

ESV ref: CM-2193  
Your ref:



Creating a  
safer state with  
electricity and gas

27 November 2015

Mr Mark Clarke  
General Manager Electricity Networks  
United Energy  
PO Box 449  
MOUNT WAVERLEY VIC 3149

Dear Mr Clarke

## **ELECTRICITY SAFETY (ELECTRIC LINE CLEARANCE) REGULATIONS 2015 – GUIDANCE INFORMATION**

I am writing to each distribution business (DB) to provide further clarification in relation to the recently made Electricity Safety (Electric Line Clearance) Regulations 2015. This guidance material is designed to help your business understand how Energy Safe Victoria (ESV) will interpret the regulations and how they may be administered. The areas covered are limited to items that have been brought to ESV's attention as requiring clarification.

### **Compliance to AS 4373 is required as far as practicable**

The regulations and ESV expect responsible persons to, as far as practicable, comply with AS 4373. At all stages of the electric line clearance (ELC) process (including inspection, consultation, notification, works programming and clearing) the responsible person must be able to demonstrate their decisions and actions around achieving Code compliance, including adherence, as far as practicable, to AS 4373.

In circumstances where tree amenity is important to the owner of a tree (for the purposes of this letter, owner includes an occupier of private land for a tree on that land, and a council for a council tree) a responsible person must, as far as practicable, cut the tree in accordance with AS 4373 to preserve the amenity of that tree. The approved electric line clearance management plan (ELCMP) shall have procedures to inform the business on how to manage a situation where tree amenity is important to the owner and it is thought to not be practicable to comply with AS 4373 while cutting a tree in accordance with the Code.

An effective notification and consultation process will inform DBs if a tree has amenity importance. An effective dispute resolution and escalation process will ensure sound governance and that people can access additional mechanisms when in disagreement.

ESV notes that generally the DB ELCMPs indicate they are already applying the principles of AS 4373.

ESV also understands that various cutting techniques have historically been employed to achieve clearance space compliance. In circumstances where tree amenity is not important to the owner of the tree, ESV acknowledges those practices will continue.

## **Compliance to AS 4373 impacting workplace safety and the use of mechanical tools**

Workplace safety should always be prioritised. Numerous different ELC methods can be utilised and performed safely.

In circumstances where tree amenity is important to the owner of the tree, ESV expects the responsible person to, as far as practicable, preserve the amenity of the tree. In situations where the responsible person has determined tree amenity is unimportant to the tree owner and mechanical tools have historically been used, ESV, in principle, has no issue with their continued use.

DB conduct over recent years in the use of mechanical tools is generally believed to be consistent with ESV's current and future expectations.

## **Inspection and cutting activities by qualified personnel**

AS 4373 states that the assessment of trees should be carried out by a suitably qualified arborist. In relation to the Code requiring qualified arborists we note the following:

- technically in AS 4373, the word should is used in this context and not the word shall, hence not a mandatory requirement of the standard
- AS 4373 refers to an arborist or, alternatively, a person with equivalent recognised and relevant experience
- AS 4373 does not require an arborist to do the cutting.

However, under an ESMS ESV expects a responsible person to have rigorous risk-based processes in place to ensure only competent persons are permitted to carry out inspection and cutting activities that require adherence to AS 4373.

## **Compliance to a written notice (clause 15)**

For the avoidance of doubt a notice in a newspaper to meet the requirements of clause 15 would be unacceptable.

The cutting or removal works can only commence between 14 and 60 days after issuing the notice. At a minimum the notice has to detail:

- responsible person's contact information
- contact details for enquiries
- how to access the dispute procedure
- etc. (depends on the category of person receiving the notice).

In relation to a private property, if the tree is intended to be cut a diagram in the notice will show the tree, where the electric line is in relation to the tree, and where the tree will be cut. A representation of the tree is acceptable and it is not necessary to use a photograph.

## **Compliance to publication of a notice (clause 16)**

In relation to a tree that is on public land that is not privately owned, a notice in a newspaper is required that:

- refers to the planned cutting or removal
- reflects the condition that the ELC works only commence between 14 and 60 days after the publishing of the notice.

The intention of the notification arrangements in this part of the regulations is to make residents and the community aware of the impending ELC works on public land. ESV expects this intent to be achieved as far as practicable. If a rolling notice is utilised in this situation and undermines the effectiveness of the intent then ESV would view the rolling notice as unacceptable.

The 2015 arrangements for notification/publication for ELC works to a tree on public land are not greatly changed from 2010. In fact, 2015 provides some greater flexibility in that the ELC works are only required to commence within the 14 to 60-day period; whereas in the 2010 regulations the ELC works had to be done within the period.

When administering the 2015 regulations, ESV would have no issue with a direct notice to the properties close to the tree/s instead of a notice in a newspaper, as an equivalent safety outcome.

### **Duty relating to assisting councils to determine the allowance for cable sag and sway (clause 21)**

If a council requires assistance to determine an additional distance that allows for cable sag and sway, the council may consult the DB. The DB must assist the council and the council must keep a record of the determined additional distance.

Typically a council's area of responsibility (declared area) is in a low bushfire risk area with short to medium span lengths (<100 m). Whereas the requirement to extend an applicable distance by an additional distance to allow for sag and sway of the cable is only relevant to:

- hazardous bushfire risk areas
- span distances greater than 100 m in low bushfire risk areas.

ESV will consider including as part of its council audit regime the requirement to keep these records. This should lessen the likelihood of a council seeking a determination for an electric line for which they had already been provided a determination.

### **Duty relating to the safety of cutting or removal of trees close to an electric line (clause 20)**

If a council has concerns about electrical safety when cutting or removing a tree, the council may consult the DB in whose distribution area the electric line is located. The DB is required to provide advice to the council on safe limits of approach to electric lines for cutting or removing the tree; and safe methods for cutting or removing the tree.

For many years now the DBs have had in place resources to support their stakeholders when electrical safety concerns were raised about work in the vicinity of their powerlines. Despite the absence of this clause in previous ELC regulations, it has always been ESV's expectation that the DBs would have provided the same or similar support on request.

### **Notification for land that is contiguous to private property**

If the intended cutting or removal works on a private property may affect the use of the land of a contiguous private property, a written notice must be given to the owner or occupier of the contiguous property. The written notice must detail the impact that the intended cutting or removal may have on the affected person's use of their land during the cutting or removal.

The 2010 ELC regulations used the terminology "affected person" in relation to requiring notification to third parties affected by cutting or removal. However it was not clear as to what constituted an affect and who had the right to be deemed an affected person. This resulted in quite a broad obligation on the DBs. ESV reviewed archival information from old regulations and discovered the original intent was to just consider the "use of the land". ESV subsequently reintroduced this terminology. Examples of where ESV would consider that the use of the contiguous land may be affected:

- causes limitations in accessing the property
- vegetation workers having to access the property.

I trust the above information provides greater clarity in relation to the recently made Electricity Safety (Electric Line Clearance) Regulations 2015.

Should you require further information please contact Noel Murray on telephone 9203 9700 or email [nmurray@esv.vic.gov.au](mailto:nmurray@esv.vic.gov.au).

Yours sincerely



Andrew Last

**EXECUTIVE MANAGER ELECTRICAL INFRASTRUCTURE SAFETY**