

Transmission Pipeline Encroachment Enforcement Strategy



Purpose

To ensure Energy Safe Victoria (ESV) maintains a consistent approach to taking action when dealing with entities responsible for encroachment on Licensed Pipelines..

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 encroachments on the Licensed Pipelines

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 policy¹ 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:

- Excavation within 3 Metres of a Gas Transmission Pipeline (Gas Safety Act 1997 Section 79C).
- Excavation within 3 Metres of a Licensed Pipeline (Pipelines Act 2005 Section 118).
- Instances when mitigating circumstances are identified

¹ 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

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

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

- Infringement or prosecution under the provision of Section 79C of the Gas Safety Act 1997.
- An infringement notice or prosecution under the provision of Section 118 of the Pipelines Act 2005
- A warning letter for offences as per the Gas Safety Act 1997 or Pipelines Act 2005.