



Ms Elizabeth Molyneux  
Deputy Secretary, Energy  
Department of Energy, Environment and Climate Action  
Level 1  
8 Nicholson Street  
EAST MELBOURNE VIC 3002

13 February 2023

Dear Ms Molyneux,

**REGULATORY IMPACT ASSESSMENT FOR THE ELECTRICAL SAFETY (BUSHFIRE MITIGATION) REGULATIONS 2023**

I would like to thank your staff at the Department of Energy, Environment and Climate Action (the Department) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Assessment (RIS) for the Electrical Safety (Bushfire Mitigation) Regulations 2023 (the Proposed Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 13 February 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

**Background and Problems**

Victoria has some of the most bushfire prone areas in Australia, with 96 per cent of the State classified as a Hazardous Bushfire Risk Area (HBRA). Electricity assets, such as overhead powerlines and poles, can be an ignition source and have previously resulted in devastating bushfires. The 2009 Victorian Bushfires Royal Commission identified five of the eleven Black Saturday fires as being caused by electricity assets. Although the proportion of fires caused by electricity assets is low, they are most

likely to occur in circumstances (such as extreme weather events) where there is greater risk of a fire getting out of control and resulting in catastrophic consequences.

The proposed Regulations are intended to replace the Electricity Safety (Bushfire Mitigation) Regulations 2013 (the current Regulations) which sunset in June 2023. The current Regulations sit under the *Electricity Safety Act 1998* (the Act). The Regulations have previously been amended to incorporate recommendations made by the 2009 Royal Commission.

The Act imposes a duty on certain owners of electrical infrastructure to minimise the risk of a bushfire starting due to asset failure. The Act imposes safety duties and bushfire mitigation planning obligations on licensed distribution and transmission companies who comprise:

- Major electricity companies (MECs)
- Operators of non-private at-risk electric lines, known as specified operators (SOs).

Specified operators are a diverse group of entities whose involvement in the distribution or transmission of electricity is incidental to their principal business. Specified operators currently include electricity generators, wood product manufacturers, Department of Defence facilities, water utilities, mines and railway operators. Growth in small-scale renewable energy generation and storage has seen many businesses in this sector become classified as specified operators.

The Act requires MECs and SOs to prepare bushfire mitigation plans (BMPs) and have them certified by Energy Safe Victoria (ESV). The current Regulations provide guidance on what the asset operators need to do to fulfill their duties under the Act. This includes providing specific details regarding the process for preparing BMPs and the inspection standards for overhead lines.

The Department explains that if the regulations were allowed to sunset, MECs and SOs would continue to have bushfire mitigation obligations under the Act and asset operators would still be required to submit BMPs to ESV for approval. However, in the absence of regulations there would be less clarity regarding:

1. the specific requirements for an adequate BMP because the detailed guidance provided in the current Regulations, such as prescribed minimum inspection frequencies, would cease to apply.
2. the rules for conducting asset inspections in areas of high bushfire risk, such as the prescribed inspection standards provided by the current Regulations would also cease to apply.

These two factors mean that without regulations, there would potentially be a higher risk of electrical assets igniting bushfires.

## Options and Impact Analysis

In the RIS, the Department analyses options to address the problems identified above. Options are assessed using a multi-criteria analysis (MCA). The criteria and weightings in the MCA are:

- Reduction in likelihood of bushfire ignition risk (50 per cent)
- Cost to industry (MECs, SOs and private overhead electric line owners) (35 per cent)
- Cost to government (15 per cent).

The RIS analyses four alternatives against the MCA criteria:

- Option 1: (the base case) the Regulations cease to exist
- Option 2: the Regulations would be reinstated – with no amendments
- Option 3: the Regulations would be reinstated – with two sub-options
  - Option 3A: with amendments for consistency with contemporary standards and other regulations; or
  - Option 3B: the amendments suggested under Option 3A and other amendments to provide greater clarity and certainty for prescribed safety requirements for existing and new electrical constructions and installations.

The Department explains that Option 3B is the preferred option because it will do the most to reduce the risk of bushfires being ignited by electricity assets. This is because the option preserves the core bushfire risk mitigation obligations of asset owners, while introducing some targeted amendments to reflect current practices, such as updating the insulation standards for low-voltage lines in high bushfire risk areas. Both Options 2 and 3A are also assessed as reducing bushfire risk relative to the base case, but to a lesser degree than Option 3B.

Option 3B is assessed as imposing slightly higher costs on industry and government than Option 1 or Option 2. This is because it would require industry to implement some additional requirements during asset construction and management activities and reflect these in future BMPs. However, these additional costs are partly offset by the preferred option benefitting industry by providing clarity about compliance and inspection requirements and certainty that these requirements have been aligned with current practices. Therefore, the overall cost to industry has been assessed as low. Due to the need to update guidance and assist industry to transition to new rules, the preferred option was also assessed as imposing minor costs on government relative to Option 2 and the base case.

The Department has based its estimate of the costs of each option for industry on a survey of industry stakeholders. The total cost of the proposed Regulations to industry was assessed, given their existing obligations under the Act.

Overall, the Department explains that the additional safety benefits of the preferred option outweigh additional costs.

## **Implementation and Evaluation**

The RIS explains that the implementation and evaluation strategies for the proposed Regulations will be focused on monitoring the development of the specified operator sector. The preferred option involves remaking the existing Regulations, with minor clarifications and administrative amendments. This means that implementation planning should be straightforward regarding MECs and the existing SOs, given the proposed amendments largely reflect business-as-usual activities. Over time, the specified operator category is likely to capture new market entrants. These entities may not be familiar with the Regulations and their potential contribution to bushfire risks is presently unknown. Implementation planning for the proposed Regulations will therefore consider both established businesses and emergent industry groups who may fall within the scope of the Regulations.

### *Implementation*

The Department explains that in addition to the RIS being released for public consultation, it will send copies of the RIS to MECs and existing SOs.

As the regulating entity, ESV will be responsible for implementing the proposed Regulations using its established auditing capabilities. These capabilities include:

- Auditing bushfire mitigation plans submitted by MECs and SOs.
- Assessing the implementation of fire-prevention technologies such as rapid earth fault current limiters (REFCLs).
- Auditing the asset management practices (including vegetation line clearance) of major electricity companies and other regulated entities.
- Collecting and analysing data received through annual electrical safety performance reports, end of fire season summary reports and annual bushfire mitigation program reports.

Noting the potential for additional entities to become subject to the proposed Regulations in future, ESV anticipates publishing guidelines for renewable energy installations in 2023 that will cover bushfire mitigation.

### *Evaluation*

In the RIS, the Department outlines its evaluation strategy to ensure the Regulations remain relevant and are effective and efficient in meeting government objectives. The strategy includes a set of key evaluation questions (KEQs) aligned with the Department of Treasury and Finance (DTF) Resource Management Framework. These questions encompass program justification, effectiveness, efficiency, funding/delivery, risk and potential further funding requirements. The RIS highlights two sub-KEQS that will be considered related to (1) effectiveness and (2) efficiency:

1. Have the Regulations been effective in reducing the likelihood of bushfire ignitions from Victoria's electricity assets and at-risk electric lines?
2. Do the Regulations constrain the costs of doing so to the most efficient level?

Proposed indicators to be used in answering the key evaluation questions may include:

- The number of fires started by electrical assets.
- Electricity distributors' asset deployment commitments including the location and timing of completion.
- The number of inspections undertaken and audits evidencing the extent to which these commitments have been met.

Data to support the evaluation of the proposed Regulations will be drawn from ESV's annual audits of the commitments made in BMPs, which are published in ESV's annual safety performance report. These audits cover progress towards asset deployment commitments. Data on the number of fires started by distribution network assets will also be drawn from data published by the Australian Energy Regulator.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



**Anna Cronin**  
Commissioner for Better Regulation