

10 March 2023

Essential Services Commission
Level 8/570 Bourke St
Melbourne VIC 3000

Lodged online via [Engage Victoria](#)

Dear Sir/Madam

Response to Making a Land Access Code of Practice Consultation Paper

AEMO welcomes the opportunity to provide feedback on the Essential Services Commission's Making a Land Access Code of Practice Consultation Paper. AEMO is acutely aware of the importance of effective engagement with landholders by transmission companies when accessing privately-owned land.

The Australian Energy Market Operator (AEMO) is an independent organisation responsible for managing the operation and planning of Australia's energy markets. AEMO operates the National Electricity Market, which spans the eastern and south-eastern states of Australia and the Australian Capital Territory.

AEMO's role is to ensure that energy is reliably supplied to consumers at a stable and competitive price. This involves forecasting energy demand, managing the dispatch of electricity, and coordinating the connection of new generators and customers to the grid.

In addition to its operational role, AEMO also plays a key role in shaping the future of Australia's energy system. It provides advice and analysis to governments, industry and consumers on issues such as renewable energy integration, grid stability and security and energy market reform.

Further, Transmission Company Victoria, a wholly owned subsidiary of AEMO, is undertaking an early works program for the Victorian portion of the Victoria – New South Wales Interconnector (VNI) West project which has particular relevance to land access matters.

General comments on a Land Access Code of Practice

AEMO's staff and contractors have significant experience (from prior roles) with landholder negotiations for access and easements for linear infrastructure under the Victorian *Pipelines Act 2005 (the Pipelines Act)* and its associated regulations.

The *Pipelines Act* sets out formal mechanisms for accessing land and securing land tenure, including prescriptive notices that are required at various stages of a project. Some of these notices are required to be issued to all landholders, regardless of whether land will be accessed voluntarily or under the powers of the *Pipelines Act*.

These mechanisms provide clarity to landholders with respect to the stage the project is at and the obligations of both the proponent and landholders.

Some of these mechanisms deal with issues outside the equivalent scope of section 93 of the *Electricity Industry Act* but, none the less, they may be useful in providing clarity to all parties in the development of electricity transmission lines.



Key mechanisms under the *Pipelines Act* that could be replicated for electricity transmission lines include:

- The development of a Consultation Plan which is approved by the Regulator prior to issuing a notice of intention to enter land for survey to all landholders. Consultation Plans under the *Pipelines Act* must be publicly available and detail the proponent's commitments to engagement with impacted landholders.
- Prescribed notices with relevant timelines for provision with respect to an electricity transmission line. These could include:
 - Notice of intention to enter land for survey
 - Notice of electricity powerline corridor
 - Publishing of a transmission licence application (if submitted after engagement with landholders has commenced)
 - Notice of issue of a transmission licence (if granted after engagement with landholders has commenced)
 - Notice of lodgement of an Environment Effects Statement for an electricity powerline

AEMO believes adopting these processes in the Land Access Code, or a broader framework, would provide additional transparency to landholders and better clarity for both electricity transmission companies and landholders on the mechanisms for land access and landholder engagement.

Responses to Stakeholder questions

- 1. Do the principles in the Electricity Transmission Company Land Access Statement of Expectations (at Appendix B) provide an appropriate basis for enforceable obligations in a Land Access Code of Practice? If not, why not?**

AEMO believes the principles in the Electricity Transmission Company Land Access Statement of Expectations provide an appropriate basis for enforceable obligations.

The Statement of Expectations is a robust and rigorous document that deals with all relevant topics that should be considered as part of access to land, including under section 93.

However, AEMO does see value in placing additional mechanisms in place to clarify how access under section 93 is communicated to landholders, specifically by prescribing the form of a notice of access.

Additionally, as outlined above, showing compliance with an approved Consultation Plan - similar to that required by the *Pipelines Act* - prior to any use of section 93 powers, could also be beneficial.

- 2. Is the scope of the Electricity Transmission Company Land Access Statement of Expectations – applying to electricity transmission companies seeking to access land for new greenfields transmission projects – appropriate? Should other activities related to private land access undertaken by an electricity transmission company under section 93 of the Electricity Industry Act 2000 be included in the code?**

AEMO believes that in their current form, the Statement of Expectations is appropriate for access in relation to greenfield transmission projects and would be appropriate for brownfields upgrades where the activities being undertaken are similar in nature to those undertaken when planning a greenfields transmission project – such as undertaking surveys and investigation activities on landholders' properties.

Activities undertaken by electricity transmission companies for operations and maintenance, and for brownfield upgrades where the activities are not similar in nature to planning for a greenfield transmission project – such as upgrading an existing tower while not altering the footprint of the

tower – should not be included in the Code as these are substantially different and, in many cases, would be governed by rights under the easements where the existing assets are located.

However, it may be that some elements of the Statement of Expectations would be good practice, for example, provision of identification by those entering a landholder's property where an easement exists, even though the rights of the easement allow access without such identification and, ensuring that complaints handling and dispute resolution processes are in place.

3. How has your experience with land access been following the release of the Electricity Transmission Company Land Access Statement of Expectations? Are there any issues you have experienced that could be further addressed in a code of practice with enforceable obligations?

AEMO's experience with land access since the release of the Statement of Expectations has primarily been with respect to its role for the Western Renewables Link. An issue that has been experienced on the Western Renewables Link is, while the requirements of AusNet as a Transmission Company are clear and mechanisms exist to ensure these are met, it is unclear whether there is any mechanism to progress access, should a landholder not be willing to meet their requirements under section 3 of the Statement of Expectations.

A clear process should be included within the Code, detailing next steps in the event that a landholder continues to resist access when a transmission company seeks to access land under section 93.

3.1 What do you consider are the most important problems that need to be addressed when electricity transmission companies access land under section 93 of the Electricity Industry Act 2000?

AEMO believes that the most important issues are addressed in the Statement of Expectations and that, at a functional level, the most important issue to be addressed is ensuring that there are documented processes and prescribed notice formats for access under section 93 so that both electricity transmission companies and landholders have clarity on how access under section 93 is undertaken in a practical sense. That is, what will an electricity transmission company have to provide to landholders and by when in order to access land under section 93.

This approach of consistency and clarity of process has been successfully undertaken in the *Pipelines Act*.

It is important to note that section 93 is extremely powerful and that these powers, with respect to greenfields electricity transmission lines, should be a last resort and not a first resort for seeking access to private land. These powers should not be used as a way to abrogate electricity transmission companies' responsibility to first undertake genuine and meaningful engagement to seek access to private land.

3.2 What other options do you think the commission could consider in addressing the identified problems related to land access under section 93 of the Electricity Industry Act 2000? Are there alternative elements to consider within the code? What are the costs and benefits of those alternatives?

As outlined earlier in this response, further prescription of the form of notices to use when accessing land under section 93 would provide consistency and clarity to all parties.

Additionally, consideration of a formal and approved Consultation Plan that is publicly available could aid in the enhancement of engagement with landholders and increased clarity of how access, both voluntary and under section 93, would be approached and obtained.

3.3 Are there any elements of the Electricity Transmission Company Land Access Statement of Expectations that should be clarified in a Land Access Code of Practice?

AEMO believes that there should be further clarification of dispute resolution mechanisms in a Land Access Code. This should clarify how the various dispute resolution options should be approached, for example, the use of Energy and Water Ombudsman Victoria (EWOV) or the Australian Energy Infrastructure Commissioner (AEIC) or other third-party dispute resolution services. Clarity should also be provided as to the third-party dispute resolution bodies suggested to be included in voluntary access agreements.

Other opportunities for clarity include further defining what 'timely' in Expectation 2 may mean with respect to provision of information to landholders as there may be many different views as to what constitutes 'timely'.

With respect to Expectation 6, further definition on how far 'diligent and comprehensive efforts' in identifying landholders should extend would be useful to guide electricity transmission companies when the usual methods of identification have been exhausted.

With respect to Expectation 12, guidance on the definition of 'reasonable' periods of notice for land without voluntary access agreements would be of value.

4. What obligations do you think are needed to cater for the specific needs of private land (such as, and including, biosecurity protections and processes)?

AEMO believes that the specific needs of private landholders are best catered for in clearly documented access agreements that are agreed on a voluntary basis. Voluntary agreements best allow for the specific needs of each landholder to be adequately documented and addressed.

These voluntary agreements should, for any given project, have a standard form that the electricity transmission company and landholder negotiate, agree to and sign. At a minimum, these documents should include:

- The details of the property subject to the agreement
- The area of land to be accessed (if smaller than the entire property)
- The background of the project and an outline of the proposed infrastructure
- Access commitments made by the proponent (such as commitments to reinstate any land that is disturbed)
- Landholder requirements for access routes, biosecurity measures, access hours, etc.
- Agreed notice periods for entry
- Insurance/indemnity provisions
- Length of the agreement
- Description of activities proposed to be carried out
- Any agreed compensation
- Project contact point

Where voluntary access is not able to be agreed, an electricity transmission company should establish a base set of conditions that address the needs of landholders that cover areas such as:

- Biosecurity measures
- Minimum notice periods prior to entry
- Steps to minimise impacts including utilising existing access tracks, where possible
- Expected timeframe for access
- Reinstatement obligations

Additionally, where voluntary access is not agreed and land is being accessed under section 93, there should be an obligation on electricity transmission companies to consider the land-use when

preparing to access land as this may inform additional biosecurity measures that should be enacted.

- 5. Compared to the principles set out in the Electricity Transmission Company Land Access Statement of Expectations, should the Land Access Code of Practice have more prescriptive obligations about the time provided to landowners prior to accessing land, the transparency of processes when accessing land, or level of flexibility on the time to access land? If so, what specifically should be required of electricity transmission companies? What are the benefits and costs of having more prescriptive requirements?**

As previously outlined, it would be highly beneficial to consider the framework set out in the *Pipelines Act* regarding consultation and prescribed notifications to impacted landholders. This would provide clarity and transparency to impacted landholders of the required process and obligations of the proponent.

With respect to the time provided prior to access to land when using powers under section 93, a more prescriptive definition would be useful to ensure that the expectations of both electricity transmission companies and landholders are aligned. If prescriptive guidance is provided for this notice period, neither group will be able to suggest that the expectation of the other is unrealistic. These prescriptive definitions should not be required in any voluntary agreements as timelines should be negotiated to reflect suitable timeframes for both parties.

The benefit of more prescriptive requirements is the clarity provided to all parties involved while the cost is the reduced flexibility for all parties. These must be carefully weighed, and as discussed, prescriptive requirements should not extend to voluntary agreements.

- 6. The Energy and Water Ombudsman (Victoria) (EWOV) is the current complaints dispute resolution body for the resolution of disputes involving electricity transmission companies under the statement of expectations. Are there other options for complaint handling that we should consider as we develop the code of practice? What would be the costs and benefits of those options?**

As outlined earlier, AEMO believes that further clarity should be provided to the roles of various dispute resolution options proposed, for example, the use of EWOV versus the AEIC versus other third-party dispute resolution services.

The key benefit would be to provide clarity to enable all parties to identify the appropriate body for the relevant situation.

AEMO believes that complaint handling should remain with the electricity transmission companies and be in-line with the statement of expectations, with only dispute resolution being escalated outside of the electricity transmission company.

- 7. Is there anything else you want us to consider when drafting the Land Access Code of Practice?**

The ESC should consider if it is feasible to provide reasonable obligations for landholders when drafting the Code of Practice. These should not be onerous but should provide for the safety and security of those accessing the land under section 93.

These could include obligations to treat those accessing the land in a respectful way and detail that physical and verbal threats are not appropriate. Further, that a landholder should take reasonable steps to ensure that the property is safe for entry if they are notified the land will be accessed under section 93, including advising those entering it of any hazards they should be aware of.

Likewise, obligations should apply for those accessing the land to treat landholders in a respectful way and ensure that access to the property is undertaken in a safe and considerate manner, including, but not limited to:

- Ensuring that all reasonable access requirements communicated by the landholder, including their preferred windows of time for access, are understood and adhered to
- Providing adequate notice for any access to property as well as the expected duration of that access
- Ensuring that the purpose of the access is well understood by the landholder
- Minimising disruption to business to the extent possible, and respecting landholders' time
- In the event of a dispute, that the mechanism for resolution is understood by both those accessing land and the landholder

AEMO thanks the ESC for its work in the development of the Statement of Expectations and for the opportunity to provide comment on Making a Land Access Code of Practice and looks forward to being able to provide comment on the draft Land Access Code of Practice at the appropriate time.

Should you have any questions regarding this submission, please do not hesitate to contact Ben Schneider, Specialist – Land, Planning and Environment, on [REDACTED]



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