

Prosecution guideline

Energy Safe Victoria

Guideline

Purpose

The purpose of this guideline is to communicate how we exercise our prosecutorial discretion. These guidelines do not limit our discretion to use any enforcement option deemed appropriate.

These guidelines are published on our website, www.esv.vic.gov.au and should be read in the context of our [Compliance and Enforcement Policy](#).

Victoria's energy safety laws

We can conduct criminal prosecutions for breaches of summary and indictable offence provisions in Victoria's energy safety laws, which comprise the following Acts and the regulations made under those Acts:

- *Electricity Safety Act 1998* (Vic)
- *Gas Safety Act 1997* (Vic)
- *Pipelines Act 2005* (Vic)

In these guidelines, the above are collectively referred to as Victoria's 'energy safety laws'.

Why we prosecute

We prosecute to deter non-compliance with the energy safety laws and to prevent deaths, serious injuries and damage to property.

A prosecution may be brought regardless of whether non-compliance results in death, injury or damage to property.

We are committed to achieving the highest levels of safety to prevent deaths, serious injuries and incidents while also meeting community expectations. We detect non-compliance and safety risks through a variety of enforcement tools.

Our enforcement officers (electricity) and inspectors (gas and pipelines) may exercise powers under energy safety laws including to enter premises, seize certain items and issue notices for the purposes of investigating whether an offence has been committed.

Determining whether to prosecute

We recognise that when conducting a criminal prosecution, we are functioning as a prosecution agency within the criminal justice system. We comply with the Victorian model litigant guidelines and will consider the following factors when exercising prosecutorial discretion:

Accountability

Decisions about bringing, or not to proceed with, a prosecution, are made by the Commission or by general managers under delegation from the Commission on the recommendation of our General Counsel.

Consultation with the Director of Public Prosecutions

We will request advice from the Director of Public Prosecutions (**DPP**) prior to commencing a criminal prosecution for indictable offences.

Statutory time limits

There are statutory requirements which limit the time within which we may bring charges for breaches of the energy safety laws.

The time for us to bring charges against a person for an offence is limited to three years from the date an offence is alleged to have occurred for electrical and gas safety offences, and one year for pipeline works under the Pipelines Act.

Prospects and public interest

We will have regard to two central considerations:

- if there is a reasonable prospect of a conviction
- if the prosecution is in the public interest

In considering these matters, we will comply with the Policy of the Director of Public Prosecutions for Victoria (**DPP Policy**) available at www.opp.vic.gov.au.

Reasonable prospect of conviction

Consistent with the DPP Policy, we will consider the following factors when determining whether there is a reasonable prospect of a conviction:

- all the admissible evidence
- the reliability and credibility of the evidence
- the possibility of evidence being excluded
- any possible defence (including statutory defences available under the energy safety laws)
- whether the prosecution witnesses are available, competent and compellable
- any conflict between eye-witnesses
- whether there is any reason to suspect that evidence may have been concocted
- how the witnesses are likely to present in court
- any possible contamination of evidence
- any other matter relevant to whether a jury or magistrate would find the person guilty.

Public interest

If we believe there is a reasonable prospect of a conviction, we will then consider whether the prosecution is in the public interest.

We adopt those considerations published in the DPP Policy which are relevant to the particular matter being assessed, in determining whether the prosecution is in the public interest.

These public interest factors include (but are not limited to):

- the nature and circumstances of the alleged offending, including:
 - the seriousness of the alleged offence and the level of public concern about the alleged offence
 - the extent of the risk posed by the alleged offence to energy safety or reliability
 - the actual or potential consequences of the alleged offence (e.g. in the case of a safety offence, the extent to which the risk of injury is shown)
 - the prevalence of the alleged offence
 - any mitigating or aggravating features of the alleged offending

- the characteristics of the alleged offender, including:
 - the alleged offender’s compliance history (including the alleged offender’s response to any previous ESV’s enforcement and prevention activities)
 - the attitude of the alleged offender(s) (including any proactive steps taken to remedy the offence or efforts to make restitution for any loss caused by the offence)
 - the alleged offender’s age, intelligence, health and any other relevant personal circumstances
 - whether the alleged offender co-operated in the investigation or prosecution of the case, including the investigation or prosecution of others or is prepared to do so
- the impact of the alleged offence on others; for example:
 - any person who has been injured or exposed to risk
 - the family of any person who has been injured or exposed to risk
- the extent of any financial losses suffered by others as a result of the alleged offence
- the need for general deterrence namely, reducing the likelihood that others will commit similar offences
- the need for specific deterrence namely, reducing the likelihood that the alleged offender will commit further breaches
- the effect of prosecution, including:
 - the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court
 - whether the consequences of any resulting finding of guilt would be unduly harsh or oppressive
- the need to maintain public confidence in the administration of the Victoria’s energy safety laws
- the likely length and cost of taking enforcement action
- the availability and efficacy of alternatives to prosecution.

Improper considerations

Our decision whether to prosecute will not be influenced by:

- political pressure or interference
- the race, religion, sex, national origin, political associations, activities or beliefs of the offender or any other person involved
- personal feelings concerning the offence, the offender or a victim
- possible political advantage or disadvantage to the Government or any political group or party
- the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

How we prosecute

Ethics, obligations and duties

In conducting a prosecution, our prosecutors must:

- act independently and impartially
- act fairly to the accused, including by ensuring the disclosure of any material which:
 - is relevant or possibly relevant to an issue in the case
 - raises or possibly raises a new issue whose existence is not apparent from the evidence the prosecution proposes to rely on, or
 - is or may be exculpatoryunless the material is subject to any claim of public interest immunity or client legal privilege or any statutory provisions to the contrary
- assist the court to avoid appealable error

- endeavour to ensure that any submissions of fact or law is soundly based
- work to facilitate the expeditious completion of criminal proceedings
- avoid any real or potential conflict of interest
- where relevant, seek to comply with the *Legal Profession Uniform Law Application Act 2014*, the *Legal Profession Uniform General Rules 2015*, the *Legal Profession Uniform Conduct (Barristers) Rules 2015* and the Victorian Model Litigant Guidelines.

Resolution

We try to resolve prosecutions at all stages of the proceedings, recognising that:

- resolution of matters, particularly early resolution, is an important means of ensuring effective and efficient prosecutions
- resolution may remove the need for victims and witnesses to give evidence
- resolution provides certainty of outcome and reduces associated costs.

Plea offers should be made in writing. If a verbal offer is made, we will respond in writing.

We will record any resolution in writing and provide a copy of the document to the accused or their legal representative prior to the resolution being entered at court. Consistent with the DPP Policy, the document must include:

- the charges to which the accused will plead guilty
- any agreed facts
- any agreement about sentencing submissions
- any agreement about ancillary orders and
- any other matter relevant to the accused's decision to plead guilty.

Resolution of a prosecution requires the consent of the Commission or by general managers under delegation from the Commission on the recommendation of our General Counsel.

Communication with relevant parties

We will communicate with relevant parties regarding decisions to take enforcement action including:

- the alleged offender
- the complainant (if relevant)
- any person injured or exposed to risk as a result of the alleged offence

If a prosecution is brought, we will also notify these persons of the outcome.

Publishing enforcement action and outcomes

We publish information about the nature and outcome of prosecutions on our website: www.esv.vic.gov.au.

We may also publish information about the filing of charges and other enforcement actions where appropriate. This is consistent with performing our functions as the outcomes highlight and deter similar non-compliance and provide an opportunity to educate the community or regulated entities.

Publishing of such information is carried out in accordance with our Privacy Policy.

Further information

Related policy

These guidelines support our Compliance and Enforcement Policy, which is available at www.esv.vic.gov.au.

Feedback and complaints

We encourage feedback about your experience with us and invite people to contact us at info@energysafe.vic.gov.au

If you have any queries in relation to making a complaint contact us on **03 9203 9700** or at complaints@energysafe.vic.gov.au

For more information, visit www.esv.vic.gov.au

For access to Victoria's energy safety laws, visit: www.esv.vic.gov.au/about-esv/energy_regulatory_framework/legislation-and-regulations

Review of this policy

Version	Date	Revision information	Owner	Review date	Authorised by
1.0	December 2021	Policy created	General Counsel	Every 12 months	ESV Commission

Who we are

We are Victoria's 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.

**Note: The information in this document is intended for general use only. We make reasonable efforts to ensure the information in this document is accurate, complete and up to date, however do not accept liability for any loss or damage which may be incurred by any person relying on this document.*