

Submission

On

Review of the Electricity (Hazards from Trees) Regulations 2023

Discussion Document

Submission to:

Energy Markets Policy

Ministry of Business, Innovation and Employment

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Submitter

The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand's 1.74 m hectares of plantation forests and over 75% of the annual harvest.

In 2019, the forest growing sector was worth \$6.93 billion in export value and has a 12% share of rural land use.

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Introduction: general comments

1. The discussion document is one sided and has not provided data other than the harvesting cost of a forest, as to the impact on forest and/or landowners if an option to create corridors is accepted.
2. The discussion document has not provided any data as to the number of outages caused by tree fall, other than the less than 1 % for Transpower, to justify the imposition of a tree fall corridor. There is also no data advising if outages from tree fall occur in the rural area, shelter belts, forests or in urban areas.
3. The discussion document does not recognise that it is not just tree owners but landowners that would be affected by the Tree Regulations. The Ministry of Business Innovation and Employment (MBIE) are very aware that there are many different arrangements for planting forests on land, each providing for different property rights between landowner and tree owner.
4. FOA has had no communication with MBIE, other than to ask what was happening with a review, since 2022. MBIE have clearly used that time to have discussions with lines companies to provide their data, but FOA was not been given the opportunity to provide data that would have provided quantitative information on the distance of lines interfacing with existing forests, the information as to whether the forest existed prior to 1992, the forests that would be impacted by Emissions Trading Scheme (ETS) liabilities, the proportional impact of fall tree corridors on farm forester's forests, particular information as to property right arrangements for the growing of trees on another's' land, and the extent of existing arrangements with

line companies and how these differ in widths and responsibilities between the landowners and the line companies. This lack of data cannot be rectified by a consultation that has come at a time when the forest industry is in different regions dealing with the impact of devastating weather events.

5. If MBIE had not wished to deal with FOA directly, then it should have been seeking information from Te Uru Rakau. It is our understanding that there has not been any such consultation.
6. The proposals for a fall distance corridor would impose a disproportionate loss of property rights on landowners for the benefit of private line companies.

Issue 1: There are risks to electricity network assets from trees that are not encroaching on the Growth Limit Zone (GLZ) that could still fall on the assets during a severe weather event.

Question 1: Do you agree with the issues that MBIE has identified with the Tree Regulations? Why or why not?

No, from a land owner and tree owner's property right interests.

- a. There appears to have been from the time of the workshops held by MBIE, further consultation with the line owners to now raise as a major issue the risk from the falling of trees on their lines. During the workshops this was not raised as a major issue. The workability of the notice provisions and a risk management approach was the focus of the line owners' concerns. At the workshops an FOA representative asked for the data from the line companies of the outages caused by falling of trees versus tree branches, flying bark, landslips and the like. The data was not provided, and this discussion document also does not provide any data as to the number of outages caused by tree fall. Transpower advises that less than 1% of outages are from tree fall.

A lines company in south Auckland advised that their major issue during outages from storm events was flying bark from eucalyptus trees planted as shelter belts. But data from lines owners on outages caused by tree fall was not provided.

The options in this discussion document regarding fall distance setbacks would impose major costs on tree owners and landowners, the proposal has not considered any data or evidence on the extent of outages caused by tree fall.

- b. The discussion document fails to address the issue of the operation of lines permitted under the Electricity Act 1992 to continue to occupy land without requiring an easement and in particular lines that are occupying land that was in 1992 afforested in either exotic or native trees.
- c. The discussion document fails to adequately recognise the issue of private property rights and the cost implications for landowners and or tree owners.
- d. The discussion document fails to address the issue of cost implications for not just tree owners but also for landowners affected by power line corridors. ETS liabilities can be a significant landowner cost burden. MBIE has previously been advised that in relation to the forestry sector there are various applicable legal instruments between tree owners and landowners. There are crown forest licences, forestry rights, leases and the like. Any changes to the Tree Regulations will impact differently upon tree owners and landowners depending on the terms of those legal instruments and statutory liabilities.
- e. While the discussion document references maximising land use and ETS liabilities as cost concerns it does not raise concerns associated with the obligation to pay rates, to undertake corridor weed and vegetation management and any obligation to protect significant natural areas (SNAs). Nor does it deal with the impact on rental payments

when the land agreements only pay rent on the plantable land area. Crown forestry licences (CFLs) have a rental mechanism whereby the licensee pays rent only on plantable areas. If fall distance corridors are to be imposed then the Crown and now the Maori landowners who have taken up the CFLs under treaty settlement may well receive less rent and also be liable to pay ETS liabilities.

- f. The discussion document does not address the issue of power lines that are within easements that may now not be wide enough to address the fall distance of trees. The discussion document provides no such evaluation and yet they could have access publicly registered documents such as easements in CFLS, and Forest Rights which are registered under the Forestry Rights Registration Act 1983.
- g. The discussion document fails to recognise that line owners are commercial operators who could exercise designation powers for network utilities and acquire land for public works. The discussion document does not address the other remedies for the line companies versus the proposal to, in effect, take land without paying any compensation. Other than Transpower (which is a state-owned enterprise) lines are owned by companies. This is quite different from when a number of electricity lines were owned by their communities. Under municipal electricity legislation.
- h. This submission is made on behalf of the NZFOA and its members. NZFOA has provided feed back in this submission. We cannot provide quantifiable cost information for every one of our members but provide in question 7 an outline of costs. It is our submission that MBIE should undertake the work to identify the length of lines interfacing with forestry to provide a balanced cost and benefit analysis of the impact of taking land more appropriately for fall tree corridors.
- i. It is a busy time for forestry companies especially those that are dealing with the effects of severe weather events to respond to the discussion document especially as there has been no contact on this review with MBIE since 2022.

Question 2: *What considerations do you believe the Trees Regulations should have in respect to the Te Tiriti o Waitangi?*

- a. The proposed tree fall provision is in effect taking of land without the payment of compensation. The fall distance proposals appear to have implications for existing and future treaty settlements.

Question 3: *Do you think that the Tree Regulations should restrict the distance in which new trees can be planted or replanted in proximity to electricity lines?*

- a. Since 1992 if a line owner wished to use private land, then they are required to negotiate with the landowner for the use of that land. This is the same situation if the line owner wished to occupy more land than they occupied prior to 1992, such as if they wished for

a wider corridor. If land is occupied by an electricity line that was established prior to 1992 and there were existing trees, then the line owner only must be responsible for maintaining the existing works and tracks providing access. Line owners have never had to be responsible for paying for the maintenance of the land under an electricity line nor for paying rates or rental costs on the land they occupy (section22A Electricity Act 1992).

Line owners are responsible for compensation for trees removed (section 58 of the act) pursuant to any regulation created under section 169 of the Electricity act 1992. The tree regulations were established under this section of the act. Compensation was to be assessed under the Public Works Act 1981. Clearly a recognition that removing trees was for the public benefit. Section58 compensation only applies to trees existing in 1992. Most existing trees would have been harvested by now.

Where forests were subjected to having land occupied by existing trees one would have expected that if the risk of tree fall distance was an issue, then line companies would have negotiated for a wider corridor with the land owner.

It is egregious that now after the time period for liability to pay compensation, that the proposal is for line companies to be able to request removals of trees without paying any compensation and or negotiating for use of the land above which they occupied in 1992.

However, there is no proposal to pay compensation for the use of land for the power line. FOA disagrees with the statement in the foreword to the discussion document that “trees and electricity lines share space”. Sharing suggests that there is equal rights and obligations. This is not the case here.

With regard to new tree plantings and the proposed fall distance setbacks, the proposals are in effect a taking of land for the benefit of a line company. Since 1992 it has been clear under the electricity act that if line companies wished to use land for electricity lines, then their remedy is to negotiate agreement with the landowners. The line companies have responsibilities to their shareholders and will benefit by not having to pay for the taking of the use of someone else’s land. It is the same regarding replanting. However, replanting has further costs that have been mentioned above relating to ETS liabilities, weed management and rental impact.

Under s 169 (g) of the act the Government could have in 2003, regulated for the location of a tree or the removal of the whole of a tree under the Tree regulations, not just any part of it. At that time the Government chose not to give line companies the power to do so. The proposal now is to do so. The discussion document is deficient in not providing an adequate cost benefit analysis for the costs for landowners and tree owners if set back distances for the location and or removal of trees could be required by the line owner.

Afforestation and or tree planting location should be managed through negotiation with the landowner such that ongoing management of the affected land could be covered. In

effect the use of the land by a electricity line is a public work and the regulations could set out the process for negotiation.

Restricted replanting for what is in effect a public work, is a taking of land without compensation. Any restrictions on replanting should be by way of negotiation.

Question 4: *Arguably the judgement in Nottingham Forest Trustee Ltd (Nottingham) v Unison Networks Ltd (Unison) has decisively clarified the responsibility for managing the fall line risk outside of the GLZ. Do you agree and if so, is further government intervention necessary to address this risk?*

- a. FOA do not agree that this is the situation in all cases. The case suggests that claims for isolated damage will not be successful in nuisance for damages. The case does not address the situation where trees were existing near lines that were existing prior to 1992. Such lines could themselves be liable in nuisance for any damage to adjacent trees. The case does not deal with a situation whereby government legislation has required a setback for fall distance trees and trees beyond that distance fall on a line.

The case does provide guidance to tree owners in managing all risks, not just the risk of fall distance, from trees near electricity lines. The responsibility is on the tree owner to manage the risk, and should a line owner not be happy with this then they can negotiate for a greater setback.

Given that the discussion document does not provide the extent of power outages caused by fall of trees versus other causes it is Impossible to evaluate the extent of the risk to either tree owners or line owners. On page 19 of the discussion document in table 4 Transpower provides that less than 1 % of the outages are caused by fall risk trees. The other line owners do not provide any data. It is submitted that the extent of the risk is not one that requires regulation.

The trees in the case provided for a 15 metre set back either side of the existing lines. There is reference to Transpower suggesting a 50 m set back either side and another suggestion for 24 m set back either side. None of these setbacks provide for the fall distance of trees at full maturity in New Zealand. Accordingly, any arbitrary distance is irrelevant as the case provides guidance that no matter the width of the corridor if trees fall on a line there is potential liability for the tree owner. In other words, the regulations may set a setback distance, but the tree owner still has a common law liability.

Question 5: *Do you agree with our preferred objectives of the Regulation, why or why not?*

- a. No, if the proposals are to allow for fall distance setbacks without any compensation. Line companies are commercial entities and if a wide corridor is needed for the public benefit, it is in effect a public work and compensation should be paid. The way the

objective is worded infers that lines are being provided for a public benefit that does not have to take into account the impact upon the property rights of landowners.

- b. The addition of the words '*particularly in response to a changing climate*' are not accepted. While wind is usually responsible for not only the falling of trees, but damage caused by branches etc, the discussion document has not provided any data as to electricity outages caused by flooding of lines and works, lines taken out by slips and if the location of trees close to lines affected by such events were an additional factor in any risk to the electricity supply. If the government is really concerned about all aspects of severe weather events, a more comprehensive discussion document should have been provided. Then we could have expected to see assessments of location of trees and lines in floodable areas and or high erosion risk areas.
- c. It is not considered that an objective is required but rather the existing purpose is more fit for purpose.

Question 6: Do you agree with our policy assessment criteria, why or why not?

- d. No because the discussion document does not provide adequate data to undertake an adequate cost benefit analysis of the proposals. There is inadequate data to evaluate if the cost of tree falls causing line damage is proportional to the cost of taking land from landowners. The proposal is in effect providing a public benefit without the line owners paying compensation for use of the land or for the other costs to the landowner such as lost land out of production, vegetation control, rates and payment of ETS liabilities where applicable.
- e. There is limited predictability of regulatory outcomes as the proposed setbacks are not based on mature tree heights, either for native or exotic trees. The common law liability in nuisance, as set out in the Nottingham v Unison judgement, may well be nullified.
That is if a tree taller than the setback distance falls and causes damage to a line the common law remedy of nuisance would not be available as the regulations would have codified the risk of fallen trees upon electricity lines.

Question 7: What are your thoughts on extending the GLZ to cover a larger area, what would be the appropriate distance for the extension and how would this affect you?

- a. We are opposed to any extension of the GLZ to cover fall distance. Less than 1% of Transpower outages are caused by tree fall and there is no data from the line owners to quantify the risk. The discussion document has obtained data for costs of outages to line owners but not the costs caused specifically by falling trees. At the same time the discussion document has made no effort to contact Te Uru Rakau or forests owners to provide the costs to forest owners of providing wider corridors.

- b. Provision of corridors will extend existing boundaries of easements as there are few that provide for 48 m let alone Transpower's suggestion of 100 m. We know that Transpower did negotiate an arrangement for the new lines from Whakamaru to Auckland to cross forestry land at Kinleith for a corridor up to 120 m wide. In this instance the he land and tree owner were compensated for ETS liabilities, weed management and rental costs.
- c. Line companies have been working with forest owners to negotiate greater setbacks from their lines especially when forests are replanted. Typically the agreements that have been reached include some form of compensation whether it is weed control, payment of ETS liabilities or even rental costs. A forestry company in the Marlborough and Tasman region has reached agreement with its lines company regarding replant setbacks. The agreement includes line company responsibility for ETS liabilities and vegetation management. This discussion document has not bothered to collect the data on the existing arrangements between line owners and land/tree owners to evaluate what will be the impact on such agreements should the proposal to extend set back areas without compensation proceeds. It is unacceptable that after a review period of 4 years, adequate data collection and consultation has not occurred.
- d. We find the statement on page 27 of the discussion document "*that vegetation owners may not be incentivised to address these risks proactively*" unpalusible. The responsibilities of the common law in nuisance are a back stop to remind land and tree owners of their legal responsibilities.
- e. Costs for providing fall distance corridors are set out below:
 - (i) the ETS liability repayment is complicated. It is currently set at three time the price of carbon (\$60) for larger growers. Small forestry participants are currently exempt, but the intention is they will also be required to pay a surrender penalty by 2025. The following example provides hectarage that is taken out of forest land as electricity corridors. A member company at the top of the South Island has identified that it has 82km of lines across its estate. If one was only looking at a 20 m wide corridor that would be an estimated total of 326 ha used by the line companies. Any increase in the corridor width only increases the hectarage and can be used to calculate the potential impact on the landowner and or tree owner.

The Climate Change Regulations were gazetted in 2008 and provide the allocation of NZUs to the different areas and species. Given the date of the regulations and the amount of work undertaken in recent time on the ETS, MBIE has no excuse for not being able to provide some basic data of expected costs per hectare of deforestation liability.

(ii) Vegetation management can be undertaken by aerial spraying, by handheld spraying, spraying from a vehicle, suppression by mulching of vegetation. Costs will vary. Scale and the type of herbicides used will impact on the costs. Two years ago, on the Coromandel a lines company aerial sprayed 1.5 km length of a line corridor at the cost of \$10,000. At today's costs helicopters are \$3,000 hr. In the west Auckland

region, a forest company's aerial spraying costs for weed/vegetation management this year is approximately \$263 /ha.

It is not clear if MBIE have discussed whether line companies are prepared to pay for the use of the land for a fall corridor. It is clear from our members that there are a variety of arrangement in place where line companies have agreed to pay not only ETS liabilities but the costs of weed management. Weed management control is important for managing the spread into the forest estate and managing fire risk.

- f. FOA does not have the overall cost to forest owners should fall distance setbacks be proposed as we do not have the information on the extent of lines in New Zealand that do have existing setbacks, whether these are secured by existing easements, existing arrangements and/or grand parented under the Electricity Act 1992. It was expected that this data would have been collected by MBIE during the 4 year development period.
- g. In practice line owners are already forwarding invoices for damage caused to electricity lines from falling trees. In South Otago a line company sent a forest owner an invoice for damage caused by falling poplars that fell across a road and damaged lines on the other side of the road. Unison has a practice of sending invoices for damages via their insurance company.
- h. The discussion document provides such a one-sided approach to its options. There is no evaluation of what the impact will be on farm foresters. Wide corridors upon small forests could render the forests as uneconomic.

Question 8: *Would a 'likely to interfere with' approach work if 'likely interference' were clearly defined and limited in the regulation? What would this look like to you?*

- a. Because of privacy issues we have been unable to obtain the information concerning the amount of telecommunication lines that are secured by way of easement or located in road reserve areas versus unsecured lines. It is our understanding that at the time Telcom was created and was privatised that existing lines that were outside of road reserves were secured by way of easements. It is also unclear how often section 128 of the Telecommunication Act has been utilised and if it has been applied to unsecured lines or those within easements. Without this information we consider that the application of the telecommunications act to the risk of the fall distance of trees on electricity lines is not comparing apples with apples. MBIE clearly have had discussions with Chorus but have not explored the relevancy of the application of section 128 to this situation.
- b. FOA would be opposed to the introduction of such a term as it would create uncertainty and allows utility owners to shift the costs and risks onto the landowner rather than internalise risks they can manage, such as tower spacing, load control, undergrounding, etc. By requiring utility owners and landowners to negotiate fair and equitable

agreements, the relative costs of managing the risk will be optimised – be that by paying for the use and control of the land or by investing in the infrastructure. Unreasonable expectations and the transfer of risk to utility owners would also be managed.

Question 9: *Would a ‘likely to interfere with’ approach work if combined with a risk-based approach?*

- a. FOA would be opposed to the introduction of such a term whether risk based or otherwise for the reasons set out in our response to Question 8.

Question 10: *What is your preferred option out of the options proposed by MBIE for issue 1? Are there any options you would recommend that have not been considered?*

- a. The status quo is the preferred option as there has been no provision for even a process for compensation to be provided to landowners and/or tree owners. The fact that the discussion document does not even consider that landowners have any rights affected is very disappointing and again is an indication of the one-sided approach of this discussion document.
- b. In the absence of a fair and equitable negotiated solution between utility owners and landowners or the compulsory acquisition of affected land through the Public Works Act, FOA’s preferred Option is Option 1 – the status quo.
- c. A new notice category has been discounted. The line owners have indicated that they dislike having to deal with single trees in their GLZ notices and particularly for forestry would prefer to have a corridor established. Option 4 still deals with a single tree approach.

Issue 2: How can the Trees Regulations prevent the over-trimming of hazardous vegetation, which can result in unnecessary diminution of economic or amenity value?

Question 11: How do you think a risk-based approach in the Regulation to managing vegetation could be implemented and enforced?

- a. The risk-based approach does not include an assessment of the impact on the land owner and tree owner. The discussion document has not provided any information about whether the New South Wales (NSW) Regulations have been used to create fall distance corridors. The discussion document has not set out a fair, comparing apples with apples scenario to enable adequate evaluation. **There is no criteria to consider**

the risk to the tree owner of initiating windthrow on a tree owner by the opening up of a new corridor in growing trees.

- b. It is not clear from the information provided if the NSW notice could lead to major corridor expansion and impose restrictions on replanting of existing commercial forests.
- c. As stated in our response to Question 8, by requiring works owners and landowners to negotiate fair and equitable agreements, the relative costs of managing the risk will be optimised – be that by paying for the use and control of the land or by investing in the infrastructure. Unreasonable expectations and the transfer of risk by works owners will be minimised by what the works owners are prepared to pay for.

Question 12: What do you think are the most important aspects to include in a risk-based approach methodology? Are there any additional issues that you think should be considered?

- a. As well as any risk to the transmission infrastructure, any risk assessment must include the risk that operating and maintaining the transmission infrastructure has on the surrounding land uses to ensure the assessment is comprehensive and balanced. That risk would include the risk of crop damage and limitations of future land use opportunities.

Question 13: Do you agree with our view to include the consideration of fire risk in a risk-based approach to vegetation risk, why or why not?

- d. Yes. As noted in our response to Question 12, any risk assessment must include the risk that operating and maintaining the transmission infrastructure has on the surrounding land uses. As highlighted in the Discussion Document, climate change is predicted to change weather patterns such that parts of New Zealand will be hotter and drier. Increased incidents of wildfire in forested areas is possible, especially associated with the expanding rural-urban interface in many parts of New Zealand. Transmission Lines will be another potential source of ignition that needs to be accounted for in any risk assessment. However, SFNZ notes the failure of the Discussion Document to recognise the risk of wildfire caused by the transmission lines and the significant cost that will need to be met by the landowner if works owners fail to manage the risks associated with their assets.
- e. The majority of forest fires initiate from the surrounding land use, not the forest itself.. The management of vegetation/weeds in a corridor is a major concern to forestry as clearly the powerlines add to the fire risk, particularly during storms. Yet this discussion document does not deal in any way with the risk of creating such corridors let alone requiring the line owner to be responsible for managing such corridors.

Question 14: What is your preferred option out of the options proposed by MBIE for issue 2, are there any options you would recommend that have not been considered?

- a. While FOA supports a risk-based approach, none of the options proposed are fair and equitable to the landowner. As noted in our responses to above questions, FOA considers that requiring works owners to work with landowners to identify risk and negotiate a fair and equitable agreement to manage that risk where landowners are equitably compensated for the loss of the productive use of their land should be the mechanism adopted in any changes arising from the review.
- b. We cannot support option 4 as it does not provide any consideration of the costs to a landowner and or tree owner. As outlined, these are very real costs which a landowner is being advised that they should be responsible for the community good. The difficulty with this is that line companies are commercial entities as are farmers and foresters. One property owner would be required to provide land for use by another property owner with no compensation. The proposal is really for a public work without the provision for compensation for that public work.

Question 15: Do you have any feedback on the Tree Regulations obligation on works owners to remove danger to persons or property from trees damaging conductors?

While FOA supports a risk-based approach, none of the options proposed are fair and equitable to the landowner. As noted in our responses to above questions, FOA considers that requiring line owners to work with landowners to identify risk and negotiate a fair and equitable agreement to manage that risk where landowners are equitably compensated for the loss of the productive use of their land should be the mechanism adopted in any changes arising from the review.

Issue 3: How should the Regulation balance the responsibility of vegetation owners and works owners?

Question 16: Do you agree with MBIE's view that responsibility to identify risks sits best with works owners?

- a. Only the works owners know the voltage of their lines and the reason why they choose certain spans therefore, they have the expertise to identify risk.

Question 17: Do you agree with MBIE's view that the allocation of the first cut or trim should remain with improvements to its application, and why or why not?

- a. FOA supports the retention of the first cut or trim provisions of the Regulations and does not see any need to amend them. Whilst it is noted why a landowner would seek to make a return off land that is otherwise simply a cost imposed on them, the reasons given for proposed changes to the Regulations appear spurious. Registering an area of trees in the ETS would create a contingent liability on the landowner should the works owner de-forest the area and/or the landowner seeks to protect themselves from ongoing management costs associated with the area.
- b. In this day and age, we question why line owners do not keep adequate records of cut and trim notices. It should be a responsibility of the line owner to keep such records. GPS is such a simple method of record. We find that the line owners keep records that they can attach to their invoices for damage to their lines. These include geo-referenced images.

Question 18: *Is there a way to apply the notice system at a higher level than the individual tree?*

- a. FOA prefers the status quo. As stated above when a lines company wishes to invoice a forest owner for electricity line damage from a fallen tree or an encroaching branch they appear to have the tools, drone footage, GPS identification etc to identify the tree or trees that have caused damage.

Question 19: *What is your preferred option out of the options proposed by MBIE for issue 3, are there any options you would recommend that have not been considered?*

- a. As noted in our response to Question 18, FOA considers that requiring works owners to work with landowners to identify risk and negotiate a fair and equitable agreement to manage that risk where landowners are equitably compensated for the loss of the productive use of their land would largely overcome the stated challenges of the Regulations. Such agreements would allow for effective mechanisms for managing this and other identified issues. In the absence of such provisions and given the lack of clarity in how the notice provisions would be changed, FOA would prefer the status quo.

Issue 4: What should be the process for works owners to access vegetation on private land?

Question 20: *What is your preferred option out of the options proposed by MBIE for issue 3? Are there any options you would recommend that have not been considered?*

- a. The lack of consideration of landowner versus tree owner rights is so apparent in this section of the discussion document. Vegetation owners are not necessarily the

landowner. So option 2 is unacceptable as legally the tree owner may not have the appropriate rights of access to pass onto the line owner. We find in practice that the line companies and their contractors that take entry to property seriously and that the existing situation is working. Those that consider that they do not have to take into account the Health and Safety responsibilities of a landowner and or tree owner and the provision of adequate public liability insurance are the persons who have difficulty in obtaining access.

Issue 5: How should disputes between vegetation and works owners be resolved?

Question 21: What is your preferred option out of the options proposed by MBIE for issue 4, are there any options you would recommend that have not been considered?

- a. Without limiting our foregoing submissions, we prefer the suggestion made under Option 2 for dealing with disputes arising from the implementation of the Regulation.

Question 22: Do you consider that ongoing penalties are a useful element of the current regulatory regime?

- a. The fact that ongoing penalties have not been used under the Regulation to date, suggests that there is no need to make any change though we would not be opposed to updating the Regulation to be consistent with more current regulatory drafting as part of any necessary update to the Regulation.

Arrangements for monitoring, evaluation and review

Question 23: Do you have any comments on our proposals for monitoring, evaluating and reviewing the Trees Regulations, for example when a review of the new Trees Regulations should occur?

- a. The proposals regarding monitoring, evaluating, and reviewing the Regulation are not specific enough for FOA to comment on and, without certainty over whether there will be changes to the Regulations and what those changes would be, there is no way of assessing what would be necessary, appropriate, or reasonable.
- b. Given the drawn-out review process that has occurred that still has not sought, collected any data on the costs to tree owners and the non-recognition of costs to landowners we would only hope that future reviews would provide a for a more equitable analysis of issues.

Additional feedback

Question 24: Do you have any additional feedback that you would like to provide on the regulation or the options we have proposed?

- a. As stated in our general and specific submissions, FOA is concerned over the lack of balance in the discussion document with a presumption in favour of security of the transmission infrastructure and the failure to fully recognise the potential impact the loss of property right represents to landowners.
- b. The discussion document fails to adequately recognise the issue of private property rights and the costs and implications of regulation that benefit commercial organisations over the owners of private property. The Regulations legitimised a use of private property for works existing at a point in time - as defined in the Act. Works established after that point in time need to either purchase the affected land through direct negotiation or the Public Works Act or negotiate an easement. FOA opposes any further alienation of the private property rights of landowners through the review of the Electricity (Hazards from Trees) Regulations. Any requirement to manage the risk to and from trees outside of the GLZ should be managed through fair and equitable easements or commercial agreements between the landowner and the owner/operator of the electricity lines.

Note on making this submission public

The FOA is happy for this submission to be made public.



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