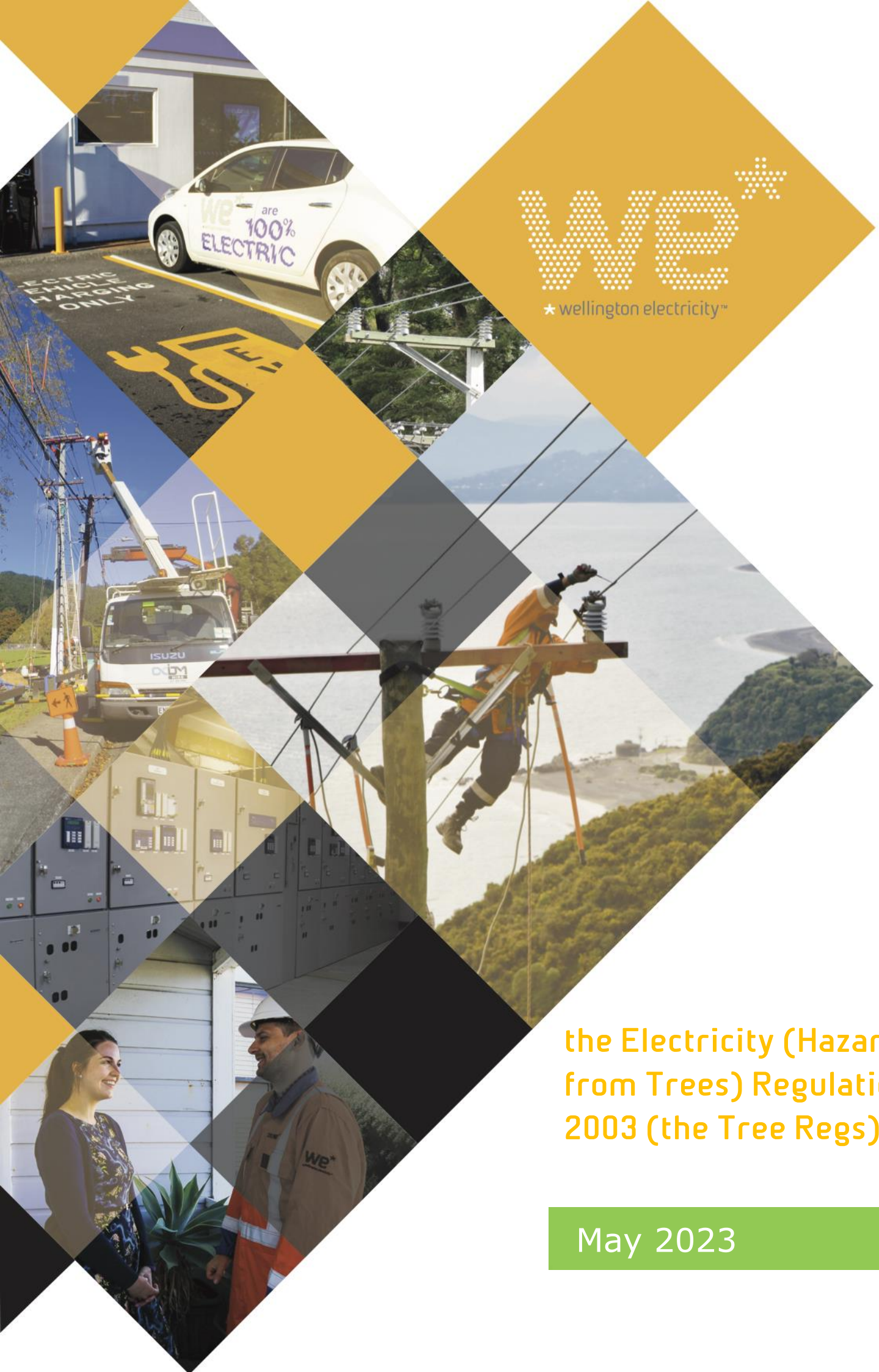

wellington electricity™

the Electricity (Hazards from Trees) Regulations 2003 (the Tree Regs)

May 2023

Contents

1 Submission and contact details

Consultation	Issues paper: Updating the Regulatory Settings for Distribution Networks
Submitted to	Ministry of Business, Innovation and Employment (**MBIE**)
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2 Release of information

We are comfortable for any part of this submission being made public. This submission contains no confidential information.

3 Introduction

Thank you for the opportunity to make a submission to the discussion document *Electricity (Hazards from Trees) Regulations 2003 (the Tree Regs)*. This submission will refer to the consultation document as 'The Paper'.

Many Works Owners are already implementing a risk assessment framework like that recommended in the Paper to manage gaps in current legislation. This works well until an identified 'at risk' tree owner elects to ignore the "at risk tree notice" and the matter requires recovery through the Courts. Providing the ability to enforce cut and trim notices will ensure networks can address 'at risk trees' and ensure a secure power supply, while also enabling them to recover the costs of the remedial or emergency works.

We also note the opportunity to simplify the regulatory framework. We believe after 20 years there is no longer the need to offer a first cut or trim or 'no interest trees'. These mechanisms were included in legislation to provide tree owners time to meet their obligations to ensure their vegetation wasn't putting electrical equipment at risk. This period has well and truly been completed. Most vegetation planted before 2003 will now have had its first cut or trim and Vegetation Owners should know their obligations. The legislation was not intended to pass the responsibility of managing trees to Works Owners, it was intended to provide time for Vegetation Owners to meet their new (at the time the legislation was introduced) obligations.

4 Context

Question 1: Do you agree with the issues that MBIE has identified with the Trees Regulations? Why, or why not?

Yes, we agree that MBIE has identified most of the key issues. The key missing issue is how Works Owners manage a default from a notice issued to a Vegetation Owner that an 'at risk' tree needs cutting or trimming. This includes changes to ensure that the costs for any damage caused by the 'at risk' tree or any remedial trimming action can be recovered from the Vegetation Owner who has not met their obligations provided by the notice.

We agree with MBIE's intent of strengthening the Tree Regs in response to severe weather events. With the greater reliance on electricity for NZ to decarbonise, networks need the ability to manage vegetation efficiently and effectively so they can maintain a secure supply of electricity. This will become even more important as climate change increases the frequency of severe weather events.

5 Evidence on the current problem

Question 2: What considerations do you believe the Trees Regulations should have in respect to Te Tiriti o Waitangi?

No comments.

Question 3: 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. There seems little sense in allowing trees to be planted where they will eventually have to be cut back or removed. Feedback from Vegetation Owners in the forestry industry (page 20 of the paper) says that the forestry industry is already doing this so a legislative change would be reinforcing existing good practices.

6 Other relevant information

Question 4: 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?

While the ruling is useful to clarify aspects of the legislation, it does highlight the need for legislative change. If the legislation was clear and was functioning well, there wouldn't be the need to rely on legal precedent to confirm the intent of the Tree Regs and the responsibility of the Vegetation Owners and the Works Owners. Works Owners should have a procedural pathway for recovering costs from Vegetation Owners who have defaulted on their obligations, rather than having to rely on the Courts to recover costs.

The judgement also only addressed a subset of the issues identified.

7 Primary issues and options analysis

Question 5: Do you agree with our preferred objectives of the Regulation, why or why not?

Yes, we agree with the preferred objectives.

We think the objective for a resilient electricity network could be strengthened by referencing the provision of an 'adequate security of electricity' in relation to both responding to climate change ***and*** to New Zealand's decarbonisation objectives. The reference to climate change relates to resilience to changing weather patterns (i.e. like those experienced during Cyclone Gabrielle) and the reference to decarbonisation relates to the growing dependence on electricity as the primary energy source as we transition fossil fuel use to electricity, including the electrification of transportation. The greater dependence on electricity means that the impact of an outage will be greater.

We also think the objectives should consider who is best placed to bear the costs of managing vegetation. This includes ensuring that the public (electricity customers) are not paying for vegetation Owners to meet their vegetation management obligations. Under the current regulation, a single Vegetation Owner defaulting on their vegetation management obligations can drive costs across many customers.

Question 6: Do you agree with our policy assessment criteria, why or why not?

Yes, we agree with the assessment criteria assuming that the objectives are expanded to reflect the increased reliance New Zealanders will have on the electricity system as we decarbonise (and the greater impact of any outages as New Zealand transitions away from fossil fuels).

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

Question 7: 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?

We agree with the Paper's assessment that simply extending the GLZ to the average length of a radiata pine is inefficient and would result in a large amount of vegetation in New Zealand being felled or trimmed, much of which would never come into contact with electricity lines and equipment. We agree that this option would lead to large and unnecessary commercial losses for vegetation owners.

Question 8: 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?

We think this option is close to what is required – identifying vegetation that is at risk of contacting electrical equipment (rather than the blanket approach of option 1). Combined with a risk-based approach that classifies the impact and likelihood of damage that the identified vegetation might cause, would allow a Works Owner to target their work programmes to high-risk vegetation and avoid unnecessarily trimming vegetation that is not at risk.

Question 9: Would a 'likely to interfere with' approach work if combined with a risk-based approach?

Yes – this is essential to allow networks to identify and focus only on the trees that need managing to maintain their quality standards.

Question 10: 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?

Our preferred option is a combination of option 3 and 4:

1. Maintain the current GLZ distances and refine the definition to include:

    - Restricting new plantings and replanting in GLZ (as discussed in question 3).
    - Require the GLZ to be 'clear to the sky', ensuring branches don't hang over electricity lines. This will avoid outages from breaking overhanging branches.

    Maintaining the GLZ provides a clear expectation of the areas that vegetation must not encroach and allows Works Owners to actively and directly ensure the areas stay vegetation free.

2. Apply a risk-based assessment to the vegetation outside of the GLZ, identifying and assessing vegetation that could threaten the security of the electricity supply. A risk-based assessment would allow a Works Owner to focus on the trees that need managing to maintain their quality standards.

    WELL has successfully operated a risk-based approach to vegetation management since 2018, focusing the management programme on the removal of high-risk trees.

3. Introduce a new notice category warning that a vegetation hazard outside of the GLZ poses a risk to electricity lines and that the responsibility for trimming and removing the identified vegetation sits with the Vegetation Owner). The notice should:

    - Provide a date that the at-risk vegetation needs removal, trimming or cutting.
    - Provide an indication of the potential cost that could be incurred if the notice is not actioned.
    - Notify the Vegetation Owner that they will be liable for any damage to the network or costs to reinstate supply, by the identified vegetation, after the date provided to address the notice.
    - Provide advice and guidance on how the Vegetation Owners can action the notice, including contacts for arborists qualified to complete the work. The guidance would also include providing an awareness of unintended consequences of not using qualified arborists (i.e. felling into lines and realising the risks that the notice was trying to avoid).

    Networks may choose to offer Vegetation Owners a free cut or trim if they are already working in the area. For example, we often offer to cut 'at risk' trees as part of our GLZ work programmes, provided

the Vegetation Owner removes the carcass of the tree. These types of offers form part of a network operator's social license and should be at the discretion of the Works Owner.

4. Provide the ability for Works Owners to enforce the notice if the Vegetation Owner does not action the notice by the date provided. Enforcement could include the ability of the Works Owner to access the private property and cut/trim the vegetation as required through a Justice of the Peace endorsement of documented evidence rather than redress through the District Court.

5. Adjust the regulatory rules to remove any SAIDI and SAIFI impact incurred from vegetation that has had a notice issued and the Vegetation Owner has not completed the actions by the dates provided in the notice.

9 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?

Question 11: How do you think a risk-based approach in the Regulation to managing vegetation could be implemented and enforced?

We believe that legislation should provide rules about the provision and operation of a risk-based framework, but the actual framework itself should be developed outside of legislation to allow it to be regularly reviewed and updated.

The Electricity Engineers' Association and Electricity Networks Association have jointly developed guidance and assessment criteria for a risk-based vegetation framework. This could be adopted as a starting point.

The risk assessment frameworks should be informed by arborists who can provide technical knowledge and expertise about tree management, species-specific risks, the impact on removing vegetation on adjoining trees and vegetation life cycles.

Question 12: 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?

We have been operating a risk-based vegetation framework since 2018. We developed our risk assessment framework with Treescape who specialise in vegetation management around electrical equipment.

The Electricity Networks Association of New Zealand and Electricity Engineers' Association of New Zealand have also jointly developed the *Risk Based Vegetation Management Guide - A Guide to assessing and prioritising vegetation management outside of the requirements specified in the Electricity (Hazards from Trees) Regulations 2003*.

The guide provides a range of risk criteria to be considered. The importance of each will depend on network characteristics like topography, weather, vegetation network etc. On the Wellington network, important aspects include:

- Tree species (e.g. gum trees are inherently high risk as they readily shed branches and bark);
- Visual tree health assessment (as failure is usually due to tree condition or a defect);
- Line strike probability (e.g. direction of lean towards or away from the line);
- Ground stability and root security;
- Consequences of tree contact (number of customers affected);
- Likelihood and consequence are combined to determine benefit vs cost of mitigation.

Much of the success of our application of the risk-based framework has been ensuring our vegetation management contractors who implement the framework have the appropriate skills and experiences to apply the assessment correctly and consistently.

Traditional risk-based assessments have focused on the impact on the electricity system and haven't considered the Vegetation Owners' economic costs. Additional criteria considering and assessing the cost of different mitigations and the economic cost to the Vegetation Owner should also be considered. These additional criteria will be important to help mitigate Vegetation Owners' concerns about unnecessary cutting and trimming. Part 5 of the New South Wales Electricity Supply (Safety and Network Management) Regulations 2014 provides useful guidance. This includes consideration of alternative methods and confirmation that none of those methods are feasible (including economically feasible). Guidance will need to be developed for these assessments.

The assessments could include other mitigations like conductor covers, or in extreme cases for high-value vegetation, undergrounding. Alternatively, the Vegetation Owner could provide a backup supply and accept that they will have to pay damages, to mitigate the risk of their vegetation causing an outage. For high-value alternatives, it would be appropriate for the Vegetation Owner, who would fund works outside of the GLZ, to sign-off the assessment.

Question 13: 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?

Yes, we agree with the Paper's assessment that fire risks should also be considered. A consequence of vegetation contacting electrical equipment and subsequent risk to public safety and the power supply is fire.

Hazards from trees can also impact Vegetation Owners' own electrical assets. Vegetation Owners are responsible for their own service lines which can be damaged by private trees falling and breaking the supply connection to the home (or network). This can also damage internal home wiring which then will need electrical inspection to prevent house fires on reconnection and livening. This is covered in current Safety Regulations.

Question 14: 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?

We agree with the Paper's assessment of the options and that option 4 is the most preferred. Currently, we apply a risk-based assessment (like option 2) which identifies 'at risk' trees outside of the GLZ and outlines the Vegetation Owners responsibility and obligation to address the identified risk Option 4 of issuing a notice that can be enforced would provide confidence that 'at risk' vegetation can be mitigated.

Any option should retain the GLZ and the ability for a Works Owner to address any vegetation within that zone. The responsibility and ability to remove any danger to persons or property from trees damaging conductors should also be retained.

The current *Notification of trees encroaching notice zone* and *Notification of trees encroaching growth limit zone* would be replaced with the ability to issue an enforceable notice (as discussed in the solution to Issue 1) which has resulted from a Works Owners risk assessment of vegetation outside of the GLZ.

Question 15: Do you have any feedback on the Tree Regulations obligation on works owners to remove danger to persons or property from trees damaging conductors?

While retaining this obligation is important, we believe that the definition of an emergency situation needs expanding to capture imminent threats in addition to responding to incidents once they have occurred. We support the ENA's definition.

"Emergency situation means a situation where the works owner considers, on reasonable grounds, that there is no reasonable opportunity to issue a landowner with a tree notice, and that the circumstances are such that the works required to alleviate or remove the hazards must be done immediately or promptly".

We agree with the Paper's assessment that the need for this ability will increase as the frequency of severe weather events may worsen with climate change.

There are ownership boundaries between "works" and "installation" that should be considered - where responsibilities transfer to private property owners rather than network owners to manage trees and the danger they can pose to public safety.

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

Question 16: Do you agree with MBIE's view that responsibility to identify risks sits best with works owners?

We agree with MBIE's view that the responsibility to identify risks sits best with Works Owners:

- Works Owners understand the risk posed by vegetation to their networks and are best placed to identify hazards and assess the potential mitigations and controls.

- Works owners are accountable for meeting regulatory quality standards and need to be confident that an adequate risk assessment is being made. As a network owner, we would not be comfortable with another party being responsible for activities that directly impact our network's quality performance.

Question 17: 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?

We disagree with retaining the first cut or trim as the tree regulations as the requirement was in place to ensure tree clearance was achieved before subsequent charges were recovered from tree owners. As the Tree Regs have been in place for 20 years and most vegetation planted before the legislation was introduced would have received its 'free' cut or trim. Vegetation Owners should now understand their obligations and should not be planting trees that could grow into contact with electrical equipment. As the legislation stands at the moment, the public bears the cost (via distribution lines charges) of the first trim or cut, even when the trees were planted after the legislation was put in place and obligations were clear. While the proposed clarification would exclude vegetation in this situation, we believe that after 20 years the legislation can be simplified by removing this obligation and not be further complicated by adding unnecessary exceptions.

Managing the first cut and trim has a high cost (both the administration cost of tracking which trees have had their 'free' cut and the cost of the cut itself) which we believe is being unfairly applied to the public. Essentially the public is now paying to remedy when Vegetation Owners aren't meeting their obligations under the Act.

Question 18: Is there a way to apply the notice system at a higher level than the individual tree?

We strongly support the suggested change for the reasons provided. The change would allow Works Owners to reduce their administration costs. Typically, the tree owner is a landowner, so issuing a Notice linked to a property title which references a pole number(s) on the network feeder would also be workable. Under price/quality regulation, those cost savings are passed back to the public[1].

Question 19: 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?

We support option 3 for the reasons provided in our response to questions 16 and 17 and those provided in the Paper.

We do not agree with MBIE's preference for option 2 '*because it provides a better balance in regard to the sharing of costs associated with managing hazardous vegetation'*:

- Works Owners are responsible for risk assessments and for managing trees within the GLZ so will already incur a large share of the cost.

[1] The IRIS incentive mechanisms means that the savings are shares approximately 75/25 between the customer and the Works Owner respectively (assuming current regulatory settings).

- As highlighted in the Paper, first cut and trims applied 20 years after the legislation was put in place will most likely be for trees that were planted after the legislation was introduced when Vegetation Owners should have known their obligations. Retaining the first cut and trim means the public is paying for the consequence of subsequent Vegetation Owners not meeting those obligations.

- We believe that in the majority of cases, the economic impact of electrical equipment being on private land should already be accounted for. Even before the Act was introduced in 2003, landowners will have been aware that they would have to keep vegetation clear of conductors and would have accounted for the loss of productive land in their own business valuations. The majority of the electricity network has been in place for over 50 years and in the majority of cases, the issue of economic loss will have been diluted to the point it is no longer material.

We also believe that the 'no interest tree' mechanism should be removed for similar reasons as the first cut or trim should be removed. After 20 years Vegetation Owners should already have declared no interest in trees and those trees should have already been cut. Vegetation Owners should be responsible for managing trees planted after 2003 as they should be aware of their obligations. Managing the no-interest tree database is very expensive as each tree has to be individually identified and managed.

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

Question 20: 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?

We support option 2 which will improve a Works Owners ability to get the necessary permissions. We believe that option 3 will also be needed if the Works Owner still cannot contact the owner or occupier. If option 2 is applied, this should only be needed on rare occasions but would provide an important 'last resort' capability that is needed to maintain a secure power supply.

Note, these options to access private land assume there is an emergency or when a Vegetation Owner has defaulted on their obligations to respond to a Notice. Works Owners will not need to access private land in any other case – trimming and cutting vegetation identified as being 'at risk, is the Vegetation Owners' obligation and the Works Owner will not need access.

Removing 'first cut' and 'no-interest' trees will significantly reduce the need to seek permission to access private land.

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

Question 21: 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?

We agree with MBIE's assessment and preference for option 2. We believe it's important for the arbitrator to have specialised vegetation knowledge.

A dispensation should not remove the obligation on the Vegetation to pay costs resulting from damage from not acting to remove the tree risk. This will balance against frivolous requests for dispensation which don't maintain the security of supply.

13 Offences and penalties

Question 22: Do you consider that ongoing penalties are a useful element of the current regulatory regime?

We support penalties as they provide a useful deterrent and incentive for all parties to be aware of and meet their obligations. This would have been of benefit for the situation addressed in the Unison legal case.

More important than penalties is a clear framework of who is liable for any damages to electrical equipment caused by vegetation. This includes Vegetation Owners being liable for any damage if they have received a notice and they have not responded within the timelines provided.

14 Arrangements for monitoring, evaluation and review

Question 23: 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?

We agree that regular reviews are important, especially following legislative changes.

15 Additional feedback

Question 24: Do you have any additional feedback that you would like to provide on the regulation or the options we have proposed?

The Tree Regs provide an important fallback for Works Owners to allow them to maintain a secure supply when Vegetation Owners don't want to take responsibility for managing their vegetation. The Tree Regs and the associated risk mitigation framework should allow consideration for alternative mitigations like covered conductors or undergrounding which would allow the Vegetation Owner to retain high-value vegetation. As the party paying for these alternatives, the Vegetation Owners should be included in assessing these alternatives.