

Essential Services Commission
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6 March 2023

RE: Making a Land Access Code of Practice: Consultation paper

Thank you for the opportunity to provide comments as part of the ESC's consultation to develop a draft Land Access Code of Practice for transmission companies.

The VFF previously prepared a submission to the consultation on the ESC's Statement of Expectations and firmly believes an independent and enforceable code is required for all transmission and distribution network service providers in accordance with the VFF's Managing Entry to Farm policy statement.

The VFF is concerned that in the case of existing transmission infrastructure, landowners have been treated unfairly and that the current arrangements for land access do not reflect the situation they were led to believe would be the case at the time of the infrastructure's development.

The ambiguity around land access rules has significantly disrupted farming operations and food and fibre production. As farming practices evolve, the interaction with transmission infrastructure becomes more complex and there becomes an increasing need for clear, transparent and fair rules to allow farmers to continue their operations and be fairly compensated.

This is a prescient point given the new transmission developments which have been identified for construction across the state. It is therefore vital that a clear and enforceable Code of Practice is implemented and applies to the whole lifecycle of transmission development (preconstruction, construction, operation and decommissioning). It must clearly explain key concepts and be supported by guidance notes to landholders and energy companies.

This submission sets forward a number of recommendations to the ESC that will aid in the development of a fair access code that is responsive to the needs of farm business operators. It should be read in tandem with the VFF's Managing Entry to Farm policy statement which has been appended. Further enquiries regarding the VFF's position should be emailed to

Yours faithfully,

Gerald Leach
Chair
VFF Planning, Environment and Climate Change Committee

Recommendations

Recommendation 1

That the Access Code be applied to all stages of the transmission development life cycle (preconstruction, construction, operation and decommissioning) in accordance with Section 93 of the *Electricity Industry Act 2000* (the Act).

Recommendation 2

That the ESC develops a survey to ascertain the current knowledge surrounding the requirements that transmission companies have over access to easements, whether companies provide contact details to landholders, including policies on providing notices and compensation.

Recommendation 3

That the Access code clearly explains what ‘constructing, maintaining, altering, or using any works or undertakings of’ means in the context of s93(2) of the Act, being ‘*In the exercise of the powers under subsection (1), an electricity corporation must do as little damage as may be and, must, if required within 2 years from the exercise of the powers, make full compensation to the owner of and all parties interested in any land for any damage sustained by them in consequence of the exercise of the powers.*’

This should include, but is not limited to:

- How to determine ‘as little damage as may be’, noting that the impact will vary by site, including soils, weather, season, time of impact and production system.
- How to understand when compensation is required.
- How to document damage sustained and how to ensure full compensation is achieved.
- To ensure the review of the code to ensure compliance with regulatory change.
- Information for non farmers on the potential risks and consequences of common s93(1)(e) actions on different projection systems

A process should be initiated to establish what actions have been undertaken since the enactment of the Act and how restitution for the exercise of powers outside the regulatory safeguards can be made.

Recommendation 4

That the ESC consider the minimum standards relating to land access, compensation and rehabilitation in the *Mineral Resources (Sustainable Development) Act* so that it can recommend to the Victorian Government to undertake legislative reform to ensure that the *Electricity Industries Act* does not confer powers that would cause harm to private property without compensation.

Recommendation 5

That the ESC hold a series of workshops with the VFF to discuss the actions needed in transforming the Statement of Expectations into a code that fully addresses Section 93 of the Act and how they can best be progressed.

Transmission infrastructure and land access concerns – Moorabool-Portland Transmission Line Case Study

In order to understand the impact of transmission developments on farming businesses, the VFF has consulted members that are located on the existing Moorabool-Portland Transmission Line. The 500 KV powerline has been in operation for just over forty years. The project went through an Environmental Effects Study process where landholders raised many issues from fire danger to loss of television signal. Despite assurances by the SEC and the Minister prior to development, many of the foreshadowed impacts eventuated. For example, television signal was lost requiring high aerial masts to be installed at the landholders' cost.

Landowners report confusion over what they can and can't do on their land. They report that it is not clear who they can discuss issues with, or where they can access clear information about what activities can occur on the easement. When questions are asked, the response is not to refer them to a document or provide them a contact person, or how they can appeal the action - they are just told they have no rights to even ask the question.

The physical constraints that arise from transmission towers directly impact farm operations. The concrete visible at the surface is a maximum one-metre-deep column that ties into a 30m x 30m x 15m (deep) concrete slab. The construction of this requires significant earth works and compaction around the pylon and for wider than the 30 metre easement. This often mixes top and sub soil layers with road base material and is compacted, resulting in a decrease of soil quality and productivity. The 30m x 30m area over the slab does not allow for deep rooted crops and impacts on drainage so that soil becomes waterlogged. Taking into account the impact around the slab and the area impacted by earthing it is estimated that this could equate to 15.5 tonne of potato production per transmission pylon per annum. This equates to a \$7,500 production loss each year based on current prices.

The VFF spoke to landholders in the vicinity of the failed pylons. No landholder had the contact details to report issues to the company, including what seemed to be new cracks at the base of a pylon. They did not have a copy of any material regarding processes and protocols. Several reported that Ausnet staff were found on site nowhere near the easement and without having phoned as required under the farm's biosecurity management plan per the biosecurity signs on the site. When there is damage to a pylon all roadworks are then repeated on site. The existing subsurface works are not rehabilitated and the pylon moved so that the area above a slab of concrete is then 30 metres x 60 metres.

Other issues raised with the VFF include gates put in by the transmission company to access the powerline being located 30 to 50 metres away from the easement and where complaints were made about land access issues on the Portland line, they were responded to as a Western Renewables Link complaint.

When the transmission network was operated by the SEC they stated in writing that there would be very little impact on operations, and compensation would reflect that. Since this time there are many additional and unforeseen impacts on operation and how farms operate. Often as a result of changes to state and federal regulatory arrangements. For example, a requirement for a vendor declaration arose in 2017 under federal legislation on selling livestock. It is clear that what landholders can and can't do on their land has changed without their involvement or knowledge.

It is clear that privatised companies are unaware of the commitments made to landholders regarding how the land would be accessed and that in the nearly 45 years since, the regulatory requirements, including food safety and biosecurity, have increased the importance of appropriate land access arrangements to farmers.

General impacts on farming operations

Occupational Health and Safety

Farms are workplaces and farm businesses are required to comply with OH&S laws. All visitors to a farm should be inducted in any relevant OH&S procedures. Similarly, farm businesses must understand all safety related procedures concerning transmission lines to ensure all workers and visitors comply with the relevant procedures.

Crop damage

Vehicle movements on and off farm causes damage to crops. Emergency access can cause high impact and not planned to avoid impact on production.

Biosecurity

Biosecurity is a complex issue that is regulated by multiple statutes at state and federal levels. In the agricultural context, biosecurity relates to the procedures and measures designed to protect plants and livestock from harmful diseases, or to protect the farm from the introduction of pest plants and animals.

Failure to consider biosecurity risks can have a devastating impact on farming operations. Farmers have biosecurity plans that respond to the risks at their location and for their production system. That means the nature of biosecurity varies between farms. Simple and effective measures are often taken on farm to limit biosecurity risks such as logging all visitors, washing down vehicles

The understanding of harm can be complex. Impacts can sometimes be readily seen such as damage to a crop, or may emerge over time such as weeds and disease. The Access Code needs to assist in ensuring that these impacts can be documented and compensated for.

Responses to questions for stakeholders

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?

The Statement of Expectations document is not an appropriate basis for an enforceable Land Access Code of Practice as it specifically focuses on the pre-acquisition and pre-construction stages of development where the great majority of impacts are theoretical. It therefore limits considerations such as safety, impacts on farm production and biosecurity to those related to temporary low impact access.

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?

For the reasons above the scope of applying the access code to greenfields transmission projects is not appropriate and is much narrower than what is covered under Section 93 of the Act.

As the provisions of Section 93 are not limited to the pre-construction stage of transmission projects or new projects any code in relation to the section should address the section as a whole.

It is clear that since Section 93 was introduced no company has sought to comply with it, or inform landholders of the rights and obligations it confers.

It is premature to seek landholder feedback on this question when they do not have the information required to be able to make that assessment.

As Section 93 seeks to minimise impacts, and provide compensation where they cannot be avoided, then it is critical that a code ensures both the landholder and the companies understand the operational context, the consequences of actions and how to ensure compliance with a broad range of regulatory objectives. The only way this can be achieved is a survey of all existing landholders with a transmission or distribution easement on their land, accompanied by a current information pack on the operational restrictions relating to the transmission easement.

The survey should be sent to every landholder along transmission routes and be accompanied by the relevant set of rules or procedures that the transmission company applies to the easement. This survey will provide landholders with the ability to outline what impacts these rules will have on their operations so that they can ensure the final code is meaningful, legible, fair and enforceable. Local government should be in a position to send out this information if requested to do so or the ESC can undertake a title search for each property.

Section 93 relates to the powers as to what would be known as works in other statutes. Planning for greenfield sites is not specifically mentioned in the Section 1 (e) which states the easement holder / company ‘*may do all other things necessary or convenient for constructing, maintaining, altering, or using any works or undertakings of, or under the control of, the electricity corporation.*’

Surveying and route selection activities are necessary for the ability to construct a transmission line. If the legislators deemed these safeguards were only relevant to site section / pre construction the terms construction, maintaining and altering would not be required.

This is a critical concept as these powers are not conferred lightly or without safeguards. It is clear that the legislation expected there to be rules guiding access and an acknowledgement that further compensation / restitution may be required as a consequence of actions taken. If this was not the case then section 93(2) would not be required.

93 (2) In the exercise of the powers under subsection (1), an electricity corporation must do as little damage as may be and, must, if required within 2 years from the exercise of the powers, make full compensation to the owner of and all parties interested in any land for any damage sustained by them in consequence of the exercise of the powers.

Section 93(2) clearly places restrictions on the actions that a company can take and the obligation to make good any harm caused from those actions. It is disappointing that transmission companies have not been open and transparent with landholders who question the way works are undertaken and outline the negative impact this has on their business.

It is imperative that the Essential Services Commission acts to ensure companies are meeting their legislative requirements and that landholders have the information required to ensure these statutory safeguards to protect their Human Rights are delivered.

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?

- 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?*
- 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?*
- 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?*

The Statement of Expectations has been limited in its use due to the failure to address section 93 in full. This submission has provided examples of the most important issues to be addressed under the existing provisions. It is not fair nor appropriate for landholders to calculate the costs and benefits of alternatives. It is appropriate for them to be fully informed so that they can raise issues for consideration in a cost / benefit analysis that is guided by the clear principles under s93(2). In lay terms, the cost of an action should be borne by the transmission company, not transferred onto a private individual. This submission has made recommendations in relation to what the code needs to clarify and where guidance notes or fact sheets may be required to assist compliance.

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

We refer the ESC to the VFF's [Managing Entry to Farm Policy Statement](#) which outlines the specific needs to be considered in relation to farmland.

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?

There should be a much broader range of considerations, minimum standards to be met where there is no access agreement, and a requirement to enter into access agreements that may have specific requirements relating to other regulatory and operational considerations.

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?

The VFF supports a similar approach to the one occurring in New South Wales where there is an agricultural commissioner who oversees a process to understand the impacts of decisions on agriculture and to help ensure that bodies providing oversight and compliance are well versed in understanding the issues, risks and consequences.

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

The only current statute that provides a decent understanding of land access issues is the *Mineral Resources (Sustainable Development) Act*. While the VFF acknowledges that many improvements can be made, it does consider the impacts of access, matters of compensation and the need to ensure rehabilitation.

Victoria did not always have these safeguards. They were developed over time, and often as a consequence of the end-of-life impacts that were not adequately considered with mining developments. A member of parliament once said that rehabilitation was not needed as there wasn't a big hole in the ground. While that is not an informed understanding of the nature of impacts and the need for rehabilitation, it also shows that decision makers do not know that a 35 x 35 x 22 (deep) metre hole in the ground would need to be jack hammered or blasted to remove the footings of each pylon. That would require the construction of roads to remove the overburden and to return soil to match the soil profile of the property.

Comments regarding how the code must address Section 93 of the Act

The table below is a brief translation of the issues raised in this submission and the VFF's Managing Entry to Farm policy statement and how they are relevant to the required change in a code.

<p>Consultation Paper Appendix B - Extract from the Electricity Transmission Company Land Access Statement of Expectations</p>	<p>VFF recommended changes to ensure code addresses areas outlined in s93(1)(e), (2) and (3)</p>
<p><i>Approach to communication and engagement</i></p> <ul style="list-style-type: none"> – <i>Ensure staged, timely engagement and consultation</i> – <i>Be accessible and responsive</i> – <i>Use accessible, readable communications</i> – <i>Employ respectful two-way communication</i> 	<p>This must apply to the life of the asset and beyond, until fully rehabilitated (including removal of concrete footings).</p> <p>Owners must always have the phone and email details of their key contact at the company so that any issues can be addressed in a timely manner.</p> <p>The current rules / protocols on the easement should be provided to landholders annually.</p> <p>Any changes to the protocols must allow for consultation with landholders and compensation for any new restrictions.</p> <p>The impacts of the transmission lines on standard operating procedures in an emergency (ground and air) need to be provided to the landholders.</p> <p>Recommendations should be made to ensure that there is always an energy company staff member on duty with delegations to take any required action to ensure that the transmission lines do not restrict emergency management operations.</p>

<p><i>Process of communication and engagement</i></p> <ul style="list-style-type: none"> – <i>Identify and contact those affected</i> – <i>Provide identification on contact</i> – <i>Outline access rights and obligations</i> – <i>Make clear when and why access is required</i> – <i>Explain the processes involved</i> – <i>Commit to details on how access will occur</i> – <i>Give reasonable notice of proposed access</i> – <i>Keep records</i> – <i>Maintain confidentiality and respect privacy</i> 	<p>This will need a series of specific documents.</p> <p>For land studies, for construction, for general maintenance, for emergency maintenance, for major repair / replacement and for rehabilitation.</p> <p>Biosecurity and compensation should be included at each stage.</p> <p>Access should be via the easement. Notice should be given in all circumstances, including emergency notice.</p> <p>Any works that impact on crops, pasture or livestock in the easement should be compensated for.</p> <p>Any works that require access outside of the easement will require the company to enter into a voluntary land access agreement and compensation.</p>
<p><i>Managing impacts of access</i></p> <ul style="list-style-type: none"> – <i>Minimise impact on land and landowners</i> – <i>Meet expected work standards</i> – <i>Meet requirements for field-based employees and contractors accessing land</i> – <i>Implement environmental and biosecurity controls</i> – <i>Manage fire risks</i> – <i>Manage COVID and other health risks</i> 	<p>This seemingly only applies to studies.</p> <p>This needs to be updated based on the information in the categories above.</p>
<p><i>Managing complaints and disputes effectively and fairly</i></p> <ul style="list-style-type: none"> – <i>Implement effective complaint handling</i> – <i>Offer dispute resolution</i> 	<p>Complaints cannot be made unless there is information provided to all landholders on what the rules are, and who to contact.</p> <p>This also needs to include how to trigger consideration of compensation</p> <p>The companies have demonstrated they do not have these processes in place. Self reporting is not recommended.</p> <p>Companies must provide information to landholders on their rights to review.</p>

Conclusion

A comprehensive access code is critical in returning fair, transparent and safe regulatory practice to land access for transmission developments.

The Essential Services Commission should not allow the safeguards of Section 93 of the Act to continue to be ignored by transmission companies. It is essential that the code ensures good regulatory practice in line with subsection (1)(e) and (2) but also ensures companies provide landholders with the ability to comment on, and be compensated for changes in company rules or procedures applying to the easement.

including provision of natural justice to landholders in relation to company guidance on what can occur on an easement.

Although public projects should not transfer costs onto others, these costs are often not well understood. That is why the Victorian Farmers Federation developed the Managing Entry to Farm policy to ensure good regulatory practice as our members regularly are expected to bear the costs of a utility service or public good on their business.

We would welcome the opportunity to work with the ESC to ensure that an access code reflects the context in which s93 must apply to productive agriculture, ensuring that a fair, transparent and reviewable process is delivered to landholders.