



THE TREES (ELECTRIC LINES) REGULATIONS 1986

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 28th day of October 1986

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Electricity Act 1968, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

- 1. Title and commencement
- 2. Interpretation
- 3. Regulations to bind the Crown

PART I

ARBITRATORS

- 4. Appointment of arbitrators
- 5. Functions, duties, and powers of arbitrators
- 6. Decisions of arbitrators
- 7. Proceedings of arbitrators
- 8. Evidence

- 9. Arbitrator may act on evidence available
- 10. Rehearing
- 11. Remuneration of arbitrators
- 12. Protection of arbitrators
- 13. Offences

PART II

CONTROL OF SHELTER-BELT TREES

- 14. Construction of lines
- 15. Maintenance of lines
- 16. Determination of disputes by Arbitrators

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Trees (Electric Lines) Regulations 1986.

(2) These regulations shall come into force on the 10th day of November 1986.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Act” means the Electricity Act 1968:

“Arbitrator” means an arbitrator appointed pursuant to regulation 4 of these regulations; and includes an alternate arbitrator appointed pursuant to regulation 5 of these regulations:

“Code of Practice for Shelter-belt Trees” means the electrical code of practice known as the Electrical Code of Practice for Shelter-belt Trees Close to Overhead Electric Lines 1986 issued by the Secretary of Energy on the 21st day of October 1986:

“Electric line” and “line” have the same meanings as in the Act:

“Electrical Supply Authority” has the same meaning as in the Act:

“Electric Supply Line” means an overhead distribution line operated at any voltage of 33 000 volts or less:

“Minister” means the Minister of Energy:

“Nominated address”, in relation to an arbitrator, means the address nominated by the arbitrator as being the place where the arbitrator can be contacted for the purposes of these regulations:

“Shelter-belt tree” means any tree or vegetation forming part of a group of trees or vegetation providing, in part or in whole, shelter for any existing or proposed horticultural use of the land adjacent to the tree or vegetation:

“Tree owner”, in relation to a shelter-belt tree, means a person who is an owner or lessee of the land on which the tree is planted; and includes a person who is an authorised agent of such an owner or lessee for the purposes of these regulations:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year, and ending with the 2nd day of January in the following year.

3. Regulations to bind the Crown—These regulations shall bind the Crown.

PART I

ARBITRATORS

4. Appointment of arbitrators—(1) The Minister may from time to time, by notice in the *Gazette*, appoint—

(a) Such persons as the Minister considers are, by reason of their special knowledge or experience, fit to act as arbitrators for the purposes of these regulations; and

(b) Such persons as the Minister considers are, by reason of their special knowledge or experience, fit to act as alternate arbitrators for arbitrators specified in the notice during any periods when those arbitrators are unable for any reason to perform their functions and duties under these regulations.

(2) Subject to subclause (3) of this regulation, every person appointed as an arbitrator or alternate arbitrator shall hold office for such term (not being less than 12 months) as is specified in the notice of appointment, and may be reappointed by the Minister from time to time.

(3) An arbitrator or alternate arbitrator may at any time be removed from office by the Minister, by notice in the *Gazette*, for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign office by written notice to the Minister.

(4) An arbitrator or alternate arbitrator may at any time hold any other office or engage in any other employment or calling unless the Minister considers that the proper discharge of the functions of an arbitrator will be impaired thereby.

(5) An alternate arbitrator shall, while he or she acts as such, be deemed to be the arbitrator in whose place he or she acts.

(6) No appointment of an alternate arbitrator and no act done by him or her as such shall in any proceedings be questioned on the ground that the occasion for his or her appointment had not arisen or had ceased.

(7) No person appointed as an arbitrator or alternate arbitrator under this regulation shall, by virtue of that appointment, be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956.

(8) An arbitrator or alternate arbitrator, while acting as such, is an employee employed by the Crown for the purposes of the Accident Compensation Act 1982.

5. Functions, duties, and powers of arbitrators—(1) The functions of an arbitrator shall be to—

(a) Hear and determine disputes between tree owners and Electrical Supply Authorities or other persons referred to the arbitrator pursuant to these regulations; and

(b) Perform the functions and duties conferred or imposed on arbitrators pursuant to these regulations.

(2) Nothing in the Act or these regulations shall oblige an arbitrator to hear or determine a matter or perform any other function or duty if the arbitrator considers that he or she is unable to properly perform that function or duty.

(3) An arbitrator shall determine a dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

(4) Without limiting any other provision of these regulations, an arbitrator shall have all such powers as are reasonably necessary or expedient to enable the arbitrator to carry out his or her functions and duties.

(5) Nothing in the Arbitration Act 1908 shall apply to an arbitrator or in respect of disputes referred to an arbitrator.

6. Decisions of arbitrators—(1) An arbitrator may determine a dispute by making such decision in respect of the shelter-belt tree that is the subject of the dispute as the arbitrator thinks fit and any such decision may be made on such terms and conditions as the arbitrator thinks fit.

(2) An arbitrator shall not have any power to order any person to perform, or refrain from performing, any act or to undertake, or refrain from undertaking, any obligation.

7. Proceedings of arbitrators—(1) An application for the determination of a dispute by an arbitrator shall be made in writing to an appropriate arbitrator within the time prescribed in these regulations.

(2) An appropriate arbitrator for the purpose of subclause (1) of this regulation is the arbitrator whose nominated address is nearest by the most practicable route to the place where the applicant resides:

Provided that—

(a) Where the difference in the respective distances from the applicant's residence to the nominated addresses of 2 or more arbitrators is not more than 30 kilometres, each of those arbitrators shall be an appropriate arbitrator to whom the applicant may apply; and

(b) If an arbitrator declines to hear or determine a dispute pursuant to regulation 5 (2) of these regulations, he or she shall be disregarded in determining who is an appropriate arbitrator for that dispute.

(3) Forthwith after accepting an application to determine a dispute an arbitrator shall—

(a) Decide who are the parties to the dispute and notify them of the application; and

(b) Subject to regulation 9 of these regulations, hear every party who wishes to be heard.

(4) All hearings and other proceedings by an arbitrator shall be conducted in private.

(5) Subject to these regulations, an arbitrator shall adopt such procedure as he or she thinks best suited to the ends of justice.

(6) An arbitrator shall use his or her best endeavours to determine a dispute within 10 working days of receipt by the arbitrator of the application relating to the dispute made in accordance with subclause (1) of this regulation.

(7) Forthwith after determining a dispute, an arbitrator shall send or give written notice of the determination to all parties to the dispute.

(8) No proceedings or order or other document of an arbitrator shall be set aside or quashed for want of form.

8. Evidence—(1) Evidence tendered to an arbitrator need not be given on oath unless the arbitrator otherwise determines in respect of any particular evidence.

(2) An arbitrator may, on his or her own initiative, seek and receive such other evidence and make such other investigations and enquiries as he or she thinks fit.

(3) An arbitrator may receive and take into account any relevant evidence or information, whether or not the same would normally be admissible in a Court of law.

9. Arbitrator may act on evidence available—(1) Where the case of any party is not presented to an arbitrator, after reasonable opportunity has been given to the party to do so, the dispute may be resolved by the arbitrator on such evidence or information as is before him or her, including that obtained pursuant to regulation 8 (2) of these regulations.

(2) No determination made by an arbitrator in the circumstances described in subclause (1) of this regulation shall be challenged on the ground that the case of the party was not presented to the arbitrator, but the party may apply for a rehearing under regulation 10 of these regulations on the ground that there was sufficient reason for the failure to present the case.

10. Rehearing—(1) A party to a dispute that has been determined by an arbitrator may, by written notice delivered to the arbitrator within 3 working days of receipt by the party of the notice given pursuant to regulation 7 (7) of these regulations, apply for a rehearing of the dispute.

(2) An arbitrator may rehear a dispute that has been determined by him or her and on such terms and conditions as he or she thinks fit, but is not obliged to do so.

(3) Regulations 7 (3) to (7), 8, and 9 of these regulations shall apply to the rehearing of a dispute as if it were an original hearing of the dispute.

(4) If an arbitrator agrees to rehear a dispute any determination made by the arbitrator on the original hearing of the dispute shall cease to have effect.

11. Remuneration of arbitrators—There shall be paid to every arbitrator, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, and allowances (including travelling allowances and expenses) in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if an arbitrator or alternate arbitrator were a member of a statutory Board within the meaning of that Act.

12. Protection of arbitrators—(1) An arbitrator in the performance of his or her functions or duties under these regulations shall have and enjoy the same protection as a Justice of the Peace acting in his or her criminal jurisdiction has and enjoys under Part VII of the Summary Proceedings Act 1957.

(2) For the avoidance of doubt as to the privileges and immunities of arbitrators, parties to disputes referred to an arbitrator and witnesses in the proceedings of an arbitrator, it is declared that such proceedings are judicial proceedings.

(3) The privileges and immunities referred to in subclause (2) of this regulation shall extend and apply to—

(a) An arbitrator acting under regulation 8 (2) of these regulations; and

- (b) A person who gives information, or makes any statement, to an arbitrator on any such occasion.

13. Offences—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who deceives or attempts to deceive or knowingly misleads an arbitrator acting in the performance of his or her functions or duties under these regulations.

PART II

CONTROL OF SHELTER-BELT TREES

14. Construction of lines—(1) Every Electrical Supply Authority that proposes to construct an electric line adjacent to existing shelter-belt trees, or has reason to believe that shelter-belt trees may be planted adjacent to the route of a proposed electric line, shall—

- (a) Use its best endeavours to notify the owners of the land on which the trees are or are to be planted of the provisions of the Code of Practice for Shelter-belt Trees and its intention to construct an electric line; and
- (b) Consider any submissions made to it by any one or more of those owners before construction commences.

(2) An Electrical Supply Authority that proposes to construct an electric line shall, in determining the route of the line, consider along with other relevant factors the route (including, where applicable, the side of the road) which will cause least interference with any existing or proposed shelter-belt trees.

(3) Where an Electrical Supply Authority constructs an electric supply line adjacent to an existing shelter-belt tree and that shelter-belt tree does not comply with the Code of Practice for Shelter-belt Trees at the time of construction of the electric supply line, the Electrical Supply Authority shall meet the reasonable cost of the first cut or trim necessary so that the shelter-belt tree complies with the Code of Practice for Shelter-belt Trees:

Provided that this subclause shall not apply to the reconstruction of an existing electric supply line on the same route.

15. Maintenance of lines—(1) Every Electrical Supply Authority and tree owner shall comply with those provisions of the Code of Practice for Shelter-belt Trees that set or endorse standards, controls, or requirements for any tree or vegetation to prevent the interruption of the supply of electricity or interference with the electrical supply system.

(2) The tree owner shall bear such direct costs for all work necessary to cut or trim trees to comply with the Code of Practice for Shelter-belt Trees, except as provided in regulation 14 (3) of these regulations. The direct costs may include the costs of ensuring that the cutting or trimming work is carried out safely and the costs of remedying damage to the electric supply line:

Provided that for the first cutting or trimming of a shelter-belt tree or trees within 12 months of the date of coming into force of the Electrical Code of Practice for Shelter-belt Trees, the Electrical Supply Authority shall during normal working hours carry out any isolation or earthing operation necessary free of charge.

(3) If a tree owner fails to comply with a notice to cut or trim shelter-belt trees served on the tree owner by an Electrical Supply Authority pursuant to the Code of Practice for Shelter-belt Trees and such failure continues for more than 10 working days after the service of the notice (or, where the matter has been referred to an arbitrator who has decided that the tree should be cut or trimmed, for more than 10 working days after the arbitrator so decides) the Electrical Supply Authority may cut or trim the trees or arrange for them to be cut or trimmed, in accordance with the notice or the decision of the arbitrator, as the case may be.

16. Determination of disputes by arbitrators—(1) Whenever there is a dispute between a tree owner and an Electrical Supply Authority as to the interpretation or application of the Code of Practice for Shelter-belt Trees, either the tree owner or the Electrical Supply Authority may apply to an arbitrator under regulation 7 of these regulations to determine the dispute.

(2) Where the dispute arises out of a notice served by an Electrical Supply Authority requiring a tree owner to cut or trim shelter-belt trees in accordance with the Code of Practice for Shelter-belt Trees, an application to an arbitrator must be made within 10 working days of the date of service of the notice on the tree owner or such longer period as is agreed between the Electrical Supply Authority and the tree owner.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

These regulations, which come into force on 10 November 1986, provide for the control of shelter-belt trees adjacent to any proposed electric line.

It provides for the enforcement of the Code of Practice for Shelter-belt Trees and enables an Electrical Supply Authority to give notice under the Code of Practice to the owner of shelter-belt trees to cut or trim the trees.

An arbitration system is also set up to deal with any disputes arising out of the interpretation or application of the Code of Practice or out of any notice under the Code of Practice to cut or trim trees.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 30 October 1986.

These regulations are administered in the Ministry of Energy.