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ENA submission to discussion document on Electricity (Hazards from Trees) Regulations 2003

Submission to the Ministry of Business, Innovation and Employment

Contents

1. Introduction

Electricity Networks Aotearoa (**ENA**) appreciates the opportunity to make a submission to the discussion document on the Electricity (Hazards from Trees) Regulations 2003 (the Tree Regs).

ENA represents the 27 electricity distribution businesses (EDBs) in New Zealand (see Appendix A) which provide local and regional electricity networks. EDBs employ 10,000 people, deliver energy to more than two million homes and businesses and have spent or invested $8 billion in the last five years.

2. Executive Summary

As recent experiences of significant weather events have shown, New Zealand homes, businesses and communities have a critical reliance on a safe, secure and affordable supply of electricity for their health and wellbeing. In addition to directly powering communities, electricity is also critical to the operation of many other essential services, such as telecommunications and water reticulation. Heightening this critical reliance is the increasing importance of electricity to New Zealand's transition to a de-carbonised energy system, where even public and private transport will be reliant on a secure electricity supply.

It is therefore imperative that New Zealand finds a better way to manage the interaction between electricity lines and vegetation. The scale of damage and disruption caused by Cyclone Gabrielle was significantly worsened by vegetation. It is apparent now that our existing approach to managing vegetation in the Tree Regs is not working effectively, which gives rise to significant additional costs, supply disruptions and safety risk being imposed on electricity customers. ENA therefore welcomes this review of the Tree Regs by the Government.

We have worked within the framework in the discussion document and provided our preferred option for each of the issues identified. We do, however, think that there is an opportunity for more significant reform of the Tree Regs that would make many of the issues identified easier to resolve. That is, to split tree owners into two classes- 'private' tree owners and 'commercial or public' tree owners.

We expand on this idea further in our response to section 3.1.3 *A proposal for a new approach* below.

3. Context

3.1. Q1. Do you agree with the issues that MBIE has identified with the regulations?

We agree with many of the issues that MBIE has identified in its discussion document and are pleased to see some of the issues we raised directly with MBIE appear.

3.1.1. Growing importance of a secure electricity supply

ENA believes that the discussion document significantly downplays the increasing importance of a reliable and resilient supply of electricity to consumers, communities and businesses. The recent effects of Cyclone Gabrielle (though unwelcome) have provided an object lesson that the safe and secure provision of electricity supply is absolutely vital - not just for 'nice to have' aspects of modern living, but also critical elements of civil infrastructure such as telecommunications and water, sewage and wastewater management.

ENA is therefore concerned that the discussion document weighs the economic value of land (especially productive land in a rural context) against the economic impost on EDBs and their customers in terms of the 'value of lost load' and SAIDI/SAIFI metrics. This is a wholly inappropriate way of setting the balance of risk and costs between works owners and vegetation owners.

The true value of a safe and secure supply of electricity to consumers and communities vastly exceeds the strict economic costs imposed on, and benefits accrued to, works owners. Additionally the economic impact of disasters such as wildfires started by trees touching lines has not been measured. The impacts of these sorts of events are measured in terms of the loss of utility of land, costs to contain the fire, repair damage and physical harm to people and property.

The value of secure and resilient electricity will become increasingly important as New Zealand electrifies its economy. Consider the hardship recently endured by Te Tairāwhiti and Te Matau-a-Māui as a result of Cyclone Gabrielle, and then consider how much more difficult to manage that situation would have been if the entire light vehicle fleet was electrified – a critical element of the Government's plans for meeting New Zealand's climate change objectives. For these reasons, the discussion document has not accurately framed the relative values of secure electricity supply against the value of vegetation.

3.1.2. Presence of electricity lines on private land

The electrification of rural New Zealand largely occurred in the 60s, 70s and early 80s. At that time rural communities were very eager to be connected to electricity distribution networks and receive an electricity supply. Many landowners were happy to have electricity lines placed on their land as it allowed for them and their communities to receive an electricity supply. In many cases this land was being used for sheep or dairy farming, and so the presence of electricity lines had little impact on the productivity of the land for those purposes.

Since the electricity lines were put in place, much of the private land that the lines cross has changed ownership. In cases where this has occurred, the presence of the electricity lines on the land, and their effect on the potential productivity of that land, will have been factored into the sale price of the land. Therefore, the present owners of the land will have received 'compensation' for the presence of the electricity lines in the form of a lower than otherwise purchase price. MBIE should therefore be wary of assuming that the presence of electricity lines on private land is without 'compensation' to the present land owner.

We do accept that there will be some rare instances where the land has been in single continuous ownership since the electricity lines were put in. In those scenarios, the landowner would have engaged with the EDB at the time the electricity lines were installed and was presumably fully cognisant of any impacts that would arise. We caution MBIE from re-visiting, in the context of the Tree Regs, the compensation regime that was in place prior to the Electricity Act 1992, when many of these lines were built. To do so is likely to be unwieldy and potentially a burden on all electricity consumers.

3.1.3. A proposal for a new approach

We propose that MBIE give serious consideration to amending the Tree Regs so they identify two different classes of tree owner – 'private' tree owners and 'commercial or public' tree owners.

The difference between these two classes of tree owner is whether or not they are considered a person conducting a business or undertaking (PCBU) as per the Health and Safety at Work Act (HASWA).

A 'private tree owner' would be a tree owner who is not a PCBU, and we anticipate that in the main this would be private residential tree owners who are not operating a business. Conversely, a 'commercial or public' tree owner would be a tree owner that is a PCBU. We expect that this would encompass businesses, and our focus is particularly on those businesses that own significant numbers of trees, such as plantation forestry and road-controlling authorities. There may be other ways this differentiation could be defined, and we're happy to explore this in more detail.

We note that PCBUs have existing obligations under HASWA S30(1)(a) to "…eliminate risks to health and safety, so far as is reasonably practicable;" and therefore this class of tree owner is already obligated to consider risks created by their activities and eliminate them. Clearly, choosing not to plant vegetation where it will grow into close proximity of an electricity line is a reasonably practicable step that a PCBU can (and should) take to eliminate risk to their workers and others. Defining these obligations more explicitly in the Tree Regs would therefore also have the benefit of helping these PCBUs manage their more general obligations under HASWA.

We will expand on this proposal further in our responses to some of the options in the discussion paper, but we believe that differentiating between classes of tree owners described above would make many aspects of the Tree Regs easier. There would no longer to be a need to find a 'one size fits all' solution. Trade-offs, particularly around responsibilities and duties, can be calibrated based on the competence and capability of the party in question.

3.2. Q2. What considerations do you believe the Trees Regulations should have in respect to Te Tiriti?

We agree that the Tree Regs should give effect to the principles of Te Tiriti. However, irrespective of the nature of the ownership of land, electricity lines, or vegetation, some significant physical risks exist where lines and vegetation come into close proximity with one another. Therefore, it is in all parties' interests that a regulatory regime exists to define and manage the responsibilities of relevant parties in these situations.

3.3. Q3. Do you think that the Trees Regulations should restrict the distance in which new trees can be planted or replanted in proximity to electricity lines?

Yes, absolutely. One of the first steps in addressing tree-related outages is to stop anything that worsens the situation in the future. Preventing new trees being planted in places where they will foreseeably grow to interfere with or otherwise threaten electricity lines is an obvious and necessary step to prevent the issue persisting into the future.

4. Other relevant information

4.1. Q4. Arguably the judgement in Nottingham Forest Trustee Ltd v Unison Networks Ltd has decisively clarified the responsibility for managing the fall line risk outside of the GLZ. Do you agree, and if so, is further government intervention necessary to address this risk?

We disagree, and think that the need for this judgement emphasises how poorly the Tree Regs manage what should be an obvious risk. Government intervention to amend the Tree Regs so that responsibility is clearly defined, articulated and managed appropriately is therefore more critical than ever.

Clearly, if the Tree Regs did address the fall line risk that materialised in this case, then Unison (and by extension its customers) would not have suffered the damage to its assets and interruption to supply that these trees ultimately caused. It is obviously in all parties' interests that such situations are addressed before any actual damage or interruption is caused, rather than relying on lengthy and expensive court proceedings after the fact.

We encourage MBIE to pay close attention to Unison's response to this question. As one of the parties involved in this case, it has a more detailed understanding and appreciation of the implications.

5. Objectives for the regulatory framework

5.1. Q5. Do you agree with our preferred objectives of the Regulation, why or why not?

We agree with MBIE's preferred objectives for the Regulations, though note again our comments in response to question 1 that MBIE has significantly understated the value of reliable and resilient electricity supply. Given the critical importance of a secure supply of electricity, the written purpose of the Tree Regs should be significantly strengthened.

5.2. Q6. Do you agree with our policy assessment criteria, why or why not?

We generally agree with the policy assessment criteria outlined in the discussion document, but wish to once again draw MBIE's attention to the observation we made under question 1. Specifically, we do not think that MBIE has appropriately calibrated '…the interests of vegetation owners and the interests of works owners.'. The 'interests of work owners' should be explicitly expanded to encompass the interests of all electricity consumers in having a safe and resilient supply of electricity, and all the things that that enables. That includes:

- warm, healthy, dry homes and workplaces
- medical devices necessary for individual well-being and health
- telecommunications equipment (including wider telecommunications networks)
- critical civil services, including water and wastewater systems
- private and public transport networks (increasingly as New Zealand decarbonises)
- commerce, particularly when underpinned by electronic fund transfer

In short, the public good enabled by a functioning and resilient electricity supply is vast and verging on unquantifiable – it is not an exaggeration to say that almost every aspect of modern civil society is dependent on it. It is therefore incorrect, and in some respects dangerous, to reduce this to simply being a weighing of the 'interests of works owners' against the 'interests of vegetation owners'. We strongly urge MBIE to take a more wholistic view of the value of a secure electricity supply when assessing potential changes to the Tree Regs.

6. Issue 1: How should vegetation risks outside the GLZ be managed?

6.1. Q7. What are your thoughts on extending the GLZ to cover a larger area, what would be the appropriate distance for the extension and how might this affect you?

To achieve a suitable level of risk reduction from 'fall line risk' using the blunt tool of a GLZ, it would need to extend to the distance of the tallest mature tree species in New Zealand – probably a radiata pine, as the discussion document describes. We agree with the discussion document's characterisation of such an approach – it would require a significant trimming of vegetation, most of which would be unlikely to ever threaten overhead electricity lines, and is therefore undesirable and unnecessary.

Setting aside the size of the GLZ, one critical issue that MBIE must address with the Tree Regs is the mismatch between the notice zone with respect to low voltage lines and the minimum approach distance (MAD) specified in NZ ECP 34[1]. Essentially, the notice zone should be sufficiently outside the MAD so that the tree owner still has the opportunity to manage the vegetation in question without requiring that the work be done by electrically competent people. As the Tree Regs stand now, by the time the tree owner – in many cases a different individual from the land owner or occupier - has received the notice from the works owner, this is not an option and so the trimming must be carried out by electrically competent people (most likely utility arborists) with the additional cost and complexity that entails. This additional cost has the added disadvantage of incentivising tree owners to take short-cuts and carry out their own tree trimming, within the MAD, with the risk that accompanies that.

Another sensible improvement that can be made to the GLZ, whether or not it is enlarged, is to require the GLZ to be 'clear to sky'[2]. Clearly, any vegetation that is allowed to overhang electricity lines, irrespective of how far above those lines it may be, poses an immediate risk to the lines should that vegetation fall (e.g. if an overhanging branch breaks). There is little value provided to the tree owner in allowing this overhanging vegetation to remain in place, and it unnecessarily complicates the tree trimming activity. For these reasons, GLZ should extend vertically upward, not allowing vegetation to remain in place that overhangs electricity lines.

[1] ECP 34 - New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001)

[2] Meaning that vegetation is not permitted to occupy the space vertically above any electricity line, irrespective of distance.

6.2. Q8. Would a 'likely to interfere with' approach work if 'likely interference' were clearly defined and limited in the regulation? What would this look like to you?

There is some attraction to introducing a 'likely to interfere with' approach into the Tree Regs. Provided it was scoped to encompass all vegetation that could interfere with the electricity lines (including in the event of falling over) then that would give EDBs significantly improved ability to manage the risk of vegetation to their assets. The 'likely to interfere' approach also needn't require (as the discussion document states) the removal of GLZ – it could simply apply to any vegetation outside of the GLZ, however that is defined.

We also want to point out that many, perhaps the vast majority, of Chorus lines are located on electricity network poles. Chorus therefore gets protection of their assets 'for free' (or included in lease costs, depending on the arrangement with the EDB) as EDBs use the Tree Regs to keep vegetation away from their electricity lines. The extent of Chorus' utilisation of the 'likely to interfere' notice is therefore not necessarily a good indicator of its potentially usefulness to EDBs.

Lastly, there is some concerns within the EDBs that the need to rely on the district court to enforce 'likely to interfere with' notices could create a significant administrative burden for both works owners and the courts.

6.3. Q9. Would a 'likely to interfere with' approach work if combined with a risk-based approach?

Yes, we think that a 'likely to interfere with' approach would work well when combined with a risk-based approach. In this arrangement, the Tree Regs would retain the current use of a GLZ (exact size and shape to be determined), and then any vegetation outside of that GLZ, if it is identified as posing a significant risk based on a defined risk assessment methodology, could then be subject to a 'likely to interfere with' notice from the EDB to the vegetation owner.

The benefits of such an approach would be:

- It retains the use of GLZ for the majority of vegetation in close proximity to the electricity lines, which is relatively simple to understand and apply, giving greater certainty to EDBs and vegetation owners:
- It allows EDBs to use a risk-based approach to manage vegetation that poses a risk outside the GLZ. In most cases this would likely be fall-zone risk vegetation. The risk-based approach would allow the EDB to not issue a 'likely to interfere with' notice in specific cases where the vegetation did not pose a risk to the electricity lines, e.g. because of the species of tree, geographic features, prevailing wind direction, etc.
- The additional complexity of a risk-based approach is employed only in those instances where a potential risk exists outside of the GLZ, minimising administrative burden.

We do have some nervousness that the need to rely on the District Court to enforce 'likely to interfere with' notices could create a significant administrative burden for both works owners and the courts.

6.4. Q10. What is your preferred option out of the options proposed by MBIE for issue 1? Are there any options you would recommend that have not been considered?

On balance, our preferred option is option 4, which to our reading is largely analogous to the approach implied by question 9, but using the existing (or potentially amended) resolution mechanisms in the Tree Regs rather than the District Court to resolve inaction. In either option 3 or 4 we think that a GLZ should be retained, as this is an easily understood mechanism for defining areas where vegetation should not be allowed to encroach. The new notice (or 'likely to interfere' notice) would then apply to any vegetation outside the GLZ that nevertheless presented a material risk to overhead electricity lines, as supported by a risk-based assessment.

We see both benefits and disbenefits from utilising the District Court to enforce 'likely to interfere with' notices. On the one hand, the authority of the District Court would hopefully be persuasive in the instance of otherwise non-compliant tree owners. On the other hand, there is a risk of creating a significant administrative burden for both works owners and the courts. We suggest that, if MBIE wishes to pursue option 3, that work to better understand the probable number of 'likely to interfere with' notices that would need to be referred to the district court. ENA and EDBs are ready to assist MBIE with this task.

We also suggest that, irrespective of changes to the Tree Regs notice system, a timeframe element be added to the notices issued, with appropriate penalties for non-compliance. These timeframes would of course have to provide a reasonable opportunity for tree owners to take action. If adopted, the risk based approach could provide a means by which the time scales could be determined based on the risk posed by the vegetation.

7. Issue 2: How can the Trees Regulations prevent the over-trimming of hazardous vegetation, which can result in unnecessary diminution of economic or amenity value?

7.1. Q11. How do you think a risk-based approach in the Regulation to managing vegetation could be implemented and enforced?

The interested stakeholders in the Tree Regs (including EDBs) could jointly develop an agreed risk-based approach to vegetation management near overhead electricity lines outside of the GLZ. The electricity sector,

supported by ENA, would be willing to coordinate this activity. The agreed risk-based approach could be contained within an industry guidance document, such as that produced by the Electricity Engineers' Association. The Tree Regs could include a requirement for this guidance to be reviewed on some reasonable frequency, e.g., 3-5 years.

The Tree Regs could make explicit reference to this guidance document as being the method by which the works owners must assess vegetation outside the GLZ. The role of the Tree Regs arbitrator could be expanded to encompass disputes between works owners and vegetation owners regarding the interpretation of this guidance.

7.2. Q12. What do you think are the most important aspects to include in a risk-based approach methodology? Are there any additional issues that you think should be considered?

ENA and its members have developed an outline of a risk-based approach methodology. In addition, individual EDBs will likely have their own internal risk-based processes for assessing threats to their assets. There are also internationally recognised risk management systems and standards (e.g. ISO 31000) that can be drawn on to develop a specific risk management framework for the Tree Regs.

Some obvious risk management considerations would be (note this is a non-exhaustive list):

- location of vegetation relative to the electricity overhead line
- location of the overhead line itself (e.g. near areas with high amounts of public traffic, etc)
- health of the vegetation
- species of vegetation (e.g. growth rates, propensity to shed branches, typical size and weight of branches, etc)
- criticality of the overhead line in the context of the wider electricity system and customers being served (e.g. hospitals, rest homes, schools, etc)
- prevailing weather conditions in the location
- relevant geographic features (e.g., sheltering slopes, exposed ridges, etc)

7.3. Q13. Do you agree with our view to include the consideration of fire risk in a risk-based approach to vegetation risk, why or why not?

ENA strongly supports the inclusion of fire as a key risk that the Tree Regs should manage, whether by incorporation into a risk-based approach, or by some other mechanism. One of the likely effects of climate

change is more drought periods and higher average ambient temperatures. These two effects will give rise to more vegetation, and periods when that vegetation will be drier and therefore more combustible. This increases the risk of fire starting when vegetation and electricity lines come into contact.

EDBs are increasingly focussed on their obligations to manage these risks but lack the necessary regulatory tools to do so. Setting to one side the obvious public safety risk and risks to property that arise from wildfires, this inability to manage risk effectively also has more mundane, but still consequential, effects. For example, EDBs face higher insurance premiums than they otherwise would if there were a more effective mechanism for them to manage fire risk. The costs of these premiums ultimately flow through to electricity customers. According to the Commerce Commission's Information Disclosure data, EDB insurance costs have increased 60% over the last 5 years.

ENA therefore agrees that fire risk should be a consideration in a risk-based approach. We do caution, however, that there is some risk of overlap or conflict arising from the interplay of the Tree Regs (and the role of works owners) and the role of Fire and Emergency NZ.

7.4. Q14. What is your preferred option out of the options proposed by MBIE for issue 2, are there any options you would recommend that have not been considered?

Of the options presented in the paper to address issue 2, ENA prefers option 4. Retaining the GLZ (subject to some alterations) has benefits for all stakeholders in that it is a relatively easy concept to understand and apply. There is significant merit in the introduction of a risk-based approach to manage vegetation outside the GLZ that nevertheless poses a risk to overhead electricity lines. In particular this is likely to apply to fall line risk, though there may be circumstances where other sorts of risk arise from vegetation outside the GLZ that the risk-based approach can address.

8. Obligation to remove danger to persons or property from trees damaging lines

8.1. Q15. Do you have any feedback on the Tree Regulations obligation on works owners to remove danger to persons or property from trees damaging conductors?

ENA understands from members that while the intent of provisions in the Tree Regs related to emergency situations is understood and appreciated, they are quite difficult to apply in practice. Clearly the ideal

resolution to such situations is to be able to intervene as soon as a potential risk is identified, such that the risk and damage to the EDB network do not actually materialise.

With this in mind then, a broader scope for this provision, such that EDBs can more readily address these situations prior to them becoming 'immediate', would be welcomed.

We recommend that there be a definition for the phrase 'Emergency Situation' and suggest it covers the situation where the works owner considers, on reasonable grounds, that there is no opportunity to issue a tree owner with a tree notice, and the works required to alleviate or remove the hazards must be immediate or prompt.

9. Issue 3: How should the Regulation balance the responsibility of vegetation owners and works owners?

9.1. Q16. Do you agree with MBIE's view that responsibility to identify risks sits best with works owners?

In our proposal to differentiate classes of tree owner, we consider that 'commercial or public' tree owners would be capable of undertaking and applying their own risk assessments of vegetation in close proximity to electricity lines. The risk assessment envisaged in our response to Q11 and Q12 should be relatively simple for any minimally competent PCBU to apply, with some limited additional information provided by the works owner (e.g. voltage of the electricity lines in question). In addition, this could give the vegetation owner the option of trading off additional management activity (e.g. more frequent trimming) in exchange for other benefits arising from the vegetation in question (e.g. maximise economic or amenity value). It would also allow the vegetation owner to exert greater control over who and how their land is accessed.

Conversely, the distribution sector does not expect that private individuals should carry out risk assessments on the interaction of vegetation and overhead electricity lines. However, businesses, particularly large organisations that manage risk on a day-to-day basis (e.g. forestry owners/operators, famers, local authorities, road-controlling authorities) should be perfectly capable of following and acting on a risk assessment methodology of the sort described in our response to question 12.

9.2. Q17. Do you agree with MBIE's view that the allocation of the first cut or trim should remain with improvements to its application, and why or why not?

ENA does not agree with MBIE's views on the allocation of first-cut or trim obligations. In addition to the gaming of the Tree Regs that MBIE describes in the discussion document, there is a more significant gaming risk posed by the Tree Regs. Essentially, every individual tree is 'entitled' to one cut or trim at the works owners' expense. Irrespective of any other changes made to the Tree Regs, we strongly advocate that the first cut and trim obligation on works owners be removed.

Among many other issues caused by the first-cut and trim obligation, clearly in situations where vegetation owners are continually planting new trees as a core part of their business (e.g. plantation forestry), there will be an ongoing cost imposed on EDBs (and by extension their customers) to continually provide first cuts or trims as new vegetation is planted and grows into the notice zones.

One benefit of differentiating between classes of tree owners is that, for 'commercial or public' tree owners specifically, there would be no obligation on the EDB to provide a first cut. Removing the 'free first cut and trim' would have the benefit of strongly incentivising these types of tree owners to only plant vegetation where it will not grow to interfere with the electricity lines. Avoiding this type of inappropriate planting has the added benefit of not requiring either tree owner or works owner staff or contractors to manage vegetation that has grown close to the electricity lines in future, thereby removing a potential source of risk in carrying out that activity.

9.3. Q18. Is there a way to apply the notice system at a higher level than the individual tree?

ENA sees significant merit in developing the notice system such that it does not require the works owner to apply it on a per-tree basis in all cases. The need to monitor first cuts on a per tree basis is a significant administrative burden, and almost nonsensical in some contexts, such as plantation forests.

ENA supports an amendment to the Tree Regs that provides some flexibility to the works owners on how to identity the vegetation that a notice relates to, based on the individual circumstances.

For example, the system should facilitate (where relevant):

- the use of GPS location with text or an image to identify a single tree that requires trimming
- the use of GPS location in conjunction with text and/or an aerial image (such as a GIS snip) to identify a specific stand or area of vegetation
- the ability to identify multiple areas of vegetation on a specific property.

For those tree owners who have neither the extent of tree ownership nor the competence or capacity to manage a less specific notice system (e.g. 'private' tree owners), the existing tree-specific notice system could be retained.

9.4. Q19. What is your preferred option out of the options proposed by MBIE for issue 3, are there any options you would recommend that have not been considered?

Of the options that MBIE have presented to address issue 3, ENA prefers option 3.

We again draw MBIE's attention to our proposal regarding different classes of tree owners, which would allow for the options to address this issue (and the others in this paper) to be tailored to the competence, capacity and resources of the tree owner in question.

10. Issue 4: What should be the process for works owners to access vegetation on private land?

10.1. Q20. What is your preferred option out of the options proposed by MBIE for issue 4? Are there any options you would recommend that have not been considered?

ENA does not support any of the options proposed. Option 2 does not in our view adequately address the problem. Option 3, by relying on a court order, would take much too long meaning: that EDBs cannot access land to reduce risk, even where they have an obligation to do so.

ENA does however support the inclusion of 'owner or occupier' included in Option 2 – so that works owners are not obstructed in cases where the owner cannot be contacted.

EDBs are often frustrated by the notice system for tree trimming as it frequently 'dead-ends' when a land or tree owner is non-responsive. EDBs have limited knowledge of who individual tree owners are (especially plantation forestry) and need some relatively straightforward mechanism to resolve these 'dead-end' situations when they arise. For this reason we think it desirable to allow EDBs, when reasonable efforts have been exhausted, to access private land to carry out tree trimming to remove the risk posed by vegetation.

It is relevant to point out that EDBs have powers under the Electricity Act (section 23 - Rights of entry in respect of existing works) to allow them to access private land for the purpose of 'inspecting, maintaining, or operating the [existing] work[s] '. It is therefore incongruous to allow EDBs power to access private land for the broad

range of tasks described in the Act, but then introduce additional, arguably more onerous, obligations under the Tree Regs only for the much narrower activity of vegetation management.

ENA recommends that separate provisions are included in the Tree Regs to make property access rights for works owners for the purpose of vegetation management within the regulations clear.

Expanding on this, a variation of Option 3 – that the works owner would still need to make reasonable efforts to contact the owner or occupier – but would have right of access following these attempts, without requiring the determination of the court is our preferred approach. We think that in cases where parties did not agree that reasonable efforts had been made to make contact with the owner or occupier, before the land was accessed, the courts could be used in these cases to determine if reasonable efforts had been made and to hold works owners to account for this. This means that litigation happens in some – but not all – cases where works owners cannot access land to remove risk.

There should be some indication of what 'reasonable efforts' means and we note that the Electricity Act 1992 sets out notice requirements that a works owner must adhere to when accessing property for the sake of maintaining works. Section 23A says this is 10 working days and Section 23C provides that a works owner does not need to give notice in an emergency. Instead, the person must give notice as soon as practicable (no later than 5 working days after entry).

We think these notice periods are a good indication of where 'reasonable efforts' have been made by a works owner to contact an owner or occupier, and we recommend that these are stipulated in the regulations.

11. Issue 5: How should disputes between vegetation and works owners be resolved?

11.1. Q21. What is your preferred option out of the options proposed by MBIE for issue 5, are there any options you would recommend that have not been considered?

Of the options that MBIE have presented to address issue 5, ENA prefers options 2, extending the scope of the present arbitrators' jurisdiction.

While we see some attractiveness to utilising UDLs existing resources and capabilities to address the issue of dispute resolution under the Tree Regs, we agree with MBIE's statement that there are advantages to this service being paid for by the Government, rather than the sector. For that reason, we agree with MBIE's preferred option 2 to resolve issue 5.

12. Offences and penalties

12.1. Q22. Do you consider that ongoing penalties are a useful element of the current regulatory regime?

ENA understands from members that they are often unwilling to pursue penalties against private or residential tree owners for non-compliance with the Tree Regs, as this is seen as heavy-handed, resource intensive to apply for, and not consistent with good customer service outcomes. In addition, private tree owners are largely unaware of their obligations under the Tree Regs, so the incentive to avoid penalties associated with non-compliance has little, if any, effect on their behaviour in managing their vegetation. ENA's proposal to introduce two classes of tree owner would allow for stronger penalties to be imposed only on those classes of commercial and private tree owners who have the capability, capacity and resource to manage their obligations under the Tree Regs appropriately. In this arrangement, a strong penalty regime is a useful incentive to drive compliant behaviour from these types of tree owner and would be more likely to be utilised by the EDBs.

13. Arrangements for monitoring, evaluation and review

13.1. Q23. Do you have any comments on our proposals for monitoring, evaluating and reviewing the Trees Regulations, for example when a review of the new Trees Regulations should occur?

As a matter of good law-making, legislation should be subject to regular review to examine its effectiveness and make amendments as required. It is unfortunate that it has been nearly 20 years since the Tree Regs were introduced and only now are subject to review.

Climate change and electrification of the economy will mean that the speed of change in the sector will increase, and there will be a need for regulations to adapt to meet these changing needs. To avoid the mistakes of the past, we propose that the Tree Regs should be subject to review within 5 years from any amendments to the Tree Regs. These review requirements should be enshrined within the regulations.

13.2. Q24. Do you have any additional feedback that you would like to provide on the regulation or the options we have proposed?

We think there is a strong case for introducing two classes of tree owners, as per our proposal under section 3.1.3. We think that many of the obligations and duties imposed by the Tree Regs can be easily fulfilled by any minimally competent PCBU, and it is not unreasonable to require such entities to manage the risks they impose on external parties and their assets.

Conversely, we think there is also a strong argument that the obligations that the Tree Regs impose upon private/residential tree owners are poorly understood and difficult and costly for these individuals to comply with in practice. The net effect of this is that this class of tree owner is more likely to take short cuts, exposing themselves and others to safety risks. With the differentiation we have proposed, the obligations on this class of tree owner could be reduced, with works owners prepared to pick up additional obligations in terms of these trees – which we understand is what happens in practice in many cases today. However, if this option is favoured it is imperative that allowances be made within the Commerce Commissions price-quality regime for the additional expenditure that this would require from EDBs.

We also wish to raise the issue of vegetation management on the conservation estate. Currently, S.8(4) and S.14(8) of the Tree Regs effectively exempt the Department of Conservation from any role or responsibility to manage vegetation on conservation land. Irrespective of the nature of the ownership of land, electricity lines, or vegetation, some significant physical risks exist where lines and vegetation come into close proximity with one another. For these reasons it is important that the Tree Regs define and articulate clear responsibilities for all parties that have a role to play in the management of the risks arising from electricity lines and vegetation. We therefore propose that these exemptions be removed from the Tree Regs, and that conservation land (and the administrator of that land, the Dept of Conservation) be included in the management regime defined by the Tree Regs. In our proposed differentiation of classes of tree owner, Dept of Conservation would be considered a 'commercial or public' tree owner.

Lastly, as a relatively straightforward matter of modernisation of the Tree Regs, requirements on works owners to provide notices by mail should be broadened to allow other widely accepted means of communication (e.g. email).

14. Conclusion

It is difficult to overstate how important the ability to effectively manage vegetation is to the distribution sector. ENA and its members are more than willing to work closely with MBIE and other stakeholders on developing improvements to the Tree Regs, driven by the feedback from this discussion document. The ENA's contact person for this submission is Richard Le Gros (richard@electricity.org.nz or 04 555 0075).

15. Appendix A

The Electricity Networks Association makes this submission along with the support of its members, listed below.

Alpine Energy

Aurora Energy

Buller Electricity

Centralines

Counties Energy

Electra

EA Networks

Firstlight Network

Horizon Energy Distribution

Mainpower NZ

Marlborough Lines

Nelson Electricity

Network Tasman

Network Waitaki

Northpower

Orion New Zealand

Powerco

PowerNet

Scanpower

The Lines Company

Top Energy

Unison Networks

Vector

Waipa Networks

WEL Networks

Wellington Electricity Lines

Westpower