

# 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](http://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 prosecute for breaches of 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. In doing so, we comply with relevant sections of the:

- *Policy of the Director of Public Prosecutions for Victoria (DPP Policy)* available at [www.opp.vic.gov.au](http://www.opp.vic.gov.au). This guideline is consistent with the DPP Policy where relevant.
- *Victorian Model Litigant Guidelines* which set standards for how we behave as a party to legal proceedings.

## Accountability

Decisions on whether to commence a prosecution are made by the Energy Safe Commission (**Commission**) or by members of the Executive Leadership Team (**Executive**) under delegation from the Commission and 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 an indictable offence.

## 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 electrical or gas safety offence is limited to three years from the date the offence is alleged to have occurred, and one year for pipeline works under the Pipelines Act.

## The test for prosecution

A prosecution can only proceed if:

- there is a reasonable prospect of a conviction; and
- the prosecution is in the public interest.

## Reasonable prospect of conviction

Consistent with the DPP Policy, we will consider the following factors when determining whether there is a reasonable prospect of 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 conviction, we will then consider whether the prosecution is in the public interest. In doing so, we will consider the public interest factors published in the DPP Policy, which are relevant to the circumstances of the case.

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
  - the age of the alleged offence (when it happened)
  - the offender's culpability
  - the obsolescence or obscurity of the law
  - community protection, including the:
    - extent of the risk posed by the alleged offence to energy safety or reliability; and

- actual or potential consequences of the alleged offence
  - any mitigating or aggravating features of the alleged offending
- the profile and behaviour 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 alleged offender’s age, physical health, mental health or disability and any other relevant personal circumstances
  - whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the offender has done so
- factors relating to the victim of the alleged offence, including:
  - the attitude of the victim to a prosecution
  - the entitlement of the victim to compensation
  - the age, physical health, mental health or disability of the victim
- other factors relevant to the case, including:
  - the prevalence of the offence and the need for:
    - specific deterrence namely, reducing the likelihood that the alleged offender will commit further breaches
    - general deterrence namely, reducing the likelihood that others will commit similar offences
  - the likely sentence, including 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 availability and efficacy of alternatives to prosecution
  - whether a sentence has already imposed on the offender which adequately reflects the criminality
  - the age, physical health, mental health or disability of any witnesses
  - the likely length of a trial
  - any circumstances that would prevent a fair trial.

## 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 alleged offender or any other person involved
- personal feelings concerning the offence, the alleged 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
- assist the court to avoid appealable error
- endeavour to ensure that any submissions of fact or law are soundly based
- work to facilitate the expeditious completion of criminal proceedings
- use temperate or dispassionate language
- avoid any real or potential conflict of interest
- endeavour to ensure that any conflict of interest involving a defence practitioner is acted upon

- 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, where relevant.

## Resolution

We may resolve prosecutions where it is in the public interest to do so, 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.

In determining whether a proposed resolution is in the public interest, we will consider:

- whether there is a reasonable prospect of a conviction of each offence charged
- the strength and evidence of each charge
- any defences
- the likelihood of acquittal on any of the charges
- whether the charge or charges to which accused will plead guilty:
  - adequately reflect the accused's criminality
  - allow for the imposition of an appropriate sentence
  - allow for the making of all appropriate ancillary orders
- the views of the victim and the informant about the proposed resolution.

Where practical, 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.

Resolution of a prosecution requires the consent of the Commission or members of the Executive under delegation from the Commission and on the recommendation of our General Counsel.

## Publishing enforcement outcomes

We publish information about the nature and outcome of prosecutions on our website: [www.esv.vic.gov.au](http://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](http://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](mailto: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](mailto:complaints@energysafe.vic.gov.au)

For more information, visit [www.esv.vic.gov.au](http://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](http://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
2.0	September 2023	Revised to reflect changes to DPP Policy	General Counsel	Every 3 years (or as legislative change requires)	CEO

## 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.*