



Secretary: [REDACTED]  
[REDACTED]  
[REDACTED]

Marnie Williams  
Commissioner and Chair  
Energy Safe Victoria  
Level 4/5 Riverside Quay  
SOUTHBANK VIC 3006

18<sup>th</sup> August 2021

Email: [consultation@energysafe.vic.gov.au](mailto:consultation@energysafe.vic.gov.au)

Dear Ms Williams

### **Energy Safe Victoria – Submissions on Draft Report**

I refer to Energy Safe Victoria's (**ESV**) draft 'AusNet Services Wood Pole Management Report' and ESV's invitation to the community to make submissions on the draft Report.

#### **1. Executive Summary**

Kingston & District Power Alliance (**K&DPA**) makes the following submissions on the draft Report:

1. The community is relying on ESV to fulfil its mandate in relation to prevention and mitigation of electricity-caused bushfires.
2. The draft Report refers to evidence that suggests AusNet has not complied with the Electricity Safety Act, 1988. Despite this evidence, ESV has apparently decided that it will not impose sanctions for non-compliance. ESV needs to explain this decision in light of the evidence described in the draft Report. This approach is inconsistent with community expectations following the Victorian government's assurances that ESV would implement an independent and robust approach to compliance.

3. The draft Report states that an increase in network safety risk and a deterioration of network safety outcomes 'may' be inconsistent with the intent of the Electricity Safety Act, 1988. In fact, this outcome would clearly be a breach of the Act.
4. The draft Report states that ESV has more work to do to clarify its expectations in relation to evidence to demonstrate adherence to general safety duties under the Electricity Safety Act, 1988. This suggests ESV accepts at least some of the blame for Major Electricity Companies (**MEC**) failing to comply with electricity safety laws. Irrespective of any guidance offered by ESV, the MEC are required to ensure they understand and fully comply with their obligations. The regulator's role is to enforce the law, not to take the blame for non-compliance.

## 2. Background

The draft Report arises out of electricity-caused fires that impacted farming communities in south west Victoria in 2018. As a result, ESV has carried out two investigations into wood pole management, first for Powercor and second for AusNet.

ESV's Public Technical Report dated March 2020 dealing with Powercor acknowledged that there was 'significant community concern' as a result of the circumstances surrounding the fires<sup>1</sup>.

However, ESV's Public Technical Report failed to detail the background, including the significant community effort that was required to force ESV to properly investigate the fires. The public submission to the ESV dated February 2020 lodged by Ms J Porter on behalf of the farming community that was affected by the fires:

- expresses "the overwhelming dissatisfaction and disappointment of our rural community that this report has only been developed in response to a long and largely belittled community campaign ..."; and
- states "it is clearly evident, that Energy Safe Victoria is a weak and captured Regulator"<sup>2</sup>.

Serious allegations made by the community were reported by the ABC on 5 December 2019<sup>3</sup>. Litigation resulted from the fires and a commercial settlement was negotiated shortly after Powercor was forced by the Court to disclose a report detailing poor management practices.

---

<sup>1</sup> ESV Public Technical Report dated March 2020, 'Powercor Wood Pole Management: A review of sustainable wood pole safety outcomes', page 4

<sup>2</sup> ESV Submission lodged by Ms J Porter dated February 2020 page 5

<sup>3</sup> 'Powercor agrees to pay 2018 St Patrick's Day fire victims after revelations of sub-par pole maintenance', ABC News, <https://www.abc.net.au/news/2019-12-05/powercor-settles-fire-victims-after-secret-document-revealed/11765304>

Subsequently, a number of whistleblowers described ESV as lacking independence and criticized ESV's failure to adequately police Victoria's energy networks, as reported by the ABC on 22 March 2020<sup>4</sup>.

### 3. K&DPA Submissions on Draft Report

Farming communities are watching ESV's performance closely as a result of the Western Victoria Transmission Network Project and other energy projects which are planned.

Although ESV's draft Report deals with distribution assets, it provides an opportunity for the community to assess whether the Victorian government is delivering on promises that the ESV would start to implement an independent and robust approach to compliance by Major Electricity Companies.

Kingston & District Power Alliance is concerned by a number of unexplained aspects of the draft Report. Separate comments in relation to community expectations are set out at Item 4 below.

The draft report states:

*"AusNet Services has recently introduced changes to its wood pole management approach that it has not yet thoroughly and adequately assessed. The changes have also not demonstrated long-term sustainable safety outcomes or minimise risk 'as far as practicable' (AFAP)."*<sup>5</sup>

and

*"ESV is concerned that a recent significant change to AusNet Services inspection frequency may lead to an increase in network safety risk, and a deterioration of network safety outcomes, due to pole management practices, in the medium to long-term. If this is the case, this may be inconsistent with the intent of the legislation, to minimise safety risks as far as practicable and community expectations."*<sup>6</sup>

Although ESV has expressed concern about multiple shortcomings in AusNet's management of wooden poles and called for immediate changes, there is no mention of any adverse finding against AusNet. ESV has apparently concluded that these problems do not breach the Electricity Safety Act, 1988. ESV should explain to the community how ESV justifies this surprising conclusion. It suggests ESV lacks the confidence to take compliance action.

Further, it is incorrect to say that if there is an increase in network safety risk and a deterioration of network safety outcomes this 'may' be inconsistent with the intent of the legislation. In fact, that outcome would clearly be a breach of the Act.

---

<sup>4</sup> 'Victorians at increased fire risk due to weak regulator, former executive says', ABC News, <https://www.abc.net.au/news/2020-03-22/energy-safe-victoria-regulator-criticised-fire-risk/11975382>

<sup>5</sup> Draft ESV Report Executive Summary, page 1

<sup>6</sup> Draft ESV Report Executive Summary, page 2

K&DPA is particularly concerned by ESV's comment on page 26 the draft Report:

*“During the course of the investigations undertaken by ESV, it has become apparent that further work is required to clarify the expectations of ESV in demonstrating adherence to the general duties of the Electricity Safety Act 1998. As this topic applies to all MECs, ESV will review recently published supporting materials and if required, develop and publish revised guidance in this regard.”*

This is a surprising statement. ESV needs to explain why the onus is on ESV to do further work to clarify its expectations? The legislation is clear.

This shifts responsibility away from Major Electricity Companies and onto ESV. It gives the MEC an excuse to shift the blame onto ESV for their non-compliance with safety legislation.

The MEC are under an obligation to take their own advice to ensure that they understand and comply with all aspects of electricity safety law. If a problem has been identified, the onus should be on the MEC to do more work to understand their obligations. ESV's job is to enforce the law, not to take the blame itself.

#### **4. Community Expectations**

The community has a legitimate expectation that ESV will enforce strict compliance with the law. The Victorian government has given assurances that there has been a change in the ESV's approach. The community is entitled to ask tough questions about whether there is any substance in these assurances. The community is skeptical that ESV can fulfil its mandate given:

- ESV's documented history of weak and ineffective regulatory oversight;
- evidence that community campaigns are required to get ESV to carry out thorough investigations, as per the complaints made by the rural community affected by the 2018 fires<sup>7</sup>; and
- the whistleblower's complaints as described in the ABC report dated 22 March 2020<sup>8</sup>.

Item 4.7.1 of the Final Report of the 2009 Bushfire Royal Commission described ESV as 'a weak regulator'. The Commission stated:

*“The Commission endorses the view of Professor Hodge, who noted that, although co-regulation is a legitimate regulatory style in certain circumstances, as practised by ESV it appears to be nothing more than ‘compliance ritualism’. The focus is on ticking boxes rather than substantive matters ...”*

---

<sup>7</sup> ESV Submission lodged by Ms J Porter dated February 2020 page 5

<sup>8</sup> 'Victorians at increased fire risk due to weak regulator, former executive says', ABC News, <https://www.abc.net.au/news/2020-03-22/energy-safe-victoria-regulator-criticised-fire-risk/11975382>

and

*‘The Commission is strongly of the view that a strengthening of ESV’s regulatory powers is needed, including the ability to apply sanctions in relation to non-performance, so that it can take a more active role in monitoring and regulating the electricity distribution industry in Victoria’.*

Recommendation 34 of the 2009 Bushfire Royal Commission was that:

*“The State amend the regulatory framework for electricity safety to strengthen Energy Safe Victoria’s mandate in relation to the prevention and mitigation of electricity-caused bushfires and to require it to fulfil that mandate.”*

Subsequently, in 2018 the Grimes Review (‘Independent Review of Victoria’s Electricity and Gas Network Safety Framework’) also made important recommendations in relation to ESV. Recommendations 6, 7, 8, 9, 11 and 42 concerned strengthening ESV’s capability and preparedness to take strong regulatory action.

For example, Recommendation 9 of the Grimes Report was that ESV should implement the more robust approach to regulatory compliance and enforcement outlined in its Corporate Plan 2017-2020.

In the Government Response to the Grimes Review dated August 2018, the Victorian Government states on page 1 that steps will be taken to progress the recommendations ‘including strengthening ESV’s capability and preparedness to take strong regulatory action’.

Kingston & District Power Alliance is concerned that the draft Report demonstrates that despite the Royal Commission and the Grimes Review, ESV remains slow, weak and lacking in confidence. There is no evidence that ESV is implementing a more robust approach to regulatory compliance.

The failure to apply any sanction on AusNet (despite suggesting changes to the management practices are needed) indicates that ESV is not prepared to take strong regulatory action.

Further, ESV failed to ask the fundamental question: what business decision resulted in AusNet introducing significant changes which had the potential to increase network safety risk? Why is there no adverse comment about the poor quality of the decision-making process that resulted in this outcome? The community is entitled to expect that ESV will ask the tough questions on its behalf.

Kingston & District Power Alliance is concerned that the same problem was evident with the weak investigation carried out by ESV into the Cressy Tower collapse. ESV adopted a passive role, when a proactive approach was needed. It failed to ask AusNet the fundamental question about whether compliance with AS/NZS 7000 will deliver a reliable outcome for transmission towers built in locations that experience severe wind. Instead, the investigation report merely hints that ESV is concerned about whether AS/NZS 7000 will

deliver a fit for purpose outcome and says it will monitor the situation. In other words, ESV will wait until another tower collapses.

It is time for the ESV to fulfil its role and to hold electricity companies to account on electricity safety.

We have copied this letter to the Minister for Energy, Environment and Climate Change, the Shadow Minister and the Shire of Hepburn.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CC' followed by a flourish.

**Chair  
Kingston & District Power Alliance**