



## Electricity (Hazards from Trees) Regulations 2003

Dame Sian Elias, Administrator of the Government

### Order in Council

At Wellington this 15th day of December 2003

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 169 of the Electricity Act 1992, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## Regulations

### 1 Title

These regulations may be cited as the Electricity (Hazards from Trees) Regulations 2003.

### 2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

### 3 Purpose

The purpose of these regulations is to protect the security of the supply of electricity, and the safety of the public, by—

- (a) prescribing distances from electrical conductors within which trees must not encroach; and
- (b) setting rules about who has responsibility for cutting or trimming trees that encroach on electrical conductors; and
- (c) assigning liability if those rules are breached; and
- (d) providing an arbitration system to resolve disputes between works owners and tree owners about the operation of these regulations.

#### 4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

**Act** means the Electricity Act 1992

**amenity value**, in relation to a tree, means the natural and physical qualities and characteristics of the tree that—

- (a) contribute to people's appreciation of the tree or the area in which that tree is situated; or
- (b) provide desired shelter or desired screening to a property adjoining the property on which the tree is situated

**arbitrator** means an arbitrator appointed under regulation 29

**conductor** means any wire or cable used or placed in position for the conveyance of electricity; but does not include the wire of any electric fence

**cut or trim notice** means a notice given under regulation 9

**dispensation zone**, in relation to the space surrounding a conductor, means the space within the growth limit zone into which a tree may encroach to the distance specified by a works owner or arbitrator in a dispensation

**growth limit zone**, in relation to the space surrounding a conductor, means the space that extends no more than the distance from the conductor as specified for that conductor in the Schedule

**hazard warning notice** means a notice given under regulation 7

**insulated**, in relation to conductors, means that the conductors are covered with insulation in such a manner that a person may safely handle them when they are live

**no-interest tree notice** means a notice given under regulation 15

**notice zone**, in relation to the growth limit zone, means the space that extends no more than 1 metre beyond the growth limit zone

**span** means the length of conductor between any 2 consecutive supports of that conductor

**tree** includes any tree, shrub, or plant, or any part of a tree, shrub, or plant; and **trees** has a corresponding meaning

**works** has the same meaning as in section 2(1) of the Act

**works owner** means the owner of any works.

- (2) For the purposes of these regulations, any distance stated in respect of a notice zone, growth limit zone, or dispensation zone that is applicable to a conductor must be measured on a basis that takes into account maximum design sag.

## Part 1 Control of trees

### *General notice requirement*

#### 5 Consumers to be notified of certain dangers, growth limit zones, etc

- (1) Not later than 1 July 2005, and following that date at intervals of not more than 12 months, every works owner must—
- (a) publicly disclose and publish on the Internet the information described in subclause (2) (the **required information**); and
  - (b) in addition, either—
    - (i) ensure that each consumer who is provided with line function services by that works owner is given written notice of the required information; or
    - (ii) publish the required information in the news sections of 2 separate editions of each newspaper that is widely read by consumers provided with line function services by that works owner.
- (2) For the purposes of subclause (1), the following information is the required information:
- (a) a general description of the dangers posed by contact between trees and live conductors; and
  - (b) an explanation of the notice zone and growth limit zone as defined in these regulations; and

- (c) a general description of the dangers of cutting and trimming trees in the vicinity of live conductors; and
- (d) a list of the offences specified in regulation 26(1) that may be committed by tree owners and the penalties that may be imposed for committing any of those offences.

*Trees encroaching notice zones*

**6 Notification of trees encroaching notice zone**

- (1) If a works owner becomes aware of a tree encroaching the notice zone but not the growth limit zone in respect of a conductor belonging to that works owner, that works owner may give a hazard warning notice to the tree owner.
- (2) A hazard warning notice must be given in accordance with regulation 7.

**7 Hazard warning notice**

- (1) The purpose of a hazard warning notice is to warn a tree owner that a tree encroaches a notice zone and must not encroach a growth limit zone.
- (2) A hazard warning notice must be in writing and be given in the manner required by regulation 23.
- (3) A hazard warning notice must contain,—
  - (a) if the notice is given after 1 July 2005, a copy of the notice given in accordance with regulation 5; and
  - (b) an explanation of the notice zone and growth limit zone in relation to the tree and the conductor to which the hazard warning notice relates; and
  - (c) sufficient information to fairly inform the tree owner of the location and identity of the tree; and
  - (d) a statement that, if the tree encroaches the growth limit zone, a cut or trim notice may be given to the tree owner, unless regulation 8(4) applies; and
  - (e) a statement that the tree owner may give a no-interest tree notice to the works owner under regulation 15; and
  - (f) a statement that the tree owner may apply to the works owner, within the time limits set out in regulation 19, for a dispensation from cutting or trimming the tree; and
  - (g) a statement that the tree owner may apply to an arbitrator, within the time limits set out in regulation 22, if the

- dispensation is not granted or the tree owner disagrees with the terms of the dispensation; and
- (h) a list of the offences specified in regulation 26(1) that may be committed by a tree owner and the penalties that may be imposed for committing any of those offences; and
  - (i) a summary of the tree owner's liabilities specified in regulation 28; and
  - (j) a list of the names, addresses, and other contact details of all arbitrators appointed under regulation 29.

*Trees encroaching growth limit zones*

**8 Notification of trees encroaching growth limit zone**

- (1) Before 1 July 2005, if a works owner becomes aware of a tree encroaching the growth limit zone in respect of a conductor belonging to that works owner, that works owner may give a cut or trim notice to the tree owner.
- (2) On and after 1 July 2005, if a works owner becomes aware of a tree encroaching the growth limit zone in respect of a conductor belonging to that works owner, that works owner must give a cut or trim notice to the tree owner.
- (3) A cut or trim notice must be given in accordance with regulation 9.
- (4) Despite subclauses (1) and (2), if a conductor to which those subclauses would otherwise apply is on land administered by any person under the Conservation Act 1987, or any of the Acts set out in the First Schedule to that Act that regulate the use of land,—
  - (a) a cut or trim notice must not be issued to the tree owner:
  - (b) the tree owner is not under any obligation to cut or trim the tree:
  - (c) the works owner must, within 3 months of becoming aware that the tree encroaches the growth limit zone and at the works owner's expense, ensure that the tree is cut or trimmed to ensure that the tree ceases to encroach the growth limit zone.
- (5) A works owner is not required to comply with subclause (4)(c) if the works owner has taken reasonable steps to comply with that subclause but is unable to comply because of—
  - (a) the requirements of any Act; or

- (b) the refusal of the tree owner to—
  - (i) allow the works owner access to the tree; or
  - (ii) permit its cutting or trimming.

## **9 Cut or trim notice**

- (1) The purpose of a cut or trim notice is to notify a tree owner that a tree encroaches a growth limit zone and must be cut or trimmed.
- (2) A cut or trim notice must be in writing and be given in the manner required by regulation 23.
- (3) A cut or trim notice must contain—
  - (a) an explanation of the notice zone and growth limit zone in relation to the conductor and the tree to which the cut or trim notice relates; and
  - (b) sufficient information to fairly inform the tree owner of the location and identity of the tree; and
  - (c) the time limits within which the tree owner must cause the tree to be cut or trimmed as determined by regulation 10(1) or, if the works owner wishes to exercise the power conferred by regulation 11(3), a statement of the intention of the works owner to cut or trim the tree; and
  - (d) an explanation of the works owner's obligations; and
  - (e) a statement that the tree owner may give a no-interest tree notice to the works owner within the time limits specified in regulation 15; and
  - (f) a statement that the tree owner may apply to the works owner, within the time limits set out in regulation 19 for a dispensation from cutting or trimming the tree; and
  - (g) a statement that the tree owner may apply to an arbitrator, within the time limits set out in regulation 22, if the dispensation is not granted, or the tree owner disagrees with the terms of the dispensation; and
  - (h) a list of the names, addresses, and other contact details of all arbitrators appointed under regulation 29; and
  - (i) where the works owner is an electricity operator, a statement that the tree owner must, at least 3 working days before the tree is cut or trimmed, advise the works owner of the time and location of the cutting or trimming of the tree; and
  - (j) a list of the offences specified in regulation 26(1) that may be committed by a tree owner and the penalties that

may be imposed for committing any of those offences;  
and

- (k) a summary of the tree owner's liabilities specified in regulation 28.

## **10 Cutting of trees encroaching growth limit zone**

- (1) A tree owner who is given a cut or trim notice must cause the tree to which the notice relates to be cut or trimmed so that it does not encroach the notice zone for the conductor to which the notice relates.
- (2) A tree owner must cause the tree to which the notice relates to be cut or trimmed within the following time limits:
  - (a) if the tree owner received a cut or trim notice within 3 months after receiving a hazard warning notice, no later than—
    - (i) 10 working days after the date on which the tree owner received the cut or trim notice, if the tree is able to grow at least 1 metre in 1 month in the climatic conditions prevailing in the area where the tree is located; or
    - (ii) 25 working days after the date on which the tree owner received the cut or trim notice, if subparagraph (i) does not apply to the tree; or
  - (b) if an arbitrator has made a decision under regulation 31, and the arbitrator specifies a time limit within which the tree must be cut or trimmed, that time limit; or
  - (c) in any other case, no later than 45 working days after the date on which the tree owner received the cut or trim notice.
- (3) A tree owner who is given a cut or trim notice by a works owner must, at least 3 working days before the tree is cut or trimmed, advise the works owner of the time and location of the cutting or trimming of the tree.
- (4) This regulation is subject to regulation 11(3).

## **11 Costs of first cut or trim and removal of debris**

- (1) This regulation applies to a tree owner and a works owner if—
  - (a) the works owner gives a cut or trim notice in respect of a tree to the tree owner; and

- (b) the tree has not previously been the subject of a cut or trim notice under these regulations; and
  - (c) the tree was not, before the commencement of these regulations, subject to the Trees (Electric Lines) Regulations 1986; and
  - (d) the tree is not the subject of an agreement between the works owner and the tree owner under which the works owner has already met those costs; and
  - (e) the tree is not the subject of a no-interest tree notice given under regulation 15.
- (2) The works owner must meet the reasonable costs of the cutting or trimming referred to in the cut or trim notice (whether undertaken by the tree owner or the works owner under subclause (3)), unless the tree owner has refused consent to the entry of the works owner on to the tree owner's property to exercise powers conferred by subclause (3).
- (3) The works owner may cut or trim the tree to the extent necessary to ensure that it does not encroach the notice zone, at the works owner's expense, if—
- (a) the works owner has indicated an intention to cut or trim the tree in the cut or trim notice; and
  - (b) the time allowed for the tree owner to apply for a dispensation or arbitration has expired; and
  - (c) any application for a dispensation or arbitration by the tree owner has been determined; and
  - (d) the cutting or trimming takes place in accordance with any dispensation or determination of an arbitrator, as the case requires; and
  - (e) in the case where entry on to the tree owner's property is necessary to effect the cutting or trimming, the works owner obtains the consent of the tree owner to enter the tree owner's property.
- (4) If a works owner exercises the powers conferred by subclause (3), the works owner must—
- (a) remove or cause to be removed any resulting debris that falls on any adjoining land; or
  - (b) ensure that any resulting debris that falls on any adjoining land is tidied or dealt with in such a way that it does not affect the use or enjoyment of the land by its owner or occupier.

- (5) Subclause (4) does not apply if an arbitrator, in proceedings relating to that tree, determines otherwise.

*Debris, underground works, etc*

**12 Removal of debris after cutting trees**

- (1) If a tree owner is required by these regulations to cause a tree to be cut or trimmed, the tree owner must either—
- (a) remove or cause to be removed any resulting debris that falls on any adjoining land; or
  - (b) ensure that any resulting debris that falls on any adjoining land is tidied or dealt with in such a way that it does not affect the use or enjoyment of the land by its owner or occupier.
- (2) Subclause (1) does not apply if an arbitrator, in proceedings relating to that tree, determines otherwise.

**13 Underground works**

In order to permit the safe repair or operation of an underground conductor, a works owner may sever and remove any tree roots that are within 0.5 metres of that conductor.

**14 Obligation to remove danger to persons or property from trees damaging conductors**

- (1) A works owner must, without delay, undertake any work in relation to a tree (including the roots of that tree) if the works owner becomes aware that there is immediate danger to persons or property from a conductor because—
- (a) the tree has come into contact with, or constitutes a serious hazard to, that conductor; or
  - (b) the tree has caused damage to that conductor and is likely to cause further damage to that conductor.
- (2) Subclause (1)—
- (a) has effect despite—
    - (i) any application for a dispensation that is pending; or
    - (ii) any arbitration that is not determined; or
    - (iii) the giving of a notice under regulation 9 specifying a time for cutting or trimming a tree that has not expired; but
  - (b) does not override any Act.

- (3) For the purposes of subclause (1), a works owner may cut or trim the tree to the extent necessary to remove the danger but, if the works owner wishes to cut or trim the tree so that it no longer encroaches the notice zone, the works owner must obtain the consent of the tree owner.
- (4) The works owner is responsible for the removal of debris produced as a result of the cutting or trimming of the tree.
- (5) When a works owner undertakes any work in accordance with subclause (1), the tree owner is liable for the direct costs of that work if—
  - (a) the tree owner was warned by the works owner of the potential danger created by the tree, before the commencement of these regulations, and has failed to remedy the potential danger; or
  - (b) the tree owner was requested by the works owner to undertake work in relation to the tree, before the commencement of these regulations, and has failed to undertake the work requested; or
  - (c) the tree owner has failed to comply with a cut or trim notice.
- (6) The direct costs must be reasonable and may include—
  - (a) the costs of ensuring that any cutting or trimming work is carried out safely; and
  - (b) the costs of any isolation or earthing operation that is necessary; and
  - (c) the costs of the removal of any debris; and
  - (d) the costs of remedying any damage to works, where that damage arises (whether directly or indirectly) out of a tree owner's failure to comply with the requirements of these regulations.
- (7) A works owner may recover any amount payable under subclause (5) as a debt due to the works owner.
- (8) Subclauses (5) to (7) do not apply to a tree owner if the tree is on land administered by any person under the Conservation Act 1987, or any of the Acts set out in the First Schedule to that Act that regulate the use of land.

*No-interest tree notices***15 No-interest tree notice**

- (1) An owner or occupier of any land on which a tree is growing may give a no-interest tree notice to a works owner if subclause (2), subclause (3), or subclause (4) applies.
- (2) Subclause (1) applies if—
  - (a) the tree was naturally sown in the vicinity of an existing works; and
  - (b) the tree encroaches or may encroach the notice zone or growth limit zone in respect of a conductor belonging to the works owner; and
  - (c) that conductor is situated on the land on which the tree is growing, or on the adjoining land.
- (3) Subclause (1) applies if—
  - (a) the tree was planted in the vicinity of an existing works before the commencement of these regulations; and
  - (b) at the time of planting, the tree owner believed on reasonable grounds that the tree, when fully grown, would not interfere with any conductor.
- (4) Subclause (1) applies if—
  - (a) the tree was planted in the vicinity of an existing works on or after the commencement of these regulations; and
  - (b) at the time of planting, the tree owner believed on reasonable grounds that the tree, when fully grown, would not encroach on a growth limit zone.
- (5) An owner or occupier may give a no-interest tree notice whether or not the owner or occupier has received a hazard warning notice or a cut or trim notice in respect of the tree to which the notice relates.
- (6) If an owner or occupier wishes to give a no-interest tree notice and the owner or occupier has received a cut or trim notice in respect of the tree to which the no-interest tree notice relates, the owner or occupier must give the no-interest tree notice no later than 10 working days after the date on which the tree owner received that cut or trim notice.
- (7) A no-interest tree notice must be in writing and be given in the manner required by regulation 23.

**16 Purpose and effect of no-interest tree notice**

- (1) The purpose of a no-interest tree notice is to notify a works owner that the owner or occupier of the land on which the tree is growing has no interest in the tree.
- (2) Subject to regulation 17, if a works owner receives a no-interest tree notice, the works owner may cause the tree to be removed or trimmed to an extent determined by the works owner if the works owner first obtains permission to enter the land on which the tree is growing from the owner or occupier who gave the notice.
- (3) If—
  - (a) a works owner receives a no-interest tree notice; and
  - (b) the works owner fails to remove the tree or trim it within 20 working days after the date on which the works owner received the notice; and
  - (c) the tree causes damage to any works of the works owner,the owner or occupier who gave the notice is not liable for the costs of remedying that damage.
- (4) If a works owner causes a tree to be removed or trimmed under subclause (2), the works owner, if so requested by the owner or occupier of the land, must either—
  - (a) remove or cause to be removed any debris produced in the removal or trimming of the tree; or
  - (b) ensure that any debris produced in the removal or trimming of the tree does not interfere with the use or enjoyment of the land by its owner or occupier.

**17 No-interest tree notice may be rescinded**

- (1) If a works owner receives a no-interest tree notice, and the owner or occupier who gave the notice refuses to allow the works owner to enter the land for the purpose of removing or trimming the tree, the no-interest tree notice is immediately rescinded.
- (2) An owner or occupier who gives a no-interest tree notice to a works owner may rescind the notice at any time by informing the works owner in writing that the notice is rescinded.
- (3) If an owner or occupier who gives a no-interest tree notice to a works owner is a local authority and the tree that is the subject of the notice is subject to clearance or pruning restrictions

under a district plan (as defined in section 2(1) of the Resource Management Act 1991), that notice is of no effect.

- (4) If a no-interest tree notice has been rescinded or is of no effect, these regulations apply as if that notice had not been given.

### **18 Trees with amenity value**

- (1) A works owner must consult with the owner or occupier of land to which paragraph (b) applies before the works owner causes a tree that is on a road to be removed or trimmed, if—
- (a) a local authority or other body or person having jurisdiction over a road gives a no-interest tree notice to the works owner in respect of the tree; and
  - (b) the works owner has reason to believe that the tree may have amenity value for an owner or occupier of any land that is situated within a 50-metre radius of the tree.
- (2) A works owner must not cause a tree to be removed or trimmed under regulation 16 if a person who is consulted under subclause (1) gives written notice to the works owner that he or she is interested in the tree and wishes to be treated as the tree owner for the purposes of these regulations.
- (3) A person who notifies a works owner under subclause (2) may rescind the notice at any time by informing the works owner in writing that the notice is rescinded.
- (4) Once a notice has been rescinded, these regulations apply as if that notice had not been given.

### *Dispensations*

#### **19 Application for dispensation**

- (1) Subject to subclause (3), a tree owner to whom a works owner gives a hazard warning notice or a cut or trim notice in respect of a tree may apply to the works owner for a dispensation from the cutting or trimming of that tree so that it does not encroach the notice zone.
- (2) If a dispensation is granted,—
- (a) the tree owner is not required to cut or trim the tree so that it does not encroach the notice zone and the works owner may not exercise the power conferred by regulation 11(2); but

- (b) the tree owner must ensure that the tree to which the dispensation relates does not encroach into the growth limit zone beyond the dispensation zone.
- (3) An application for a dispensation,—
  - (a) if the tree owner is given a hazard warning notice but has not been given a cut or trim notice, may be made at any time; and
  - (b) if the tree owner is given a cut or trim notice, must be made no later than 5 working days after the date on which the tree owner received that notice.
- (4) An application for a dispensation must be in writing and be given in the manner required by regulation 23.

## **20 Works owner to consider dispensation applications**

- (1) If a works owner receives an application for a dispensation, the works owner must, no later than 5 working days after the date on which the works owner received that application,—
  - (a) decide whether to grant the dispensation; and
  - (b) give written notice of the decision to the tree owner in the manner required by regulation 23.
- (2) A works owner must grant a dispensation if the works owner is satisfied that the tree is unlikely to come into contact with, or constitute a serious hazard to, a conductor, or is unlikely to cause damage to a conductor, because of—
  - (a) the species or age of the tree; or
  - (b) the location of the tree in relation to the works.
- (3) If a works owner decides to grant a dispensation, the works owner—
  - (a) must specify in the dispensation the distance into the growth limit zone that the tree to which the dispensation relates may encroach; and
  - (b) may make the dispensation subject to any conditions that the works owner thinks fit, and must specify those conditions in the dispensation.

## **21 Further provisions relating to dispensations**

- (1) A dispensation—
  - (a) comes into force on the date the dispensation is granted; and

- (b) has effect for a period (not exceeding 5 years) that is specified by the works owner in the dispensation.
- (2) A works owner may revoke a dispensation if—
  - (a) the tree to which the dispensation relates encroaches into the growth limit zone beyond the dispensation zone; or
  - (b) the tree owner breaches the conditions (if any) that the works owner has imposed.
- (3) If a tree to which the dispensation relates encroaches into the growth limit zone beyond the dispensation zone, the works owner may give a cut or trim notice in respect of the tree, whether or not the dispensation has been revoked.
- (4) A dispensation, or the making of an application for a dispensation, does not limit the obligation of a works owner under regulation 14 to undertake, without delay, any work in relation to a tree (including the roots of that tree) that is necessary to remove an immediate danger to persons or property from a conductor.

### *Arbitration*

## **22 Arbitration**

- (1) A tree owner may apply to an arbitrator to determine a dispute between the tree owner and a works owner if—
  - (a) the works owner has refused to grant a dispensation under regulation 20 and the tree owner believes that a dispensation should have been granted; or
  - (b) the works owner has granted a dispensation under that regulation but the tree owner does not agree with the terms of that dispensation.
- (2) An application to an arbitrator must be made no later than 5 working days after the date on which the tree owner received notice under regulation 20(1).
- (3) An application to an arbitrator must be in writing and be made in the manner required by regulation 25.
- (4) The determination of a dispute by arbitration, or the making of an application to an arbitrator to determine a dispute, does not limit the obligation of a works owner under regulation 14 to undertake, without delay, any work in relation to a tree

(including the roots of any tree) that is necessary to remove an immediate danger to persons or property from a conductor.

*Manner of notification*

**23 Manner of notification to tree owners**

- (1) A hazard warning notice or a cut or trim notice to be given to a tree owner who is a natural person must be addressed to that tree owner and may be—
  - (a) delivered to that tree owner; or
  - (b) posted to that tree owner's last known or usual place of residence; or
  - (c) sent by fax to a telephone number used by that tree owner for the transmission of documents by fax; or
  - (d) if the tree owner consents, sent by electronic communication to that tree owner.
- (2) A hazard warning notice or a cut or trim notice to be given to a tree owner other than a natural person must be addressed to that tree owner and may be—
  - (a) delivered to a person who is a director or an officer of that tree owner; or
  - (b) posted to that tree owner's registered office or address for service or principal office; or
  - (c) sent by fax to a telephone number used for the transmission of documents by fax at that tree owner's registered office or address for service or principal office; or
  - (d) if the tree owner consents, sent by electronic communication to that tree owner.
- (3) If a hazard warning notice or a cut or trim notice is to be given to a tree owner that is a partnership, it is sufficient to give the notice to 1 of the partners in accordance with subclause (1).
- (4) In proving the delivery of a hazard warning notice or a cut or trim notice in accordance with this regulation, it is sufficient to prove that the notice was properly addressed.
- (5) A hazard warning notice or a cut or trim notice given in accordance with this regulation,—
  - (a) if the notice is delivered, or sent by fax, must be treated, unless the contrary is shown, as having been received on the day on which that notice was delivered or sent; and

- (b) if the notice is posted, must be treated, unless the contrary is shown, as having been received on the third working day after the date on which that notice was posted; and
- (c) if the notice is sent by electronic communication, must be treated, unless the contrary is shown, as having been received,—
  - (i) in the case of a tree owner who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or
  - (ii) in any other case, at the time the electronic communication comes to the attention of the tree owner.

#### **24 Manner of notification and application to works owners**

- (1) A no-interest tree notice, or an application for a dispensation under regulation 19, to be given to a works owner who is a natural person, must be addressed to that works owner and may be—
  - (a) delivered to that works owner; or
  - (b) posted to that works owner's last known or usual place of residence; or
  - (c) sent by fax to a telephone number used by that works owner for the transmission of documents by fax; or
  - (d) if the works owner consents, sent by electronic communication to that works owner.
- (2) A no-interest tree notice, or an application for a dispensation under regulation 19, to be given to a works owner other than a natural person, must be addressed to that works owner and may be—
  - (a) delivered to a person who is a director or an officer of that works owner; or
  - (b) posted to that works owner's registered office or address for service or principal office; or
  - (c) sent by fax to a telephone number used for the transmission of documents by fax at that works owner's registered office or address for service or principal office; or
  - (d) if the works owner consents, sent by electronic communication to that works owner.

- (3) If a notice is to be given, or an application is to be made, to a works owner that is a partnership, it is sufficient to give the notice or application to 1 of the partners in accordance with subclause (1).
- (4) In proving the delivery of a notice or an application in accordance with this regulation, it is sufficient to prove that the notice or application was properly addressed.
- (5) A notice given, or an application made, in accordance with this regulation,—
  - (a) if the notice or application is delivered, or sent by fax, must be treated, unless the contrary is shown, as having been received on the day on which that notice was delivered or sent; and
  - (b) if the notice is posted, must be treated, unless the contrary is shown, as having been received on the third working day after the date on which that notice was posted; and
  - (c) if the notice is sent by electronic communication, must be treated, unless the contrary is shown, as having been received,—
    - (i) in the case of a works owner who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or
    - (ii) in any other case, at the time the electronic communication comes to the attention of the works owner.

## **25 Manner of application to arbitrators**

- (1) An application to be made under regulation 22 to an arbitrator must be addressed to that arbitrator and may be—
  - (a) delivered to that arbitrator; or
  - (b) posted to that arbitrator's last known or usual place of residence; or
  - (c) sent by fax to a telephone number used by that arbitrator for the transmission of documents by fax; or
  - (d) sent to the arbitrator by electronic communication to the information system designated by the arbitrator for the purpose of receiving electronic communications.

- (2) In proving the delivery of an application in accordance with subclause (1), it is sufficient to prove that the application was properly addressed.
- (3) An application made in accordance with subclause (1),—
  - (a) if the application is delivered, or sent by fax, must be treated, unless the contrary is shown, as having been received on the day on which that application was delivered or sent; and
  - (b) if the application is posted, must be treated, unless the contrary is shown, as having been received on the third working day after the date on which that application was posted; and
  - (c) if the application is sent by electronic communication, must be treated as having been received, unless the contrary is shown, at the time the electronic communication enters the information system designated by the arbitrator for the purpose of receiving electronic communications.

### *Offences and liabilities*

#### **26 Offences committed by tree owners**

- (1) A person commits an offence who, being a tree owner who is given a cut or trim notice in relation to a tree that requires the tree owner to cut or trim the tree,—
  - (a) fails, without reasonable excuse, to cause the tree to be cut or trimmed in accordance with regulation 10; or
  - (b) in contravention of regulation 10(3), fails, without reasonable excuse, to advise the works owner of the time and location of the cutting or trimming of the tree.
- (2) A person who commits an offence against subclause (1) is liable on summary conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, a further fine not exceeding \$500 for every day or part of a day during which the offence has continued.
- (3) No proceedings may be taken in respect of an offence against subclause (1)(a) if—
  - (a) the tree owner has applied for a dispensation under regulation 19 and the works owner to whom the application for a dispensation was made—

- (i) has not made a decision in respect of the application; or
- (ii) has failed to give notice to the tree owner in accordance with regulation 20(1)(b); or
- (b) a dispute in respect of the tree to which the offence relates has been referred to an arbitrator and the arbitrator has not made a decision in respect of that dispute.

## **27 Offences committed by works owners**

- (1) A person commits an offence who, being a works owner,—
  - (a) in contravention of regulation 5, fails, without reasonable excuse, to give written notice to every consumer supplied with electricity by that works owner; or
  - (b) in contravention of regulation 8(2), on becoming aware of a tree encroaching a growth limit zone in respect of a conductor belonging to that person, fails, without reasonable excuse, to give a cut or trim notice to the tree owner in respect of that tree.
- (2) A person commits an offence who, being a works owner, fails, without reasonable excuse, to comply with regulation 8(4)(c) or regulation 14(1) or (4).
- (3) A person who commits an offence against subclause (1) is liable on summary conviction to a fine not exceeding \$10,000.
- (4) A person who commits an offence against subclause (2) is liable on summary conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence has continued.

## **28 Liability of tree owners**

- (1) Subject to subclauses (3) and (4) and regulation 16(3), a tree owner is liable to a works owner for the costs of remedying any damage caused to a conductor if—
  - (a) the tree owner fails to comply with the requirements of these regulations; and
  - (b) the conductor belongs to a works owner and is damaged, and that damage arose (whether directly or indirectly) from a failure of the tree owner to comply with the requirements of these regulations.

- (2) A works owner may recover any amount payable under subclause (1) as a debt due to the works owner.
- (3) Despite regulation 14, a tree owner is not liable to a works owner for the cost of remedying damage caused to works as a result of a tree, if on or after 1 July 2005,—
  - (a) the works are damaged by a tree encroaching the growth limit zone; and
  - (b) the works owner failed to give the tree owner a cut or trim notice, or gave the tree owner a cut or trim notice but the damage occurred before the expiry of the time limit for the cutting or trimming.
- (4) Subclause (1) does not apply to a tree owner if the tree is on land administered under the Conservation Act 1987, or any of the Acts set out in the First Schedule to that Act that regulate the use of land.
- (5) If a tree, to which a dispensation relates or which is in breach of conditions in an arbitrator's decision, causes damage to any works, the tree owner is liable to the works owner for the costs of remedying the damage caused to those works.

## **Part 2** **Arbitrators**

### *Appointment of arbitrators*

#### **29 Appointment of arbitrators**

- (1) The Minister may from time to time, by notice in the *Gazette*, appoint such persons as the Minister considers are, by reason of their special knowledge or experience, fit to act as arbitrators for the purposes of these regulations.
- (2) Subject to subclause (3), every person appointed as an arbitrator holds office for a term (being not less than 12 months) that is stated in the notice of appointment, and may be re-appointed by the Minister from time to time.
- (3) An arbitrator may at any time be removed from office by the Minister, by notice in the *Gazette*, for inability to perform the functions of office, bankruptcy, or misconduct, proved to the satisfaction of the Minister, or may at any time resign from office by written notice to the Minister.

- (4) An arbitrator may at any time hold any other office or engage in any other employment or calling unless the Minister considers that the proper discharge of the functions of an arbitrator will be impaired by holding that other office or engaging in that other employment or calling.
- (5) No person appointed as an arbitrator under this regulation is, by virtue of that appointment, to be treated as being employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956.
- (6) An arbitrator, while acting as an arbitrator, is an employee employed by the Crown for the purposes of the Accident Rehabilitation and Compensation Insurance Act 1992.

*Functions, duties, and powers*

**30 Functions, duties, and powers of arbitrators**

- (1) The functions of an arbitrator are—
  - (a) to hear and determine disputes between tree owners and works owners referred to the arbitrator under these regulations; and
  - (b) to perform the functions and duties conferred or imposed on arbitrators under these regulations.
- (2) The Act or these regulations do not oblige an arbitrator to hear or determine a matter or perform any other function or duty if the arbitrator considers that he or she is unable to properly perform that function or duty.
- (3) An arbitrator must determine a dispute according to the substantial merits and justice of the case, and in doing so must have regard to the law but is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities.
- (4) Without limiting any other provision of these regulations, an arbitrator has all the powers that are reasonably necessary or expedient to enable the arbitrator to carry out his or her functions and duties.
- (5) The Arbitration Act 1996 does not apply to an arbitrator, or to disputes referred to an arbitrator, under these regulations.

*Decisions and proceedings***31 Decisions of arbitrators**

- (1) An arbitrator may determine a dispute by making such decision in respect of the tree that is the subject of the dispute as the arbitrator thinks fit, and that decision may be made on any terms and conditions that the arbitrator thinks fit.
- (2) Without limiting the powers conferred by subclause (1), an arbitrator may—
  - (a) grant a dispensation from any requirement imposed under these regulations to cut or trim a tree:
  - (b) refuse to grant a dispensation from any requirement imposed under these regulations to cut or trim a tree:
  - (c) vary the terms of any dispensation:
  - (d) specify the distance into the growth limit zone that the tree to which the dispensation relates may encroach, in any case where the arbitrator grants a dispensation or varies a dispensation:
  - (e) specify a time limit within which the tree must be cut or trimmed.
- (3) An arbitrator does not have the power to order any person—
  - (a) to perform, or refrain from performing, any act; or
  - (b) to undertake, or refrain from undertaking, any obligation.

**32 Proceedings of arbitrators**

- (1) An arbitrator who receives an application under regulation 22 must—
  - (a) accept the application; or
  - (b) notify the person who made the application that—
    - (i) the arbitrator declines to hear or determine the dispute to which the application relates; and
    - (ii) the person can apply to another arbitrator to hear the dispute.
- (2) After accepting an application to determine a dispute, an arbitrator must, as soon as practicable,—
  - (a) decide who are the parties to the dispute and notify them of the application; and
  - (b) subject to regulation 34, hear every party who wishes to be heard.

- (3) All hearings and other proceedings by an arbitrator must be conducted in private.
- (4) Subject to these regulations, an arbitrator may regulate his or her own procedure.
- (5) On receiving an application under regulation 22, an arbitrator must use his or her best endeavours to determine a dispute within 10 working days after receiving it.
- (6) After determining a dispute, an arbitrator must, as soon as practicable, send or give written notice of the decision to all parties to the dispute and to the Secretary.

### **33 Evidence**

- (1) Evidence tendered to an arbitrator need not be given on oath unless the arbitrator otherwise determines in respect of any particular evidence.
- (2) An arbitrator may, on his or her own initiative, seek and receive any other evidence and make any other investigations and inquiries as he or she thinks fit.
- (3) An arbitrator may receive and take into account any relevant evidence or information, whether or not that evidence or information would normally be admissible in a court.

### **34 Arbitrator may act on evidence available**

Where the case of any party is not presented to an arbitrator, after reasonable opportunity has been given to the party to do so, the dispute may be resolved by the arbitrator on the evidence or information before him or her, including any evidence or information obtained under regulation 33(2).

### *Rehearings*

### **35 Rehearings**

- (1) A party to the dispute that has been determined by an arbitrator may, by written notice delivered to the arbitrator within 3 working days of receipt by the party of the notice given under regulation 32(6), apply for a rehearing of the dispute.
- (2) An arbitrator may rehear a dispute that has been determined by him or her on any terms and conditions he or she thinks fit, but is not obliged to do so.

- (3) Regulation 32(3) to (6) and regulations 33 and 34 apply to the rehearing of a dispute as if it were an original hearing of the dispute.
- (4) If an arbitrator agrees to rehear a dispute, any decision made by the arbitrator on the original hearing of the dispute ceases to have effect.

*Miscellaneous provisions*

**36 Remuneration of arbitrators**

Arbitrators are entitled to be paid remuneration by way of fees and allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply as if an arbitrator were a member of a statutory Board.

**37 Protection of arbitrators**

- (1) In the performance of his or her functions or duties under these regulations, an arbitrator has and enjoys the same protection that a Justice of the Peace acting in his or her criminal jurisdiction has and enjoys under Part VII of the Summary Proceedings Act 1957.
- (2) The proceedings of an arbitrator are judicial proceedings.
- (3) The privileges and immunities of arbitrators, parties to disputes, and witnesses extend and apply to—
  - (a) an arbitrator acting under regulation 33(2); and
  - (b) a person who gives information, or makes any statement, to an arbitrator acting under that regulation.

**Part 3**

**Miscellaneous provisions**

**38 Compensation for trees and vegetation removed**

These regulations do not affect the right to compensation under section 58 of the Act.

**39 Safety clearance distances for conductors of overhead electric lines**

These regulations do not affect the obligation to comply with regulation 31 of the Electricity Regulations 1997.

**40 Claims for damages to works**

These regulations do not affect any other claims that a works owner may have against a tree owner in respect of any damage caused to works by a tree owner.

**41 Regulations do not affect specified agreements**

- (1) These regulations do not affect the operation of any specified agreement between a works owner and a land owner that provides for—
  - (a) the carrying out of the trimming or felling of trees; or
  - (b) the payment of the costs of the trimming or felling of trees.
- (2) Subclause (1) is subject to regulation 11(1)(d).
- (3) **Specified agreement**—
  - (a) means—
    - (i) any agreement made before the commencement of these regulations; and
    - (ii) any agreement made after the commencement of these regulations that is in writing and specifies the area that is the subject of the agreement; but
  - (b) does not include any provision in an agreement that is inconsistent with the requirements of the Schedule (which relates to growth limit zones).

**42 Revocations**

The Trees (Electric Lines) Regulations 1986 (SR 1986/315) are revoked.

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r 4(1)

**Schedule  
Growth limit zones**

Table 1  
Distances for spans less than and equal to 150 metres in length

<b>Voltage of conductors other than aerial bundled conductors or conductors insulated by other means</b>	<b>Distance in any direction from any point on conductor (metres)</b>
66 kV or greater	4
50 kV to 66 kV	3
33 kV	2.5
11 kV	1.6
400/230 v	0.5
<b>Voltage of aerial bundled conductors or conductors insulated by other means</b>	<b>Distance in any direction from any point on conductor (metres)</b>
Any voltage where the conductor is an aerial bundled conductor or is otherwise insulated	0.5

Key:  
kV = kilovolts  
v = volts

Table 2  
Distances for spans more than 150 metres in length

<b>Length of span (metres)</b>	<b>Vertical distance from a horizontal plane drawn from any point on conductor (metres)</b>	<b>Horizontal distance from a vertical plane drawn from any point on conductor (metres)</b>
150 to 300	4	D1 = 4 D2 = 8
301 to 500	4	D1 = 7.5 D2 = 15
501 to 700	4	D1 = 15 D2 = 30
Greater than or equal to 701	4	D1 = 25 D2 = 50

Key:  
D1 = distance for the 15% of each span at either end of the span  
D2 = distance for the centre 70% of each span

Diane Morcom,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, provide for the control of trees adjacent to conductors.

*Regulation 4* contains definitions. Key definitions include **dispensation zone**, **growth limit zone**, **notice zone**, and **works owner**.

*Part 1 (regulations 5 to 28)* deals with the control of trees.

*Regulation 5* imposes a general requirement on every works owner that is an electricity operator to give to every consumer, who is supplied with electricity by that works owner, specified information concerning the dangers posed by contact between trees and live conductors and the operation of certain aspects of the regulations.

*Regulation 6* enables a works owner who becomes aware of a tree encroaching the notice zone but not the growth limit zone to give a hazard warning notice to the tree owner.

*Regulation 7* describes the purpose of a hazard warning notice, prescribes the details that it must contain, and the method of its delivery.

*Regulation 8* describes the circumstances where a works owner either may, or must, give a cut or trim notice to the owner of a tree which is encroaching the growth limit zone.

*Regulation 9* describes the purpose of a cut or trim notice, prescribes the details that it must contain, and the method of its delivery.

*Regulation 10* sets out the obligations of a tree owner, on receipt of a cut or trim notice, to cause the tree to be cut or trimmed in accordance with the requirements of that regulation.

*Regulation 11* requires the works owner to meet the reasonable costs of the first cut or trim in the circumstances described in that regulation.

*Regulation 12* requires any tree owner who is required to cause a tree to be cut or trimmed to also remove or tidy any debris that falls on adjoining land, unless an arbitrator orders otherwise.

*Regulation 13* empowers a works owner to sever and remove any tree roots which are within 0.5 metres of an underground conductor.

*Regulation 14* specifies the obligations of a works owner to take certain steps to remove danger to persons or property as a consequence of trees contacting, or posing a serious hazard to, conductors.

*Regulation 15* enables an owner or occupier of land to give a no-interest tree notice to a works owner in certain circumstances described in that regulation.

*Regulation 16* describes the purpose and effect of a no-interest tree notice. In broad terms, the purpose of the no-interest tree notice is to notify a works owner that the owner or occupier of the land on which the tree is growing has no interest in the tree, which enables the works owner to remove or trim the tree if the works owner receives permission to enter on the land. If the tree is not removed or trimmed within a certain period, and it causes damage to any works of the works owner, the owner or occupier of the land who gave the notice is not liable for the costs of remedying the damage.

*Regulation 17* provides for the rescinding of a no-interest tree notice in certain circumstances.

*Regulation 18* sets out rules governing consultation about the removal of trees on roads where the tree is believed to have an amenity value.

*Regulation 19* enables a tree owner, who has received a hazard warning notice or a cut or trim notice from a works owner, to apply to the works owner for a dispensation from cutting or trimming a tree so that it does not encroach the notice zone. The regulation goes on to deal with the effect of a dispensation and the method of application.

*Regulation 20* provides criteria governing the grant or refusal of dispensations, the form in which a dispensation may be given, and provides time limits for making a decision on receiving an application for a dispensation.

*Regulation 21* makes further provision concerning dispensations, including the date a dispensation comes into effect, the duration of the dispensation, and the circumstances in which it may be revoked or overridden.

*Regulation 22* provides for arbitration in the event that a tree owner is dissatisfied with the decision of a works owner to refuse to grant a dispensation, or is dissatisfied with the terms of the dispensation.

*Regulation 23* deals with the manner in which a hazard warning notice or a cut or trim notice is to be given to a tree owner.

*Regulation 24* deals with the manner in which a no-interest tree notice or an application for a dispensation is to be given to a works owner.

*Regulation 25* deals with the manner in which an application may be made to an arbitrator.

*Regulation 26* prescribes various offences that may be committed by tree owners.

*Regulation 27* prescribes various offences that may be committed by works owners.

*Regulation 28* deals with the civil liability of tree owners arising out of, or connected with, a failure to comply with the provisions of these regulations.

*Part 2 (regulations 29 to 37)* deals with the appointment of arbitrators, the functions, duties, and powers of arbitrators, decision-making by arbitrators, the conduct of proceedings before arbitrators, evidence tendered in connection with arbitrations, rehearings, remuneration of arbitrators, and the protections and privileges of arbitrators.

*Part 3 (regulations 38 to 42)* deals with miscellaneous matters.

*Regulation 38* provides that these regulations do not affect the right to compensation under the Electricity Act 1992.

*Regulation 39* provides that these regulations do not affect the obligation to comply with certain regulations dealing with safety clearance distances for conductors of overhead electric lines.

*Regulation 40* provides that these regulations do not affect any other claims that a works owner may have against a tree owner in respect of any damage caused to works by a tree owner.

*Regulation 41* provides that these regulations do not affect the operation of certain agreements between works owners and tree owners dealing with the trimming or felling of trees and the costs arising from such trimming or felling.

*Regulation 42* deals with revocations.

The *Schedule* specifies growth limit zones.

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**Electricity (Hazards from Trees)  
Regulations 2003**

2003/375

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
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