

EPA's approach to submissions regarding imposing a conviction



Environment
Protection
Authority Victoria

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Policy

1 Issue dealt with by this policy

This policy sets out the approach of the Victorian Environment Protection Authority (EPA) to submissions regarding the imposition of a conviction, and aggravating and mitigating factors to be taken into account.

There is a need for EPA to ensure transparency and clarity by stating in this policy how it will apply its prosecutorial discretion:

- in relation to submissions it will make regarding the imposition of a conviction
- in a fair, proportionate and authoritative manner for each prosecution matter.

2 Relevant legislation and guidelines

2.1 What is a 'conviction'?

A court has a discretion, after a finding of guilt, to record that finding of guilt with or without a conviction.¹ The terms 'conviction' and 'previous conviction' are defined in the *Criminal Procedure Act 2009* (Vic) as follows:²

- 'conviction' [in chapter 6] includes a finding of guilt by a court, whether or not a conviction is recorded
- 'previous conviction' means a prior conviction or finding of guilt by a court.

The recording of a conviction may have more serious consequences for a person than recording of a non-conviction. For example, a person (whether natural person or corporate body) with a conviction recorded may be restricted from undertaking certain activities compared to those without a previous conviction. Such restrictions could apply in areas including (but not limited to):

- business and trade
- employment
- holding a public office
- directorship of a company
- obtaining insurances
- obtaining accreditations
- migration.

2.2 Environmental laws

This policy applies to all prosecutions conducted by EPA for alleged breaches of the *Environment Protection Act 1970* (EP Act), the *Pollution of Waters by Oils and Noxious Substances Act 1986* (POWBONS Act) and relevant subordinate legislation under both these Acts. The offence provisions in that legislation:

- can apply to both natural persons and corporate entities

- are either summary offences or indictable offences that are triable summarily.³

2.3 EPA's Compliance and Enforcement Policy

EPA's *Compliance and Enforcement Policy* (C&E Policy) articulates EPA's approach, method and priorities in ensuring compliance with the EP Act, POWBONS Act, and the associated subordinate legislation under both these Acts, and exercising its compliance and enforcement powers.

This is a supplementary policy to the C&E Policy and should be read in the context of, and subject to the C&E Policy.

As with all supplementary policies this policy:

- is consistent with and supports the principles and aims of the C&E Policy
- will be reviewed to ensure its ongoing effectiveness and relevance, and may be modified by EPA at any time.

For copies of EPA's C&E Policy and other supplementary policies see www.epa.vic.gov.au.

2.4 Guidelines of the Director of Public Prosecutions

In deciding whether or not to prosecute, EPA adopts the *Guidelines of the Director of Public Prosecutions* (DPP) (Prosecution Guidelines).⁴

For a copy of the Prosecution Guidelines see www.opp.vic.gov.au.

2.5 Victorian Government's Model Litigant Guidelines

The *Victorian Government's Model Litigant Guidelines* are policy guidelines that set standards for how all government departments, agencies and their lawyers should behave as a party to legal proceedings.

Broadly, the guidelines provide that the State should act fairly and consistently, avoid litigation where possible, pay legitimate claims without litigation and keep litigation costs to a minimum.

For a copy of the *Model Litigant Guidelines* see www.justice.vic.gov.au.

2.6 Sentencing Act 1991 (Vic) and Criminal Procedure Act 2009 (Vic)

The *Criminal Procedure Act 2009* (the CP Act) and *Sentencing Act 1991* (Vic) (the Sentencing Act) both provide relevant guidance regarding the nature of a conviction and the imposition of a conviction by a court.

3 EPA's policy position

Sentencing, including whether or not a conviction is warranted for an alleged offence, is always a matter for the discretion of the relevant court.

1 See: *Sentencing Act 1991*, s.7 & s.8.

2 See *Criminal Procedure Act 2009*, s.3.

3 For further information about indictable offences that are triable summarily see EPA Policy - *EPA's approach to choice of jurisdiction for indictable offences that are triable summarily*.

4 In particular, *Policy 2: the Prosecutorial Discretion*, available at www.opp.vic.gov.au

EPA's approach to submissions regarding imposing a conviction

In making its submissions to the court regarding imposition of a conviction, broadly, EPA will state that environmental offences are serious matters. Accordingly, EPA is of the view that imposition of a conviction is warranted for all persons who offend against environmental offences.

4. act in accordance with the Victorian Government's *Model Litigant Guidelines*.

4 How EPA will apply the policy

EPA will apply its discretion and take mitigating and aggravating factors into account in making submissions concerning imposition of a conviction, based on the specific facts and circumstances of each matter.

Submissions will take into account relevant guiding principles as expressed:

- in the Sentencing Act⁵
- in the EP Act⁶
- in case law that further develops or elaborates on sentencing principles.

For example, the Sentencing Act provides that in exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case. Those circumstances include:⁷

- the nature of the offence
- the character and past history of the offender
- the impact of the recording of a conviction on the offender's economic or social well-being, or on his/her employment prospects.

Other examples of relevant factors EPA will consider in its submissions include (but are not limited to):

- nature of the impact to the environment and community
- duration of the impact
- level of co-operation of the accused party with EPA
- prevalence of the offence
- accused party's culpability (that is whether the alleged offending was intentional, negligent or inadvertent).

As discussed above, the CP Act provides a definition of 'conviction', stating '...includes a finding of guilt by a court, whether or not a conviction is recorded.'⁸ The Sentencing Act also distinguishes a conviction as an independent sentencing order available to a court, and provides that a finding of guilt is a prerequisite to the imposition of a conviction by a court.⁹

In this regard EPA acknowledges that although the imposition of a conviction is an order independent from a finding of guilt by a court, the term 'conviction' may also refer to a finding of guilt.

EPA will apply this policy as follows:

1. apply the Prosecution Guidelines to all duty-holders
2. apply the Prosecution Guidelines in the context of EPA's principles of compliance and enforcement, set out in the C&E Policy
3. undertake prosecution proceedings in a manner that avoids unnecessary public expenditure

⁵ See *Sentencing Act 1991* (Vic), s.8.

⁶ See *Environment Protection Act 1970* (Vic), s.1A - s.1L.

⁷ See *Sentencing Act 1991* (Vic), s.8.

⁸ See *Criminal Procedure Act 2009*, s.3 and part 6.

⁹ See *Sentencing Act 1991* (Vic), s.7.