



ACT
Government

REGULATORY IMPACT STATEMENT

Electricity Powerline Vegetation Management Code 2018

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Purpose

The purpose of this Regulatory Impact Statement (RIS) is to provide information about the regulatory impact of the Electricity Powerline Vegetation Management Code (the Code) made under the *Utilities (Technical Regulation) Act 2014* (the Act).

Policy Problem

There is an ongoing need to maintain minimum clearance distances for vegetation near powerlines while at the same time limiting the environmental impact of any work done to prune trees.

A range of solutions were proposed in the Powerline Fire Safety Policy, which underpins the *Utilities (Technical Regulation) Amendment Act 2017* (Amendment Act) and the Code. These include the responsible utility: assuming maintenance responsibility for power poles on rural land to prevent potential bushfire ignitions; assuming ongoing responsibility for maintaining vegetation clearances on other non-urban land such as National Parks and reserves; assuming responsibility for vegetation management in the urban area; and being required to develop and adopt technical solutions to the overhead electricity network as a long term measure to prevent ignitions.

The requirement to develop technical solutions to reduce fire risk allows the responsible utility to maintain clearances in an appropriate manner, which limits impacts on trees and the environment.

The Authorising Law

The Code is made and approved under Division 3.2 of the Act. The Act relates to the safe, reliable and efficient delivery of regulated utility services. The objects of the Act include promoting the long-term serviceability of regulated utility networks and regulated utility services and to ensure the safe and reliable operation and maintenance of regulated utility networks and regulated utility services to protect the public, workers, property and the environment.

The Amendment Act creates a new section 41D which relates to vegetation clearance from aerial lines and establishes the need for work to be undertaken in accordance with a technical code.

Objectives of the Electricity Powerline Vegetation Management Code

The Code aims to provide further details about how the power under section 41D for the responsible utility to enter land and maintain vegetation clearances must be exercised. The Code requires the submission of a Works Plan to the Technical Regulator with prior endorsement from the Conservator of Flora and Fauna before vegetation clearance work can be undertaken on rural leased land or non-urban unleased land.

Specific pruning requirements are included, which aim to protect individual trees on all land from excessive damage, such as reduction pruning and a limit on the percentage of canopy that can be removed. The Code requires vegetation management contractors and employees of the responsible utility to have adequate training in arboriculture practices.

A new strict liability offence provision is inserted by the Amendment Act at section 16(2) of the Act, making it an offence if the regulated utility fails to comply with a requirement of a relevant technical code.

Consistency of the Electricity Powerline Vegetation Management Code with the Utilities (Technical Regulation) Act 2014

The Code is consistent with the Act in that it directly facilitates the objects of the Act. Specifically, setting enforceable standards for how, and by whom, vegetation clearance work can be carried out meets the objective of safe and reliable operation of a regulated utility network. Endorsement by the Conservator of Flora and Fauna prior to the responsible utility undertaking work in non-urban areas meets the objective of protecting the environment.

The Code directly addresses matters in s 11 of the Act which provides matters that technical codes can be made to address. Section 11(1)(f) provides that a technical code may be made for the purpose of protecting public and private property, and the environment. The Code achieves through requiring the responsible utility to consider bushfire risk as part of the Works Plan. Section 11(2) of the Act allows the Code to make provision in relation to the accreditation of people for work associated with regulated utility services.

Consideration of Alternative Options

Since 2014, the Act has provided for the technical regulation of utility services in the ACT. There are no reasonable alternative options for the technical regulation of the services outlined in the overarching policy and the Amendment Act. Within the bounds of the Act, a technical code is the most appropriate mechanism for achieving the policy objective of establishing a consistent process for management of vegetation, bushfire risk and environmental issues in the vicinity of the regulated overhead electricity network.

Cost/Benefit Analysis of Implementing the Code

The Australian Energy Regulator (AER) regulates energy markets and networks under the national energy market legislation and rules. A regulatory requirement such as the Amendment Act and Code must be in place before the AER will allow the pass through of necessary costs, incurred by the responsible utility to comply with the Code, to customers.

While the Code may place an additional administrative burden on the responsible utility through the requirement for a Works Plan and specific pruning and accreditation requirements, these measures are necessary and justified to achieve satisfactory environmental outcomes and reduced bushfire risk to the community.

The cost of the responsible utility undertaking additional responsibilities must meet a materiality threshold exceeding 1% of the utility's annual revenue. When all issues relating to vegetation management and private power poles are considered together in the interest of bushfire safety, the cost exceeds the materiality threshold.

Consultation

As required by the Act, the draft Code was provided to the ICRC and Evoenergy during the statutory consultation process. The draft Code was also provided to the Conservator of Flora and Fauna. This will be required under section 13 of the Act, as inserted on the commencement of the Amendment Act.

Consistency of the Regulation with Scrutiny of Bills Committee Principles

The Committee's terms of reference require it to consider whether (among other things) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):

a) is in accord with the general objects of the Act under which it is made;

The Code is consistent with the objects of the Act, specifically section 6(d) – ensure the safe and reliable operation and maintenance of a regulated utility network to protect the public, workers, property and the environment.

The content of the Code is a matter specifically provided for in the Act. In particular section 11(1)(f) which relates to protecting (i) public and private property; (ii) the environment; and section 11(2) which states that a technical code may make provision in relation to the accreditation of people for work associated with regulated utility services.

b) unduly trespasses on rights previously established by law;

The Code does not trespass on the right of the utility. New section 41D(2) of the Act provides:

(2) *A responsible utility may –*

(a) *enter and occupy land; and*

(b) *undertake any activity or work on the land that is reasonably necessary for the clearance of vegetation near an aerial line, including:*

(i) *the felling or lopping of trees; or*

(ii) *The trimming of roots of trees or other plants; or*

(iii) *The clearing or removal of vegetation.*

The Code provides guidance on the way in which the powers in that section must be exercised. The right in section 41D is clearly subject to the requirements of an applicable technical code as set out in section 41D(3).

c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions;

The right in section 41D to enter and occupy land, and to undertake activities or work is not unduly dependent upon non reviewable decisions. While the Code sets up a process for a Works Plan to be prepared by the responsible utility and submitted to the Technical Regulator for approval, this approval merely indicates that the work as indicated appears to comply with the requirements of the Code and other relevant legislation.

It is an offence to breach a requirement of a technical code (see section 16 of the Act), including the specific pruning requirements that apply through the adoption of the Australian Standards.

If the Works Plan indicates that the work or activities to be undertaken will be compliant with the specific requirements of the Code and other relevant legislation then it will be approved. While the decision of the Technical Regulator to approve or reject a Works Plan is not reviewable, the rejection of the Works Plan itself does not prevent the utility from exercising their powers under section 41D, so long as they are compliant with the requirements set out in the Code. Further, a new or revised Works Plan that contains new information that demonstrates code compliance can be submitted for approval.

The Works Plan merely establishes a process for the utility to consult with the Conservator of Flora and Fauna on environmental issues, and the Technical Regulator on technical issues, and for the Technical Regulator to indicate whether the Works Plan appears to be compliant with the Code and other relevant legislation.

- d) contains a matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The Act specifically contemplates technical codes that can be established for protection of the environment and the level of accreditation required. The Code contains detailed technical requirements that appropriately sit in subordinate legislation.

The Code also requires consultation and preparation of a Works Plan that will demonstrate code compliance of proposed activities. These requirements are all appropriately placed within the Code itself.