tree and a high voltage uninsulated electric line, regardless of whether it is in a hazardous or low bushfire risk area;
- intermittent or constant contact between a tree and a low voltage uninsulated electric line in a hazardous bushfire risk area; and
- constant contact between a tree and a low voltage uninsulated electric line in a low bushfire risk area.

We can issue an infringement notice for each incident of non-compliance. For example, where we find that multiple trees are within the minimum clearance space for an electric line span, we can issue an infringement notice for each tree. However, we are more likely to only issue one infringement notice for each electric line span found to have non-compliance unless we consider multiple infringement notices are appropriate having regard to the factors in table 1.

Infringement penalties for non-compliance with clause 3(1) of the Code are as follows:

- 5 penalty units for a natural person (equivalent to \$908.70 as at June 2022); or
- 25 penalty units for a body corporate (equivalent to \$4543.50 as at June 2022).³

More information about infringement notices, and the rights to request an internal review, is available at: www.esv.vic.gov.au/about-esv/energy_regulatory_framework/compliance-and-enforcement/infringements.

Prosecution

We may prosecute a responsible person under section 90 of the ES Act where we identify serious and/or systemic safety issues, where there is evidence of reckless or negligent conduct by the responsible persons, or where we consider prosecution is otherwise appropriate having regard to the nature, severity, gravity or consequence of the offence.

Prosecution can lead to penalties of:

¹ From 1 July 2021 to 30 June 2022, the value of one penalty unit is \$181.74. The rate for penalty units is indexed each financial year so that it rises in line with inflation. Any change to the value of a penalty unit occurs on 1 July each year.

² Ibid.

³ Ibid.

- 50 penalty units for a natural person (equivalent to \$9087 as at June 2022); or
- 250 penalty units for a body corporate (equivalent to \$45,435 as at June 2022).⁴

Procedural fairness

We have regard to the requirements of procedural fairness when making decisions about compliance and enforcement matters. The requirements of procedural fairness vary depending on the nature and circumstances of the decision. For example, when considering whether to take enforcement action, we will typically notify the responsible person and will take into account any submissions made about their circumstances when making a decision. We will ensure our decision is communicated clearly, and will provide information about rights of review.

Anyone who has received an infringement notice has a right to request an internal review of our decision to issue the notice. Internal reviews are undertaken by an independent officer who was not involved in the original decision.

More information available at: www.esv.vic.gov.au/about-esv/energy_regulatory_framework/compliance-and-enforcement/infringements.

Where to get more information

It is important that you understand your responsibilities. If you need further information please visit our website at www.esv.vic.gov.au or contact our advisory service:

Phone: 1800 800 158 (free call)

Email: info@energysafe.vic.gov.au

Who we are

We are Victoria's independent safety regulator for electricity, gas and pipelines.

Our role is to ensure that Victorian gas and electricity industries are safe and meet community expectations. We are also responsible for licensing and registering electricians, and educating the community about energy safety.

More information is available on ESV's website: www.esv.vic.gov.au

⁴ Ibid.