

Consultation Notice

Open Flued Gas Space Heaters— Proposed prohibition of supply and declaration of non-acceptance



The Victorian Energy Safety Commission is currently assessing whether to exercise its enforcement powers under the *Gas Safety Act 1997 (Act)* to prohibit the sale and supply of open flued gas space heaters (**OFGSHs**) (including a second hand OFGSH) which do not comply with the current AS/NZS 5263.1.3 standard (**Standard**) in Victoria and to declare that all OFGSHs, (including a second hand OFGSH) that do not meet the latest safety requirements specified in the Standard are no longer accepted for the purposes of supply and sale in Victoria.

For clarity, an OFGSH means an open-flued gas space heater appliance that:

1. has the primary function of heating an indoor room or space in which it is installed through either radiant or convective heat, or a combination of both; and
2. conforms with the thermal efficiency requirements of AS/NZS 5263.1.3; and
3. is designed to be connected to a flue system; and
4. draws air for combustion from the room or space in which it is installed.

The purpose of this notice is to consult with businesses and individuals that may be significantly impacted by the enforcement actions that are currently being considered.

Background

On 29 December 2020, the Department of Environment, Land, Water and Planning (**DELWP**) released a Regulatory Impact Statement (**RIS**) prepared by Deloitte Access Economics which detailed two different options to support the phase out of OFGSHs:

- Option 1: Proposed an amendment to the *Gas Safety (Installation) Regulations 2018* to prohibit the installation of new or replacement OFGSHs that do not meet additional safety requirements. This option also considered the proposed regulation amendment in the context of ESV making a separate decision to exercise its powers under one or both of sections 69A and 76 of the Act as further discussed in this notice.
- Option 2: Proposed to fast-track the development of proposed amendments to the relevant Australian Standards (AS/NZS 5263.1.3 and AS/NZS 5263.1.8) and through the issuance of a Gas Technical Regulators Committee (**GTRC**) Technical Guidance Bulletin. The proposed amendments and guidance bulletin were intended to ensure that only OFGSHs fitted with additional safety features could be supplied after 1 January 2022.

The RIS public submission period closed on 22 February 2021.

Following detailed consideration of all submissions, the government elected to adopt Option 2 to phase out OFGSHs. However, following recent consultation with DELWP and industry, Energy Safe Victoria (**ESV**) is not satisfied that the preferred approach has been effectively carried out by gas appliance manufacturers and is now considering taking appropriate enforcement action, as set out in the RIS in Option 1¹ namely, to exercise its powers under s 69A and s 76 of the Act to prohibit the supply of existing OFGSHs in Victoria which do not comply with the current Standard and to declare that OFGSHs that do not meet the latest safety requirements specified in the Standard are no longer accepted for the purposes of supply and sale in Victoria.

¹ The regulatory impact statement and its outcome which is set out in the Department's Statement of Reasons is available here: <https://engage.vic.gov.au/open-flued-gas-space-heaters>

Proposed enforcement actions

Prohibition on the supply of OFGSHs in Victoria

The Victorian Energy Safety Commission is considering whether to issue a notice under section 76(1) of the Act that will prohibit the supply and sale of all OFGSHs in Victoria, including a second hand OFGSH, whether sold online, through a shop front or other marketplace, that do not meet the following requirements:

1. the OFGSH has a fan-assisted combustion system; and
2. the burner of the OFGSH only operates while the combustion fan is functioning; and
3. the OFGSH incorporates a fail-safe interlock that:
 - a. will shut down within 15 minutes if spillage of combustion products occurs under any negative pressure conditions; and
 - b. in the event of a shut down referred to in subparagraph (a):
 - i. will not allow the appliance to automatically reset; and
 - ii. will require the use of a tool for access to manually reset the appliance; and
4. the carbon monoxide/carbon dioxide ratio of the combustion products of the OFGSH does not exceed 0.02 after 10 minutes operation under any operating conditions; and
5. when the operation of the fail-safe interlock is tested in a test room under negative pressure conditions, the concentration of carbon monoxide, in parts per million (ppm), in the combustion products from the test room extraction system does not exceed 90 ppm.

A copy of the proposed Prohibition Notice is included as **Annexure 1** to this consultation paper for review and feedback.

Summary of reasons for prohibition notice

It appears to ESV that OFGSHs that lack the features listed above are, or are likely to become, by reason of their design or construction, unsafe to use for the following reasons:

- (a) As OFGSHs draw their air from the room or space in which they are installed they are susceptible to the effects of negative pressure in buildings caused by insufficient ventilation when combined with the operation of air extraction systems such as bathroom exhaust fans or kitchen range hoods. A negative pressure in a building can cause the products of combustion from an OFGSH including carbon monoxide (**CO**) to be drawn into the building.
- (b) If ventilation is insufficient and the negative pressure is high enough, airflow through the flue may become restricted or in some cases even reversed. If the supply of fresh air to the burner is deficient, an OFGSH may produce high levels of CO, which in turn could be drawn into the building as described above.
- (c) The usage patterns of OFGSHs are such that these appliances are operated for significant periods of time and, as a result, allow for a build-up of dangerous levels of CO in houses when the appliance is operated in a negative pressure environment making the OFGSH unsafe to use.

It also appears to ESV that prohibition of the supply or sale of all OFGSHs that lack the features listed above, is warranted because of the risk of death or injury to people arising out of the use of OFGSH that lack those features. In particular, the risk of injury or death caused by CO poisoning if an OFGSH spills high levels of CO within a premises. In assessing this risk, ESV has had regard to the death in July 2017 of Ms Sonia Sofianopoulos as a result of carbon monoxide poisoning and the deaths of Chase and Tyler Robinson from carbon monoxide poisoning in May 2010.

Effect of prohibition notice

The prohibition notice under consideration will, from 1 July 2022 (or the date of the prohibition notice), apply to all sale and supply of OFGSHs in Victoria at all levels of the OFGSH supply chain. This will include sale and supplies made in Victoria by manufacturers, importers, wholesalers, retailers and tradespeople including plumbers and plumbing businesses.

From 1 July 2022, it will be an offence for any person to supply a prohibited OFGSH, including a second hand OFGSH, whether sold online, through a shop front or other marketplace, to any person even if that supply is made without cost. A maximum penalty of 200 penalty units (in the case of a natural person) or 1000 penalty units (in the case of a body corporate) will apply to any non-compliance with the requirements of the prohibition.

Declaration of non-acceptance of OFGSHs

The Victorian Energy Safety Commission is also considering whether to issue a declaration of non-acceptance under section 69A of the Act in relation to all OFGSHs which do not meet the requirements 1 to 5 as set out above (the **prescribed class**). The proposed declaration of non-acceptance will render any OFGSH, including a second hand OFGSH, falling within the prescribed class, which have previously been accepted by a Conformity Assessment Body (**CAB**), to become no longer accepted for the purposes of the Act.

To clarify, this declaration would not apply to any accepted OFGSHs that meets requirements 1 to 5 as set out above.

A copy of the proposed Non-Acceptance Notice is included as **Annexure 2** to this consultation paper for review and feedback.

Summary of reasons for the declaration

It appears to ESV that OFGSHs which come within the prescribed class are, or are likely to become, unsafe to use for the following reasons:

- (a) As OFGSHs draw their air from the room or space in which they are installed they are susceptible to the effects of negative pressure in buildings caused by insufficient ventilation when combined with the operation of air extraction systems such as bathroom exhaust fans or kitchen range hoods. A negative pressure in a building can cause the products of combustion from an OFGSH including carbon monoxide (CO) to be drawn into the building.
- (b) If ventilation is insufficient and the negative pressure is high enough, airflow through the flue may become restricted or in some cases even reversed. If the supply of fresh air to the burner is deficient, an OFGSH may produce high levels of CO, which in turn could be drawn into the building as described above.
- (c) The usage patterns of OFGSHs are such that these appliances are operated for significant periods of time and as a result allow for a build-up of dangerous levels of CO in houses when the appliance is operated in a negative pressure environment making the OFGSH unsafe to use.

Effect of declaration

From the date the declaration is published in the Government Gazette, all accepted OFGSHs, including a second hand OFGSH, falling within the prescribed class (i.e. that do not meet requirements in 1 to 5 as set out above) will become not accepted for the purposes of the Act.

It will be an offence to supply the previously accepted OFGSHs, including second hand OFGSH, from that date (see section 71(1)(a) of the Act) or to install one of them (see section 70(1) of the Act). Both offences carry a maximum penalty of 40 penalty units (in the case of a natural person) or 200 penalty units (in the case of a body corporate) any breaches of these provisions.

Feedback and comments

The Victorian Energy Safety Commission wishes to consult industry stakeholders in relation to the proposed prohibition and non-acceptance declaration before making a determination on the proposed enforcement action.

You are invited to provide written comments in relation to any of the following matters:

- The need for, scope and timing of the proposed prohibition and declaration that is under consideration;
- The impact that the proposed prohibition and declaration may have on your business or the gas appliance industry;
- The wording of the draft prohibition notice and declaration notice including any errors identified or other issues that you believe require correction;
- Any other issue or matter that you would like ESV to consider before ESV decides whether or not to proceed with either or both of the proposed enforcement actions as described above.

Written comments are due by **9 June 2022** and may be submitted to: Consultation@energysafe.vic.gov.au

Privacy and publication of submissions

All submissions will be treated as public documents and may be published online and/or referenced publicly.

The contact information you provide, such as your email address, may also be used to contact you should we need to clarify your submission or provide you with project updates.

For further information refer to the ESV privacy policy: <https://esv.vic.gov.au/pdfs/esv-privacy-policy/>

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.

More information is available on the ESV website: www.esv.vic.gov.au