

# Compliance and enforcement

## Policy

**Safety is our number one priority at Energy Safe Victoria (ESV). We will never walk past an unsafe situation and will always act to prevent harm and ensure community safety in the electricity, gas and pipeline industries. We expect regulated entities to know their regulatory obligations and will take enforcement action where required to achieve compliance and promote safety.**

## Purpose

The Compliance and Enforcement Policy describes our approach to promoting and enforcing compliance with the energy safety legislative framework in Victoria.

## Our role as energy safety regulator

### What we do

We are Victoria's independent safety regulator responsible for electricity, gas and pipeline safety. We have a strong commitment to the safe and efficient supply and use of electricity, gas and pipelines shared between the community, industry and regulators. We want safety to be paramount so that Victorians can be confident that the energy they rely on is provided and used safely and efficiently.

As a strong and proactive regulator, our role is to prevent harm by monitoring and enforcing compliance with Victoria's energy safety legislative framework, comprising the *Electricity Safety Act 1998* (Electricity Safety Act), the *Gas Safety Act 1997* (Gas Safety Act) and the *Pipelines Act 2005* (Pipelines Act) and regulations made under each of those Acts.

We do this by:

- working with regulated entities to ensure that energy safety requirements are known, understood and complied with
- working with community to provide advice and increase awareness of energy safety
- monitoring and enforcing compliance with the energy safety legislative framework
- targeting regulatory action (informed by technical safety expertise and data) to achieve the safest outcomes
- holding regulated entities to account when they do not comply with energy safety requirements that may have an impact on safety.

Our core regulatory functions are to:

### License, accept and approve

We permit entities within the regulated energy sectors to conduct activities and provide services, operate infrastructure and installations, and supply and sell equipment and appliances.

As the energy safety regulator, we:

- license electrical workers and register electrical contractors
- make decisions that permit the sale, supply, installation and use of electrical and gas appliances/devices

- approve safety management schemes, safety cases and safety management plans for the construction, operation, maintenance and modification of electrical and gas and pipeline infrastructure, networks and industrial installations.

## Monitor energy safety and enforce compliance

We provide the community with assurance that energy activities and usage are safe by monitoring that regulated entities have complied with statutory requirements - and have met their safety duties. We do this through monitoring and detecting non-compliance using a range of proactive and responsive measures that are targeted through consideration of the likelihood and consequence of the potential risks.

## Educate and encourage

We work with the community and industry to establish safety standards and requirements, and encourage compliant performance.

We engage with the community and industry to ensure they understand what they must do to comply with energy safety laws and contribute to the safe conveyance, supply and use of energy in Victoria.

## Enforce compliance

We are empowered by Victorian energy safety laws to take various actions to enforce compliance with the law.

## How we do it

We detect non-compliance and safety risks through a variety of means, including:

- incident reports from energy businesses, emergency services and the community
- regular periodic compliance reporting from operators of electricity networks, gas networks and pipelines
- inspections and audits
- investigations of serious incidents and complaints.

Our enforcement officers (electricity) and inspectors (gas and pipelines) are appointed to monitor and act in relation to non-compliance and safety risks. They are able to exercise powers under energy safety laws including to enter premises, seize certain items and issue notices and infringements.

## What energy safety means

Victoria's energy safety laws recognise that gas and electricity can be inherently dangerous, and that safety risks cannot be completely eliminated. Safety is achieved through compliance with specified legal duties and compliance requirements for regulated entities to manage the risks to people and property of working with, or using, fuel gases and electricity.

We define 'safe' as; to mitigate or eliminate the circumstances that can lead to an electrical incident, a gas incident or any other energy safety incident. Incidents include actual as well as potential incidents that can cause death, serious injury, or damage to property.

We expect regulated entities to prevent or mitigate the potential for incidents to occur in order to achieve acceptable safety outcomes.

## Who we regulate

Victorian energy safety laws establish duties and compliance requirements for regulated entities to manage risks to achieve energy safety outcomes for the community.

These compliance requirements and safety duties are specific to certain entities in each industry sector.

<b>Electricity</b>	Entities performing or with direct interests in the safety of electrical work, equipment and infrastructure including: <ul style="list-style-type: none"> <li>• major electricity companies</li> <li>• licensed electrical workers</li> <li>• registered electrical contractors</li> <li>• suppliers of electrical equipment</li> <li>• equipment certifiers</li> <li>• rail traction network operators</li> <li>• councils</li> <li>• property owners and occupiers.</li> </ul>
<b>Gas</b>	Entities performing or with direct interests in the safety of gasfitting work, appliances and infrastructure including: <ul style="list-style-type: none"> <li>• gas companies</li> <li>• LPG suppliers</li> <li>• gasfitters</li> <li>• suppliers of gas appliances</li> <li>• property owners and occupiers.</li> </ul>
<b>Pipelines</b>	Entities managing or with interests in, or whose activities may impact on, the safety of licensed pipelines including: <ul style="list-style-type: none"> <li>• pipeline licensees</li> <li>• third-party contractors working near licensed assets</li> <li>• property developers.</li> </ul>

The use of the term ‘regulated entity’ in this policy is intended to be a broad term to capture all of these different types of persons (both natural persons and corporate entities) who are subject to compliance obligations under the energy safety laws.

## Our approach to compliance and enforcement

We are committed to being a strong regulator that protects the Victorian community by preventing harm to people and property. We seek to achieve the highest levels of safety to prevent deaths, serious injuries and incidents while also meeting community expectations.

### Our objectives

Our approach to compliance and enforcement intends to achieve the following objectives:

Rectify unsafe situations to prevent harms
Prevent or contain harms where the unsafe situation has not been rectified
Remediate non-compliances
Require the cause of non-compliances to be addressed
Penalise offenders for proven misconduct, and deter them from future non-compliant conduct
Deter others from engaging in similar contraventions through general education on the consequences of non-compliance
Meet community expectations and act in the public interest with respect to the enforcement of the law

## The principles we apply

We are guided by the following seven principles when carrying out our compliance and enforcement powers.

<b>Targeted</b>	We target our compliance and enforcement activities to areas that will have the most impact to safety outcomes.
<b>Proportionate</b>	Our enforcement actions are proportionate to the issue that we are responding to by balancing the level of non-compliance and the risk to safety.
<b>Consistent</b>	We are consistent in our compliance and enforcement approach so that comparable levels of non-compliance and risk to safety will result in comparable enforcement actions.
<b>Factual</b>	Our actions are fact-based through the collection of evidence and information.
<b>Impartial</b>	We are an independent regulator and take enforcement action in an impartial and transparent manner.
<b>Proactive</b>	We are proactive in our compliance and enforcement approach, with our aim always being to prevent harm before it can occur.
<b>Constructive</b>	We maintain an active and constructive engagement with regulated entities and the community to promote compliance and safety.

## Promoting compliance

Achieving compliance is the responsibility of regulated entities.

We will support regulated entities to do this by:

- informing and educating regulated entities and the community at large about energy safety
- meeting with industry, the community and other stakeholders to better understand and clarify areas of uncertainty
- publishing compliance guidance to support regulated entities to understand how to comply
- monitoring and auditing compliance and reporting back to regulated entities
- publishing safety checklists for electricians and gas fitters.

## How we enforce compliance

### Enforcement decision criteria

Where a potential non-compliance is identified, we will assess and determine our enforcement response based on the available action that is proportionate to the nature of the offence, the actual harms caused, significance of potential risk outcomes, and the conduct of the regulated entity responsible for the non-compliance.

We use the following enforcement decision criteria to assist with determining what enforcement action to take:

<b>Effect</b>	Will the enforcement action achieve our enforcement objectives?
<b>Consequence</b>	Is the enforcement action being taken reasonable, taking into account the gravity of the harm or potential harm involved?
<b>Intent</b>	Will the enforcement action reflect the regulated entity's efforts to comply at the time of the offence?
<b>Prior compliance performance</b>	Does the enforcement action account for the regulated entity's compliance history?

<b>Unintended consequences</b>	Will the enforcement action have any undesirable outcomes on the person or business, or any other part of the community, such as creating hardship, psycho-social impacts or inadvertently encouraging non-compliant or poor conduct by others?
<b>Corrective action</b>	Does the enforcement action take account of any demonstrated actions by the regulated entity to address the cause of, or to rectify, the non-compliance?

## Enforcement actions

There are a range of enforcement actions that we may take to monitor and enforce compliance with the energy safety laws. These actions are broadly consistent across the electricity and gas sector laws, although there are some differences.

There may be circumstances where more than one enforcement action is warranted (such as prosecuting for supplying unsafe electrical equipment and requiring a recall of that equipment from the market).

## Educate

We educate and support regulated entities to maintain awareness of compliance requirements in various ways, including by publishing compliance guidance and operating advice lines.

## Require information

We may issue information notices in specified circumstances requiring a person to give us information, to produce documents or to give us reasonable assistance. We use these actions to support our investigations and to determine compliance with the energy safety laws.

## Warn

We may issue a warning letter to a regulated entity that specifies that a non-compliance has been identified, instructs the entity to comply in the future and warns that any further breaches of the energy safety laws by that entity may be dealt with by more severe penalties and sanctions. We expect that regulated entities who are warned to improve their compliance performance. We may also issue official warnings for infringement notice offences.

## Rectify and make safe

We may issue a rectification notice to a regulated entity requiring rectification of non-compliant electrical installation work or gasfitting work.

We may also require disconnection of gas or electricity supply to premises where unsafe gas and electrical installations have been found until the specified unsafe defects are rectified.

## Improve

We may issue an improvement notice to regulated entities who are contravening a provision of energy safety legislation. We will generally consider issuing an improvement notice to businesses that operate under gas safety cases and electricity safety management schemes. In these cases, the notices require the business to improve their processes and procedures to eliminate continued or repeated non-compliance.

## Direct

A direction may be issued to take action to make a gas or electricity emergency situation safe including taking a specific action that will address the potential for harms (and can include ceasing particular electrical work practices and uses of electrical equipment or gas appliances). Directions can also require that action is

taken in order to prevent unsafe situations from arising and for the prevention and mitigation of bushfires that may arise out of incidents involving electric lines or electrical installations.

### Require action

We may require or direct relevant persons to perform specified acts for the purpose of keeping trees clear of electric lines or to take action to install, operate and maintain a mitigation system to mitigate stray current erosion.

### Audit and validation

We may require certain regulated entities, such as specified operators with bushfire mitigation plans, gas companies and major electricity companies, to obtain independent audits and validation of their compliance at their own cost.

### Discipline

We may take disciplinary action against a licenced electrical worker or registered electrical contractor.

- After conducting an inquiry into the conduct of a licensed electrical worker or registered electrical contractor, we may suspend the worker's licence or contractor's registration for a period of up to 12 months or cancel it.
- We may also place conditions on a licence or registration or require the holder of a licence to complete training, courses or exams.
- Disciplinary action will generally be considered if there is a repeated pattern of non-compliance or if there has been fraudulent or negligent conduct.

### Recall

We may issue a notice requiring the recall of unsafe equipment or appliances supplied or sold to consumers. A recall notice will be considered where a product is found to be unsafe (e.g. the product poses a risk of electric shock, electrocution or fire) and the supplier has not initiated a voluntary recall. Recall notices require suppliers to inform the public of the safety issue and provide instructions or action they need to take. This often involves returning the product to the place of purchase, and can sometimes involve a requirement on a supplier to arrange for technicians to attend a residential premises to test, repair or modify installed gas or electrical equipment.

### Prohibit

We may issue a notice prohibiting the further supply or sale of unsafe electrical equipment or gas appliances to consumers. Prohibitions apply to all suppliers of a product including manufacturers, importers, wholesalers, retailers and tradespeople.

### Require a revised plan or determine a plan

Certain regulated entities such as major electricity companies, gas companies and pipeline operators are required to have safety management schemes (electricity), plans (pipelines) or cases (gas) to operate their facilities and networks. We may accept or provisionally accept these schemes, plans or cases, require them to be revised or amended and, in relation to schemes or cases, determine them if the scheme or case is not submitted or is submitted to us but is not accepted.

### Infringe

We may issue an infringement notice to a regulated entity that imposes a financial penalty for breaches of specific energy safety laws, and allows specific contraventions of energy safety laws to be dealt with by payment of a fine, rather than through court proceedings.

## Prosecute

We may prosecute a regulated entity for breaches of energy safety laws. We will consider prosecution in cases that are generally more serious in nature or where there has been repeated or wilful non-compliance. We must be satisfied that there is a reasonable prospect of successfully proving the offence beyond reasonable doubt before proceeding with a prosecution. Prosecutions can result in fines or undertakings being imposed by a court and the requirement to pay some of our legal costs.

## Where to find more information

### Publicising compliance and enforcement

We publish information regarding our compliance activities and enforcement outcomes on our website:

[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:

- Energy Safe Victoria: [www.esv.vic.gov.au](http://www.esv.vic.gov.au)
- Energy safety legislation: [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) (then select “Victorian Law Today”, then choose Electricity Safety Act 1998 / Gas Safety Act 1997 / Pipelines Act 2005 to view those Acts)