

City of Boroondara Submission:

- Exposure Draft - Electricity Safety (Electric Line Clearance) Regulations 2020 (ESR)
- Regulatory Impact Statement (RIS)

March 2020



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1 Executive Summary

The City of Boroondara (COB) is a critical stakeholder in relation to the management of public land and associated trees near powerlines. The Exposure Draft - Electricity Safety (Electric Line Clearance) Regulations 2020 (ESR) is of great interest to the Council in addressing the balance between the risks identified in the Regulatory Impact Statement (RIS) and the removal of thousands of structural branches and entire mature trees that historically and currently exist within this council that will likely occur if the ESR is approved as proposed.

Council has major duties primarily in relation to two Acts when developing this submission:

- 1) As the “responsible person” under the Electricity Safety Act 1998 for the management of trees on public land, and
- 2) As per the Local Government Act 1989 - provide governance and leadership for the local community through advocacy, decision making and action.

Relative to the ESR, the City of Boroondara is responsible for public land that is wholly defined as Low Bushfire Risk Area (LBRA) as well as the fundamental objectives in the regulation to ensure: the management of the health of the trees as well as prepare management plans to minimise the danger of trees contacting electric lines causing fire or electrocution. Councils are the largest stakeholder by far responsible for the existing trees in LBRA’s of Victoria

Council is of the view that:

- It is essential to achieve the objectives of the applicable Act and Regulations by managing powerline risk near vegetation to reduce fires, electrocution and outages.
- The regulation is primarily the result of bushfires started by electrical assets in High Bushfire Risk Areas (HBRA) and is, when reviewed against the risks, biased to excessive removal of vegetation in Low Bushfire Risk Areas (LBRA) of Melbourne.
- The highest risk in both HBRA and LBRA is vegetation making contact with high voltage (HV) cables. Council fully supports the minimum clearances appropriate to the operating voltage of HV.
- The ESR does not currently do this for the operating voltages in LBRA of Melbourne, rather it is based on minimum clearances for rural voltages that are at least double the actual operating voltages of the LBRA of Melbourne.
- There is to date, negligible likelihood of fires and electrocutions in LBRA due to vegetation within the minimum clearance space (MCS). In LBRA the only risk with a substantiated likelihood is outages.
- The RIS concludes that only 6% of outages are caused by vegetation inside the minimum clearance space (grown-in). The balance of the 94% are caused by trees/branches over and beside the minimum clearance space (blown-in), which is acceptable under the regulations in LBRA (excluding 66kv overhang).
- Outages in LBRA are principally caused by either vegetation contacting high voltage (HV) or a fallen branch/tree breaking HV or low voltage (LV) cables through mechanical impact.
- Vegetation touching LV does not commonly cause outages as partially recognised by the ESR. This is evident by the thousands of trees currently touching LV in LBRA of Melbourne.
- The draft Regulations are inadequate in striking a balance of its objectives considering the stated risks (RIS & submission) in LBRA, resulting in excessive vegetation clearance practices. There is historically and currently a significant volume of LV non-compliance across Melbourne of mature trees/structural limbs

within the minimum clearance space that must be removed if this ESR is not changed.

- Non-compliance of mature trees/structural limbs with the Code for LV in LBRA has generally been tolerated on the basis that it poses little risk. The local community residual risk has not changed however the tolerance of ESV and DB's has.
- If enacted Councils face \$45k Infringement Notices per tree or an estimated 5% removal of mature trees for the LV alone.
- If Council's recommendation is accepted for a reduced exception minimum clearance space for uninsulated LV to match that already accepted for insulated LV then Council estimates a 70% reduction in the existing mature trees/structural limbs required to be removed to meet Code with no substantiated increase in outage risk.
- The consultation process timeline is inadequate for due consideration of comments provided as a Section 13 Certificate must be presented to Governor in Council by the end of April.
- The consultation information as provided does not highlight in any way the introduction of Infringement Offences, which Council consider material in nature.
- The Electric Line Clearance Consultative Committee (ELCCC) who reviewed the draft does not have balanced representation appropriate for LBRA.
- The 5 Distribution Companies (DB) have 100% representation on the ELCCC while the 79 Councils have 1 person for a 13 member ELCCC.
- The privatised DB's have conflict of interest in considering the matter of Infringement Offences for increased compliance in LBRA as 5% of their revenue is impacted by unplanned outages under the STIPIS regulatory incentive.
- This is further validated by a DB having issued around a \$750k claim for loss of STIPIS revenue that Council is disputing. The same DB has recently informed Council of a pending second claim of \$850k likely.
- Due to the significantly different current state, risks and ELCCC member objectives, Council recommends changes to the ELCC structure and constitution to have a separate focus for HBRA vs LBRA.

The LBRA compliance implications in this ESR are likely to have material unintended consequences across Melbourne. It is likely that significant increased unsubstantiated vegetation removal across Melbourne will occur if the recommendations from this Council and Municipal Association of Victoria (MAV) are not able to be given due consideration because of the process timelines and an ELCCC constitution appropriate prior to 2015 now outdated in 2020. (Summary of recommendations - Appendix 1). In Boroondara alone it is estimated that the regulations as drafted for LV alone will result in:

- The loss of approximately 1,300 mature trees
- Significant canopy loss of over 600 trees
- \$3.5m of costs to Boroondara ratepayers.

Numerous seemingly good intentions from the various entities impacting the Act and Regulations have not kept abreast of other changes. Government Regulations are not enacted for unsubstantiated or non-existent risks nor company profits as is the potential of the current ESR for LBRA's of Melbourne

2 Background

2.1 The Act, Code, Regulations and Enforcement

The regulation is primarily the result of bushfires started by electrical assets in predominantly rural High Bushfire Risk Areas (HBRA). The requirements in the LBRA have not been critically challenged as “fit for purpose” to date because the focus has justifiably been on compliance in the HBRA. This has essentially changed for all stakeholders since the last update in 2015 however not due to the community risk changing.

2.1.1 Distribution Business’s (DB)

DB’s focus was justifiably on their own HBRA compliance and did not have as strong focus on their unplanned outages. This changed when the Regulator introduced a Service Target Performance Incentive Scheme (STPIS) that now places up to 5% of the privatised DB’s revenue at risk in part to unplanned outages per customer. The customers are concentrated in LBRA of Melbourne. As a result one DB has started issuing claims for lost revenue for underground asset strikes as well as vegetation contact.

In the City of Boroondara’s case this has resulted in a combination from one DB of submitting a lost revenue claim of around \$750k as well as notifying ESV of non-compliances in LBRA that ESV have subsequently validated and issued notice to Council to obtain compliance for. The same DB has recently informed council of a second claim pending of \$850k. Council is disputing the claims to date however the ramifications for rate payers across Victoria in LBRA are significant.

The five DB’s have 100% representation on the ELCCC while the 79 Councils have 1 person for a 13 member ELCCC. Three of the five DB’s represented are partially owned by the one group that has begun initiating claims for lost revenue.

The privatised DB’s have duly supported Infringement Offences for increased compliance in LBRA partially due to 5% of their revenue at risk for unplanned outages under the STIPIS regulatory incentive.

2.1.2 Energy Safe Victoria (ESV)

While Council acknowledges that ESV has historically taken a risk-based approach to enforcement action focused in HBRA this has changed since 2019. The shift to make any non-compliance (including LBRA) an infringeable offence does raise fears in relation to this change. The references to “at all times” and “no part of a tree” in clause 3(1) empowers ESV to issue a body corporate a fine of 250 penalty units (\$41,305) for any vegetation located within the clearance space, regardless of whether it poses a material risk or not.

Prior to 2019 ESV generally conducted one sample audit a year of Council and no further follow up. During 2019 ESV has:

- Significantly increased the number of vegetation inspectors
- Introduced sophisticated equipment to measure infringement offences to within cm’s
- Informed council that it intends to be increasingly active in LBRA.
- Completed 3 audits totalling over 1000 noncompliant trees.
- Escalated further to currently Council is in “Show Cause” status with ESV

2.1.3 Council

Until 2019 this Council along with MAV have had little need to challenge the LBRA Regulations and Council has been interpreting the risks with a balanced view in regard to the objective stated in the regulations that prescribe: “standard and practices to protect the health of trees that require cutting in accordance with the Code”. In particular in relation to structural limbs, material canopy loss and tree removal minimisation near LV within council.

The view of Council is the Act and ESR are historically biased to a focus on mitigating the HBRA risks that are unsubstantiated in LBRA of Melbourne and have resulted in excessive vegetation clearances in LBRA. The ESR compliance enforced by the changed behaviours of ESV/DB’s will result in a step change in vegetation removal across LBRA of Melbourne.

This view is further validated in the RIS that states only 6% of outages are caused by vegetation inside the minimum clearance space (grown-in). Therefore 94% are caused by (blown-in) vegetation acceptable under the regulations.

2.1.4 Low Bushfire Risk Area

When Council is reviewing and making decisions for managing vegetation it is always in the context of a LBRA that applies to the entire Council land. In developing our recommendations Council has also considered the risk information provided within the RIS regarding outages and failure modes.

2.1.5 Regulation Impact Statement (RIS)

Data provided in the RIS indicates that fire, power supply outage and electrocution incidents resulting from vegetation within the clearance distance are minimal and trending in the right direction. The following extract from the RIS of outage incident data provided by the DB’s for vegetation outages indicates the status in relation to outages:

It is important to note that the AER SAIDI and SAIFI data does not identify the cause of the outage; many factors, in addition to trees, cause outages. It is not possible to quantify the number, duration and frequency of interruptions explicitly due to tree or tree branch contact, let alone due to clearance activities or tree contact from within (or from outside) the clearance space, from the AER data.

*ESV incident data may be used to provide a percentage split between ‘grow-ins’ and ‘fall-ins’. While a EB can list as part of the causes for an incident whether the tree was fallen, blown branch/vegetation and/or within clearances, there is no mandatory requirement to provide this level of detail for all incidents to ESV. ESV notes that no type of tree contact was specified for 23% of incidents that were listed as being caused by trees. Of those where the contact mechanism was Identified, 43% was due to blown branches, 51% was due to fallen branches and **6% was due to contact by trees within the clearance space (grow-ins)**.*

The 6% figure is similar to the 2015 RIS, which found 8.2% of interruptions in 2010-13 were due to ‘grow-ins’. Using the 6% figure, we can provide an estimate of the economic cost of outages due to ‘grow-ins’.

The incident data reflects the outcomes of existing vegetation management practices. It does not, as implied by the RIS, demonstrate the effectiveness of compliance with the Code. The reality is that unless trees are pruned excessively or removed altogether, growth into the prescribed minimum clearance distances for LV in LBRA is common. Non-compliance with the Code for LV in LBRA has generally been tolerated on the basis that it poses little risk.

2.1.6 LBRA - Substantiated Risk Mitigation

Based on the RIS, Council's view is that there is negligible risk of fires and very low likelihood of local community electrocutions generally in LBRA. Council further acknowledges there is a level of acceptance of branches/trees overhanging and beside in LBRA that is justifiably not the case in HBRA.

There is no question that responsible management of vegetation around powerlines is critical to reduce risk of fire, electrocution and power supply outages. It is also true that the level of risk posed by vegetation around powerlines depends on a range of variables. These variables include whether the powerline is (high voltage or low voltage); and the proximity between a powerline and vegetation (e.g. hard contact, intermittent contact, no contact).

Council agrees the risk of vegetation contact with HV is not acceptable and will manage this requirement to the Code. **Council does not accept the ESR minimum clearances currently set for a voltage (22KV) at least double the majority of operating voltages (11/6.6kv) across Melbourne.**

In regard to *uninsulated LV* Council's view is constant/intermittent contact alone with vegetation does not cause outages as is proven by the thousands of trees in Victoria currently in contact. However constant/intermittent contact with *insulated LV* cables does cause outages.

The RIS further states only 6% of all outages are caused by any vegetation that is within the minimum clearance space based on DB supplied incident data.

Historically in LBRA what did cause *uninsulated LV* outages is:

- 1) A tree/major limb fails and can reach the powerlines with enough mechanical load to break the conductor/structure or force conductors to contact each other, or
- 2) A growing tree/structural limb pushes a cable out of alignment into and adjacent conductor.

To mitigate the risk of 2 near uninsulated LV DB's have now installed a cable spreader half way along each cable span between poles. This effectively makes uninsulated LV spans in Melbourne 20-25m long. It is implausible that an existing mature tree/structural limb could grow so much between inspections that it forces cables to touch and cause an outage. The ESR does not adequately consider the current residual risk.

Council does not accept the Exception minimum clearances for a structural limb near uninsulated LV being >500mm when insulated LV >150mm is acceptable in LBRA.

If the ESR is enacted as drafted, councils will likely either remain non-compliant or, if ESR's enforcement approach shifts as anticipated, Council's across Victoria will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental, aesthetic and political risk and cost, for local and state government within Victoria.

Council has therefore made recommendations within this submission to more accurately balance the risk of outages to the amenity value of the vegetation in relation to these two risks solely in LBRA.

3 Councils Exposure Draft Comments

3.1 Supported Regulatory Changes

Provide demographic details and information about the current environment of relevance to the plan.

Category of change	Description of change	Location	Councils position
Broad change	<p>Change to the objective of the regulation to include a reference to protecting the health of trees</p> <p><u>Wording of new regulations</u></p> <p>The objectives of these Regulations are... (b) to prescribe—</p> <p>(i) standards and practices to be adopted and observed in tree cutting or removal in the vicinity of electric lines and the keeping of the whole or any part of a tree clear of electric lines, including standards and practices to protect the health of trees that require cutting in accordance with the Code; and</p> <p>(ii) a requirement that certain responsible persons prepare management procedures to minimise the danger of trees contacting electric lines and causing fire or electrocution or interruptions to electricity supply; and ...</p> <p>(c) to require responsible persons to minimise the impacts of cutting on indigenous and significant trees and the habitat of threatened fauna; and</p>	Part 1, Regulation 1	Supported.
Management plans	Re-worded the regulations such that responsible persons excluding a major electricity company must prepare a management plan annually	Part 1, Regulation 9(2)	Supported.
Management plans	<p>Change to the requirement such that major electricity companies must prepare and submit a management plan relevant for a 5-year period.</p> <p><u>Wording of new regulations</u></p> <p>(3) A responsible person that is a major electricity company must before 31 March 2021 prepare and submit to Energy Safe Victoria for approval a management plan relating to compliance with the Code for the period from 1 July 2021 to 30 June 2026</p>	Part 1, Regulation 9(3) Part 1, Regulation 10(2)	Supported.

Category of change	Description of change	Location	Councils position
Management plans	Included an additional requirement of a map in the management plan to show HBRA (High Bushfire Risk Area) and LBRA (Low Bushfire Risk Area) that are related to area covered by the plan	Part 1, Regulation 9(4)(f)	Supported in principle. However accountability needed for CFA and/or MFB (Melbourne) to provide to responsible persons or on their website.
Management plans	Change the word 'native' to 'indigenous to Victoria'	Part 1, Regulation 9(4)(g)	Supported.
Management plans	Change so that management plans no longer have to be available for inspection at the responsible persons primary place of business – they only need to be on their website	Part 1, Regulation 10(6)(b)	Supported.
Insulating cover	Updated the definition of an insulated cover and links to related standards	Schedule 1, Part 1, Regulation 1	Supported.
Insulated cable	Change the definition of an insulated cable based on new definition of an insulated cover.	Schedule 1, Part 1, Regulation 1	Supported.
Suitably qualified arborist	Change the definition of a suitably qualified arborist from Certificate 4 in arboriculture to a Certificate 3 in arboriculture, including a ground-based tree assessment training module. This has been prompted by training providers no longer providing Certificate 4 in Victoria.	Schedule 1, Part 1, Regulation 1	Supported.
Exceptions to minimum clearance	Allows branches to be 150 mm from the line if the span is less than 40 m in length. It used to have to be 300 mm away from the insulated line. The exception clause can only be used under increased tree management requirements designed to monitor or manage risk to acceptable level.	Schedule 1, Part 1, Regulation 4(c)	Supported.
Exceptions to minimum clearance	New clause has been added introducing exceptions to minimum clearance distances for small branches growing under uninsulated low voltage electric lines. The exception clause can only be used under increased tree management requirements designed to monitor/manage risk to acceptable level.	Schedule 1, Part 1, Regulation 5A	Reg 6, not 5A? Supported.
Indigenous vegetation	Change the words 'specified significant tress' to include 'indigenous or significant	Schedule 1, Part 1,	Supported.

Category of change	Description of change	Location	Councils position
	trees'. The regulation aims to minimise the cutting or removal of indigenous or significant trees reflecting changes in definitions.	Regulation 10	
Public notification	Change the requirements so notifications can be published on the responsible person's website or published in a newspaper. <u>Wording of new regulations</u> A written notice published under subclause (2) must be published on the responsible person's Internet site or in a newspaper circulating generally in the locality of the land in which the tree is to be cut or removed.	Schedule 1, Part 1, Regulation 16(3)	Supported.
Dispute resolution requirement	This has been removed from the Code and is in the Regulations as a requirement to include detail of dispute resolution procedure in the plan rather than as a stand-alone procedure.		Supported.

3.2 Opposed Regulatory Changes

The introduction of Infringement Offences in LBRA of Melbourne is considered as material in nature and was not in our view consulted upon. There is no mention of this change or associated risk in the RIS and the Exposure Draft was issued without tracked changes making it implausible a reasonable person would have discovered it.

Both ESV and the DB's are obligated to represent their entities requirements however the regulations for LBRA are not representative of the risk vs value of the amenity trees to the communities Council represents. In particular the ESR LBRA minimum clearance space for:

- Actual risk of substantial branches and tree trunks of mature trees growing within the minimum clearance space for uninsulated LV (not in constant contact), nor
- The main rural HV operating voltage of 22kv used to set the minimum clearance space in LBRA when Melbourne's urban operating voltages are 11+6.6kv. (96% of Councils HV is 11kv)

If actual compliance was to be achieved in LBRA, as must be the purpose of introducing Infringement Offences to regulations, it would initially require rate increases then the removal of the majority of the mature nature strip trees near LV (96% of Powerlines) across our local communities that local and state government are appointed to represent. If applied literally in LBRA across Melbourne Council estimates there are tens of thousands of these offences at any one time currently.

When considered along with Councils overall submission the introduction of Infringement Offences in LBRA is strongly opposed.

If the regulations are finalised as drafted, councils will likely either remain non-compliant or, if ESV's enforcement approach shifts, they will be forced to remove large numbers of mature trees and structural branches. Both approaches come at significant financial, environmental,

aesthetic and political risk and cost, for local government, for the Victorian government and for the community. This is in the absence of incident data or other evidence to indicate that current practice for LV in LBRA is unsafe.

4 Additional Changes Recommended

4.1 Exception Minimum Inspection Timeframe

The Code includes a number of exception clauses that allow vegetation to grow inside the minimum clearance space on the condition that a range of conditions are met. Councils note that the exception clauses as drafted, and that currently exist, require the responsible person to undertake a number of actions “within the last 12 months”.

For any nominated exception trees to be inspected, risk quantified, and mitigations completed, the time period before Infringement Offences can be applied needs to be longer to work in conjunction with annual inspection cycles. **Council recommends that this period be increased to 14 months.**

4.2 Minimum Clearances for HV in LBRA of Melbourne

In rural Victoria (excluding tower lines) the HV operating voltages for both HBRA and LBRA are:

- Sub-Transmission - 66kv for supply between main centres: and
- Distribution - 22kv supply within towns and across rural areas or 12.7kv (SWER) occasionally for remote rural areas

In LBRA of Melbourne the predominant Distribution Voltages are 11 or 6.6kv. In this Councils case 96% of Councils HV cables are operating at 11kv.

As previously noted historically the regulations, ELCCC and ESV compliance focus has been on rural fire risk prevention. However this bias has resulted in unsubstantiated excessive vegetation removal in LBRA of Melbourne due to Minimum Clearances being set for rural voltage levels at least double what the majority of the operating voltage is across Melbourne.

The below table created from the ESR demonstrates that different minimum clearances are appropriate for different operating voltages. It also shows that the regulation minimum clearances set for LBRA of Melbourne are excessive.

Voltage	% Route length in Council	Minimum Clearance
66kv	<1%	2250mm
22kv	4%	1500mm
11kv	96%	1500mm
6.6kv	<1%	1500mm
Low Voltage <1kv	NA	1000mm

Note: all are uninsulated cables <45m spans

Extrapolating the clearance distances prescribed for LV, 22kV and 66kV, Council anticipates that the minimum clearance distances for 6.6kV and 11kV would be materially less than the 1500mm currently prescribed. One estimate is 1060mm for 6.6kV and 1160mm for 11kV.

Council recommends that the Code prescribe minimum clearance distances for each of 6.6kV, 11kV and 22kV operating voltages for LBRA. This will more accurately balance the risk and health of trees for the respective local communities as per the objectives stated in the ESR.

Notwithstanding the recommendation, Council understands that vegetation cannot be allowed to contact HV cables and will continue to manage vegetation to the minimum clearances within the Code.

4.3 Exceptions - Structural Limbs near Uninsulated LV in LBRA

For uninsulated LV spans equal to or less than 45m in length in LBRA, the Code prescribes a minimum clearance distance of 1000mm. Under Clause 6 of the current (2015) Code, structural branches are permitted up to 500mm from the line if certain conditions and management requirements are met.

One of those requirements is that spans up to 45 metres in length are fitted with one conductor spreader and spans greater than 45m in length are fitted with two spreaders.

It is our understanding that there are currently many thousands of mature trees in urban areas that have structural branches within the minimum clearance space of 1000mm.

Councils estimate that a significant majority of those trees are also closer to the line than the 500mm clearance distance permitted under the exception clause within the Code.

Clause 4 of the current (2015) Code sets a minimum clearance distance of 150mm for spans 40m or less in length for structural branches around insulated LV in LBRA (and a minimum clearance distance of 300 mm for spans 40m or longer).

In the absence of data or evidence to prove that structural branches around uninsulated LV lines pose greater risk of outage or public safety than structural branches around insulated lines, **Council recommends that the exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.**

The proposed exception reflects the "real world" proximity of the low height of uninsulated LV to mature trees/limbs. It does not condone contact. Structural limbs have minimal movement and the management requirements attached to this proposed exception ensure the risk of limb health is monitored and managed in the future.

If adopted this will closely reflect what is already happening in practice in our inner urban areas and significantly reduce major branch and tree removal.

Council estimates up 70% of historical and currently non complaint trees/structural limbs near uninsulated LV will be able to be saved with no increased outage risk at an avoided cost of \$2,753,000 in our Council alone.

4.4 Planned Vegetation Clearance Shutdowns

DB's are charging Council on average \$8,600(ex GST) for a vegetation clearance shutdown that is required for Council to meet compliance requirements however it also improves a DB's likely revenue. **Council recommends the Council's be exempt from shutdown costs by DB's.**

5 Future ELCCC & Membership

Division 3 of the Electricity Safety Act provides for the creation of the Electric Line Clearance Consultative Committee (ELCCC). The Committee comprises 13 members appointed by the Minister. Its functions are to provide advice to ESV;

- With regard to the preparation and maintenance of the Code;
- On any matter relating to the clearance of electric lines when requested so to do by ESV or the Minister; and
- Report before 30 September each year to the Minister on the performance of its functions.

Currently the Act provides for the Committee to be comprised of one representative each for VicRoads (now Department of Transport), the CFA (now Fire Rescue Victoria), the Department of Environment, Land, Water and Planning (DELWP), and local government. The Minister for Planning nominates one member as does the Minister for Environment. Private landowners have two representatives and the distribution businesses and transmission companies have four representatives.

The constitution of the committee is outdated and needs to be reviewed as a matter of priority. VicRoads rarely, if ever, attends meetings. Following changes to the Act a few years ago, it no longer has line clearance responsibilities. Likewise, the Minister for Planning and the Minister for Environment's nominees rarely, if ever, attend. The distribution businesses and transmission companies dominate the committee in terms of numbers.

From 2015 to early 2019 the Committee did not meet. Expressions of interest to be a member of the Committee were invited in mid-2015, with the appointments announced some three and a half years later.

As a result, the changes proposed to be included in the 2020 regulations essentially represent a tweaking of the current regulations. This is not unexpected given the Committee had limited opportunity to consider what, if any, more substantive changes should be made before the current regulations are inapplicable due to the 5 yearly renewal in the Act.

As referenced in our submission historically the regulations, ELCCC and ESV's compliance focus has been on rural HBRA fire risk prevention and the extensive removal of vegetation risk. Council supports in principle the current committee membership for the HBRA's of Victoria.

However **Council does not support the current ELCCC structure or membership for the LBRA of Victoria.** The current state has created an inappropriate bias of focus and requirements in the development of the regulations over time for LBRA.

The latest draft Introducing Infringement Offences for both HBRA and LBRA further reflects the committee's membership and plausibly:

- The privatised Distributions Business's (DB) duty for profit with 5% of their revenue at risk (STIPIS) because of unplanned outages per customer who are concentrated in the towns and cities. The DB's have 100% representation on the ELCCC.
- ESV's frustration in compliance levels across LBRA of Melbourne.

In addition Council is currently in negotiations with a DB in relation to a claim of around \$750,000 loss of STIPIS revenue and the DB has informed Council of its intention to issue a second \$850,000 lost revenue related Claim.

The 79 Councils of Victoria's role as public land managers for the trees are the substantial stakeholder representing the local community in the LBRA of Victoria.

Accordingly Council recommends that:

- **The existing ELCCC constitution and membership is reviewed. The constitution of the committee be redefined to focus on HBRA.**
- **A second equivalent committee be formed with appropriate Constitution and Council membership for the LBRA of Victoria.**

6 Alternative Consultative Process Recommended

6.1 ELCCC and timelines

Other than the introduction of Infringement Offences, the changes proposed to be included in the 2020 regulations essentially represent a tweaking of the current regulations. This is not unexpected given the Committee had limited opportunity to consider what, if any, more substantive changes should be made given the sunset timing for the existing regulations of 28 June 2020.

6.2 Consultation Transparency

The introduction of Infringement Offences is considered as material in nature and was not in our view consulted upon. There is no mention of this change or associated risk in the RIS for LBRA and the Exposure Draft was issued without tracked changes making it implausible a reasonable person would have discovered it.

Therefore as is required for public consultancy to be effectively administered, the submissions received from consultation will not be adequately informed of the impact of this material change.

6.3 Council Recommendation

Due to the above as well as the other related reverences throughout our submission Council recommends:

- **The Existing Regulations be extended for 6 months**
- **A new consultation is completed during this period**
- **A LBRA focused subcommittee be formed in the interim reporting to the ELCCC**
- **The subcommittee recommendations form part of the public consultation for transparency**

7 Appendix 1: Summary of Council's Recommendations

Category of change	Council's Recommendations
Infringement Offences	Introduction of the change is strongly opposed
Minimum LBRA Clearances	The Code prescribe minimum clearance distances for each of 6.6kV, 11kV and 22kV operating voltages found within LBRA.
Exceptions for Structural Limbs near Uninsulated LV	The exception clause for structural branches around uninsulated LV in LBRA be amended to provide for a minimum clearance distance of 150mm for spans less than or equal to 45m in length.
ELCCC	The existing ELCCC constitution and membership is reviewed. The constitution of the committee be redefined to focus on HBRA.
	A second equivalent committee be formed with appropriate Constitution and Council membership for the LBRA of Victoria.
Alternative Consultative Process	The Existing Regulations be extended for 6 months
	A new consultation is completed during this period
	A LBRA focused subcommittee be formed in the interim reporting to the ELCCC.
	The subcommittee recommendations form part of the public consultation for transparency.
DB Vegetation Shutdown Fee	Council's be exempt from shutdown costs by DB's.