Regulatory Impact Solutions

Impact Assessment

Electricity Safety (Management) Regulations 2019

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Abbreviations

the Act	*Electricity Safety Act 1998*
the current Regulations	Electricity Safety (Management) Regulations 2009
the proposed Regulations	Electricity Safety (Management) Regulations 2019
COES	Certificate of electrical safety
ESMS	Electricity Safety Management Scheme
ESV	Energy Safe Victoria
OCBR	Office of the Commissioner for Better Regulation
MEC	Major Electricity Company
RIS	Regulatory Impact Statement
SLA	*Subordinate legislation Act 1994*
VESMS	Voluntary Electricity Safety Management Scheme

Summary

Background

The Electricity Safety (Management) Regulations 2009 (the current Regulations) will expire on 8 December 2019. In Victoria regulations expire (sunset) after 10 years. This process enables the Victorian Government to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on Victorian businesses and the community. Energy Safe Victoria is currently remaking these regulations.

Regulatory Impact Solutions Pty Ltd was engaged by Energy Safe Victoria (ESV) to undertake a preliminary assessment of the impacts of the proposed Electricity Safety (Management) Regulations 2019 (the proposed Regulations), to inform the process for making the Regulations including consultation.

The *Electricity Safety Act 1998* (the Act) makes provision for the acceptance of Electricity Safety Management Schemes (ESMSs) by electrical operators and major electricity companies (MECs).

ESMSs constitute an example of systems or process-based regulation and are based on the conduct of systemic risk assessments, the development of risk control strategies and the development of monitoring, record-keeping and reporting requirements. Division 2 of Part 10 of the Act requires that all MECs must have an ESMS in place at all times. In addition, Division 3 of Part 10 of the Act allows for the adoption of ESMS on a voluntary basis by other electrical operators. Three types of Voluntary Electricity Safety Management Schemes (VESMS) are specified for:

- employers of electrical workers
- specified premises
- complex electrical installations.

The Act provides for the submission of an ESMS, its contents, and process for validation, acceptance and revision. The current and proposed Regulations prescribe additional content requirements—specifically, the safety management system to be followed. The proposed Regulations will also include fees in relation to VESMSs.

The *Subordinate Legislation Act 1994* (SLA) provides for the making of statutory rules without the need to prepare a regulatory impact statement (RIS) where the proposed statutory rule "would not impose a significant economic or social burden on a sector of the public" (s. 8(1)(a)).

In considering whether a proposed statutory rule imposes a significant economic or social burden on a sector of the public, the responsible Minister must consider:

- the relevant base case
- whether the proposed statutory rule imposes a burden on one or more 'sector[s] of the public'
- whether that burden is a 'significant economic or social burden'.

The relevant base case can be determined by considering what the situation would be if the statutory rule were not made.

For a burden to be imposed on a 'sector of the public', the proposed statutory rule must impose a burden on either the whole community or on one or more identifiable groups of people within the community. How many, and which, people can constitute a sector of the public is a matter of judgement in each case. It will depend on the nature of the proposed statutory rule. For example, a statutory rule might impose a burden on a sector of the public if it:

- affects a number of businesses, community groups, or individuals

- has a concentrated effect on a particular group, region or industry
- has an aggregate impact on the Victorian economy.

In some circumstances, a statutory rule may have a significant concentrated effect on a particular group, region or industry. In such cases the burden on that group, region or industry may mean that the burden as a whole is significant, even though the majority of the population is not affected.

'Significant burden' cannot be defined prescriptively. 'Burden' is a broad concept which may include a range of negative effects or impacts. Whether a burden is 'significant' should be determined in accordance with the ordinary English-language meaning of the word. A burden that is very minor, inconsequential or of little importance will not be a 'significant burden'.

In general, if the preliminary and indicative analysis suggests the measurable social and/or economic costs to any sector of the public (including costs to the Victorian community as a whole) are greater than $2 million per year, compared with the relevant base case, then there is likely to be a significant burden. The $2 million threshold is indicative only and should be reserved for situations where it is not otherwise clear that a significant burden may be imposed. Further, a statutory rule or legislative instrument may impose a significant burden on a sector of the public even if it imposes quantifiable costs of less than $2 million per year – for example, if the impact is concentrated on a particular group, region or industry.

Conclusion

The proposed Regulations impose a burden on the electricity sector and a number of large electrical operators—being electricity businesses and other businesses and professionals who must comply with the Act.

- There is a substantive cost burden imposed by setting out the content requirements for ESMSs. Based on consultation with industry, the incremental cost of this burden (above the base case of no regulations) is likely to be no more than $775,000 per annum (annualised amount over the life of the proposed Regulations). This falls on a small number of businesses—nine MECs and 20 other businesses.
- The financial cost burden of introducing new annual fees for VESMSs is in the order of $300,000 per year if full cost recovery is applied (or $279,000 under the preferred fee structure).

These amounts are expected to remain relatively stable (in real terms) over the life of the proposed Regulations, and so should amount to a total impact of no more than $1.05 million per annum.

The total regulatory burden is therefore below $2 million per annum.

However, the impact is concentrated on a small group of businesses. To determine whether the burden is significant in this context, it is useful to note:

- The cost of the regulations per business is small relative to the cost of their operations
- As businesses, the costs (to the extent that they result in any real increase in net costs to businesses) are likely to be spread over the wider community through normal market operations
- In most cases, the regulations assist the businesses to avoid other costs—for example by assisting businesses to save time in preparing ESMSs, by providing a clear framework on how businesses can meet their obligations under the Act, or (in the case of facilitating VESMSs) by allowing businesses to be exempted from other compliance requirements of the Act and the need to pay for COESs (for example).

In conclusion, the proposed Regulations would not impose a significant burden on a sector of the public, and therefore meet the criteria for an exemption from preparation of a RIS.

1 Background

1.1 Electricity Safety Act 1998

The Electricity Safety Act makes provision for the adoption of Electricity Safety Management Schemes (ESMS) by electrical operators and MECs.

ESMS constitute an example of systems or process-based regulation and are based on the conduct of systemic risk assessments, the development of risk control strategies and the development of monitoring, record-keeping and reporting requirements. Division 2 of Part 10 of the Act requires that all major electricity companies (MECs) must have an ESMS in place at all times. In addition, Division 3 of Part 10 of the Act allows for the adoption of ESMS on a voluntary basis by other electrical operators. Three types of Voluntary Electricity Safety Management Schemes (VESMS) are specified for, respectively:

- employers of electrical workers (s. 114)
- specified premises (s. 115)
- complex electrical installations (s. 116).

Section 117 of the Act provides that, if ESV accepts a voluntary ESMS, it may exempt any person authorised under the accepted ESMS to carry out a class or type of electrical work from compliance with any of the regulations relating to the carrying out of that class or type of electrical work or from compliance with various sections of the Act. This exemption provision is intended to avoid regulatory duplication by recognising that compliance with the accepted ESMS is an appropriate substitute for compliance with the specific, prescriptive requirements of the Act or regulations in respect of which the exemption is given. The existence of the exemption provision means that the ESMS can be considered as an "alternative compliance mechanism" in respect of certain aspects of the Act and/or regulations.

Currently, there are nine MECs (distribution and transmission) with mandated ESMSs, and 20 companies that have adopted VESMSs.

The process for making ESMSs is set out in the Act. The Act requires:

- an ESMS to be prepared, in writing
- specification of the safety management system being followed or to be followed by the company:

  (i) to comply with the general duties under Division 1[1]

  (ii) in relation to any other matters relating to the safe design, construction, operation, maintenance and decommissioning of the supply network or electrical work that are prescribed
- a plan for the mitigation of bushfire danger (in relation to the major electricity company's supply network).

Once submitted, ESV must consider the ESMS and must accept it if ESV is satisfied that it is appropriate for the supply network or electrical work to which it applies and complies with this Act and the regulations. In particular, ESV cannot accept an ESMS that does not demonstrate how the company will comply with the relevant general duties under the Act.

[1] The general duties for MECs are to design, construct, operate, maintain and decommission its supply network to minimise as far as practicable (a) the hazards and risks to the safety of any person arising from the supply network; and (b) the hazards and risks of damage to the property of any person arising from the supply network; and (c) the bushfire danger arising from the supply network (s. 98). Similar general duties exist for those that submit a VESMS –see ss. 120D, 120E, 120F.

In reaching a determination on acceptance, ESV may require the ESMS to obtain an independent validation—at the cost of the company—to assess fitness for purpose. ESV may also, and commonly does, use the Act to require a company to provide any additional information it thinks fit in order to assess the ESMS.

ESMSs must be revised every five years, when relevant circumstances change, or when requested by ESV. ESV may also determine an ESMS on behalf of a MEC where necessary to ensure acceptable levels of safety have been achieved.

The Act provides for the setting of a fee to submit a proposed ESMS (s. 99(6)) and setting annual fees in relation to accepted ESMSs (s. 120J). To date, these have not been used.

1.2 Electricity Safety (Management) Regulations 2019

The Act provides that the safety management system, that is part of the ESMS, to be prepared in accordance with the Regulations. The Act also allows (s. 150) regulations to, inter alia:

- specify the requirements and standards with which an electricity safety management scheme must be prepared and with what content
- require the keeping of records in relation to electricity safety management schemes
- require an electricity safety management scheme to nominate the persons who are to carry out electrical work under the scheme.

1.2.1 The proposed Regulations

The proposed Regulations prescribe additional details of ESMSs by providing for the requirements and other matters relating to the acceptance of ESMSs by ESV.

The proposed Regulations largely remake the current Regulations to better clarify the form of an acceptable ESMS, with some changes made to improve the clarity of the regulations.

1.3 Method & Calculations

The objective of this review was to present costing data, an analysis of the data, and an interpretation of that analysis.

Specifically, in preparing this report we:

- engaged with OCBR to determine if the approach used to undertake is appropriate
- consulted a representative sample of parties with an interest in electricity safety management schemes to obtain costing data in relation to the proposed options
- provided an analysis of the data that concludes if a RIS is or is not required, based on the data.

This report uses the method set out in the Victorian *Regulatory Change Measurement Manual*. [2] The regulatory cost calculations were based on:

Cost of regulatory obligations = Unit cost × Quantity

where:

unit cost represents the changed cost experienced by a particular party in complying with a regulatory obligation; and

quantity represents the number of affected parties and the number, or frequency, of transactions annually.

[2] *Victorian Regulatory Change Measurement Manual*, March 2018, Version 3.1

Unit cost data was obtained from eight stakeholder in face-to-face interviews (see Consultation section) and the quantity of ESMSs was obtained from ESV. Stakeholders did not keep cost data on the development of components of ESMSs; therefore, stakeholders were asked about the entire development cost of the ESMS, with assumptions about attribution and incrementality developed based on qualitative discussions. The cost calculations assume that the number of ESMSs will remain stable over the life of the regulations for VESMS and a small increase to mandated ESMSs.[3]

See Appendix B for discussion of assumptions.

This report focuses only on the regulatory burden imposed by the proposed Regulations. It does this in terms of gross costs only (i.e., it does not consider other consequential impacts, such as associated costs savings that may arises elsewhere or other benefits that are expected). However, care is needed to only include costs that are genuinely incremental to what would occur in the absence of any regulations. These are discussed in the next chapter.

[3] These assumptions are based on discussion with ESV. There has been no change in the number of VESMSs for some time, with the assumption being that those that are likely to make use of VESMS already have them in place. For ESMSs prepared by MECs, there is some uncertainty about whether any new ESMSs will be required in next ten years. As the purpose of this analysis is to estimate a potential cost of the regulatory burden, it is considered prudent to assume there may be one new ESMSs prepared. The costs estimated are therefore considered a conservative, upper estimate.

2 Estimating compliance costs

Based on our consultation with a sample of MECs and other electrical operators, the costs they incur in relation to ESMSs can be considered as follows:

Table 1: Costs to industry of ESMS requirements

	MECs (mandatory ESMS)	Other (voluntary ESMS)
Costs of preparation, submission and acceptance of ESMS	$100,000 to $200,000	$10,000 to $40,000
Costs of revisions to ESMSs (5-yearly updates)	$85,000 to $170,000	$5,000 to $30,000
Ongoing costs related to monitoring, record keeping, reporting	From "very small" (for most) to $100,000 per annum	From "very small" (for most) to $25,000 per annum

2.1 Costs of preparing ESMSs

There are 9 MECs that will need to undertake 2 revisions of their ESMS over the next ten years (the life of the proposed Regulations). For the purpose of this analysis, it is assumed there may be 1 new MEC that would need to prepare a new ESMS at some point in the next ten years. There are 20 non-MEC ESMSs in place, which would need to be revised twice in the next ten years. For the purpose of this assessment, it is assumed there are no new voluntary ESMSs in the next ten years.[4]

Based on these assumptions, the aggregate costs of preparing and revising ESMSs during the life of the proposed Regulations is estimated to be between $1.93 million and $4.66 million (in 2019 dollars). Abstracting from any particular timing of when revisions occur, this translates to an annualised cost of between $193,000 and $466,000 per annum.[5]

However, this is an overstatement of the costs attributable to the proposed Regulations. The measurement of regulatory burden is taken from the position that the current Regulations are not remade – this position represents the 'base case' that is typically used for regulatory impact analysis.

The core duties for which an ESMS supports exist under the Act, and the ESMS is intended to assist the company in meeting those duties, not introduce new or additional duties. In addition, companies would have other reasons for assessing and mitigating risks in their businesses, such as meeting other commercial risks such as OH&S, common law negligence, reputational impacts, etc. Therefore, it is reasonable to expect that all companies that prepare ESMSs should, and most would as standard business practice, already have documents, processes and controls in place that meet most of the requirements expected in an ESMS. The incremental costs of preparing an ESMS is therefore limited to addressing any gaps that may be identified, collating relevant material into the ESMS documentation, and engaging with ESV in the assessment process. This may suggest that only around half of the above costs should be considered genuinely incremental to the business. This was consistent with the feedback from the sample of stakeholders we consulted for this report—that most of the requirements of the ESMS are business as usual, although the ESMS preparation process does identify some gaps.

We therefore consider it reasonable to expect that the annual cost to industry of preparing (and revising) ESMSs is no more than $250,000 per year.

[4] However, ESV would like to better understand the incentives for entering VESMSs.

[5] Of course, if there are a higher number of new ESMSs prepared in the future, or a higher number of revisions (e.g., revisions that are required within shorter periods than the default 5 years), the costs could be higher.

But even then, care is needed to consider additional costs that would be incurred in the base case. As noted in chapter 1, the Act sets out basic requirements for an ESMS, and ESV could use its powers under the Act to refuse to accept an ESMS until it is satisfied that the ESMS is appropriate for the safety risks. This may, in the absence of any regulations setting out additional requirements for what should be in an ESMS, involve greater use of the validation process (at the cost of the company) and would almost certainly involve a longer assessment process with additional use of the power under the Act to request additional information from applicants until the ESMS can be accepted. In this context, by specifying ESMS requirements in the proposed Regulations, **the Regulations are likely to reduce the costs to industry of engaging with ESV during the assessment process.**

2.2 Ongoing costs of implementing the ESMSs

Based on the costs outlined in Table 1, the annual costs to industry of monitoring their ESMS, keeping records, and incident reporting, is in the order of $525,000 per annum.[6] Stakeholders indicated that monitoring and record keeping were of only marginal cost impact, as these would be normal business activities anyway, but that incident reporting was (to some) of more material burden.

Feedback from stakeholders indicated that incidents (those that are currently required to be reported to ESV as well as other incidents) are routinely recorded internally, with reporting to management and boards. The incremental costs imposed because of the Regulations is therefore in practice limited to the time it takes to report incident information to ESV. For some operators, this is rare, with few relevant incidents occurring; for others reporting to ESV is more frequent.

2.3 Changes in compliance costs

Stakeholders were not able to identify costs in a disaggregated way that would enable the cost of specific elements of the ESMS to be individually costed. However, potential changes to the ESMS requirements were discussed in qualitative terms in terms of the significance of the change on overall costs.

Table 2: Impact of proposed changes to ESMS requirements

Proposed change	Likely impact on industry costs
Greater specificity for reporting of serious incidents	Minor increase in reporting costs
Linkage to Act: ss. 120D/E/F	Existing requirement in Act/improves clarity in what ESV will determine is an acceptable ESMS
Requirement for ABN	Negligible incremental cost
Clarification of applicable: 'complex electrical installation'	No cost
Removal of the need to include Safety Policy	Minor cost savings in compiling ESMS submission
Updating definitions	No cost
New penalty for failure to comply with an exemption condition	Strengthens compliance; no cost for compliers

The changes above will have only negligible to small increase in regulatory costs compared to the current Regulations. It is possible that clarification and greater specificity in the proposed Regulations will improve compliance (and costs); however, improved compliance would be expected to be accompanied by a safer electricity environment. M W <polark72@hotmail.com>

[6] This is based on 25 companies having an annual additional cost of $10,000, 3 having additional costs of $25,000 and 2 having additional costs of $100,000. Stakeholder feedback suggests these higher amounts are rare within the industry.

3 Fees for voluntary ESMSs

3.1 Context

ESV proposes to introduce fees in respect of ESV's role in the assessment, acceptance and monitoring of voluntary Electricity Safety Management Schemes (ESMSs) developed by electrical operators under the terms of the Electricity Safety Act 1998 (the Act). The fee would not apply to the ESMSs that are compulsorily required of Major Electricity Companies (MECs).[7]

Part 10 of the Act requires all MECs to have ESMS in place. However, it also allows for the adoption of ESMS on a voluntary basis by other electrical operators. Three types are allowed under the Act are:

- employers of electrical workers (s. 114)
- specified premises (s. 115)
- complex electrical installations (s. 116).

Section 117 of the Act provides that ESV may exempt any person authorised under the accepted ESMS from compliance with applicable regulations or from various sections of the Act[8].

Consultation revealed that there were two main reasons why entities entered into VESMSs: first, some entities saw a 'red tape' costing saving (e.g., not having to submit compliance certificates, not having circuit maps on distribution boards); and second, some entities could not comply with the Act unless exempted from certain requirements. We note that prior to the introduction of VESMSs, compliance with the normal (prescriptive) requirements was very low by some operators.

It is noted that companies that adopt VESMSs considered that the scheme resulted in considerable cost savings. Companies mentioned that they weighed up costs and benefits of VESMS: those who have voluntarily adopted these schemes consider that there are clear cost savings in do so.

However, ESV incurs significant costs in undertaking the processes of assessment and acceptance of ESMS applications and the auditing and monitoring of accepted ESMS. In line with the Victorian Government's general policy of recovering the costs of regulatory activity through the application of regulatory fees[9], it is now intended to impose a fee that will recover the costs incurred by ESV.

In 2018, similar fees were introduced for voluntary gas safety cases in relation to gas installations. Such safety cases require ESV to undertake the same assessment, acceptance and regulatory surveillance activities that apply to gas companies, who pay general levies that provide for cost recovery. ESV estimated its annual cost for managing voluntary gas safety cases at approximately $14,550 (each) per annum (in 2019 dollars).

3.2 The principle of cost recovery

All government activities involve a cost. Cost recovery is a method of recovering all or some of the cost of particular activities undertaken by government agencies from individuals or businesses,

[7] It is not proposed to charge fees in respect of the mandatory ESMS required to be maintained by Major Electricity Companies (MECs) as MECs currently pay industry levies, which raised $8.9 million in 2018-19. The levy is intended to offset a wide range of regulatory costs attributable to MECs and the costs associated with the assessment and acceptance of mandatory ESMS are considered to fall within this range of costs. In other words, MECs already contribute to ESV costs for the assessment and audit of ESMSs, with the formula used to calculate annual levies being a reasonable proxy for the proportionate complexity of each MEC's ESMS. By contrast, entities that have voluntary ESMS in place do not pay the levy.

[8] Sections 44(2), 45(1), (2) and (3) and section 45A.

[9] As set out in the Department of Treasury and Finance *Cost Recovery Guidelines*.

based on the beneficiary pays[10] or impactor pays[11] principle. The concept 'user pays' is used to capture both situations.

The task of setting fees or charges involves determining whether to recover costs directly from users or others who benefit from the service being provided, those whose actions give rise to the need for the activity, or taxpayers more generally. Whether costs should be user pays or more generally funded by taxpayers will depend on the type of activity and the existence of any public benefits.

The government's *Cost Recovery Guidelines* apply to the question of cost recovery of the following activities:

- government provision of a good or service e.g. certificate of title, or a working with children check; or providing access to land valuation data
- regulatory activities e.g. registration, licensing, approvals, issuing of permits, and compliance and enforcement.

There are costs associated with ESV providing services to MECs and operators of complex electrical installations. If these costs are not adequately recovered through fees (and assuming other revenue sources such as levies are not increased), the cost will need to be met from taxpayers generally through the state budget. This raises a number of problems:

- No cost recovery may be unfair, in that all taxpayers pay for the services even though not all taxpayers benefit from the services. This is a failure to achieve what is known as 'horizontal equity'.
- From a behavioural perspective, if an organisation pays for something they are likely to 'value' it more than if it is provided at no charge.

On the other hand, cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity. From a horizontal equity point of view, cost recovery ensures that those that have benefited from government-provided goods and services, or those that give rise to the need for government regulation, pay the associated cost. Those parties that do not benefit or take part in a regulated activity do not have to bear the costs.

Good regulatory practice, as reflected in long-standing Victorian government policy, requires that the costs of industry regulation should, in general, be borne by the industry itself. From an economic perspective, this helps to ensure that the full cost of production of the industry's outputs is internalised by producers and reflected in the price of its products. This implies that pricing will be efficient and market distortions are avoided[12]. Thus, charging regulatory fees based on recovering the costs incurred by the regulator contributes to economic efficiency. Such fees also contribute to equity, since they imply that taxpayers generally are not required to subsidise the regulatory cost of individual industries and, by implication, the consumers of those industries' products.

In the case of ESV, gaps in cost recovery can lead to cross-subsidisation. That is, the bulk of the recovery of costs comes from annual levies on the MECs, despite the fact that it is other parties (in this case other electrical operators) that give rise to the costs of significant ESV activities. A well-designed cost recovery approach avoids unnecessary cross-subsidisation by matching fees to the particular users of the regulatory services.

[10] Those who benefit from the provision of a particular good or service should pay for it (Productivity Commission, 2001, p. XXI).

[11] This is where impactors meet the full costs of their actions, based on the view that those who create the need for a service should incur these costs.

[12] That is, if regulatory costs are borne by the taxpayer, there is implicitly a subsidy provided by taxpayers to producers and consumers of the industry's products. Costs, and therefore prices, are lower to the extent that regulatory fees are not charged to recover regulatory costs.

In addition to not currently paying fees that would recover ESV's costs of assessing, accepting and monitoring ESMSs, entities that have voluntary ESMS accepted may also avoid paying other fees established under the Act. Under the Act, Certificates of Electrical Safety (COES) must be completed by registered electrical contractors (RECs) and licensed electrical installation workers and provided whenever electrical installation work is carried out. COES must be purchased from ESV[13] and income derived from the sale of COES is used to fund the audit and compliance monitoring that ESV undertakes in respect of electrical installation work done in Victoria. An entity whose voluntary ESMS is accepted can be exempted from the requirement to use COESs.

Introducing fees for voluntary ESMSs in the proposed Regulations addresses the problems of inefficient resource allocation. The objective of the proposed fees is to recover the costs of services from those that give rise to the need for the regulatory activity—to the extent that cost recovery is appropriate for the service provided—while ensuring other principles such as vertical equity[14] and simplicity are also maintained.

3.3 Assessment of amount to be recovered

There are currently 20 voluntary ESMSs in place. This number has been stable for many years and is expected to remain so in the medium term (at least for the life of the proposed Regulations).

ESV has estimated the total costs of its activities related to these voluntary ESMSs is around $300,000 per year, or around $14,900 per ESMS. This average is skewed by one ESMS under s. 114, with the remaining ESMSs (under ss. 115 and 116) having a lower average cost to ESV.

Table 3: ESV costs related to voluntary ESMSs

Entity type	Per VESMS			All VESMS				Average cost per year
	Costs of assessment and acceptance	Costs of annual audits and monitoring	Total cost (over 5-year life of VESMS)	No of ESMSs	Costs of assessment and acceptance	Costs of annual audits and monitoring	Total cost (over a 5-year life of VESMSs)	Per VESMS
s. 115 and s. 116	$23,650	$46,080	$69,730	19	$449,350	$875,520	$1,324,870	$13,946
s. 114	$35,900	$125,600	$161,500	1	$35,900	$125,600	$161,500	$32,300
All VESMSs	$24,262	$50,056	$74,318	20	$485,250	$1,001,120	$1,486,370	$14,864

See Appendix C for costing assumptions. The voluntary ESMS accepted under s114 is for the operator of a large-scale rail network which goes beyond what a more typical employer of electrical workers might manage. This means there are factors which might be driving up the cost of the ESMS which cannot be easily separated out, and is therefore unlikely to be representative of the cost of a s114 ESMS for a future party.

The total annual cost of regulatory activities related to voluntary ESMSs is equivalent to 1.25 FTE ESV officers.[15]

[13] ESV is empowered to sell COES under section 45B(1) of the Act.

[14] Vertical equity suggests that in some situations different people should pay different amounts for the same service, to reflect factors such as ability to pay. This is unlikely to be relevant in most cases under the Act, however it is also proposed to give ESV a power to waive or reduce fees in some circumstances.

[15] Noting that work is in practice shared among a number of staff, including some at higher grades.

In accordance with government policy, this amount should be recovered through user charges, unless there is compelling reason to depart from full cost recovery. No clear reason is apparent as to why this group of regulated entities should not be required to pay the full cost of regulatory services.

3.4 Options for fee design

The Act anticipates recovery of costs through an annual fee paid by ESMS operators (s. 120J).[16] This suggests that the only type of fee in relation to ESMSs should be an annual fee.

However, s. 157 of the Act also provides that the regulations may fix fees and charges for or with respect to any function or service carried out by ESV. This suggests that costs could be recovered through a range of different fees related to, for example, lodgement of a proposed ESMS, upon acceptance of an ESMS, or a base fee with additional fees based on the level of regulatory activities (e.g., the number of audits carried out), or the level of risk (e.g., compliance history).

ESV considers that, given the small number of operators and the small overall amount of the fees, an overly complicated fee structure is not warranted. Therefore, a simple fee structure of an annual fee per ESMS is preferred. This also provides for a smoother and more predicable revenue base from these activities, assisting ESV to plan its regulatory effort. In this regard, when introduction of a proposed fee was mentioned to the sample of companies consulted, none raised any objections (indicating that the cost savings from VESMSs is larger than any regulatory and financial costs imposed by the regulations).

The Act also allows for regulations, including prescribed fees, to differ according to differences in circumstances (s. 157(2)(aa)). This is relevant as the proposed fees will only apply to voluntary ESMSs, not the mandatory ESMSs prepared by MECs (as these costs are already recovered through annual levies). However, it suggests that the fees for voluntary ESMSs could also differ according to operator type. As these are already separately defined under the Act, it is feasible to set different fees based on type.

The options are therefore:

Table 4: Fee structure options

	Option 1 – match annual fee to average cost by type	**Option 2 – set annual fee for all ESMSs to the costs of ss. 115-116 ESMSs**	**Option 3 – set annual fee as average across all voluntary ESMSs**
Employers of electrical workers (s. 114)	$32,300 per annum	$13,950 per annum	$14,900 per annum
Specified premises (s. 115) and complex electrical installations (s. 116)*	$13,950 per annum	$13,950 per annum	

* ESV considers the regulatory effort for both of these categories is approximately the same.

Note: these are fee amounts that would apply in 2018-19. From 1 July 2019 and each year thereafter, the actual fee amount would be increased in line with changes to the value of fee units under the Monetary Units Act.

[16] The Act provides: "An accepted ESMS operator must pay the relevant prescribed annual administration fee in accordance with the regulations."

ESV prefers Option 2 – an annual fee of $13,950 (in 2018 – 2019 dollars) for all ESMS based on the average cost for current ESMSs under section 115 and 116. While this would lead to a slight under-recovery of costs of around $18,000 per annum for one section 114 operator that is not representative of that group of VESMSs. ESV considers that providing a fee for future operators to develop ESMSs under that section, the costs of ESMS under sections 115 and 116 are a better guide.

4 Consultation

The Guidelines to the SLA suggest that initial consultation should be undertaken for the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

We note that ESV has provided an issues paper to industry stakeholders and invited feedback, and intends to release a further consultation paper on the proposed Regulations.

For this costing exercise, in April 2019 eight companies with ESMS (four MECs and five VESMS) were consulted in face-to-face interviews to inform the results of this report. The main themes to emerge from the consultations were as follows:

- no companies raised any objections concerning the proposed amendments
- a small number of companies considered that there was some duplication between ESMSs and Safety Case requirements
- no concerns were raised about the increased specificity in reporting of serious incidents.
- stakeholders welcomed the greater clarity in drafting and removal of the mention of safety policies, but considered that there was a need to define 'complex electrical installation' in the regulations
- there are regulatory cost savings from adopting VESMS, but the initial hurdle of applying for a voluntary scheme is unlikely to result in their widespread adoption
- companies with ESMSs (especially those on their second or third ESMS) have a good understanding of ESV requirements, but generally reported that the initial application was difficult.
- no companies with VESMSs raised objections about the proposed fees—in particular no company considered the amount of the fee was significant in the context of their business operations, and small compared to the value they obtain by using VESMSs. A number of stakeholders also noted that a fee on VESMSs would send a useful signal of value, which would assist in the importance of VESMSs within their organisation.

Appendix A: Comparison of current Regulations with the proposed Regulations

Reg[n]	Current - description	Proposed - changes	Burden
Part 1 — Preliminary			
1	*Objective* – is to provide for the requirements, procedures and other matters relating to the acceptance of electricity safety managements schemes.	No change	No burden - machinery
2	*Authorising provision* – provides the legal basis to make the regulations under the Act (ss. 150 and 157)	No change	No burden - machinery
3	*Commencement* – provides the date for which the regulations come into operation.	29 November 2019	No burden - machinery
4	Revocation – this regulation revokes older regulations	The Electricity Safety (Management) Regulations 2009 and Electricity Safety (Management) Amendment Regulations 2013 are revoked.	No burden - machinery
5	*Definitions* – sets out definitions of the regulations to provide clarity and ease compliance. This regulation defines 'access authority system', 'AS 5577', 'asset operator', 'emergency service', 'employer operator', 'MEC', 'published technical standard', 'scheme operator' and 'the Act'.	Minor wording changes to improve clarity and update the names of organisations. 'Applicable asset' and 'network operator' have been removed from the definitions.	No burden - definitions
6	*Meaning of access authority system* - This regulation provides a detailed definition of 'access authority system'.	Minor wording changes to improve the application of the regulation; namely adding the words 'the supply network or a complex electrical installations' or similar wording, which replaces the wording 'applicable asset'.	No burden - definition
Part 2 — Electricity Safety Management Schemes			
7 proposed		*Specification of Australian Company Number or Australian Business Number* – a new regulation to assist ESV to identity the legal entity that is submitting the ESMS.	Minor administration cost (under $100)
7	*Person responsible for carrying out of electrical work or supply network or complex electrical installation* – this regulation requires the ESMS to set down the contact person that is responsible for the	Reg 8. The word has been strengthened to nominate the person 'responsible' for the scheme, and a clause has been added: "(c) in all cases, the name, title and business address of the person who has authorised the electricity safety	Negligible administration cost

Reg[n]	Current - description	Proposed - changes	Burden
	scheme.	management scheme"	
8	*Person responsible for electricity safety management scheme* – a scheme must include the details of the person	Reg 9. Minor wording changes to improve accountability	Negligible administration cost
9	*Scheme description – employer operators* – this regulation requires that an ESMS to contain a description of details of the design, construction, operation and maintenance of the supply network or complex electrical installation, to allow ESV to identify the location and risks of these assets.	Reg 10. No change	
10	*Scheme description – major electricity companies and asset operators* - this regulation requires that an ESMS contains of description of the details of the design, construction, operation and maintenance of the supply network or complex electrical installation, to allow ESV to identify the location and risks of these assets.	Reg 11. Minor wording changes to clarify application of the regulations.	
11	Formal safety assessment – employer operators and asset operators – this regulation requires an ESMS to contain a formal safety assessment. A formal safety assessment must describe the methodology used to undertake the safety assessment; identification of hazards and risks, and details of measures taken to reduce those risks.	Reg 12. Minor wording changes to clarify application of the regulations.	
12	*Exemptions to be specified* – An ESMS must specify all the provisions of the regulations relating to electrical installations or supply networks from which the scheme operator seeks to be exempted.	Reg 13. This proposed regulation is the same, but has a clause added: (d) in the case of a scheme under which the owner of a complex electrical installation is to be exempt from compliance with [the regulations and s. 117(2A) of the Act] all provisions of the regulations relating to operation, maintenance and decommissioning of the complex electrical installation and the provisions referred to in that section from which the owner seeks to be exempted.	No burden – exemption from regulations clarified.
13	*Safety management system* – a scheme for an employer operator or an asset operator must comply with the safety management system with regard to electrical work carried out by the person	Reg 14. Minor wording changes to improve clarity of application of the regulation	Minor increase in burden if compliance is

Reg[n]	Current - description	Proposed - changes	Burden
	authorised by the employer operator; or the design, construction and decommissioning of the complex electrical installation owned or operated by the asset operator.		improved.
14	*Safety policy*	This regulation has been deleted. 'Safety policy' has been construed to mean OHS and other policies, which are covered by other legislation. Removing this regulation will align ESV's approach with the Gas Safety (Safety Case) Regulations 2018.	Marginal reduced burden.
15	*Standards for works on complex electrical installations–where there are published technical standards* – this regulation requires an operator to list all technical standards they comply with that relate to the design, construction, commissioning, installation, operation, maintenance and decommissioning of a complex electrical installation. An operator may elect not to comply with the standards as long as their approach has a safety level equivalent to the technical standard. An operator must explain the reasons for doing so to ESV.	Minor wording changes to clarify that this regulation applied to 'complex electrical installations'.	Negligible increase in burden.
16	*Standards for works on complex electrical installations–where there are no published technical standards* – must specify requirements for design, construction, commissioning, installation, operation, maintenance and decommissioning of a complex electrical installation. These requirements must be adequate to ensure the safety of the public, minimises risk to damage to property, etc.	Minor wording changes to clarify that this regulation applies to 'complex electrical installations'.	Negligible increase in burden.
17	*Technical standards for electrical work* – A safety management system for electrical work carried out or to be carried out by persons authorised by an employer operator must list every published technical standard that applies to the electrical work. If the employer operator chooses not to comply with a particular published technical standard, specify requirements in relation to the carrying out of the electrical work that will ensure a level of safety in the carrying out of the work that is at least equal to or greater than the level of safety that would ensue from compliance with that standard.	No change	

Reg[n]	Current - description	Proposed - changes	Burden
18	*Complex electrical installations-asset management plan requirements* – must specify requirements of an asset management plan relating to the design, construction, commissioning, installation, operation, maintenance and decommissioning of a complex electrical installation. These requirements must be adequate to ensure the safety of the public, minimises risk to damage to property, etc.	Minor wording changes to clarify that this regulation applies to 'complex electrical installations'. A new clause has also been included: a safety management system must be "(h) … adequate for monitoring and maintaining the integrity of the complex electrical installation taking into account the expected operational life of the installation". This clause makes the regulations consistent with the Gas Safety (Safety Case) Regulations 2018.	The proposed change imposes only a minor burden, clarifying that plans need to adequately monitor the installation over its expected operational life.
19	*Requirements in relation to electrical work* – A safety management system for the carrying out of electrical work must specify the means by which an employer operator will ensure that the electrical work is adequate for the safe operation of the electrical installation or electrical equipment in relation to which electrical work is carried out. It must also take into account the results of the formal safety assessment for the scheme, and meet the published technical standards listed in the safety management system, or the requirements specified in the safety management system in accordance with the regulations, and is carried out by the persons authorised to carry out the work.	No change	
20	*Access authority system* – The safety management system for an electricity safety management scheme submitted by an asset operator must specify the complex electrical installation or part of the installation for which an access authority system needs to be established; and the access authority system that is to apply in respect of the operation or maintenance of the complex electrical installation or the part of the installation; or work that is to be carried out on or near the complex electrical installation or part of the installation.	Minor wording changes to clarify that this regulation applied to 'complex electrical installations'.	
21	*Emergency preparedness* – A safety management system must specify a response plan designed to address all reasonably foreseeable emergencies which have been identified through the formal safety assessment. This regulation includes things that must	Minor wording changes to clarify that this regulation applied to 'complex electrical installations'.	

Reg[n]	Current - description	Proposed - changes	Burden
	be include in a response plan.		
22	*Internal monitoring, auditing and reviewing* – A safety management system must specify the means by which the asset operator or the employer operator will monitor and audit the implementation of the safety policies and procedures specified in the safety management system, and review the adequacy of those policies and procedures. A safety management system must also specify the means to be used to ensure regular and systematic identification of deficiencies in those policies and procedures and in their implementation, and systematic improvement in those policies and procedures and in their implementation.	No change.	
23	*Key performance indicators* – A safety management system must specify the KPIs to be used to determine the asset operator's or the employer operator's level of compliance with the electricity safety management scheme, the relevant provisions of the Act and the regulations made under the Act. It must also specify the process to be adopted to analyse the KPIs and to ensure that appropriate action is taken to improve compliance if required.	No change.	
24	*Incident recording, investigation and review* – A safety management system must specify the means to be used for recording and investigating serious electrical incidents involving, as the case requires an asset operator's complex electrical installation; or electrical work carried out by an electrical worker employed or engaged by an employer operator and the management systems to be used for reviewing and taking action on the information so recorded or arising from those investigations.	Minor wording change to clarify application of the regulation: 'operator's applicable asset' is replaced by 'operator's complex electrical installation'.	
25	*Competence and training* – The safety management system for an electricity safety management scheme submitted by an asset operator must specify the work and staffing systems required for the safe design, construction, operation, maintenance and decommissioning of the complex electrical installation.	Minor wording change to clarify application of the regulation: 'operator's applicable asset' is replaced by 'operator's complex electrical installation'.	

Reg[n]	Current - description	Proposed - changes	Burden
25A, 25B	*Safety Management system MEC*– For the purpose of section 99(2)(b) of the Act, the electricity safety management scheme for a supply network of an MEC must specify a safety management system that complies with AS 5577. *Safety management system* – other network operator – This regulation applies to a network operator who submits an electricity safety management scheme under section 116 of the Act. For the purpose of section 116(2)(b) of the Act, the electricity safety management scheme must specify a safety management system that complies with AS 5577.	Removed. Adoption of the standard left potential regulator gaps with respect to MEC management asset planning.	
26		**New Regulation** – Specification of Australian Company Number or Australian Business Number – An electricity safety management scheme submitted by an MEC must specify the ACN of the MEC.	Negligible administrative burden
Part 3 — Records and reporting			
26	*Records* – this regulation applies to an accepted ESMS operator. It specifies the type, form, and length of time that information must be kept.	Reg 29. No change	
27	*Asset operator and network operator requirements for reporting of serious electrical incidents* – tbc	Reg 30. tbc	
28	*Asset operator and network operator reporting of incidents other than serious electrical incidents* – An electricity supplier that is an asset operator or a network operator must report to Energy Safe Victoria on a quarterly basis all specified electrical incidents in the form of a statistical summary. 20 penalty units	Reg 31. The wording has been changed to improve the specificity of the regulation, and the second clause has been removed so that other incidents (that are not 'serious incidents) are not limited to those listed.	
Part 5 — Exemptions			
29	*Exemptions from regulation requirements* – Energy Safe Victoria	Reg 34. Clauses have been re-ordered, with minor changes in	

Reg[n]	Current - description	Proposed - changes	Burden
	may, on the application of the scheme operator, exempt an electricity safety management scheme from any of the requirements of these Regulations. An exemption may be subject to conditions. An application must be in writing and state the name, address and telephone number of the applicant; the exemption requested; and the reasons for applying for the exemption.	the wording. A penalty has been included to ensure compliance. This aligns the regulation with the Gas Safety (Safety Case) Regulations 2018.	
Part 4 — Fees			
32		**New Regulation** – Reg. 32. *Fees for voluntary electricity safety management schemes* – Currently, no fees are charges for VESMS. This regulation provides that an asset operator or an employer operator must pay an annual fee of 942 fee units [$13,950] to Energy Safe Victoria. The fee is payable on acceptance of the electricity safety management scheme and on each anniversary of acceptance.	Financial cost
33		**New Regulation** – Reg 33. *Waiver or rebate of fees* – Energy Safe Victoria may waive or rebate all or part of the administration fee if, in the opinion of Energy Safe Victoria the consideration of the electricity safety management scheme would impose or has imposed a lesser burden than usual on Energy Safe Victoria; or administration of the electricity safety management scheme has imposed no appreciable burden or a lesser burden than usual on Energy Safe Victoria.	

Appendix B: Assumptions & Calculations of Regulatory Costs

Costs of preparing and revising ESMS was based on feedback from industry consultation undertaken for this report. Where possible, actual cost estimates were sought. Where input from stakeholder was based on staff time, it was assumed that staff time has a cost of **$84.10** per hour based on the following:

$1,922 / 40 hours = $48.05 x OCBR on-costs factor 1.75 = $84.10 per hour.[17]

This resulting in the following estimated costs per ESMS:

Table B.1: Costs of ESMSs

	MECs (mandatory ESMS)	Other (voluntary ESMS)
Costs of preparation, submission and acceptance of ESMS	$100,000 to $200,000	$10,000 to $40,000
Costs of revisions to ESMSs (5-yearly updates)	$85,000 to $170,000	$5,000 to $30,000
Ongoing costs related to monitoring, record keeping, reporting	From very small (for most) to $100,000 per annum	From very small (for most) to $25,000 per annum

There are currently 9 MECs that will need to undertake 2 revisions of their ESMS over the next ten years (the life of the proposed Regulations). For the purpose of this analysis, it is assumed there may is 1 new MEC that would need to prepare a new ESMS at some point in the next ten years. There are 20 non-MEC ESMSs in place, which would need to be revised twice in the next ten years. For the purpose of this assessment, it is assumed there are no new voluntary ESMSs in the next ten years.

[17] ABS Catalogue 6306.0 - Employee Earnings and Hours, Australia, May 2018; Table 8 All Employees, Number of employees, Average weekly total cash earnings–Age category, Industry: Electricity, gas, water and waste services - All ages, $1,922.00 per week, released January 2019.

Appendix C: Assumptions for ESV costs

Processes: steps considered

Table C.1: Process steps for VESMSs

New ESMSs and resubmitted ESMSs (under s120)	**1**	Consideration of draft ESMSs
	2	Receipt of resubmitted ESMS - receipt, document check, validation check, allocate ESMS to relevant staff for evaluation
	3	Assess ESMS using tool to review compliance with the regulations, standards and requirements
	4	Send provisional acceptance letter
	5	Site visit to verify assessment
	6	Prepare advice to Director ESV on acceptance/non-acceptance of ESMS
Activities after acceptance of ESMS	**1**	Schedule Audit
	2	Prepare for Audit
	3	Onsite conduct of audit
	4	Office document review/analysis
	5	Report writing and finalisation
	6	On-site visit to confirm compliance changes
	7	Assessment of 3 or 6 monthly KPI reports

Staff costs:

Table C.2: ESV staff costs

Grade	Annual salary
10	$125,709
11	$132,583
12	$138,837
13	$145,504

A standard day is taken as 8 hours. There are 261.25 working days each year.

An uplift factor of 75 per cent was added to account for on-costs (superannuation, payroll tax, workers compensation insurance) and corporate overheads (accommodation, corporate support functions). All costs were measured in terms of time spent by staff on each activity, except for travel and accommodation that is a non-standard activity cost know to be required in relation to a proportion of ESMS.

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