

# Gas Asset Damage

## Enforcement Strategy



### Purpose

To ensure Energy Safe Victoria (ESV) maintains a consistent approach when dealing with entities responsible for damage to a gas main or gas service on the gas distribution network.

### Effective date

The strategy applies from the date of signature by the General Manager, Gas and Pipeline Safety and Technical Regulation.

### Basis of strategy

The strategy exists in the context of and is subordinate to ESV's published Compliance and Enforcement Policy (DOC/13/4094) and Compliance Strategy (DOC 13 5579).

It provides a decision making framework when dealing with entities responsible for damage to the gas distribution network.

### General principles

Compliance recognises the importance of providing all participants with comprehensive information and education about their duties and responsibilities. This approach combines encouraging good practise with deterring unacceptable performance.

Consistent with ESV's organisational values, its compliance and enforcement activities should be constructive, accountable, transparent and effective, and its enforcement actions should be targeted, proportionate, consistent and fair.

ESV balances the use of positive motivation and deterrence to improve safety.

Depending on the circumstances, ESV has a range of enforcement measures where compliance is not achieved that include:

- seeking voluntary compliance
- issuing a warning letter or infringement notice
- prosecution.

ESV's Compliance Strategy policy<sup>1</sup> has more information about these enforcement tools.

### Breach and enforcement action matrix

The purpose of the breach and enforcement matrix is to provide decision making guidance to a range of commonly reported infrastructure matters including:

- Gas Asset Damage; a third party asset strike on the gas distribution network (Gas Safety Act 1997 Section 79B Gas Safety Act 1997 Section 79D).
- Instances when mitigating circumstances are identified

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<sup>1</sup> A broader policy document that places these guidelines in context as part of ESV's overall compliance and enforcement functions.

**Breach and enforcement action matrix**

<b>Behaviour</b>	<b>Circumstances of incident</b> <b>Encroaching or damaging parties must exhibit:</b>	<b>ESV action</b>
Able and willing	At least 2 of the following behaviours: <ul style="list-style-type: none"> <li>Engaged and compliant.</li> <li>Unintentional breach or self-reported breach.</li> <li>Minor breach.</li> <li>No history of breach.</li> </ul>	<ul style="list-style-type: none"> <li>Engagement, education, and guidance.</li> <li>Communication.</li> </ul>
Unable and willing	One or more of the following behaviours: <ul style="list-style-type: none"> <li>Outlines reasonable efforts to locate asset prior to commencing work, and post-incident is receptive to education and facilitate future compliance and maintain awareness of ongoing obligations.</li> </ul>	<ul style="list-style-type: none"> <li>Warning letter.</li> </ul>
	<ul style="list-style-type: none"> <li>Reckless and careless instances demonstrating no consideration or regard for safe work procedures.</li> <li>Previous non-compliance.</li> </ul>	<ul style="list-style-type: none"> <li>Infringement.</li> </ul>
Able and unwilling	One or more of the following behaviours: <ul style="list-style-type: none"> <li>Previously provided with advice and information from ESV but general failure to address breaches of similar nature previously.</li> <li>Resistance to compliance or lack of compliance.</li> <li>Does not engage with ESV.</li> <li>Made no effort to locate asset prior to commencing work.</li> <li>Post-incident, does not undertake any corrective actions.</li> </ul>	<ul style="list-style-type: none"> <li>Prosecution.</li> </ul>
Unable and unwilling	One or more of the following behaviours: <ul style="list-style-type: none"> <li>Does not engage with ESV.</li> <li>Previous reported activity of a similar nature that demonstrates behaviour has not improved or changed.</li> <li>Uncooperative attitude towards authority</li> <li>Deliberate non-compliance.</li> </ul>	<ul style="list-style-type: none"> <li>Prosecution.</li> </ul>

NOTE: Mitigating circumstances may be considered prior to enforcement action being taken against a damaging/ encroaching entity when:

- a site-specific issue is identified and confirmed (such as an unmarked change of depth or alignment)
- the asset owner provided inaccurate asset plans
- the entity demonstrates that reasonable efforts were made to locate the asset prior to commencing work.

## Enforcement options

- An Infringement notice or prosecution under the provision of Section 79B of the Gas Safety Act 1997.
- Prosecution for a breach of Section 79D of the Gas Safety Act 1997. (There is no provision to issue an infringement notice under this section.)
- A warning letter for offences as per the Gas Safety Act 1997 or Pipelines Act 2005.