

### **3.3 Response to Regulatory Impact Statement and Exposure Draft - Electricity Safety (Electric Line Clearance) Regulations 2020**

#### **Abstract**

The current Electricity Safety (Electric Line Clearance) Regulations 2015 (ELC) sunset on 28 June 2020. Energy Safe Victoria (ESV) has issued draft proposed regulations for comment.

Due to the tight timeframes an officer submission was provided to ESV on 6 March 2020. Municipal Association of Victoria (MAV) have also provided a submission to ESV that is largely informed by Boroondara advice.

The regulation is primarily the result of bushfires started by electrical assets in High Bushfire Risk Areas (HBRA). The requirements in the Low Bushfire Risk Areas (LBRA) have not been critically challenged as “fit for purpose” to date because the focus has justifiably been on compliance in the HBRA. Boroondara is categorised as a Low Bushfire Risk Area.

The process for feedback is too tight for genuine consideration of Council’s and MAV’s concerns by ESV. Given the sunset date of 28 June. Since the last regulation update the local community residual risk in LBRA has not changed, however the tolerance of ESV and Distribution Businesses (DB’s) has. This has given rise to changes in the new draft regulations, one of which is not in the best interest of the Boroondara community.

The draft regulations will allow ESV to issue infringement notices of up to \$45,000 for individual non-complaint trees. Officers have two immediate concerns with this approach, the first is that the proposed change was not disclosed in the Regulatory Impact Statement, which is a document with the sole purpose of disclosing the impact of the proposed regulations. This presents a significant transparency issue for local governments seeking to understand impacts of the proposed regulations on their communities. The second is the degree of impact. The draft regulation proposes that ESV can issue an infringement notice of \$41,305 for any vegetation located within the clearance space, regardless of whether it poses a material risk or not.

In addition to this, officers suggest the current review of these Regulations should address the following:

1. The current Regulations are inadequate in striking the appropriate balance between the known safety and outage risks, with the amenity benefits of mature vegetation and environmental benefits of tree canopy, in Low Bushfire Risk Areas (LBRA) for clearance around Low Voltage (LV) lines. These regulations, if enforced as drafted, will likely have the following impacts on Boroondara and its community:
  - Approximately 1,300 trees will need to be removed.
  - Significant loss of tree canopy of approximately 650 trees.
  - Approximately \$3.5m in costs for removals, pruning and engineering solutions.

2. The Electric Line Clearance Consultative Committee (ELCC) established under the Electricity Safety Act has not achieved its chartered purpose over the life of the regulations. The five Distribution Businesses have 100% representation on the ELCCC while the 79 Councils have one representative for a 13 member ELCCC. The privatised Distribution Businesses have 5% of their revenue at risk for unplanned outages under the regulatory Service Target Performance Incentive Scheme (STIPIS). The terms of reference and membership of this committee should be reviewed.
3. Ensuring safety and compliance requires agencies to work together towards a shared and balanced outcome. Council's efforts to undertake line clearance pruning is often hampered by long time delays and high costs in obtaining electric line shutdowns from distribution and retail companies. There is opportunity for the Regulations to mandate response times for the provision of shut downs to Councils and that shutdowns be provided at no cost for cyclic regulatory compliance pruning.

Officers also propose a number of administrative changes, which are outlined in the report and attached officer submission.

The final issue on this matter is the process, and the degree to which submissions can be meaningfully considered given the sunset date of the current Regulations is 28 June 2020, and the need to enact new Regulations prior to that date.

## **Officers' recommendation**

That Council:

1. Endorse the attached "Submission - Response to Regulatory Impact Statement and Exposure draft - Electricity Safety (Electric Line Clearance) Regulations 2020 - City of Boroondara - 2020-03-06" provided to Energy Safe Victoria on 6 March 2020.
2. Write to The Honourable Lily D'Ambrosio MP, Minister for Energy, Environment and Climate Change providing Council's submission to Energy Safe Victoria and seeking review of the regulatory impact statement process.

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**Responsible director: Daniel Freer**  
**Director Environment and Infrastructure**

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## 1. Purpose

The purpose of this report is to inform Council of the risks associated with the latest Exposure Draft - Electricity Safety (Electric Line Clearance) Regulations 2020 if it enacted as drafted.

## 2. Policy implications and relevance to community plan and council plan

This matter is broad reaching in its impact, relating directly to the following themes in the Boroondra Community Plan:

- Your Community, Services and Facilities
- Your Parks and Green Spaces
- The Environment
- Neighbourhood Character and Heritage

This matter has also been considered in the context of the Tree Strategy 2017.

## 3. Background

Boroondara has 64,000 street trees, of which approximately half are located in close proximity to powerlines. Through Tree Strategy consultation, the community told us they value the environmental benefits generated by trees, and the visual amenity and character created by the City's trees. The biggest concern raised by the community during Tree Strategy consultation was "excessive ugly pruning".

Council has electric line clearance pruning responsibilities under the Electricity Safety Act, and the Electricity Safety (Electric Line Clearance) Regulations.

The current Electricity Safety (Electric Line Clearance) Regulations 2015 (ELC) sunset on 28 June 2020. Energy Safe Victoria (ESV) has issued draft proposed regulations for comment. Due to the tight timeframe for providing submissions an officer submission was provided to ESV on 6 March 2020. Municipal Association of Victoria (MAV) have also provided a submission that is largely informed by Boroondara advice.

## 4. Outline of key issues/options

A copy of the officer submission is provided in **Attachment 1**. A copy of the MAV submission is provided in **Attachment 2**.

A summary of the issues is outlined below:

### ***Infringements***

The introduction of Infringement Offences in both HBRA and LBRA for Clause 3 (1) without transparent consultation is a material change. The references to "at all times" and "no part of a tree" in clause 3(1) empowers ESV to issue a body corporate a fine of 250 penalty units (\$41,305) for any vegetation located within the clearance space, regardless of whether it poses a material risk or not. This requirement in urban Melbourne is not practically achievable.

Officers have two immediate concerns with this approach, the first is that the proposed change was not disclosed in the Regulatory Impact Statement, which is a document with the sole purpose of disclosing the impact of the proposed regulations. This presents a significant transparency issue for local governments seeking to understand impacts of the proposed regulations on their communities.

The second is the degree of impact. The draft regulation propose that ESV can issue an infringement notice of \$41,305 for any vegetation located within the clearance space, regardless of whether it poses a material risk or not.

It is recommended that this change be strongly opposed.

### ***Governance, transparency and process***

The Electric Line Clearance Consultative Committee (ELCCC) established under the Electricity Safety Act has not achieved its chartered purpose over the life of the regulations. The five Distribution Businesses have 100% representation on the ELCCC while the 79 Councils have one representative for a 13 member ELCCC. The privatised Distribution Businesses have 5% of their revenue at risk for unplanned outages under the regulatory STIPIS. The terms of reference and membership of this committee should be reviewed as follows.

- The existing ELCCC constitution and membership is reviewed. The constitution of the committee be redefined to focus on HBRA.
- A second equivalent committee be formed with appropriate Constitution and Council membership for the LBRA of Victoria.

The immediate issue is the lack of disclosure of key items of impact (infringements) and the degree to which submissions can be meaningfully considered given the sunset date of the current Regulations is 28 June 2020, and the need to enact new Regulations prior to that date. In consideration of this it is recommended that:

- The Existing Regulations be extended for 6 months.
- A new consultation is completed during this period.
- A LBRA focused subcommittee be formed in the interim reporting to the ELCCC.
- The subcommittee recommendations form part of the public consultation for transparency.

### ***Low Voltage Clearance***

The current Regulations are inadequate in striking the appropriate balance between the known safety and outage risks, with the amenity benefits of mature vegetation and environmental benefits of tree canopy, in Low Bushfire Risk Areas (LBRA) for clearance around Low Voltage (LV) lines. These regulations, if enforces as drafted, will have the following impacts on Boroondara and its community:

- Approximately 1,300 trees will need to be removed.
- Significant loss of tree canopy of approximately 650 trees.
- Approximately \$3.5m in costs for removals, pruning and engineering solutions.

It is recommended that:

- The exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.

### **Costs of compliance**

Ensuring safety and compliance requires agencies to work together towards a shared and balanced outcome. Council's efforts to undertake line clearance pruning is often hampered by long time delays and high costs in obtaining electric line shutdowns from distribution and retail companies. There is opportunity for the Regulations to mandate response times for the provision of shutdowns to Councils and that shutdowns be provided at no cost for cyclic regulatory compliance pruning.

### **Consultation/communication**

The current timeline provided by ESV for the enactment of the ELC is as follows:

- Public consultation closed - 6 March 2020.
- Review and amend regulations by - 10 April 2020.
- Section 13 Certificate provided to Governor in Council - late April 2020.
- ESV to provide DELWP with certificates recommending making of regulations - April / May 2020.
- Minister's notice of decision published - 12 June 2020
- Papers lodged with Clerk of the Executive Council - 15 June 2020
- Regulations enacted at Executive Council Meeting - 23 June 2020

## **5. Consultation/communication**

It is difficult to accurately estimate the total cost of compliance of the ELC if enacted however likely exposure costs are:

- Infringement Offence notices in excess of \$41m
- Line clearance costs of \$3.5m

Officers calculate the cost of implementing line clearance responsibilities, if the officer proposed changes were incorporated into the new regulations to be:

- Zero for infringement notices
- \$760k for line clearance

## **6. Financial and resource implications**

There are no direct or indirect conflicts of interest, or issues with respect to the Human Rights Charter.

## 7. Social and environmental issues

If the ELC is enacted as drafted, Council will likely either remain non-compliant or, if ESV's enforcement approach shifts as anticipated, Council will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental, aesthetic and political risk and cost, for local and state government within Victoria.

**Manager:** Andrew Mackinnon, Group Manager Parks & Infrastructure

**Report officer:** Gary Bennett, Vegetation Compliance Manager (electrical)

- City of Boroondara Submission:
- Exposure Draft - Electricity Safety (Electric Line Clearance) Regulations 2020 (ESR)
  - Regulatory Impact Statement (RIS)

March 2020





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## 1 Executive Summary

The City of Boroondara (COB) is a critical stakeholder in relation to the management of public land and associated trees near powerlines. The Exposure Draft - Electricity Safety (Electric Line Clearance) Regulations 2020 (ESR) is of great interest to the Council in addressing the balance between the risks identified in the Regulatory Impact Statement (RIS) and the removal of thousands of structural branches and entire mature trees that historically and currently exist within this council that will likely occur if the ESR is approved as proposed.

Council has major duties primarily in relation to two Acts when developing this submission:

- 1) As the "responsible person" under the Electricity Safety Act 1998 for the management of trees on public land, and
- 2) As per the Local Government Act 1989 - provide governance and leadership for the local community through advocacy, decision making and action.

Relative to the ESR, the City of Boroondara is responsible for public land that is wholly defined as Low Bushfire Risk Area (LBRA) as well as the fundamental objectives in the regulation to ensure: the management of the health of the trees as well as prepare management plans to minimise the danger of trees contacting electric lines causing fire or electrocution. Councils are the largest stakeholder by far responsible for the existing trees in LBRA's of Victoria

Council is of the view that:

- It is essential to achieve the objectives of the applicable Act and Regulations by managing powerline risk near vegetation to reduce fires, electrocution and outages.
- The regulation is primarily the result of bushfires started by electrical assets in High Bushfire Risk Areas (HBRA) and is, when reviewed against the risks, biased to excessive removal of vegetation in Low Bushfire Risk Areas (LBRA) of Melbourne.
- The highest risk in both HBRA and LBRA is vegetation making contact with high voltage (HV) cables. Council fully supports the minimum clearances appropriate to the operating voltage of HV.
- The ESR does not currently do this for the operating voltages in LBRA of Melbourne, rather it is based on minimum clearances for rural voltages that are at least double the actual operating voltages of the LBRA of Melbourne.
- There is to date, negligible likelihood of fires and electrocutions in LBRA due to vegetation within the minimum clearance space (MCS). In LBRA the only risk with a substantiated likelihood is outages.
- The RIS concludes that only 6% of outages are caused by vegetation inside the minimum clearance space (grown-in). The balance of the 94% are caused by trees/branches over and beside the minimum clearance space (blown-in), which is acceptable under the regulations in LBRA (excluding 66kv overhang).
- Outages in LBRA are principally caused by either vegetation contacting high voltage (HV) or a fallen branch/tree breaking HV or low voltage (LV) cables through mechanical impact.
- Vegetation touching LV does not commonly cause outages as partially recognised by the ESR. This is evident by the thousands of trees currently touching LV in LBRA of Melbourne.
- The draft Regulations are inadequate in striking a balance of its objectives considering the stated risks (RIS & submission) in LBRA, resulting in excessive vegetation clearance practices. There is historically and currently a significant volume of LV non-compliance across Melbourne of mature trees/structural limbs



within the minimum clearance space that must be removed if this ESR is not changed.

- Non-compliance of mature trees/structural limbs with the Code for LV in LBRA has generally been tolerated on the basis that it poses little risk. The local community residual risk has not changed however the tolerance of ESV and DB's has.
- If enacted Councils face \$45k Infringement Notices per tree or an estimated 5% removal of mature trees for the LV alone.
- If Council's recommendation is accepted for a reduced exception minimum clearance space for uninsulated LV to match that already accepted for insulated LV then Council estimates a 70% reduction in the existing mature trees/structural limbs required to be removed to meet Code with no substantiated increase in outage risk.
- The consultation process timeline is inadequate for due consideration of comments provided as a Section 13 Certificate must be presented to Governor in Council by the end of April.
- The consultation information as provided does not highlight in any way the introduction of Infringement Offences, which Council consider material in nature.
- The Electric Line Clearance Consultative Committee (ELCCC) who reviewed the draft does not have balanced representation appropriate for LBRA.
- The 5 Distribution Companies (DB) have 100% representation on the ELCCC while the 79 Councils have 1 person for a 13 member ELCCC.
- The privatised DB's have conflict of interest in considering the matter of Infringement Offences for increased compliance in LBRA as 5% of their revenue is impacted by unplanned outages under the STIPIIS regulatory incentive.
- This is further validated by a DB having issued around a \$750k claim for loss of STIPIIS revenue that Council is disputing. The same DB has recently informed Council of a pending second claim of \$850k likely.
- Due to the significantly different current state, risks and ELCCC member objectives, Council recommends changes to the ELCC structure and constitution to have a separate focus for HBRA vs LBRA.

The LBRA compliance implications in this ESR are likely to have material unintended consequences across Melbourne. It is likely that significant increased unsubstantiated vegetation removal across Melbourne will occur if the recommendations from this Council and Municipal Association of Victoria (MAV) are not able to be given due consideration because of the process timelines and an ELCCC constitution appropriate prior to 2015 now outdated in 2020. (Summary of recommendations - Appendix 1). In Boroondara alone it is estimated that the regulations as drafted for LV alone will result in:

- The loss of approximately 1,300 mature trees
- Significant canopy loss of over 600 trees
- \$3.5m of costs to Boroondara ratepayers.

Numerous seemingly good intentions from the various entities impacting the Act and Regulations have not kept abreast of other changes. Government Regulations are not enacted for unsubstantiated or non-existent risks nor company profits as is the potential of the current ESR for LBRA's of Melbourne



## 2 Background

### 2.1 The Act, Code, Regulations and Enforcement

The regulation is primarily the result of bushfires started by electrical assets in predominantly rural High Bushfire Risk Areas (HBRA). The requirements in the LBRA have not been critically challenged as “fit for purpose” to date because the focus has justifiably been on compliance in the HBRA. This has essentially changed for all stakeholders since the last update in 2015 however not due to the community risk changing.

#### 2.1.1 Distribution Business’s (DB)

DB’s focus was justifiably on their own HBRA compliance and did not have as strong focus on their unplanned outages. This changed when the Regulator introduced a Service Target Performance Incentive Scheme (STPIS) that now places up to 5% of the privatised DB’s revenue at risk in part to unplanned outages per customer. The customers are concentrated in LBRA of Melbourne. As a result one DB has started issuing claims for lost revenue for underground asset strikes as well as vegetation contact.

In the City of Boroondara’s case this has resulted in a combination from one DB of submitting a lost revenue claim of around \$750k as well as notifying ESV of non-compliances in LBRA that ESV have subsequently validated and issued notice to Council to obtain compliance for. The same DB has recently informed council of a second claim pending of \$850k. Council is disputing the claims to date however the ramifications for rate payers across Victoria in LBRA are significant.

The five DB’s have 100% representation on the ELCCC while the 79 Councils have 1 person for a 13 member ELCCC. Three of the five DB’s represented are partially owned by the one group that has begun initiating claims for lost revenue.

The privatised DB’s have duly supported Infringement Offences for increased compliance in LBRA partially due to 5% of their revenue at risk for unplanned outages under the STPIS regulatory incentive.

#### 2.1.2 Energy Safe Victoria (ESV)

While Council acknowledges that ESV has historically taken a risk-based approach to enforcement action focused in HBRA this has changed since 2019. The shift to make any non-compliance (including LBRA) an infringeable offence does raise fears in relation to this change. The references to “at all times” and “no part of a tree” in clause 3(1) empowers ESV to issue a body corporate a fine of 250 penalty units (\$41,305) for any vegetation located within the clearance space, regardless of whether it poses a material risk or not.

Prior to 2019 ESV generally conducted one sample audit a year of Council and no further follow up. During 2019 ESV has:

- Significantly increased the number of vegetation inspectors
- Introduced sophisticated equipment to measure infringement offences to within cm’s
- Informed council that it intends to be increasingly active in LBRA.
- Completed 3 audits totalling over 1000 noncompliant trees.
- Escalated further to currently Council is in “Show Cause” status with ESV



### 2.1.3 Council

Until 2019 this Council along with MAV have had little need to challenge the LBRA Regulations and Council has been interpreting the risks with a balanced view in regard to the objective stated in the regulations that prescribe: “standard and practices to protect the health of trees that require cutting in accordance with the Code”. In particular in relation to structural limbs, material canopy loss and tree removal minimisation near LV within council.

The view of Council is the Act and ESR are historically biased to a focus on mitigating the HBRA risks that are unsubstantiated in LBRA of Melbourne and have resulted in excessive vegetation clearances in LBRA. The ESR compliance enforced by the changed behaviours of ESV/DB's will result in a step change in vegetation removal across LBRA of Melbourne.

This view is further validated in the RIS that states only 6% of outages are caused by vegetation inside the minimum clearance space (grown-in). Therefore 94% are caused by (blown-in) vegetation acceptable under the regulations.

### 2.1.4 Low Bushfire Risk Area

When Council is reviewing and making decisions for managing vegetation it is always in the context of a LBRA that applies to the entire Council land. In developing our recommendations Council has also considered the risk information provided within the RIS regarding outages and failure modes.

### 2.1.5 Regulation Impact Statement (RIS)

Data provided in the RIS indicates that fire, power supply outage and electrocution incidents resulting from vegetation within the clearance distance are minimal and trending in the right direction. The following extract from the RIS of outage incident data provided by the DB's for vegetation outages indicates the status in relation to outages:

*It is important to note that the AER SAIDI and SAIFI data does not identify the cause of the outage; many factors, in addition to trees, cause outages. It is not possible to quantify the number, duration and frequency of interruptions explicitly due to tree or tree branch contact, let alone due to clearance activities or tree contact from within (or from outside) the clearance space, from the AER data.*

*ESV incident data may be used to provide a percentage split between 'grow-ins' and 'fall-ins'. While a EB can list as part of the causes for an incident whether the tree was fallen, blown branch/vegetation and/or within clearances, there is no mandatory requirement to provide this level of detail for all incidents to ESV. ESV notes that no type of tree contact was specified for 23% of incidents that were listed as being caused by trees. Of those where the contact mechanism was Identified, 43% was due to blown branches, 51% was due to fallen branches and **6% was due to contact by trees within the clearance space (grow-ins)**.*

*The 6% figure is similar to the 2015 RIS, which found 8.2% of interruptions in 2010-13 were due to 'grow-ins'. Using the 6% figure, we can provide an estimate of the economic cost of outages due to 'grow-ins'.*

The incident data reflects the outcomes of existing vegetation management practices. It does not, as implied by the RIS, demonstrate the effectiveness of compliance with the Code. The reality is that unless trees are pruned excessively or removed altogether, growth into the prescribed minimum clearance distances for LV in LBRA is common. Non-compliance with the Code for LV in LBRA has generally been tolerated on the basis that it poses little risk.



### 2.1.6 LBRA - Substantiated Risk Mitigation

Based on the RIS, Council's view is that there is negligible risk of fires and very low likelihood of local community electrocutions generally in LBRA. Council further acknowledges there is a level of acceptance of branches/trees overhanging and beside in LBRA that is justifiably not the case in HBRA.

There is no question that responsible management of vegetation around powerlines is critical to reduce risk of fire, electrocution and power supply outages. It is also true that the level of risk posed by vegetation around powerlines depends on a range of variables. These variables include whether the powerline is (high voltage or low voltage); and the proximity between a powerline and vegetation (e.g. hard contact, intermittent contact, no contact).

Council agrees the risk of vegetation contact with HV is not acceptable and will manage this requirement to the Code. **Council does not accept the ESR minimum clearances currently set for a voltage (22KV) at least double the majority of operating voltages (11/6.6kv) across Melbourne.**

In regard to *uninsulated LV* Council's view is constant/intermittent contact alone with vegetation does not cause outages as is proven by the thousands of trees in Victoria currently in contact. However constant/intermittent contact with *insulated LV* cables does cause outages.

The RIS further states only 6% of all outages are caused by any vegetation that is within the minimum clearance space based on DB supplied incident data.

Historically in LBRA what did cause *uninsulated LV* outages is:

- 1) A tree/major limb fails and can reach the powerlines with enough mechanical load to break the conductor/structure or force conductors to contact each other, or
- 2) A growing tree/structural limb pushes a cable out of alignment into and adjacent conductor.

To mitigate the risk of 2 near uninsulated LV DB's have now installed a cable spreader half way along each cable span between poles. This effectively makes uninsulated LV spans in Melbourne 20-25m long. It is implausible that an existing mature tree/structural limb could grow so much between inspections that it forces cables to touch and cause an outage. The ESR does not adequately consider the current residual risk.

**Council does not accept the Exception minimum clearances for a structural limb near uninsulated LV being >500mm when insulated LV >150mm is acceptable in LBRA.**

If the ESR is enacted as drafted, councils will likely either remain non-compliant or, if ESR's enforcement approach shifts as anticipated, Council's across Victoria will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental, aesthetic and political risk and cost, for local and state government within Victoria.

Council has therefore made recommendations within this submission to more accurately balance the risk of outages to the amenity value of the vegetation in relation to these two risks solely in LBRA.

### 3 Councils Exposure Draft Comments

#### 3.1 Supported Regulatory Changes

Provide demographic details and information about the current environment of relevance to the plan.

Category of change	Description of change	Location	Councils position
Broad change	<p>Change to the objective of the regulation to include a reference to protecting the health of trees</p> <p><u>Wording of new regulations</u></p> <p>The objectives of these Regulations are... (b) to prescribe—</p> <p>(i) standards and practices to be adopted and observed in tree cutting or removal in the vicinity of electric lines and the keeping of the whole or any part of a tree clear of electric lines, including standards and practices to protect the health of trees that require cutting in accordance with the Code; and</p> <p>(ii) a requirement that certain responsible persons prepare management procedures to minimise the danger of trees contacting electric lines and causing fire or electrocution or interruptions to electricity supply; and ...</p> <p>(c) to require responsible persons to minimise the impacts of cutting on indigenous and significant trees and the habitat of threatened fauna; and</p>	Part 1, Regulation 1	Supported.
Management plans	Re-worded the regulations such that responsible persons excluding a major electricity company must prepare a management plan annually	Part 1, Regulation 9(2)	Supported.
Management plans	<p>Change to the requirement such that major electricity companies must prepare and submit a management plan relevant for a 5-year period.</p> <p><u>Wording of new regulations</u></p> <p>(3) A responsible person that is a major electricity company must before 31 March 2021 prepare and submit to Energy Safe Victoria for approval a management plan relating to compliance with the Code for the period from 1 July 2021 to 30 June 2026</p>	Part 1, Regulation 9(3)  Part 1, Regulation 10(2)	Supported.

Category of change	Description of change	Location	Councils position
Management plans	Included an additional requirement of a map in the management plan to show HBRA (High Bushfire Risk Area) and LBRA (Low Bushfire Risk Area) that are related to area covered by the plan	Part 1, Regulation 9(4)(f)	Supported in principle.  However accountability needed for CFA and/or MFB (Melbourne) to provide to responsible persons or on their website.
Management plans	Change the word 'native' to 'indigenous to Victoria'	Part 1, Regulation 9(4)(g)	Supported.
Management plans	Change so that management plans no longer have to be available for inspection at the responsible persons primary place of business – they only need to be on their website	Part 1, Regulation 10(6)(b)	Supported.
Insulating cover	Updated the definition of an insulated cover and links to related standards	Schedule 1, Part 1, Regulation 1	Supported.
Insulated cable	Change the definition of an insulated cable based on new definition of an insulated cover.	Schedule 1, Part 1, Regulation 1	Supported.
Suitably qualified arborist	Change the definition of a suitably qualified arborist from Certificate 4 in arboriculture to a Certificate 3 in arboriculture, including a ground-based tree assessment training module. This has been prompted by training providers no longer providing Certificate 4 in Victoria.	Schedule 1, Part 1, Regulation 1	Supported.
Exceptions to minimum clearance	Allows branches to be 150 mm from the line if the span is less than 40 m in length. It used to have to be 300 mm away from the insulated line. The exception clause can only be used under increased tree management requirements designed to monitor or manage risk to acceptable level.	Schedule 1, Part 1, Regulation 4(c)	Supported.
Exceptions to minimum clearance	New clause has been added introducing exceptions to minimum clearance distances for small branches growing under uninsulated low voltage electric lines. The exception clause can only be used under increased tree management requirements designed to monitor/manage risk to acceptable level.	Schedule 1, Part 1, Regulation 5A	Reg 6, not 5A? Supported.
Indigenous vegetation	Change the words 'specified significant tress' to include 'indigenous or significant	Schedule 1, Part 1,	Supported.

Category of change	Description of change	Location	Councils position
	trees'. The regulation aims to minimise the cutting or removal of indigenous or significant trees reflecting changes in definitions.	Regulation 10	
Public notification	Change the requirements so notifications can be published on the responsible person's website or published in a newspaper. <u>Wording of new regulations</u>  A written notice published under subclause (2) must be published on the responsible person's Internet site or in a newspaper circulating generally in the locality of the land in which the tree is to be cut or removed.	Schedule 1, Part 1, Regulation 16(3)	Supported.
Dispute resolution requirement	This has been removed from the Code and is in the Regulations as a requirement to include detail of dispute resolution procedure in the plan rather than as a stand-alone procedure.		Supported.

### 3.2 Opposed Regulatory Changes

The introduction of Infringement Offences in LBRA of Melbourne is considered as material in nature and was not in our view consulted upon. There is no mention of this change or associated risk in the RIS and the Exposure Draft was issued without tracked changes making it implausible a reasonable person would have discovered it.

Both ESV and the DB's are obligated to represent their entities requirements however the regulations for LBRA are not representative of the risk vs value of the amenity trees to the communities Council represents. In particular the ESR LBRA minimum clearance space for:

- Actual risk of substantial branches and tree trunks of mature trees growing within the minimum clearance space for uninsulated LV (not in constant contact), nor
- The main rural HV operating voltage of 22kv used to set the minimum clearance space in LBRA when Melbourne's urban operating voltages are 11+6.6kv. (96% of Councils HV is 11kv)

If actual compliance was to be achieved in LBRA, as must be the purpose of introducing Infringement Offences to regulations, it would initially require rate increases then the removal of the majority of the mature nature strip trees near LV (96% of Powerlines) across our local communities that local and state government are appointed to represent. If applied literally in LBRA across Melbourne Council estimates there are tens of thousands of these offences at any one time currently.

**When considered along with Councils overall submission the introduction of Infringement Offences in LBRA is strongly opposed.**

If the regulations are finalised as drafted, councils will likely either remain non-compliant or, if ESV's enforcement approach shifts, they will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental,



aesthetic and political risk and cost, for local government, for the Victorian government and for the community. This is in the absence of incident data or other evidence to indicate that current practice for LV in LBRA is unsafe.

## 4 Additional Changes Recommended

### 4.1 Exception Minimum Inspection Timeframe

The Code includes a number of exception clauses that allow vegetation to grow inside the minimum clearance space on the condition that a range of conditions are met. Councils note that the exception clauses as drafted, and that currently exist, require the responsible person to undertake a number of actions "within the last 12 months".

For any nominated exception trees to be inspected, risk quantified, and mitigations completed, the time period before Infringement Offences can be applied needs to be longer to work in conjunction with annual inspection cycles. **Council recommends that this period be increased to 14 months.**

### 4.2 Minimum Clearances for HV in LBRA of Melbourne

In rural Victoria (excluding tower lines) the HV operating voltages for both HBRA and LBRA are:

- Sub-Transmission - 66kv for supply between main centres: and
- Distribution - 22kv supply within towns and across rural areas or 12.7kv (SWER) occasionally for remote rural areas

In LBRA of Melbourne the predominant Distribution Voltages are 11 or 6.6kv. In this Councils case 96% of Councils HV cables are operating at 11kv.

As previously noted historically the regulations, ELCCC and ESV compliance focus has been on rural fire risk prevention. However this bias has resulted in unsubstantiated excessive vegetation removal in LBRA of Melbourne due to Minimum Clearances being set for rural voltage levels at least double what the majority of the operating voltage is across Melbourne.

The below table created from the ESR demonstrates that different minimum clearances are appropriate for different operating voltages. It also shows that the regulation minimum clearances set for LBRA of Melbourne are excessive.

Voltage	% Route length in Council	Minimum Clearance
66kv	<1%	2250mm
22kv	4%	<b>1500mm</b>
11kv	96%	<b>1500mm</b>
6.6kv	<1%	<b>1500mm</b>
Low Voltage <1kv	NA	1000mm

Note: all are uninsulated cables <45m spans



Extrapolating the clearance distances prescribed for LV, 22kV and 66kV, Council anticipates that the minimum clearance distances for 6.6kV and 11kV would be materially less than the 1500mm currently prescribed. One estimate is 1060mm for 6.6kV and 1160mm for 11kV.

**Council recommends that the Code prescribe minimum clearance distances for each of 6.6kV, 11kV and 22kV operating voltages for LBRA.** This will more accurately balance the risk and health of trees for the respective local communities as per the objectives stated in the ESR.

Notwithstanding the recommendation, Council understands that vegetation cannot be allowed to contact HV cables and will continue to manage vegetation to the minimum clearances within the Code.

#### **4.3 Exceptions - Structural Limbs near Uninsulated LV in LBRA**

For uninsulated LV spans equal to or less than 45m in length in LBRA, the Code prescribes a minimum clearance distance of 1000mm. Under Clause 6 of the current (2015) Code, structural branches are permitted up to 500mm from the line if certain conditions and management requirements are met.

One of those requirements is that spans up to 45 metres in length are fitted with one conductor spreader and spans greater than 45m in length are fitted with two spreaders.

It is our understanding that there are currently many thousands of mature trees in urban areas that have structural branches within the minimum clearance space of 1000mm.

Councils estimate that a significant majority of those trees are also closer to the line than the 500mm clearance distance permitted under the exception clause within the Code.

Clause 4 of the current (2015) Code sets a minimum clearance distance of 150mm for spans 40m or less in length for structural branches around insulated LV in LBRA (and a minimum clearance distance of 300 mm for spans 40m or longer).

In the absence of data or evidence to prove that structural branches around uninsulated LV lines pose greater risk of outage or public safety than structural branches around insulated lines, **Council recommends that the exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.**

The proposed exception reflects the "real world" proximity of the low height of uninsulated LV to mature trees/limbs. It does not condone contact. Structural limbs have minimal movement and the management requirements attached to this proposed exception ensure the risk of limb health is monitored and managed in the future.

If adopted this will closely reflect what is already happening in practice in our inner urban areas and significantly reduce major branch and tree removal.

Council estimates up 70% of historical and currently non complaint trees/structural limbs near uninsulated LV will be able to be saved with no increased outage risk at an avoided cost of \$2,753,000 in our Council alone.



#### 4.4 Planned Vegetation Clearance Shutdowns

DB's are charging Council on average \$8,600(ex GST) for a vegetation clearance shutdown that is required for Council to meet compliance requirements however it also improves a DB's likely revenue. **Council recommends the Council's be exempt from shutdown costs by DB's.**

#### 5 Future ELCCC & Membership

Division 3 of the Electricity Safety Act provides for the creation of the Electric Line Clearance Consultative Committee (ELCCC). The Committee comprises 13 members appointed by the Minister. Its functions are to provide advice to ESV;

- With regard to the preparation and maintenance of the Code;
- On any matter relating to the clearance of electric lines when requested so to do by ESV or the Minister; and
- Report before 30 September each year to the Minister on the performance of its functions.

Currently the Act provides for the Committee to be comprised of one representative each for VicRoads (now Department of Transport), the CFA (now Fire Rescue Victoria), the Department of Environment, Land, Water and Planning (DELWP), and local government. The Minister for Planning nominates one member as does the Minister for Environment. Private landowners have two representatives and the distribution businesses and transmission companies have four representatives.

The constitution of the committee is outdated and needs to be reviewed as a matter of priority. VicRoads rarely, if ever, attends meetings. Following changes to the Act a few years ago, it no longer has line clearance responsibilities. Likewise, the Minister for Planning and the Minister for Environment's nominees rarely, if ever, attend. The distribution businesses and transmission companies dominate the committee in terms of numbers.

From 2015 to early 2019 the Committee did not meet. Expressions of interest to be a member of the Committee were invited in mid-2015, with the appointments announced some three and a half years later.

As a result, the changes proposed to be included in the 2020 regulations essentially represent a tweaking of the current regulations. This is not unexpected given the Committee had limited opportunity to consider what, if any, more substantive changes should be made before the current regulations are inapplicable due to the 5 yearly renewal in the Act.

As referenced in our submission historically the regulations, ELCCC and ESV's compliance focus has been on rural HBRA fire risk prevention and the extensive removal of vegetation risk. Council supports in principle the current committee membership for the HBRA's of Victoria.

However **Council does not support the current ELCCC structure or membership for the LBRA of Victoria.** The current state has created an inappropriate bias of focus and requirements in the development of the regulations over time for LBRA.



The latest draft Introducing Infringement Offences for both HBRA and LBRA further reflects the committee's membership and plausibly:

- The privatised Distributions Business's (DB) duty for profit with 5% of their revenue at risk (STIPIS) because of unplanned outages per customer who are concentrated in the towns and cities. The DB's have 100% representation on the ELCCC.
- ESV's frustration in compliance levels across LBRA of Melbourne.

In addition Council is currently in negotiations with a DB in relation to a claim of around \$750,000 loss of STIPIS revenue and the DB has informed Council of its intention to issue a second \$850,000 lost revenue related Claim.

The 79 Councils of Victoria's role as public land managers for the trees are the substantial stakeholder representing the local community in the LBRA of Victoria.

**Accordingly Council recommends that:**

- **The existing ELCCC constitution and membership is reviewed. The constitution of the committee be redefined to focus on HBRA.**
- **A second equivalent committee be formed with appropriate Constitution and Council membership for the LBRA of Victoria.**

## **6 Alternative Consultative Process Recommended**

### **6.1 ELCCC and timelines**

Other than the introduction of Infringement Offences, the changes proposed to be included in the 2020 regulations essentially represent a tweaking of the current regulations. This is not unexpected given the Committee had limited opportunity to consider what, if any, more substantive changes should be made given the sunset timing for the existing regulations of 28 June 2020.

### **6.2 Consultation Transparency**

The introduction of Infringement Offences is considered as material in nature and was not in our view consulted upon. There is no mention of this change or associated risk in the RIS for LBRA and the Exposure Draft was issued without tracked changes making it implausible a reasonable person would have discovered it.

Therefore as is required for public consultancy to be effectively administered, the submissions received from consultation will not be adequately informed of the impact of this material change.

### **6.3 Council Recommendation**

**Due to the above as well as the other related reverences throughout our submission Council recommends:**

- **The Existing Regulations be extended for 6 months**
- **A new consultation is completed during this period**
- **A LBRA focused subcommittee be formed in the interim reporting to the ELCCC**
- **The subcommittee recommendations form part of the public consultation for transparency**

## 7 Appendix 1: Summary of Council's Recommendations

<b>Category of change</b>	<b>Council's Recommendations</b>
Infringement Offences	Introduction of the change is strongly opposed
Minimum LBRA Clearances	The Code prescribe minimum clearance distances for each of 6.6kV, 11kV and 22kV operating voltages found within LBRA.
Exceptions for Structural Limbs near Uninsulated LV	The exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.
ELCCC	The existing ELCCC constitution and membership is reviewed. The constitution of the committee be redefined to focus on HBRA. A second equivalent committee be formed with appropriate Constitution and Council membership for the LBRA of Victoria.
Alternative Consultative Process	The Existing Regulations be extended for 6 months
	A new consultation is completed during this period
	A LBRA focused subcommittee be formed in the interim reporting to the ELCCC.
	The subcommittee recommendations form part of the public consultation for transparency.
DB Vegetation Shutdown Fee	Council's be exempt from shutdown costs by DB's.



**Regulatory Impact Statement:**  
***Electricity Safety (Electric Line Clearance)***  
***Regulations 2020***

**Submission**

**March 2020**



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## 1 Executive summary

As responsible persons under the *Electricity Safety Act 1998* and as public land managers, councils are critical stakeholders in relation to management of vegetation around powerlines. For several years now, local government has argued for a regulatory regime that sensibly balances safety, amenity and environmental considerations in low bushfire risk areas. This is an ongoing challenge that has not yet been adequately addressed by the *Electricity Safety (Electric Line Clearance) Regulations* and the prescribed Code of Practice.

One proposed change included in the draft 2020 regulations is to make clause 3(1) of the Code an infringeable offence. Based on a recent discussion with Energy Safe Victoria (ESV), we understand this change is intended to make it simpler for ESV to enforce compliance with the Code. Clause 3(1) provides that responsible persons must ensure that, at all times, no part of a tree for which the person has clearance responsibilities is within the minimum clearance space.

Curiously, the costs, benefits and rationale of this proposed change are not mentioned or discussed in the regulatory impact statement (RIS). The table on pages 5 and 6 of the RIS that summarises the key changes does not even reference Clause 3(1).

It concerns us that if ESV were to rigidly enforce the regulations to ensure strict compliance with the Code, the financial, environmental and amenity implications of this change would be significant. It could lead to mass removal of structural branches and entire mature trees across the state. The urban forest and canopy cover that experts, governments and communities increasingly recognise as critical to mitigating impacts of climate change and improving health and liveability may become impossible to achieve.

While we acknowledge that ESV has generally taken a risk-based approach to enforcement action to date, the shift to make any non-compliance an infringeable offence does raise fears that a change in approach might be coming. The references to “at all times” and “no part of a tree” in clause 3(1) empowers ESV to issue a body corporate a fine of 250 penalty units (\$41,305) for any vegetation located within the clearance space, regardless of whether it poses a material risk or not.

There is no question that responsible management of vegetation around powerlines is critical to reduce risk of fire, electrocution and power supply outages. It is also true that the level of risk posed by vegetation around powerlines depends on a range of variables. These variables include whether the powerline is in an area of high bushfire risk or low bushfire risk; the type of powerline (high voltage or low voltage); and the proximity between a powerline and vegetation (e.g. hard contact, intermittent contact, no contact).

Councils recognise and agree that it is imperative that vegetation in high bushfire risk areas (HBRA) is managed in strict compliance with the Code. Councils also recognise the heightened risk associated with vegetation contact with high voltage (HV) powerlines in low bushfire risk areas (LBRA) and agree contact must not be permitted.



What councils do not accept is that the Code prescribes appropriate clearances and management requirements for low voltage (LV) powerlines in LBRA. Furthermore, it frustrates councils that the regulations still fail to recognise that there are areas with very low or negligible bushfire risk where amenity and environmental outcomes can and should be primary considerations when determining minimum clearance distances.

Data provided in the RIS clearly indicates that fire, power supply outage and electrocution incidents resulting from vegetation within the clearance distance are minimal and trending in the right direction. While fire risk features throughout the RIS, the data shows that only 6 per cent of the average 44 fires per year caused by contact between tree branches and powerlines is caused by “grow-ins” (vegetation within the prescribed minimum clearance space).

The incident data reflects the outcomes of existing vegetation management practices. It does not, as implied by the RIS, demonstrate the effectiveness of compliance with the Code. The reality is that unless trees are pruned excessively or removed altogether, growth into the prescribed minimum clearance distances for LV in LBRA is common. Non-compliance with the Code for LV in LBRA has generally been tolerated on the basis that it poses little risk.

If the regulations are finalised as drafted, councils will likely either remain non-compliant or, if ESV's enforcement approach shifts, they will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental, aesthetic and political risk and cost, for local government, for the Victorian government and for the community. This is in the absence of incident data or other evidence to indicate that current practice for managing trees near LV in LBRA is unsafe.

In rural Victoria, excessive and highly damaging cutting of trees in townships by distribution businesses, and in particular by Powercor and Powercor contractors, continues to undermine efforts of councils to improve the amenity and appeal of their town centres. Councils report that Powercor responds with indifference to their appeals to prune only to the minimum extent necessary to achieve compliance. Instead, cost considerations and a desire to operate two-, three- or even four-year pruning cycles drive decision making. This is unacceptable, particularly in the context of climate change.

The process adopted for the consideration and preparation of the 2020 regulations has been disappointing. This is through no fault of ESV. The Act provides for the establishment of an Electric Line Clearance Consultative Committee (ELCCC) to provide advice to ESV on the preparation of the Code. Pending the appointment of ELCCC members by the Government, the Committee did not exist or meet for more than three years, between 2015 and 2019.

The composition of the Committee includes appointees with little or no interest in line clearance issues. The Act requirements need to be revised as a matter of priority. We further question whether the ELCCC and ESV has the capacity to give due consideration to any feedback received through the RIS consultation process when the new regulations are to enter into



operation in less than four months, on 27 June 2020. This is concerning and raises doubts about the genuineness of the consultation process.

### **Recommendations**

We call on the Government to:

- Abandon the proposed change to make clause 3(1) of Code an infringeable offence or, alternatively, rework the provision so that infringements only apply to non-compliance in HBRA and to vegetation near HV in LBRA.
- Support inclusion of the changes outlined in section 5 of this submission. These changes will achieve improved amenity and environmental outcomes in low bushfire risk areas without compromising safety.
- Review Division 3 of the *Electricity Safety Act* as a matter of priority to provide for appropriate constitution of the ELCCC.



## 2 Introduction

The Municipal Association of Victoria (MAV) welcomes the opportunity to provide a submission in response to the regulatory impact statement (RIS) for the proposed *Electricity Safety (Electric Line Clearance) Regulations 2020* ("the regulations").

The MAV is the peak representative and advocacy body for Victoria's 79 councils. Formed in 1879, the *Municipal Association Act 1907* appointed the MAV the official voice of local government in Victoria.

In early February, the MAV, in collaboration with Council Arboriculture Victoria (CAV) and ESV, hosted a briefing session for councils regarding the proposed 2020 regulations. We acknowledge and appreciate ESV's ready willingness to present and take questions at that briefing.

As responsible persons under the *Electricity Safety Act 1998* and as public land managers, local government is a critical stakeholder in relation to management of vegetation around powerlines. For several years now, councils have argued for a sensible balance between safety, amenity and environmental considerations for management of vegetation in LBRA. This is an ongoing challenge that has not yet been adequately addressed by the regulations.

To be clear, the MAV and local government accept that safety must be the priority consideration when determining the appropriate regulatory settings for vegetation around powerlines. We understand that responsible management of vegetation is critical to minimise risk of bushfires, electrocution and power outages.

It concerns us however, that the regulations continue to adopt an overly cautious approach to setting minimum clearance distances for vegetation around LV powerlines in LBRA. The regulations fail to recognise that there are areas with very low or negligible bushfire risk where amenity and environmental outcomes can and should be primary considerations when managing vegetation around powerlines. This failure likely stems from the fact it was the 1977 and 1983 bushfires that were the impetus for mandating minimum clearance distances.

The current regulatory settings for trees near LV in LBRA generally play out in two different ways depending on whether it is a council or a distribution business that is the responsible person. In metropolitan Melbourne, council non-compliance with the regulations is common because strict compliance would necessitate removal of thousands, if not tens of thousands, of mature trees and limbs. The financial, social and environmental costs of removing so much vegetation is unpalatable.

In rural Victoria, excessive and highly damaging cutting of trees in townships by distribution businesses, and in particular by Powercor and Powercor contractors, continues to undermine efforts of councils to improve the amenity and appeal of their town centres. Councils report that Powercor responds with indifference to their appeals to prune only to the minimum extent necessary to achieve compliance. Instead, cost considerations and a desire to operate two-



three- or even four-year pruning cycles drive decision making. This is unacceptable, particularly in the context of climate change.

Just as electricity network infrastructure is the distribution businesses' asset, so too are street trees council and community assets. Street trees offer a range of tangible and intangible benefits, including reduced stormwater runoff, shading and cooling, habitat for local fauna, and carbon sequestration. In a warming climate the value of these benefits will only increase.

In metropolitan Melbourne in particular, there is a growing expectation and need to plant and protect trees on public land because of the shrinking availability of open space on private land. Councils and the community will not and should not have to accept unnecessary loss of vegetation.

The changes proposed to be included in the 2020 regulations essentially represent a tweaking of the current regulations. This is not unexpected given the Electric Line Clearance Consultative Committee (ELCCC) did not exist for some three and a half years. It has had limited opportunity to consider what, if any, more substantive changes should be made.

It is disappointing that the Government did not appoint members to the Committee in a timely manner to enable it to more effectively fulfil its duty to provide advice to ESV regarding the preparation of the 2020 Code.

In addition to providing the MAV's position on the key proposed changes provided for in the draft regulations, this submission recommends other changes for inclusion in the 2020 regulations. We also outline broader reforms we consider necessary to achieve a regulatory framework that appropriately balances safety, amenity and environmental considerations recognising the operational reality of managing vegetation around powerlines.

### 3 The regulatory impact statement

It is pleasing that, unlike previous regulatory impact statements (RIS) for line clearance regulations, the RIS for the proposed 2020 regulations acknowledges the very real environmental, social and amenity benefits and value of trees.

Reference is made to the *Living Melbourne: Our Metropolitan Urban Forest* strategy, developed by The Nature Conservancy and Resilient Melbourne, which we note enjoys support from a range of "endorsing partners", including the Victorian Government.

The RIS provides data on the three key risks associated with vegetation in close proximity to powerlines: fires, electrocutions and power supply interruptions. Key points include:

- in the four years to 2018-19, there has been an average of 44 fires per year caused by contact between tree branches and powerlines across Victoria. Data indicates that about three fires each year (6%) are caused by tree contact due to grow-ins. The impact of most "grow-in" fires has been small and local.



- Over the past four years, there has been one fatality due to electrocution arising from the interactions between people, trees and powerlines. There was one injury requiring medical attention and an average of three injuries per year related to minor shock.
- On average between 2014 and 2018, there were 244,315 hours of grow-in related outages per year, compared with 453,336 hours per year between 2010 and 2013.

It is important to note that this incident data reflects the outcomes of existing vegetation management practices and not, as arguably implied by the RIS, the results of compliance with the Code. The reality is that unless trees are pruned excessively or removed altogether, growth into the prescribed minimum clearance distances in LBRA is common, particularly in metropolitan Melbourne.

### **Key gap in RIS**

One concerning gap in the RIS is any reference to or analysis of the costs and benefits of the proposal to make Clause 3(1) of the Code a prescribed provision for which an infringement notice may be served.

This proposed change is not included in the table of “targeted changes” on pages 5 and 6 of the RIS and is not discussed in any detail anywhere in the RIS. This is surprising given the potentially massive financial and / or environmental and amenity implications of this proposed change.

Clause 3(1) of the Code provides that:

*A responsible person must ensure that, at all times, no part of a tree for which the person has clearance responsibilities is within the minimum clearance space for an electric line span.*

It is no secret that upon inspection of any inner urban street in Melbourne, ESV could likely identify vegetation that does not comply with the regulations. The reality is unless responsible persons clear vegetation well beyond the minimum clearance distances, some level of regrowth within the clearance space is probable, particularly when favourable growing conditions prevail. It is critical to note however that non-compliance does not necessarily equate with increased risk of bushfires, outages or electrocution. Indeed, much non-compliance, particularly in low bushfire risk areas, arguably does not materially impact risk levels at all.

While we acknowledge ESV has generally taken a risk-based approach to enforcement action to date, the shift to make any non-compliance an infringeable offence does raise fears that a change in approach might be coming. The references to “at all times” and “no part of a tree” in clause 3(1) empowers ESV to issue a council a fine of 250 penalty units for any vegetation located within the clearance space, regardless of whether it poses a material risk or not.

If the regulations are finalised as drafted, councils will likely either remain non-compliant or, if ESV’s enforcement approach shifts, they will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental,



aesthetic and political risk and cost, for local government, for the Victorian government and for the community. This is in the absence of incident data or other evidence to indicate that current practice for managing vegetation near LV in LBRA is unsafe.

The proposed change to make clause 3(1) of the Code infringeable needs to be removed or, at a minimum, substantively reworked to ensure it only relates to non-compliant vegetation that clearly poses an increased public safety risk. If risk management is the primary driver, it should only apply to non-compliance in HBRA and to vegetation near HV in LBRA.

RECOMMENDATION: that the proposed change to clause 3(1) be abandoned or reworked to only apply to non-compliance in HBRA and to vegetation near HV in LBRA.

#### 4 Proposed regulatory changes

On pages 5 and 6 of the RIS, the targeted changes to regulations are outlined as follows. The MAV's position on each proposed change is provided in the fourth column.

Category of change	Description of change	Location	MAV position
Broad change	<p>Change to the objective of the regulation to include a reference to protecting the health of trees</p> <p><u>Wording of new regulations</u></p> <p>The objectives of these Regulations are... (b) to prescribe—</p> <p>(i) standards and practices to be adopted and observed in tree cutting or removal in the vicinity of electric lines and the keeping of the whole or any part of a tree clear of electric lines, including standards and practices to protect the health of trees that require cutting in accordance with the Code; and</p> <p>(ii) a requirement that certain responsible persons prepare management procedures to minimise the danger of trees contacting electric lines and</p>	Part 1, Regulation 1	<p>Supported in principle.</p> <p>The proposed change is welcome, however, stronger wording is needed to convey the value and importance of trees. The objectives of the regulations should explicitly reference the need to factor in environmental and amenity considerations. The 1996 regulations / code of practice included the following objectives:</p> <ul style="list-style-type: none"> <li>- to `ensure that management procedures balance fire safety, reliability of the electricity system and community costs with conservation values, in the best interests of the people of Victoria';</li> <li>and</li> <li>- to `ensure that management procedures minimise the effect of powerlines on vegetation and establish strategies to progressively achieve a sustainable environment</li> </ul>



	<p>causing fire or electrocution or interruptions to electricity supply; and ...</p> <p>(c) to require responsible persons to minimise the impacts of cutting on indigenous and significant trees and the habitat of threatened fauna; and</p>		<p><i>unaffected by the presence of powerlines.'</i></p> <p>We would support reintroduction of this wording. As noted earlier in this submission, excessive and damaging cutting of vegetation by the distribution businesses or their contractors, particularly in rural townships, remains a far too common occurrence.</p>
Management plans	Re-worded the regulations such that responsible persons excluding a major electricity company must prepare a management plan annually	Part 1, Regulation 9(2)	Supported.
Management plans	<p>Change to the requirement such that major electricity companies must prepare and submit a management plan relevant for a 5-year period.</p> <p><u>Wording of new regulations</u></p> <p>(3) A responsible person that is a major electricity company must before 31 March 2021 prepare and submit to Energy Safe Victoria for approval a management plan relating to compliance with the Code for the period from 1 July 2021 to 30 June 2026</p>	<p>Part 1, Regulation 9(3)</p> <p>Part 1, Regulation 10(2)</p>	Supported.
Management plans	Included an additional requirement of a map in the management plan to show HBRA (High Bushfire Risk Area) and LBRA (Low Bushfire Risk Area) that are related to area covered by the plan	Part 1, Regulation 9(4)(f)	<p>Supported in principle.</p> <p>Timely cooperation from Fire Rescue Victoria (formerly CFA) and the MFB in providing councils with access to bushfire risk mapping will be essential.</p>
Management plans	Change the word 'native' to 'indigenous to Victoria'	Part 1, Regulation 9(4)(g)	Supported.



Management plans	Change so that management plans no longer have to be available for inspection at the responsible persons primary place of business – they only need to be on their website	Part 1, Regulation 10(6)(b)	Supported.
Insulating cover	Updated the definition of an insulated cover and links to related standards	Schedule 1, Part 1, Regulation 1	Supported.
Insulated cable	Change the definition of an insulated cable based on new definition of an insulated cover.	Schedule 1, Part 1, Regulation 1	Supported.
Suitably qualified arborist	Change the definition of a suitably qualified arborist from Certificate 4 in arboriculture to a Certificate 3 in arboriculture, including a ground-based tree assessment training module. This has been prompted by training providers no longer providing Certificate 4 in Victoria.	Schedule 1, Part 1, Regulation 1	<p>We have received mixed feedback on this proposed change.</p> <p>While some councils support the change, otherwise argue that certificate 3 is inadequate and that a level 5 qualification should be mandated.</p> <p>We note that in September 2015, Coroner Byrne handed down his findings for the inquest into the tragic death of <a href="#">Patiya May Schreiber</a>. Three-year-old Patiya was killed when she was hit by a falling tree branch in a park in Bendigo. One of the Coroner’s recommendations arising from the inquest was that ‘all inspections must be undertaken by a qualified (level 4 or above) arborist’. The Coroner further noted that a ‘level 5 qualification or above is preferred, but this may not be applicable to all council-based situations at present’.</p> <p>Under the regulations, suitably qualified arborists have responsibilities in relation to inspection of trees to which exception clauses are being</p>



			<p>applied; assessment of suspected "hazard trees; and inspection of indigenous or significant trees earmarked for removal.</p> <p>For the hazard tree-related requirements in particular, a lessening of minimum qualification level could be seen as problematic and in conflict with the Coroner's recommendation.</p>
Exceptions to minimum clearance	Allows branches to be 150 mm from the line if the span is less than 40 m in length. It used to have to be 300 mm away from the line. The exception clause can only be used under increased tree management requirements designed to monitor or manage risk to acceptable level.	Schedule 1, Part 1, Regulation 4(c)	Supported with request that the 12-month timeframe referenced in subclause (e) be extended to 14 months to enable management requirements to work in conjunction with annual inspection cycles.
Exceptions to minimum clearance	New clause has been added introducing exceptions to minimum clearance distances for small branches growing under uninsulated low voltage electric lines. The exception clause can only be used under increased tree management requirements designed to monitor/manage risk to acceptable level.	Schedule 1, Part 1, Regulation 5A	Reg 6, not 5A? Supported with request that the 12-month timeframe referenced in subclause (e) be extended to 14 months to enable management requirements to work in conjunction with annual inspection cycles.
Indigenous vegetation	Change the words 'specified significant tress' to include 'indigenous or significant trees'. The regulation aims to minimise the cutting or removal of indigenous or significant trees reflecting changes in definitions.	Schedule 1, Part 1, Regulation 10	Supported.
Public notification	Change the requirements so notifications can be published on the responsible person's website	Schedule 1, Part 1, Regulation 16(3)	Supported.



	<p>or published in a newspaper.</p> <p><u>Wording of new regulations</u></p> <p>A written notice published under subclause (2) must be published on the responsible person’s Internet site or in a newspaper circulating generally in the locality of the land in which the tree is to be cut or removed.</p>		
Dispute resolution requirement	<p>This has been removed from the Code and is in the Regulations as a requirement to include detail of dispute resolution procedure in the plan rather than as a stand-alone procedure.</p>		Supported.

As noted in the previous section, one additional key change included in the draft regulations that is not outlined or explored in the RIS is the proposal to make Clause 3(1) of the Code an infringeable offence. We oppose this proposed change.

## 5 Proposed additional changes

We recommend that the 2020 regulations also incorporate the following changes:

### Structural branches near uninsulated LV in LBRA

For uninsulated LV spans equal to or less than 45m in length in LBRA, the Code prescribes a minimum clearance distance of 1000mm. Under Clause 6 of the current (2015) Code, structural branches are permitted up to 500mm from the line if certain conditions and management requirements are met. One of those requirements is that spans up to 45 metres in length are fitted with one conductor spreader and spans greater than 45m in length are fitted with two spreaders.

It is our understanding that there are currently many thousands of mature trees in urban areas that have structural branches within the minimum clearance space of 1000mm. Councils estimate that a significant majority of those trees are closer to the line than the 500mm clearance distance permitted under the exception clause within the Code.

Clause 4 of the current (2015) Code sets a minimum clearance distance of 150mm for spans 40m or less in length for structural branches around insulated LV in LBRA (and a minimum clearance distance of 300 mm for spans 40m or longer).



In the absence of data or evidence to prove that structural branches around uninsulated lines pose greater risk of outage or public safety than structural branches around insulated lines, we recommend that the exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.

The proposed exception reflects the "real world" proximity of the low height of uninsulated LV to mature trees and limbs. It does not condone contact. Structural limbs have minimal movement and the management requirements attached to this proposed exception ensure risk is monitored and managed.

If adopted this will closely reflect what is already happening in practice in our inner urban areas and significantly reduce major branch and tree removal.

**RECOMMENDATION:** that the exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.

#### **6.6kV and 11kV in low bushfire risk areas**

In setting minimum clearance distances, the Code does not currently differentiate between different HV electric lines with the exception of 66kV. That is, the same clearance distances apply for electric lines that are 6.6kV, 11kV or 22kV.

The current prescribed minimum clearance distance of 1500mm for HV (other than 66kV) spans less than 45m in length is calculated on the nominal voltage risk of 22kV. We understand that the majority of HV lines in metropolitan Melbourne are 6.6kV or 11kV.

Extrapolating the clearance distances prescribed for LV, 22kV and 66kV, we anticipate that the minimum clearance distances for 6.6kV and 11kV would be materially less than the 1500mm currently prescribed. One estimate is 1060mm for 6.6kV and 1160mm for 11kV. We recommend that the Code prescribe minimum clearance distances for each of 6.6kV, 11kV and 22kV operating voltages for LBRA.

Notwithstanding the recommendation we understand that vegetation cannot be allowed to contact HV powerlines.

**RECOMMENDATION:** that the Code prescribe minimum clearance distances for each of 6.6kV, 11kV and 22kV operating voltages for LBRA.

#### **Outage and conductor down data**

The RIS references incident data that councils have not previously seen. The regulations should require distribution businesses and / or ESV to provide vegetation-related outage and conductor down data to the relevant responsible person as soon as possible after the incident. This will assist councils to identify and manage potentially problematic vegetation and to better understand what, if any, risks their vegetation management practices pose to the electricity network. Importantly, if provided in a timely manner, it would also enable councils to interrogate

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the integrity of the data. Councils report that there have been numerous instances where outages have been blamed on council trees where the tree was actually on private land or was compliant with the regulations.

**RECOMMENDATION:** that the regulations require distribution businesses and / or ESV to provide vegetation-related outage and conductor down data to the relevant responsible person as soon as possible after the incident

### **Exception clauses**

The Code includes a number of exception clauses that allow vegetation to grow inside the minimum clearance space on the condition that a range of conditions are met. Councils note that the exception clauses as drafted, and that currently exist, require the responsible person to undertake a number of actions “within the last 12 months”.

Councils request that this period be increased to 14 months to enable vegetation to be inspected on an annual cycle, with any remediation measures then able to be implemented within two months. This change would reflect existing practice.

**RECOMMENDATION:** that the exception clauses be amended to extend the period in which responsible persons must undertake a number of actions from 12 months to 14 months

### **ELCCC membership**

Division 3 of the *Electricity Safety Act* provides for the creation of the Electric Line Clearance Consultative Committee (ELCCC). The Committee comprises 13 members appointed by the Minister. Its functions are to provide advice to ESV with regard to the preparation and maintenance of the Code; provide advice on any matter relating to the clearance of electric lines when requested so to do by ESV or the Minister; and report before 30 September each year to the Minister on the performance of its functions.

From 2015 to early 2019 the Committee did not exist. Expressions of interest to be a member of the Committee were invited in mid-2015, with the appointments announced some three and a half years later. It is disappointing that the Government did not appoint members to the Committee in a timely manner to enable it to more effectively fulfil its duties.

The changes proposed to be included in the 2020 regulations essentially represent a tweaking of the current regulations. This is not unexpected given the Committee had limited opportunity to consider what, if any, more substantive changes should be made prior to expiry of the current regulations on 28 June 2020.

Currently the Act provides for the Committee to be comprised of one representative each for VicRoads (now Department of Transport), the CFA (now Fire Rescue Victoria), the Department of Environment, Land, Water and Planning (DELWP), and local government. The Minister for Planning nominates one member as does the Minister for Environment. Private landowners



have two representatives and the distribution businesses and transmission companies have four representatives.

The constitution of the committee is outdated and needs to be reviewed as a matter of priority. The VicRoads representative rarely, if ever, attends meetings. Following changes to the Act a few years ago, it no longer has line clearance responsibilities. Likewise, the Minister for Planning and the Minister for Environment's nominees rarely, if ever, attend. The distribution businesses and transmission companies dominate the committee in terms of numbers.

Greater local government representation on the committee is urgently needed. Likewise, given the increased understanding of the value and importance of trees in our urban areas, consideration should be given to appointing an independent expert in arboriculture.

**RECOMMENDATION:** that Division 3 of the *Electricity Safety Act* be amended to provide for an Electric Line Clearance Consultative Committee that includes greater local government representation and at least one arboriculture expert.