

# **Energy and Resources Legislation Amendment Act 2010**

**No. 55 of 2010**

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# **Energy and Resources Legislation Amendment Act 2010<sup>†</sup>**

**No. 55 of 2010**

[Assented to 14 September 2010]

**The Parliament of Victoria enacts:**

## **PART 1—PRELIMINARY**

### **1 Purposes**

The main purposes of this Act are—

- (a) to amend the **Electricity Industry Act 2000**—
  - (i) to extend the application of provisions of that Act designed to facilitate cost sharing for augmentations to distribution systems; and

- (ii) to require the Essential Services Commission to have regard to a Ministerial emergency power direction under Part 6 of that Act that is in force before revoking a licence under that Act; and
    - (iii) to make further provision in relation to matters that are consequential to the rollout of advanced metering infrastructure; and
  - (b) to make amendments to the **Electricity Safety Act 1998** relating—
    - (i) to the functions and powers of Energy Safe Victoria; and
    - (ii) to the clearance of vegetation around electric power lines; and
    - (iii) to bushfire mitigation plans; and
    - (iv) to electricity safety management schemes; and
  - (c) to amend the **National Electricity (Victoria) Act 2005**—
    - (i) to disapply the smart meter rollout provisions under the National Electricity Law to prevent an overlap with the advanced metering infrastructure arrangements under the **Electricity Industry Act 2000**; and
    - (ii) to provide for an economic incentive scheme with respect to fire starts to be administered by the Australian Energy Regulator in respect of distribution companies operating in Victoria; and
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- (d) to amend the **Energy Safe Victoria Act 2005** to make further provision in relation to Energy Safe Victoria's corporate governance arrangements; and
  - (e) to amend the **Mineral Resources (Sustainable Development) Act 1990** to improve the operation of that Act; and
  - (f) to amend the **Petroleum Act 1998** to improve the operation of that Act; and
  - (g) to repeal the **Mines Act 1958**; and
  - (h) to amend the **Gas Industry Act 2001** to require the Essential Services Commission to have regard to any Ministerial emergency power direction under Part 9 of that Act that is in force before revoking a licence under that Act; and
  - (i) to amend the **Aboriginal Heritage Act 2006** to make further provision in relation to the interrelationship between cultural heritage management plans under that Act and area work plans under the **Mineral Resources (Sustainable Development) Act 1990**; and
  - (j) to make miscellaneous amendments to the **Geothermal Energy Resources Act 2005**, the **Greenhouse Gas Geological Sequestration Act 2008**, the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, the **Pipelines Act 2005**, the **Victorian Energy Efficiency Target Act 2007**, the **Victorian Renewable Energy Act 2006** and the **Energy and Resources Legislation Amendment Act 2009**.
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## **2 Commencement**

- (1) Subject to subsection (3), this Act (except sections 36 and 85) comes into operation on a day or days to be proclaimed.
  - (2) Sections 36 and 85 come into operation on the day after the day on which this Act receives the Royal Assent.
  - (3) If a provision of this Act does not come into operation before 1 July 2011, it comes into operation on that day.
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**PART 2—AMENDMENT OF ELECTRICITY INDUSTRY  
ACT 2000**

**3 Amendment of Division heading**

In the heading to Division 2A of Part 2 of the  
**Electricity Industry Act 2000** omit "wind  
energy".

See:  
Act No.  
68/2000.  
Reprint No. 5  
as at  
1 July 2009  
and  
amending  
Act Nos  
41/2009,  
57/2009,  
68/2009,  
72/2009 and  
6/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

**4 Definitions for purpose of Division 2A of Part 2**

- (1) In section 15B of the **Electricity Industry Act 2000**, in the definition of *relevant generator*, in paragraph (b), for "activity;" substitute "activity".
- (2) In section 15B of the **Electricity Industry Act 2000**, the definition of *wind energy generation facility* is repealed.

**5 Relevant augmentations**

In section 15C(2) of the **Electricity Industry Act 2000** omit "wind energy".

**6 Applicable charging principles**

- (1) In the heading to section 15D of the **Electricity Industry Act 2000** omit "wind energy".
- (2) In section 15D(1)(a) of the **Electricity Industry Act 2000** omit "wind energy".

## 7 Variation or revocation of licence

After section 29(3) of the **Electricity Industry Act 2000** insert—

- "(4) In deciding whether to revoke a licence the Commission must have regard to any direction of the Minister under section 96 that is in force.
- (5) Anything in the procedures specified in the licence's conditions for the revocation of the licence that is inconsistent with subsection (4) is of no effect."

## 8 Definition for purpose of Division 6A of Part 2

In section 46B of the **Electricity Industry Act 2000** insert the following definition—

"*AMI tariff* means—

- (a) a tariff (including a tariff referred to in section 35 or 36A) applying to electricity supplied and sold that is metered by means of advanced metering infrastructure; or
- (b) a tariff (including a tariff referred to in section 40A) applying to electricity distributed or supplied that is metered by means of advanced metering infrastructure;"

## 9 Orders in relation to advanced metering infrastructure

- (1) In section 46D(i)(ii) of the **Electricity Industry Act 2000**, for "supplied." **substitute** "supplied;".
- (2) After section 46D(i) of the **Electricity Industry Act 2000** insert—

"(j) require a relevant licensee to give a specified customer, or a customer of a specified class—

- (i) information about advanced metering infrastructure of an explanatory kind;
- (ii) information about when a specified AMI tariff, or a specified class of AMI tariffs, may take effect;
- (iii) notification of the date when, or the period within which, electricity will be supplied and sold to that specified customer, or customers of that specified class, at specified AMI tariffs;
- (iv) information as to the basis on which a specified AMI tariff, or a specified class of AMI tariffs, is calculated;
- (v) information about the supply and installation of advanced metering infrastructure;
- (k) specify how information referred to in paragraph (j) is to be given to a specified customer, or a customer of a specified class;
- (l) require a relevant licensee to prepare, publish and maintain specified information to enable a specified customer, or a customer of a specified class, to compare offers for the supply and sale of electricity that is to be supplied and sold at specified AMI tariffs;
- (m) specify how information referred to in paragraph (l) is to be published;
- (n) require a relevant licensee to provide specified information to another relevant licensee (the *second licensee*) for the purpose of enabling the second licensee to comply with a requirement made under paragraph (j) or (l);

- (o) specify how the information referred to in paragraph (n) is to be given to the second licensee;
- (p) require a relevant licensee to assist, in a specified manner, a specified customer, or a customer of a specified class, to enable the customer to determine whether the customer may benefit from being supplied and sold electricity at a specified AMI tariff;
- (q) require a relevant licensee to establish and maintain a specified method, process or procedure by which a specified customer, or a customer of a specified class, who is supplied and sold electricity at an AMI tariff may access data relating to past electricity consumption by that customer;
- (r) provide for when a specified AMI tariff, or a specified class of AMI tariffs, may have effect;
- (s) specify the requirements to be met by a relevant licensee before the licensee may offer to supply and sell, or distribute and supply, electricity to a specified customer, or a customer of a specified class, at a specified AMI tariff or specified AMI tariffs."

**10 New section 46DA inserted**

After section 46D of the **Electricity Industry Act 2000** insert—

**"46DA Interrelationship of Orders and other provisions relating to tariffs**

A requirement under an Order of the Governor in Council made under section 46D(j) to (s) is in addition to, and does not limit, a requirement under section 35, 35C, 35D, 36A or 40A."

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## 11 Statute law revision

- (1) In section 40F(1) of the **Electricity Industry Act 2000**, in the definition of *qualifying solar energy generating facility*, for "generating" (where first occurring) **substitute** "generation".
  - (2) In section 40FJ(2) of the **Electricity Industry Act 2000**, for "day.." **substitute** "day.".
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**PART 3—AMENDMENT OF ELECTRICITY SAFETY  
ACT 1998**

**12 New section 1 substituted**

See:  
Act No.  
25/1998.  
Reprint No. 5  
as at  
21 August  
2008  
and  
amending  
Act Nos  
61/2007,  
25/2008,  
59/2008,  
57/2009 and  
6/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

For section 1 of the **Electricity Safety Act 1998**  
**substitute—**

**"1 Purpose**

The purpose of this Act is to make further  
provision relating to—

- (a) the safety of electricity supply and use;  
and
- (b) the reliability and security of electricity  
supply; and
- (c) the efficiency of electrical equipment."

**13 Definitions**

- (1) In section 3 of the **Electricity Safety Act 1998**, in  
the definition of *distribution area*, for "licensee"  
**substitute** "distribution company".
- (2) In section 3 of the **Electricity Safety Act 1998**, in  
the definition of *practicable*, after "in" (where first  
occurring) **insert** "section 83B or".
- (3) In section 3 of the **Electricity Safety Act 1998**  
**insert** the following definitions—

*'accepted bushfire mitigation plan* means—

- (a) a bushfire mitigation plan accepted by  
Energy Safe Victoria under  
Subdivision 3 of Division 1A of Part 8  
and includes a bushfire mitigation plan  
provisionally accepted by Energy Safe  
Victoria under that Subdivision; or

- (b) a bushfire mitigation plan accepted by Energy Safe Victoria under Division 2A of Part 10 (and taken to form part of an accepted ESMS by operation of section 113D) and includes a bushfire mitigation plan provisionally accepted by Energy Safe Victoria under that Division;

***bushfire mitigation plan*** means a plan referred to in section 83BA(1) or 113A(1);

***hazardous bushfire risk area*** means an area—

- (a) to which a fire authority has assigned a fire hazard rating of "high" under section 80, whether or not the area is an urban area; or
- (b) that is not an urban area (other than an area a fire control authority has assigned a fire hazard rating of "low" under section 80);

***specified bushfire risk period*** means the period commencing 1 November and ending 31 March the following year;.

#### **14 Objectives and functions of Energy Safe Victoria**

- (1) After section 6(c) of the **Electricity Safety Act 1998** insert—

"(ca) to promote the prevention and mitigation of bushfire danger;".

- (2) After section 7(f) of the **Electricity Safety Act 1998** insert—

"(fa) to regulate, monitor and enforce the prevention and mitigation of bushfires that arise out of incidents involving electric lines or electrical installations;".

**15 New section 7A inserted**

After section 7 of the **Electricity Safety Act 1998**  
**insert—**

**"7A Energy Safe Victoria may have regard to  
the reliability and security of electricity  
supply in certain cases**

In performing a function or exercising a  
power under Part 8 or 10 or regulations made  
for the purposes of either of those Parts,  
Energy Safe Victoria may have regard to the  
reliability and security of electricity supply."

**16 Amendment of heading to Part 8**

In the heading to Part 8 of the **Electricity Safety  
Act 1998**, before "ELECTRIC" insert  
**"BUSHFIRE MITIGATION  
REQUIREMENTS FOR CERTAIN  
OPERATORS AND".**

**17 New Division 1A of Part 8 substituted**

For Division 1A of Part 8 of the **Electricity  
Safety Act 1998** substitute—

**"Division 1A—Bushfire mitigation  
requirements for certain operators of at-risk  
electric lines**

**Subdivision 1—Interpretation**

**83A Definitions**

In this Division—

***at-risk electric line*** means an electric line  
(other than a private electric line) that  
is—

- (a) above the surface of land; and
- (b) in a hazardous bushfire risk area;

*specified operator* means the operator of an at-risk electric line but does not include a major electricity company.

**Subdivision 2—General duties in relation to bushfire mitigation plans**

**83B General duty of specified operators to minimise bushfire danger**

- (1) A specified operator must design, construct, operate, maintain and decommission an at-risk electric line to minimise as far as practicable the bushfire danger arising from that line.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (2) It is a defence to a prosecution of a specified operator for an offence relating to a breach of a duty or obligation set out in subsection (1) if the operator has complied with the accepted bushfire mitigation plan in relation to that duty or obligation.

**83BA Submission of bushfire mitigation plans for acceptance**

- (1) A specified operator must, before 1 July in each year, prepare and submit to Energy Safe Victoria, for acceptance under Subdivision 3, a plan for the operator's proposals for the mitigation of bushfire in relation to the operator's at-risk electric lines.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (2) A bushfire mitigation plan under subsection (1)—
  - (a) must be in or to the effect of a form approved by Energy Safe Victoria; and
  - (b) must include the prescribed particulars.
- (3) A specified operator must cause a copy of an accepted bushfire mitigation plan to be available for inspection—
  - (a) on the operator's Internet site; and
  - (b) at the operator's principal office in the State during ordinary business hours.

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
50 penalty units.

**83BB Compliance with bushfire mitigation plan**

- (1) During the specified bushfire risk period, a specified operator must not commence to commission, or operate, an at-risk electric line unless a bushfire mitigation plan that applies to the operator's at-risk electric lines has been accepted or provisionally accepted under Subdivision 3.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (2) A specified operator must comply with an accepted bushfire mitigation plan that applies to the operator's at-risk electric lines.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (3) Subsection (1) does not apply to a specified operator who has a reasonable excuse.
- (4) For the purposes of subsection (1), it is a reasonable excuse for a specified operator not to comply with subsection (1) if—
- (a) there is no accepted bushfire mitigation plan that applies to the operator's at-risk electric lines; and
  - (b) the reason for there being no accepted bushfire mitigation plan that applies to the operator's at-risk electric lines is that—
    - (i) Energy Safe Victoria failed to accept the operator's bushfire mitigation plan by 31 October in the year it was submitted to Energy Safe Victoria; and
    - (ii) that failure arose because of unreasonable delay on Energy Safe Victoria's part.
- (5) For the purposes of subsection (1), it is not a reasonable excuse for a specified operator not to comply with subsection (1) if—
- (a) there is no accepted bushfire mitigation plan that applies to the operator's at-risk electric lines; and

- (b) the reason for there being no accepted bushfire mitigation plan that applies to the operator's at-risk electric lines is that—
  - (i) Energy Safe Victoria failed to accept the operator's bushfire mitigation plan by 31 October in the year it was submitted to Energy Safe Victoria and that failure arose because of actions or inactions of the operator that hampered the ability of Energy Safe Victoria to make a decision whether to accept that plan by 31 October; or
  - (ii) Energy Safe Victoria has not accepted a plan under section 83BG.
- (6) Subsections (4) and (5) do not limit what may constitute a reasonable excuse.

**Subdivision 3—Acceptance and validation of bushfire mitigation plans**

**83BC Validation of bushfire mitigation plans**

- (1) If a bushfire mitigation plan has been submitted by a specified operator under section 83BA, Energy Safe Victoria may require the operator to obtain an independent validation of that plan or any part of that plan.
- (2) The specified operator must establish to the satisfaction of Energy Safe Victoria that each person undertaking the validation of a bushfire mitigation plan has the necessary competence and ability and access to

information to arrive at an independent opinion in respect of the plan.

- (3) If Energy Safe Victoria requires a specified operator to provide an independent validation of a bushfire mitigation plan or part of a plan, the costs of that validation must be borne by the operator.
- (4) Energy Safe Victoria is not required to proceed with the consideration of a bushfire mitigation plan under this Subdivision until the independent validation is provided.

**83BD Additional information**

- (1) Energy Safe Victoria may require a specified operator to provide any additional information that Energy Safe Victoria thinks fit in relation to a bushfire mitigation plan submitted by the operator under section 83BA.
- (2) Energy Safe Victoria is not required to proceed with the consideration of a bushfire mitigation plan under this Subdivision until the additional information is provided.

**83BE Acceptance of bushfire mitigation plan**

- (1) Energy Safe Victoria must consider a bushfire mitigation plan submitted under section 83BA with as much expedition as the requirements of this Act and the regulations and the proper consideration of the plan permit.
- (2) Energy Safe Victoria must accept a bushfire mitigation plan submitted under section 83BA if it is satisfied that the plan is appropriate for the at-risk electric lines to which it relates.

- (3) Energy Safe Victoria must notify the specified operator in writing of its decision to accept a bushfire mitigation plan.

**83BF Provisional acceptance of bushfire mitigation plan**

- (1) Energy Safe Victoria may provisionally accept a bushfire mitigation plan submitted under section 83BA if it is satisfied that the plan will minimise the bushfire danger arising from the at-risk electric lines to which the plan applies.
- (2) Energy Safe Victoria must notify the operator that submitted the bushfire mitigation plan, in writing, of its decision to provisionally accept the plan.
- (3) The notice of provisional acceptance must state—
- (a) the period that the provisional acceptance will be in force; and
  - (b) the extent to which the bushfire mitigation plan has been accepted; and
  - (c) any limitations or conditions which will apply in respect of the accepted bushfire mitigation plan or part of the plan.

**83BG Non-acceptance of bushfire mitigation plan**

- (1) If Energy Safe Victoria does not accept or provisionally accept a bushfire mitigation plan submitted to it under section 83BA, it must—
- (a) notify the specified operator that submitted the plan in writing of the non-acceptance; and
-

- (b) give the operator an opportunity to modify and re-submit the bushfire mitigation plan.
- (2) A modified bushfire mitigation plan must be submitted to Energy Safe Victoria within 28 days after the notice is given under subsection (1).
- (3) If, after considering any modified bushfire mitigation plan submitted under this section, Energy Safe Victoria decides not to accept the plan, Energy Safe Victoria must give notice in writing of that decision to the specified operator that submitted the plan.
- (4) A notice under this section must be accompanied by a statement of the reasons for the decision.

**83BH Energy Safe Victoria may determine bushfire mitigation plan**

- (1) Energy Safe Victoria may determine the bushfire mitigation plan which is to apply in relation to a specified operator's at-risk electric lines.
- (2) Energy Safe Victoria may make a determination under subsection (1) if—
  - (a) a specified operator fails to submit a bushfire mitigation plan under section 83BA that relates to the operator's at-risk electric lines; or
  - (b) Energy Safe Victoria has decided not to accept a bushfire mitigation plan submitted under section 83BA that relates to a specified operator's at-risk electric lines.

- (3) If Energy Safe Victoria determines the bushfire mitigation plan to apply to a specified operator's at-risk electric lines under this section, Energy Safe Victoria must give notice in writing to the operator of that determination.
- (4) On notice being given to the specified operator under subsection (3), the bushfire mitigation plan determined by Energy Safe Victoria is taken for the purposes of this Act to be the accepted bushfire mitigation plan for that operator's at-risk electric lines.
- (5) Nothing in subsection (4) prevents a specified operator from submitting a bushfire mitigation plan under section 83BA in relation to the operator's at-risk electric lines for acceptance under this Subdivision.

**83BI Duration of accepted bushfire mitigation plan**

An accepted bushfire mitigation plan ceases to have effect on 30 June in the year after it is accepted under this Subdivision.

**83BJ Compliance audits for accepted bushfire mitigation plans—independent audits**

- (1) Energy Safe Victoria may require a specified operator—
  - (a) to obtain, at the intervals determined by Energy Safe Victoria, independent audits of the operator's compliance with an accepted bushfire mitigation plan; and
  - (b) to forward a copy of each audit report to Energy Safe Victoria within a time specified by Energy Safe Victoria.

- (2) The specified operator must establish to the satisfaction of Energy Safe Victoria that each person undertaking an audit under this section has the necessary competence and ability and access to information on the operations of the operator and the accepted bushfire mitigation plan to enable an independent audit to be carried out.
- (3) If Energy Safe Victoria requires a specified operator to obtain an independent audit under this section, the costs of that audit must be borne by the operator.
- (4) A specified operator must comply with a requirement of Energy Safe Victoria under this section.

Penalty: 200 penalty units.

**83BK Compliance audits—Energy Safe Victoria**

Energy Safe Victoria may conduct, or cause to be conducted, an audit to determine whether or not a specified operator is satisfactorily complying with an accepted bushfire mitigation plan."

**18 New section 86A inserted**

After section 86 of the **Electricity Safety Act 1998** insert—

**"86A Energy Safe Victoria may give directions for restriction or prevention of tree growth**

- (1) If Energy Safe Victoria is satisfied that it is necessary to do so in order to prevent future unsafe electrical situations, Energy Safe Victoria may, in writing, direct a specified person—

- (a) to restrict or cease the planting of specified trees or species or classes of tree in the immediate area around an electric line; or
  - (b) to clear specified trees or species or classes of tree from the immediate area around an electric line; or
  - (c) to do any other thing necessary to minimise or prevent growth of specified trees or species or classes of tree in the immediate area around an electric line.
- (2) A direction under subsection (1) must be reasonable.
- (3) In this section, *specified person* means the owner or occupier of land in the area of an electric line or the relevant distribution company or relevant transmission company that owns or operates the electric line.
- (4) A specified person must comply with a direction under subsection (1) that applies to the specified person.

Penalty: In the case of a natural person,  
50 penalty units;  
In the case of a body corporate,  
250 penalty units."

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**19 New Division 2A of Part 8 inserted**

After Division 2 of Part 8 of the **Electricity Safety Act 1998** insert—

**"Division 2A—Electric lines and municipal fire prevention plans**

**86B Municipal fire prevention plans must specify procedures for the identification of trees that are hazardous to electric lines**

Without limiting section 55A of the **Country Fire Authority Act 1958**, a municipal council must, in a municipal fire prevention plan required to be prepared and maintained under that section, specify—

- (a) procedures and criteria for the identification of trees that are likely to fall onto, or come into contact with, an electric line (*hazard trees*); and
- (b) procedures for the notification of responsible persons of trees that are hazard trees in relation to electric lines for which they are responsible."

**20 New Division 4 of Part 8 inserted**

After Division 3 of Part 8 of the **Electricity Safety Act 1998** insert—

**"Division 4—Compliance audits in relation to compliance with the Code**

**90A Application**

- (1) This Division applies to a responsible person who has prepared a management plan relating to compliance with the Code that has been approved by Energy Safe Victoria under the regulations.

- (2) In subsection (1) ***responsible person*** means a person referred to in section 84(4), (5), (6) or (7).

**90B Compliance audits for management plans—*independent audits***

- (1) Energy Safe Victoria may require a responsible person—
- (a) to obtain, at the intervals determined by Energy Safe Victoria, independent audits of the person's compliance with the management plan; and
  - (b) to forward a copy of each audit report to Energy Safe Victoria within a time specified by Energy Safe Victoria.
- (2) The responsible person must establish to the satisfaction of Energy Safe Victoria that each person undertaking an audit under this section has the necessary competence and ability and access to information on the operations of the responsible person and the management plan to enable an independent audit to be carried out.
- (3) If Energy Safe Victoria requires a responsible person to obtain an independent audit under this section, the costs of that audit must be borne by the responsible person.
- (4) A responsible person must comply with a requirement of Energy Safe Victoria under this section.

Penalty: 200 penalty units.

**90C Compliance audits—Energy Safe Victoria**

Energy Safe Victoria may conduct, or cause to be conducted, an audit to determine whether or not a responsible person is satisfactorily complying with the management plan."

**21 Constitution of Committee**

(1) In section 87(5)(f) of the **Electricity Safety Act 1998**, for "6 other members" **substitute** "5 other members".

(2) In section 87(5)(f)(iv) of the **Electricity Safety Act 1998**, for "1987." **substitute** "1987; and".

(3) After section 87(5)(f) of the **Electricity Safety Act 1998** **insert—**

"(g) an officer or employee of Energy Safe Victoria nominated by the Minister administering the **Energy Safe Victoria Act 2005**."

**22 New section 88A inserted**

After section 88 of the **Electricity Safety Act 1998** **insert—**

**"88A Committee to consider reliability and security of electricity supply**

In performing its functions under section 88, the Electric Line Clearance Consultative Committee may have regard to the reliability and security of electricity supply."

**23 New Division 1AA of Part 10 inserted**

Before Division 1 of Part 10 of the **Electricity Safety Act 1998 insert—**

**"Division 1AA—Interpretation**

**98AA Definitions**

In this Part—

*at-risk supply network* means a supply network or a part of a supply network that is—

- (a) above the surface of land; and
- (b) in a hazardous bushfire risk area."

**24 General duty of major electricity companies**

- (1) In section 98(b) of the **Electricity Safety Act 1998**, for "network." substitute "network; and".
- (2) After section 98(b) of the **Electricity Safety Act 1998 insert—**
  - "(c) if that network is an at-risk supply network, the bushfire danger arising from that network."

**25 Electricity safety management schemes**

After section 99(2) of the **Electricity Safety Act 1998 insert—**

- "(2A) Without limiting subsection (2)(b), an electricity safety management scheme must include a plan for the mitigation of bushfire danger in relation to the major electricity company's at-risk supply network."

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**26 New section 105A inserted**

After section 105 of the **Electricity Safety Act 1998 insert—**

**"105A Bushfire mitigation parts of initial accepted ESMS lapse by certain date**

The provisions of an accepted ESMS that constitute a plan for the mitigation of bushfire danger in relation to the major electricity company's at-risk supply network lapse on 30 June in the year after the year in which the accepted ESMS is accepted.

**Note**

See also Division 2A of this Part."

**27 New Division 2A of Part 10 inserted**

After Division 2 of Part 10 of the **Electricity Safety Act 1998 insert—**

**"Division 2A—Ongoing bushfire mitigation requirements for major electricity companies**

**113A Submission of bushfire mitigation plans for acceptance**

- (1) A major electricity company must, before 1 July in each year, prepare and submit to Energy Safe Victoria, for acceptance under this Division, a plan for the company's proposals for mitigation of bushfire in relation to the company's at-risk supply network.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (2) A bushfire mitigation plan under subsection (1)—
  - (a) must be in or to the effect of a form approved by Energy Safe Victoria; and
  - (b) must include the prescribed particulars.
- (3) A major electricity company must cause a copy of its accepted bushfire mitigation plan to be made available for inspection—
  - (a) on the company's Internet site; and
  - (b) at the company's principal office in the State during ordinary business hours.

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
50 penalty units.

#### **113B Compliance with bushfire mitigation plan**

- (1) During the specified bushfire risk period, a major electricity company must not commence to commission, or operate, an at-risk supply network unless a bushfire mitigation plan that applies to the company's at-risk electric lines has been accepted or provisionally accepted under this Division.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (2) A major electricity company must comply with an accepted bushfire mitigation plan that applies to the company's at-risk supply network.

Penalty: In the case of a natural person,  
300 penalty units;  
In the case of a body corporate,  
1500 penalty units.

- (3) Subsection (1) does not apply to a major electricity company that has a reasonable excuse.
- (4) For the purposes of subsection (1), it is a reasonable excuse for a major electricity company not to comply with subsection (1) if—
- (a) there is no accepted bushfire mitigation plan that applies to the company's at-risk supply network; and
  - (b) the reason for there being no accepted bushfire mitigation plan that applies to the company's at-risk supply network is that—
    - (i) Energy Safe Victoria failed to accept the company's bushfire mitigation plan by 31 October in the year it was submitted to Energy Safe Victoria; and
    - (ii) that failure arose because of unreasonable delay on Energy Safe Victoria's part.
- (5) For the purposes of subsection (1), it is not a reasonable excuse for a major electricity company not to comply with subsection (1) if—

- (a) there is no accepted bushfire mitigation plan that applies to the company's at-risk supply network; and
- (b) the reason for there being no accepted bushfire mitigation plan that applies to the company's at-risk supply network is that—
  - (i) Energy Safe Victoria failed to accept the company's bushfire mitigation plan by 31 October in the year it was submitted to Energy Safe Victoria and that failure arose because of actions or inactions of the company that hampered the ability of Energy Safe Victoria to make a decision whether to accept that plan by 31 October; or
  - (ii) Energy Safe Victoria has not accepted a plan under section 83BG (as applied and modified by section 113C).
- (6) Subsections (4) and (5) do not limit what may constitute a reasonable excuse.

**113C Validation, acceptance, provisional acceptance and determination of bushfire mitigation plans**

Sections 83BC to 83BH apply to the validation, or acceptance, provisional acceptance or non-acceptance or determination by Energy Safe Victoria, of a bushfire mitigation plan under this Division—

(a) as if—

- (i) a reference to a specified operator were a reference to a major electricity company; and
- (ii) a reference to an at-risk electric line were a reference to an at-risk supply network; and
- (iii) a reference to a bushfire mitigation plan were a reference to a bushfire mitigation plan submitted under this Division; and
- (iv) a reference to an accepted bushfire mitigation plan were a reference to an accepted bushfire mitigation plan accepted or provisionally accepted under this Division; and

(b) with any other modifications that are necessary.

**113D Accepted bushfire mitigation plan forms part of accepted ESMS**

- (1) An accepted bushfire mitigation plan applying to a major electricity company's at-risk supply network is taken to form part of the major electricity company's accepted ESMS.
- (2) However, despite anything to the contrary in Division 2, sections 106, 107, 109 and 110 do not apply to that part of an accepted ESMS that is constituted by an accepted bushfire mitigation plan.
- (3) In addition, to avoid doubt, an acceptance, provisional acceptance or determination of a bushfire mitigation plan under this Division is not a revision of an accepted ESMS for the purposes of section 108.

**113E Duration of accepted bushfire mitigation plan**

The part of an accepted ESMS that is constituted by an accepted bushfire mitigation plan ceases to have effect on 30 June in the year after the accepted bushfire mitigation plan is accepted under this Division.

**113F Inspection of overhead private electric lines**

- (1) A major electricity company that has a distribution area must cause an inspection to be carried out at such times as are prescribed, and in accordance with the prescribed standards (if any), of private electric lines that are above the surface of land within its distribution area, other than any prescribed parts of those lines.

Penalty: In the case of a natural person,  
50 penalty units;  
In the case of a body corporate,  
250 penalty units.

- (2) A major electricity company must give to the occupier of land above which there is a private electric line notice in the prescribed form (if any) during the prescribed period (if any) before an inspection under subsection (1) is carried out.
- (3) A major electricity company may, for the purpose of an inspection under this section, enter onto land at any reasonable time for the purposes of inspecting a private electric line under this section and remain on the land for so long as is necessary to inspect the line.

- (4) If an inspection carried out under this section reveals that maintenance is required on a private electric line above land, the major electricity company must give the owner of the land written notice of the maintenance required."

**28 Repeal of redundant provision**

Section 112 of the **Electricity Safety Act 1998** is repealed.

**29 Compliance audits—independent audits**

For section 120H(1)(a)(ii) of the **Electricity Safety Act 1998** substitute—

- "(ii) the operator's supply network (including the operator's at-risk supply network) or complex electrical installation; and"

**30 Compliance audits—Energy Safe Victoria**

For section 120I(b) of the **Electricity Safety Act 1998** substitute—

- "(b) the operator's supply network (including the operator's at-risk supply network) or complex electrical installation."

**31 Definition for purpose of infringement notices**

In section 140A of the **Electricity Safety Act 1998**, in the definition of *prescribed offence*, in paragraph (a)—

- (a) for "83A(1), 83A(3), 83B(1)" substitute "83BA(3),";  
(b) after "110," insert "113A(3), 113F(1),".

**32 Director may give directions**

- (1) In section 141(2)(d) of the **Electricity Safety Act 1998**, for "safe." substitute "safe; or".

(2) After section 141(2)(d) of the **Electricity Safety Act 1998** insert—

"(e) to do any other thing necessary to prevent an unsafe electrical situation from arising."

**33 New section 141AB inserted**

After section 141A of the **Electricity Safety Act 1998** insert—

**"141AB Information notices**

- (1) Energy Safe Victoria, by written notice, may require a person to give Energy Safe Victoria information in the person's possession or control that Energy Safe Victoria reasonably requires for the purpose of preparing annual reports in relation to the performance of distribution companies in complying with Divisions 1A, 2 and 4 of Part 8, and Part 10.
- (2) A notice under subsection (1) must—
  - (a) specify or describe the information that is required by Energy Safe Victoria; and
  - (b) specify the format in which that information is to be given to Energy Safe Victoria; and
  - (c) specify the date by which the information must be given to Energy Safe Victoria.
- (3) A person who is given a notice under subsection (1) must comply with the notice unless the person has a lawful excuse.

Penalty: In the case of a natural person,  
50 penalty units;  
In the case of a body corporate,  
200 penalty units.

- (4) A natural person cannot be compelled, by the giving of a notice under subsection (1), to give information if the information might tend to incriminate the person of an offence.
- (5) This section does not require a person to give information that is the subject of legal professional privilege or client legal privilege.
- (6) It is not a lawful excuse for a person to fail to comply with a notice under subsection (1) on the ground of any duty of confidence."

**34 New section 149A inserted**

After section 149 of the **Electricity Safety Act 1998** insert—

**"149A Reliability and security of electricity supply**

The Governor in Council may make regulations for or with respect to the reliability and security of the supply of electricity."

**35 Electric line clearance**

- (1) In section 151(d) of the **Electricity Safety Act 1998**, for "an approved management plan." substitute "an approved management plan;"
- (2) After section 151(d) of the **Electricity Safety Act 1998** insert—
  - "(e) the standards and practices to be adopted and observed in relation to—
    - (i) tree planting, pruning or clearing in the immediate area around electric lines;

- (ii) species of tree or classes of tree that may remain or be planted in the immediate area around electric lines;
- (iii) species of tree or classes of tree that must be cleared from the immediate area around electric lines;
- (iv) the management of trees in the immediate area around electric lines."

**36 New section 151A inserted**

After section 151 of the **Electricity Safety Act 1998 insert—**

**"151A Bushfire mitigation**

The Governor in Council may make regulations for or with respect to—

- (a) the prevention of bushfires arising from electric lines or electrical installations;
- (b) the protection of electric lines or electrical installations from the effects of bushfires;
- (c) the inspection of electric lines or electrical installations for the purpose of the prevention of bushfires arising from such lines or installations;
- (d) the training of persons conducting inspections of the kind referred to in paragraph (c);
- (e) the auditing of the training and performance of persons conducting inspections of the kind referred to in paragraph (c)."

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**37 Statute law revision**

- (1) In section 3 of the **Electricity Safety Act 1998**—
- (a) the definition of ***Committee*** is **repealed**; and
  - (b) **insert** the following definition—  
***Committee*** means—
    - (a) in Part 4, the Equipment Advisory Committee;
    - (b) in Part 8, the Electric Line Clearance Consultative Committee;
    - (c) in Part 9, the Victorian Electrolysis Committee;"; and
  - (c) in the definition of ***voluntary ESMS operator***, for "Part 10;" **substitute** "Part 10."
- (2) In section 120C(1)(b) of the **Electricity Safety Act 1998**, before "complex" **insert** "a".
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**PART 4—AMENDMENT OF NATIONAL ELECTRICITY  
(VICTORIA) ACT 2005**

**38 New section 16B inserted**

See:  
Act No.  
8/2005.  
Reprint No. 1  
as at  
20 May 2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

After section 16A of the **National Electricity  
(Victoria) Act 2005** insert—

**"16B Disapplication of national smart meter  
rollout provisions**

Despite section 6—

- (a) Part 8A of the NEL does not apply as a law of Victoria; and
- (b) any Rule made for the purposes of that Part does not have the force of law in Victoria."

**39 New Division heading inserted into Part 3**

Before section 13 of the **National Electricity  
(Victoria) Act 2005** insert—

**"Division 1—Interpretation".**

**40 Definitions—Part 3**

In section 13 of the **National Electricity  
(Victoria) Act 2005**, insert the following definitions—

**"Country Fire Authority** means the Country Fire Authority appointed under the **Country Fire Authority Act 1958**;

**Distribution Network Service Provider** has the same meaning as in the National Electricity Rules;

**Energy Safe Victoria** means Energy Safe Victoria established under the **Energy Safe Victoria Act 2005**;

***f-factor amount determination*** means a determination made by the AER in accordance with an Order under section 16C(1)(b);

***f-factor scheme determination*** means a determination made by the AER in accordance with an Order under section 16C(1)(a);

***first distribution determination period*** means the period—

- (a) commencing on the day after the day that is the Victorian distribution pricing determination end date; and
- (b) ending on—
  - (i) 31 December 2015; or
  - (ii) for a distribution determination that continues to be in force after that date, the date on which that distribution determination ceases to be in force;

***Metropolitan Fire and Emergency Services Board*** means the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**;

***relevant entity*** means—

- (a) the Secretary to the Department of Sustainability and Environment; or
- (b) Energy Safe Victoria; or
- (c) the Country Fire Authority; or
- (d) the Metropolitan Fire and Emergency Services Board;

*service target performance incentive scheme* has the same meaning as in the National Electricity Rules;".

**41 New Division heading inserted**

After section 13 of the **National Electricity (Victoria) Act 2005** insert—

**"Division 2—General modifications".**

**42 New Division 3 of Part 3 inserted**

After Division 2 of Part 3 of the **National Electricity (Victoria) Act 2005** insert—

**'Division 3—The f-factor scheme**

**16C Order in Council for establishment of f-factor scheme**

- (1) The Governor in Council, by Order published in the Government Gazette, for the purpose of reducing the risk of fire starts and reducing the risk of loss or damage caused by fire starts, may confer functions and powers, or impose duties, on the AER to make—
    - (a) a determination for the purpose of providing incentives for Distribution Network Service Providers to reduce the risk of fire starts and reduce the risk of loss or damage caused by fire starts;
    - (b) a determination for each year of the first distribution determination period specifying an amount that is to be treated as a positive pass through amount or a negative pass through amount for the purposes of Chapter 6 of the National Electricity Rules.
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- (2) Without limiting subsection (1), an Order under that subsection may—
- (a) specify how the AER is to make, publish, implement and administer an f-factor scheme determination and an f-factor amount determination;
  - (b) specify the kinds of fire starts to be covered by an f-factor scheme determination or require the AER to determine the kinds of fire starts to be covered by an f-factor scheme determination;
  - (c) require the AER, before making an f-factor scheme determination, to consult with one or more of the following—
    - (i) the Minister;
    - (ii) a Distribution Network Service Provider;
    - (iii) a relevant entity;
    - (iv) any other person whose interests are affected and who is specified as a person with whom the AER must consult;
  - (d) require the AER, when consulting with persons referred to in paragraph (c), to comply with specified consultation procedures;
  - (e) require the AER to include benchmarks or targets for Distribution Network Service Providers as part of an f-factor scheme determination;
  - (f) require the AER to assess the performance of Distribution Network Service Providers in relation to any
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benchmarks or targets included as part of an f-factor scheme determination and for the purpose of making an f-factor amount determination;

- (g) specify any benchmarks, targets, incentives, rewards or penalties for inclusion in an f-factor scheme determination that will apply to Distribution Network Service Providers and for the purpose of making f-factor amount determinations;
  - (h) require the AER, in making an f-factor scheme determination, to have regard to specified criteria, including—
    - (i) the need to ensure that the benefits to consumers likely to result from the making of an f-factor scheme determination are sufficient to warrant the determination's benchmarks, targets, incentives, rewards or penalties for Distribution Network Service Providers;
    - (ii) any regulatory obligation or requirement to which Distribution Network Service Providers are subject;
    - (iii) a distribution system's history of fire starts;
    - (iv) the willingness of end users to pay for enhanced fire safety;
    - (v) criteria for determining benchmarks, targets, incentives, rewards or penalties that will apply to Distribution Network Service Providers and for the
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- purpose of making an f-factor amount determination;
- (vi) any interaction between the Order and a service target performance incentive scheme;
- (vii) any interaction between the Order and any other incentive scheme, including an incentive scheme in relation to services provided by means of a distribution system (other than a service target performance incentive scheme that applies to a Distribution Network Service Provider);
- (i) specify, for a Distribution Network Service Provider, the interaction between an f-factor scheme determination and a service target performance incentive scheme that apply to that Distribution Network Service Provider.
- (3) An Order under subsection (1) may be made so as to apply, adopt or incorporate wholly or partially or as amended by the Order, the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
- (a) as formulated, issued, prescribed or published at the time the Order is made or at any time before the Order is made; or
- (b) as amended from time to time.
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- (4) An Order under subsection (1) may—
  - (a) leave any matter to be decided by the AER; and
  - (b) without limiting paragraph (a), direct the AER to make amendments to any instrument made by the AER to give effect to any matter specified in an Order made under this section.
- (5) The provisions of an Order under subsection (1) may—
  - (a) be of general or limited application;
  - (b) differ according to differences in time, place and circumstances.
- (6) An Order under subsection (1) has effect as from the day specified in the Order and until the day specified in the Order.
- (7) An f-factor scheme determination or f-factor amount determination made under an Order under subsection (1) cannot come into effect before the Victorian distribution pricing determination end date.

**16D Functions and powers conferred and duties imposed on AER**

A function or power conferred or a duty imposed on the AER by an Order under section 16C is taken to be conferred or imposed by this Act.

**Note**

See sections 44AH and 44AI of the Trade Practices Act 1974 of the Commonwealth.

**16E Application of NEL provisions after the Victorian distribution pricing determination end date**

- (1) Despite section 6, after the Victorian distribution pricing determination end date—
- (a) unless the context otherwise requires, a reference in the NEL to "the Law" or "this Law" is to be read as including a reference to an Order under section 16C;
  - (b) a reference in the NEL to a function or power of the AER (including, but not limited to, an AER economic regulatory function or power) is to be read as including a reference to a function or power conferred or a duty imposed on the AER under section 16D;
  - (c) section 14B of the NEL is to be read as if after "that operator" there were inserted "and an f-factor scheme determination and an f-factor amount determination that applies to that operator";
  - (d) sections 28F(1), 28ZC and 28ZD of the NEL are to be read as if after every reference in those sections to "or the Rules" there were inserted "or an Order under section 16C under the **National Electricity (Victoria) Act 2005**";
  - (e) Division 6 of Part 3 of the NEL is to be read as if after every reference in that Division to "or the Rules" there were inserted "or an Order under section 16C under the **National Electricity (Victoria) Act 2005**";

- (f) section 28F(3)(d) of the NEL is to be read as if after "performance report" there were inserted ", other than a service provider performance report relating to a Distribution Network Service Provider's compliance with an f-factor scheme determination or f-factor amount determination";
- (g) section 28V(2)(a) of the NEL is to be read as if after subparagraph (iii) there were inserted—
  - "(iv) complying with an f-factor scheme determination and an f-factor amount determination; and".
- (2) Despite section 6, on and after the date the first Order made under section 16C comes into effect, the National Electricity Rules have the force of law in Victoria as if—
  - (a) after rule 6.13 of the Rules there were inserted—
    - "6.13A Variations to distribution determinations for purpose of f-factor scheme determinations"**
    - (a) Despite anything to the contrary in these *Rules* and subject to this rule, the *AER* may, as a consequence of the making of an f-factor scheme determination (within the meaning of section 13 of the **National Electricity (Victoria) Act 2005**), vary a distribution determination during the course of the *regulatory control period*.

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- (b) The *AER* must not vary a distribution determination under this rule unless the *AER* has complied with any consultation procedures specified in an Order under section 16C of the **National Electricity (Victoria) Act 2005**.
  - (c) Once the *AER* has made a decision under this rule varying a distribution determination, the *AER* cannot make another decision under this rule to vary that distribution determination.
  - (d) Despite anything to the contrary in these *Rules*, the *AER*, in varying a distribution determination under this rule, is not required to follow any process specified in the *Rules* in relation to the making of a distribution determination.
  - (e) To avoid doubt—
    - (1) a decision of the *AER* to vary a distribution determination under this rule is taken not to be a reviewable regulatory decision (within the meaning of section 71A of the *National Electricity Law*); and
    - (2) a distribution determination (as varied by the *AER* under this rule) is not by reason only of that variation taken to be a reviewable regulatory decision (within the meaning of section 71A of the
-

*National Electricity Law*).";  
and

- (b) after paragraph (d) of the definition of **pass through event** in Chapter 10 of the Rules there were inserted—

"(e) an f-factor amount determination (within the meaning of section 13 of the **National Electricity (Victoria) Act 2005**).".

**16F Interrelationship between f-factor determinations and distribution determinations**

The making of an f-factor scheme determination or an f-factor amount determination is not to be taken as affecting the process already commenced by the AER for the making of a distribution determination that is to apply during the first distribution determination period.

**16G Power of AER to request information relating to f-factor determinations**

- (1) If the AER considers it necessary for the purposes of making an f-factor scheme determination or an f-factor amount determination, the AER may request a relevant entity to provide information relating to fire starts to the AER.
- (2) Before making a request under subsection (1), the AER must consult with the relevant entity about its intention to make that request.

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- (3) A request under subsection (1) must—
- (a) be in writing; and
  - (b) specify the period of time within which the information requested is to be provided.
- (4) The period of time referred to in subsection (3)(b) must be reasonable.
- (5) A request under subsection (1) may request information in relation to one or more of the following—
- (a) the number of fire starts caused by, or believed to be caused by, electric lines or electrical installations during a specified period;
  - (b) the date, time and location of each of those fire starts;
  - (c) if known and determinable, the cause of each of those fire starts;
  - (d) the nature and extent of any loss or damage caused by each of those fire starts.
- (6) A relevant entity must comply with a request under subsection (1) to the extent that it is reasonably practicable for the entity to do so.
- (7) For the purposes of subsection (6), it is reasonably practicable for a relevant entity not to comply with a request under subsection (1) if the entity is of the view that compliance with the request would impose an unreasonable administrative or financial burden on the entity.¹.
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#### **43 Appeals against certain decisions or actions of the AER**

For section 29(3)(a) of the **National Electricity (Victoria) Act 2005** substitute—

- "(a) section 55(1) were omitted; and
- (ab) in section 55(1A), the reference to subsection (1) were a reference to subsection (2) of this section; and
- (ac) in those sections—
- (i) a reference to section 55(1)(a) were a reference to subsection (1)(a) of this section; and
  - (ii) a reference to section 55(1)(b) were a reference to subsection (1)(b) of this section; and
  - (iii) a reference to section 55(1)(c) were a reference to subsection (1)(c) or (d) of this section; and".

#### **44 Statute law revision**

In section 41(1) of the **National Electricity (Victoria) Act 2005**, in the definition of *VENCorp negotiated transmission service criteria*, for "negotiating" substitute "negotiated".

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**PART 5—AMENDMENT OF ENERGY SAFE VICTORIA  
ACT 2005**

**45 Grounds for the Director's removal from office**

For section 14(3) of the **Energy Safe Victoria Act 2005** substitute—

- "(3) The Governor in Council may remove the Director from office if the Director—
- (a) becomes incapable of performing his or her duties; or
  - (b) is negligent in the performance of those duties; or
  - (c) engages in improper conduct."

See:  
Act No.  
39/2005  
and  
amending  
Act Nos  
60/2006,  
80/2006 and  
28/2007.  
LawToday:  
[www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

**46 New Division 5A of Part 2 inserted**

After Division 5 of Part 2 of the **Energy Safe Victoria Act 2005** insert—

**"Division 5A—Other matters**

**19A Energy Safe Victoria must publish Charter**

- (1) Energy Safe Victoria must develop and publish a Charter of Consultation and Regulatory Practice including guidelines relating to the preparation of its corporate plan and conducting inquiries under Part 3.
- (2) The Charter of Consultation and Regulatory Practice—
  - (a) must include such matters as are prescribed; and
  - (b) may include any other matters that Energy Safe Victoria considers appropriate.

- (3) The Charter of Consultation and Regulatory Practice, or any part of the Charter, must not require or allow the public release of a draft of Energy Safe Victoria's corporate plan or a draft of a part of that plan without the prior approval of Energy Safe Victoria and the Minister.

**19B Memoranda of Understanding**

- (1) In this section *prescribed body* means a person, body or agency which is prescribed for the purposes of this section.
- (2) Energy Safe Victoria and a prescribed body must enter into a Memorandum of Understanding by a date determined by the Minister.
- (3) A Memorandum of Understanding entered into under subsection (2)—
- (a) must include such matters as are prescribed; and
  - (b) may include any other matters that the parties consider appropriate.
- (4) Energy Safe Victoria must ensure that a Memorandum of Understanding entered into under subsection (2) is published—
- (a) in the Government Gazette; and
  - (b) on the Internet."
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**PART 6—AMENDMENT OF MINERAL RESOURCES  
(SUSTAINABLE DEVELOPMENT) ACT 1990**

**47 Objectives**

In section 2(1)(b)(vii) of the **Mineral Resources (Sustainable Development) Act 1990**, for "health and safety of people" **substitute** "health and safety of the public".

See:  
Act No.  
92/1990.  
Reprint No. 7  
as at  
9 February  
2007  
and  
amending  
Act Nos  
16/2006,  
63/2006,  
25/2008,  
54/2008,  
6/2009,  
57/2009,  
69/2009,  
82/2009 and  
90/2009.  
LawToday:  
www.  
legislation.  
vic.gov.au

**48 Definitions**

In section 4(1) of the **Mineral Resources (Sustainable Development) Act 1990**, the definition of *accident* is repealed.

**49 Offence to carry on extractive industry without authority**

- (1) In section 8AB(3) of the **Mineral Resources (Sustainable Development) Act 1990** omit "workers or".
- (2) For the penalty at the foot of section 8AB(3) of the **Mineral Resources (Sustainable Development) Act 1990** substitute—  
"Penalty: 20 penalty units."

## **50 Work plans**

After section 77G(3)(a) of the **Mineral Resources (Sustainable Development) Act 1990** insert—

"(ab) if the extractive industry work authority relates to a declared quarry, in addition to the prescribed information referred to in paragraph (a), prescribed quarry stability information; and".

## **51 Conditions of extractive industry work authorities**

In section 77J(1)(f) of the **Mineral Resources (Sustainable Development) Act 1990** omit "workers and".

## **52 New sections 77KA and 77KB inserted**

After section 77K of the **Mineral Resources (Sustainable Development) Act 1990** insert—

### **"77KA Chief Inspector to be notified of reportable events in relation to quarries**

- (1) The holder of an extractive industry work authority who carries out an extractive industry at a quarry must report to the Chief Inspector in accordance with the regulations a reportable event at the quarry as soon as practicable after the reportable event occurs.
- (2) In this section, *reportable event* means an event prescribed as a reportable event for the purposes of this section.

### **77KB Variation application must be made if quarry is declared**

- (1) If the Minister declares by Order under section 7C that a specified quarry is a declared quarry, the holder of an extractive industry work authority in respect of the declared quarry, within 60 days after the declaration, must make an application to

vary the approved work plan in respect of the declared quarry.

- (2) The application must contain the prescribed quarry stability information.
- (3) Section 77H(2) to (8) apply to an application lodged under this section."

**53 Variation of an extractive industry work authority**

In section 77M(2)(c) of the **Mineral Resources (Sustainable Development) Act 1990** omit "workers or".

**54 Report to be given about entry**

Section 95D(4) of the **Mineral Resources (Sustainable Development) Act 1990** is repealed.

**55 Regulations**

Section 124(1)(qa) of the **Mineral Resources (Sustainable Development) Act 1990** is repealed.

**56 Statute law revision**

- (1) In section 77U of the **Mineral Resources (Sustainable Development) Act 1990**, in the definition of *authority*, for "(b)" (where secondly occurring) substitute "(c)".
- (2) In section 124(1)(ob) of the **Mineral Resources (Sustainable Development) Act 1990**, for "authorites" substitute "authorities".

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**PART 7—AMENDMENT OF PETROLEUM ACT 1998**

**57 Objectives**

See:  
Act No.  
96/1998.  
Reprint No. 1  
as at  
18 September  
2007  
and  
amending  
Act Nos  
25/2008,  
57/2009 and  
10/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

- (1) In section 3(2)(a) of the **Petroleum Act 1998**  
**omit** "safe and".
- (2) In section 3(2)(b) of the **Petroleum Act 1998**,  
after "individuals," **insert** "public safety,".

**58 General definitions**

In section 4 of the **Petroleum Act 1998**, the  
definition of *good oil-field practice* is **repealed**.

**59 New section 20A inserted**

After section 20 of the **Petroleum Act 1998**  
**insert—**

**"20A Grant of exploration permit**

The Minister may grant or refuse to grant an  
exploration permit."

**60 New definition of *gathering line* substituted**

For section 82 of the **Petroleum Act 1998**  
**substitute—**

**"82 Meaning of *gathering line***

A *gathering line* is a pipeline that is—

- (a) situated wholly within—
  - (i) a production licence area; or
  - (ii) a drilling authorisation area; and

- (b) used (or intended to be used) or designed to convey petroleum (or a petroleum product)—
  - (i) from one place to another in that area; or
  - (ii) between a drilling authorisation area and a production licence area."

#### **61 Operation plan to be prepared**

In section 161(1)(a) of the **Petroleum Act 1998**—

- (a) **omit** "of injury or damage";
- (b) for "community, person, land user"  
**substitute** "member of the public".

#### **62 Emergencies**

For section 200(1)(a) of the **Petroleum Act 1998**  
**substitute**—

"(a) to any member of the public; or".

#### **63 Announcement before entry**

For section 204(2)(a) of the **Petroleum Act 1998**  
**substitute**—

"(a) the safety of any member of the public; or".

#### **64 Prohibition notice**

For section 217(1)(a) of the **Petroleum Act 1998**  
**substitute**—

"(a) to any member of the public; or".

#### **65 Regulations**

- (1) In section 252(1)(n) of the **Petroleum Act 1998**  
**omit** "safety".

Energy and Resources Legislation Amendment Act 2010  
No. 55 of 2010

**s. 65**

Part 7—Amendment of Petroleum Act 1998

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- (2) In section 252(1)(r) of the **Petroleum Act 1998**  
**omit** "safe and".
  - (3) In section 252(2)(f) of the **Petroleum Act 1998**,  
after "Act" **insert** "or the regulations".
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**PART 8—REPEALS AND AMENDMENT OF OTHER ACTS**

**Division 1—Mines Act 1958**

**66 Repeal**

The **Mines Act 1958** is repealed.

See:  
Act No.  
6320.  
Reprint No. 6  
as at  
20 May 1999  
and  
amending  
Act Nos  
92/1990,  
10/2004,  
18/2005,  
77/2008,  
7/2009 and  
68/2009.  
LawToday:  
www.  
legislation.  
vic.gov.au

**Division 2—Geothermal Energy Resources Act 2005**

**67 Objectives and principles**

- (1) In section 3(1)(e) of the **Geothermal Energy Resources Act 2005**, for "health, safety" substitute "public health and safety".
- (2) In section 3(2)(i) of the **Geothermal Energy Resources Act 2005**, for "health and safety" substitute "public health and safety".

See:  
Act No.  
7/2005.  
Reprint No. 1  
as at  
31 July 2008  
and  
amending  
Act Nos  
4/2008 and  
10/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

**68 New section 20A inserted**

After section 20 of the **Geothermal Energy Resources Act 2005** insert—

**"20A Grant of exploration permit**

The Minister may grant or refuse to grant an exploration permit."

**69 Operation plan to be prepared**

In section 96(1)(a) of the **Geothermal Energy Resources Act 2005**—

- (a) **omit** "of injury or damage"; and
- (b) for "community, person, land user"  
**substitute** "member of the public".

**70 Release of factual information**

In section 121(1) of the **Geothermal Energy Resources Act 2005**, for "extraction licence that relates to the licence area," **substitute** "authority,".

**71 Emergencies**

For section 126(1)(a) of the **Geothermal Energy Resources Act 2005** **substitute**—

"(a) to any member of the public; or".

**72 Announcement before entry**

For section 131(2)(a) of the **Geothermal Energy Resources Act 2005** **substitute**—

"(a) the safety of any member of the public; or".

**73 Prohibition notice**

For section 145(1)(a) of the **Geothermal Energy Resources Act 2005** **substitute**—

"(a) to any member of the public; or".

#### 74 Repeal of spent provisions

Sections 170, 171, 172, 173 and 174 of the **Geothermal Energy Resources Act 2005** are repealed.

#### Division 3—Greenhouse Gas Geological Sequestration Act 2008

#### 75 Operation plan to be prepared

In section 209(a) of the **Greenhouse Gas Geological Sequestration Act 2008**—

- (a) **omit** "of injury or damage"; and
- (b) for "community, person, land user" **substitute** "member of the public".

See:  
Act No.  
61/2008  
and  
amending  
Act No  
10/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

#### 76 Emergencies

For section 254(1)(a) of the **Greenhouse Gas Geological Sequestration Act 2008** substitute—

"(a) to any member of the public; or".

#### 77 Announcement before entry

For section 258(2)(a) of the **Greenhouse Gas Geological Sequestration Act 2008** substitute—

"(a) the safety of the public; or".

#### 78 Prohibition notice

- (1) For section 271(1)(a) of the **Greenhouse Gas Geological Sequestration Act 2008** substitute—

"(a) to any member of the public; or".

- (2) In section 313 of the **Greenhouse Gas Geological Sequestration Act 2008**, for proposed section 271A(1)(b)(i) of that Act **substitute**—

"(i) to any member of the public; or".

## 79 Statute law revision

In section 303(2)(f) of the **Greenhouse Gas Geological Sequestration Act 2008**, for "people" substitute "persons".

## Division 4—Offshore Petroleum and Greenhouse Gas Storage Act 2010

## 80 Statute law revision

See:  
Act No.  
10/2010.  
Statute Book:  
[www.  
legislation.  
vic.gov.au](http://www.legislation.vic.gov.au)

- (1) In section 168(4)(b) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, for "that:" substitute "that—".
- (2) In section 225(6) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** after "action in" insert "the".
- (3) For section 273(4)(a) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** substitute—
  - "(a) a person who was the registered holder of a petroleum exploration permit, petroleum retention lease, petroleum production licence, infrastructure licence or pipeline licence has not paid an amount payable by the person under this Act within the period of 90 days after the day on which the amount became payable; and".
- (4) In section 468(2) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, for "lease," substitute "lease".
- (5) In section 642(3)(b) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** after "submission to" insert "the".

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- (6) In section 653(3) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**—
    - (a) for "Magistrate" **substitute** "magistrate";
    - (b) after "necessary" **insert** "to";
    - (c) in paragraph (a) **omit** "to".
  - (7) In section 662(3) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**—
    - (a) after "necessary" **insert** "to";
    - (b) in paragraph (a) **omit** "to".
  - (8) In section 663(1)(a) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** **omit** "used in" (where first occurring).
  - (9) In section 682(4)(a) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, for "Magistrate" **substitute** "magistrate".
  - (10) In section 733 of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, in the definition of *applicable document* **omit** "on".
  - (11) In section 787(1) of the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, paragraphs (b), (c) and (f) are **repealed**.
  - (12) In item 1(a) of Schedule 2 to the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, for "148° 06' 04.60 East" **substitute** '148° 06' 04.60" East'.
  - (13) In clause 93(4) of Schedule 3 to the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**, for "(2)," **substitute** "(2)".
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**Division 5—Pipelines Act 2005**

**81 Heading to section 51 amended**

See:  
Act No.  
61/2005  
and  
amending  
Act Nos  
29/2006,  
60/2006,  
25/2008,  
30/2008,  
62/2008,  
6/2010 and  
10/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

In the heading to section 51 of the **Pipelines Act 2005**, for "national park" substitute "parks".

**82 Pipelines register**

For section 186(2)(c) of the **Pipelines Act 2005** substitute—

- "(c) instruments of amendment, consolidation, transfer or cancellation of licences; and
- (d) details of applications granted under section 67(1) or 70(3) and details of notices published in the Government Gazette under section 67(3) or 70(6); and
- (e) any other document that is required to be registered under section 186A."

**83 New section 186A inserted**

After section 186 of the **Pipelines Act 2005** insert—

**"186A Other documents to be registered**

The Minister, by notice published in the Government Gazette, may require that a document of a specified kind relating to a licence be registered."

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**Division 6—Victorian Energy Efficiency Target Act 2007**

**84 How many certificates may be created in respect of a prescribed activity**

After section 18(1) of the **Victorian Energy Efficiency Target Act 2007** insert—

- "(1A) If an amount of carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity is less than 1 whole tonne but greater than or equal to 0.5 tonne, the accredited person may create 1 certificate in respect of the carbon dioxide equivalent of greenhouse gases to be reduced by the prescribed activity."

See:  
Act No.  
70/2007  
and  
amending  
Act No  
23/2009.  
LawToday:  
www.  
legislation.  
vic.gov.au

**85 New section 32A inserted**

After section 32 of the **Victorian Energy Efficiency Target Act 2007** insert—

**'32A Effect of specified Order made under section 32**

- (1) The specified Order has, and is taken always to have had, the same force and effect as it would have had if—
- (a) for "0.13501" in the Order there were substituted "0.15508"; and
  - (b) for "0.00803" in the Order there were substituted "0.00923".

- (2) In this section—

*specified Order* means the Order made under section 32 on 25 May 2010 and published in the Government Gazette on 27 May 2010.'

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**Division 7—Victorian Renewable Energy Act 2006**

**86 Statute law revision**

See:  
Act No.  
70/2006  
and  
amending  
Act Nos  
23/2009 and  
67/2009.  
LawToday:  
www.  
legislation.  
vic.gov.au

In the heading to section 58 of the **Victorian Renewable Energy Act 2006**, for "NEMMCO" substitute "AEMO".

**Division 8—Gas Industry Act 2001**

**87 Variation or revocation of licence**

See:  
Act No.  
31/2001.  
Reprint No. 4  
as at  
1 July 2009  
and  
amending  
Act Nos  
57/2009,  
68/2009 and  
10/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

After section 38(3) of the **Gas Industry Act 2001** insert—

- "(4) In deciding whether to revoke a licence the Commission must have regard to any direction of the Minister under section 207 that is in force.
- (5) Anything in the procedures specified in the licence's conditions for the revocation of the licence that is inconsistent with subsection (4) is of no effect."

**Division 9—Energy and Resources Legislation Amendment Act 2009**

**88 Part 8 repealed**

See:  
Act No.  
57/2009.  
Statute Book:  
www.  
legislation.  
vic.gov.au

Part 8 of the **Energy and Resources Legislation Amendment Act 2009** is repealed.

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**Division 10—Aboriginal Heritage Act 2006**

**89 Definitions**

In section 50 of the **Aboriginal Heritage Act 2006**, in the definition of *statutory authorisation*—

- (a) in paragraph (c), after "other than" **insert** "an authorisation approving";
  - (b) paragraph (d), after "authorisation" **insert** "(other than an amendment to an authorisation that approves a variation to an area work plan within the meaning of section 41AD(4) of the **Mineral Resources (Sustainable Development) Act 1990**)".
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See:  
Act No.  
16/2006  
and  
amending  
Act Nos  
63/2006,  
77/2008,  
6/2009,  
56/2009,  
57/2009,  
68/2009 and  
10/2010.  
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vic.gov.au

**PART 9—REPEAL OF AMENDING ACT**

**90 Repeal**

This Act is **repealed** on 1 July 2012.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## ENDNOTES

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 24 June 2010*

*Legislative Council: 29 July 2010*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Electricity Industry Act 2000**, the **Electricity Safety Act 1998**, the **National Electricity (Victoria) Act 2005**, the **Energy Safe Victoria Act 2005**, the **Mineral Resources (Sustainable Development) Act 1990**, the **Petroleum Act 1998**, the **Gas Industry Act 2001**, the **Victorian Energy Efficiency Target Act 2007**, to repeal the **Mines Act 1958** and to amend other Acts and for other purposes."