

Making a Land Access Code of Practice

Draft Decision

15 June 2023

Acknowledgement

We acknowledge the Traditional Owners of the lands and waterways on which we work and live.

We acknowledge all Aboriginal and Torres Strait Islander communities and pay our respects to Elders past and present.

As the First Peoples of this land, belonging to the world's oldest living cultures, we recognise and value their knowledge, and ongoing role in shaping and enriching the story of Victoria.

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Summary

We are developing an enforceable Land Access Code of Practice (code of practice) that will regulate land access by licensed electricity transmission companies (transmission companies). The code of practice will apply when transmission companies use their powers under section 93 of the *Electricity Industry Act 2000* (the Act) to access private land for new transmission projects and significant upgrades on existing transmission projects. The code of practice will introduce obligations before, during and after accessing land.

The code of practice aims to improve consultation and engagement with landowners and other affected parties about proposed land access and enable landowners to make more informed decisions about whether to enter into voluntary access agreements. It is also expected to reduce costs, delays and disputes related to land access and enable more effective monitoring, reporting and enforcement of compliance.

We have been engaging widely with stakeholders during development of the code of practice, including through public forums, one-on-one meetings and submissions to the [Making a Land Access Code of Practice: Consultation Paper](#) we released in February 2023. Submissions to the consultation paper unanimously supported making an enforceable code of practice about licensed transmission companies accessing land.

Making a Land Access Code of Practice

We are seeking feedback on the draft code of practice that is published with this draft decision. The draft code of practice sets out a series of steps that transmission companies must complete before, during and after they use, or propose to use, their powers under section 93 of the Act.

Improving communication

Open, accessible communication between a transmission company and a landowner is key to respectful and transparent land access. Under the proposed code of practice, when planning a new transmission project or significant upgrades to existing transmission projects, a transmission company would have to communicate broadly with potentially affected parties about the key details of the project and provide a point of contact for enquiries about land access. Transmission companies should have regard to any relevant feedback from affected landowners and occupiers when making decisions about proposed land access.

Providing specific information

Before accessing land, or before entering into an access agreement, specific information must be provided to affected parties. This information will support landowners and occupiers to understand what, when, how and why a transmission company is proposing to access land.

If a landowner or an occupier chooses not to enter into a voluntary access agreement, there are further obligations that are proposed to apply under the code of practice. For example, before accessing land, a transmission company must develop policies and procedures informed by a landowner's own plans to minimise biosecurity risk.

The draft code of practice also sets out minimum lengths of time for the notice period that a transmission company must give a landowner and/or an occupier before they access land and how to communicate changes to the proposed access dates and time. The code of practice also introduces a maximum 6-month access period, after which a transmission company must provide a new Notice of Access explaining why continued access is necessary.

Complaint-handling processes

The code of practice also proposes to require transmission companies to develop, implement and publicly communicate their internal complaint-handling processes. Affected parties will have the right to refer a complaint related to land access to a customer dispute resolution scheme approved by the commission if they are not satisfied with the transmission company's response to their complaint.

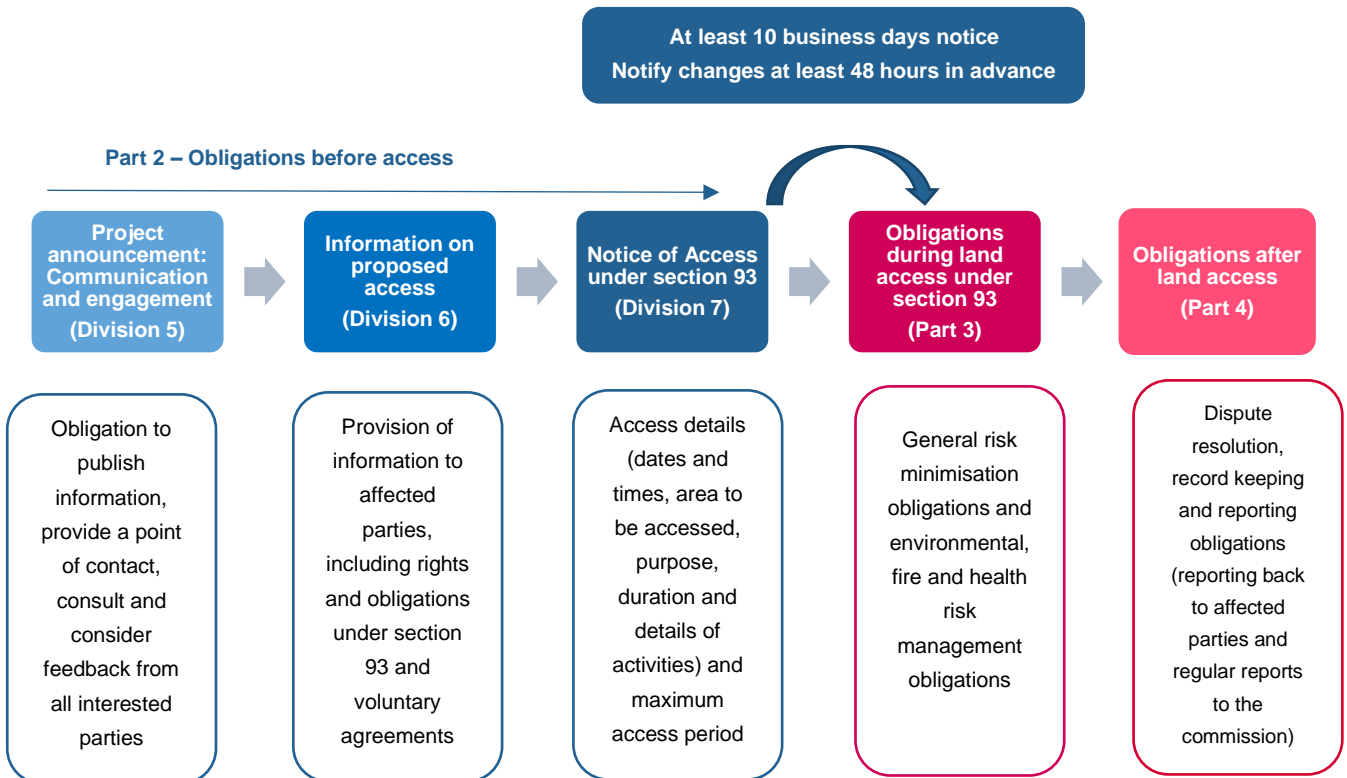
Based on stakeholder feedback and our analysis, we consider that the Energy and Water Ombudsman Victoria (EWOV) is the most appropriate dispute resolution body to resolve complaints related to land access under section 93 and compliance with the code of practice. Record keeping and reporting obligations will increase transparency and accountability for land access and will allow us to monitor transmission companies' compliance with the code of practice.

Code of practice structure

The diagram below presents an overview of the proposed structure of the code of practice and the proposed obligations for transmission companies when accessing private land:

- before accessing land: Part 2 – code of practice
- during land access using section 93 powers: Part 3 – code of practice
- after accessing land: Part 4 – code of practice.

Figure 1: Land access code of practice obligations



Turning the Electricity Transmission Company Land Access Statement of Expectations into an enforceable code of practice

The Land Access Code of Practice responds to community concerns about the manner in which transmission companies access private land. In 2021, we began hearing significant community concerns about how one particular transmission company were using its powers under section 93 to access private land for major transmission projects, notably the Western Renewables Link project.

In response to these concerns, we released our [Electricity Transmission Company Land Access Statement of Expectations](#) (statement of expectations) in May 2022. The statement of expectations contains a combination of general principles the commission expects transmission companies to apply to land access and provides examples of actions transmission companies could take to give effect to the principles.

The statement of expectations was designed as a targeted interim measure to respond to these issues and promote respectful engagement between landowners and transmission companies while we developed an enforceable code of practice.

Our experiences in developing the statement of expectations and our engagement with stakeholders since then have shown that there are significant problems when transmission companies use their statutory land access powers. These problems include a lack of clarity on transmission companies' rights and obligations, the rights of landowners and other affected parties, and concerns from the community about insufficient and ineffective consultation and risk mitigation of land access impacts.

While the statement of expectations has led to some improvement in outcomes, we consider that it is critical to have an enforceable code of practice that sets out clear obligations on transmission companies and enables us to take appropriate enforcement action when needed. The code of practice will be an enforceable instrument with significant financial penalties and other remedies for non-compliance.

Summary of our draft decision

Table 1: Summary of our draft decision

Draft decision	Summary of the commission's proposals
<p>1. An enforceable land access code of practice is needed to regulate how transmission companies can access private land</p>	<p>To support the energy transition, build social licence, protect landowners and address gaps in the existing regulatory framework, we consider that there is a need for an enforceable code of practice with prescriptive obligations that will provide reasonable protections and support effective engagement between communities and transmission companies.</p>
<p>2. Activities covered by the code of practice</p>	<p>The code of practice is proposed to apply to all new transmission projects, at any stage of a project, and significant upgrades on existing transmission projects that require access by a transmission company to private land.</p>
<p>3. Application to voluntary access agreements</p>	<p>To enable landowners and other affected parties to make informed decisions about whether to enter into voluntary access agreements as an alternative to section 93 access, the code of practice is proposed to require transmission companies to engage with affected parties and provide them information before entering into an access agreement.</p> <p>We are proposing not to include obligations related to the content of voluntary access agreements in the code of practice. However, we expect transmission companies to consider the code of practice's obligations related to land access under section 93 as minimum standards to guide the content of voluntary access agreements.</p>
<p>4. General communication and engagement obligations</p>	<p>The code of practice proposes to require transmission companies to identify and contact people who may be affected by land access and provide them with specified information about proposed transmission projects and proposed land access.</p>

<p>5. Information and notice obligations prior to accessing land</p>	<p>The code of practice proposes to require that, prior to accessing land or entering into an access agreement, a transmission company must provide information to affected landowners and occupiers about its proposed access to land. The transmission company must issue a formal 'Notice of Access' to affected landowners and occupiers with specific details and planned dates of access. This notice must be sent at least 20 business days after providing information on the proposed access and at least 10 business days prior to accessing the land for the first time. This notice must be updated if details change.</p>
<p>6. Risk mitigation obligations when accessing land</p>	<p>The code of practice proposes to require transmission companies to take actions when accessing land under section 93 of the Act to minimise the impact of land access, consistent with their obligations under section 93(2) of the Act to 'do as little damage as may be' in the exercise of their land access powers.</p>
<p>7. Biosecurity obligations when accessing land</p>	<p>The code of practice proposes to require transmission companies to take actions when accessing land under section 93 to minimise biosecurity risks associated with land access, including consulting with affected landowners and occupiers to understand property-specific biosecurity needs and developing biosecurity policies and procedures.</p>
<p>8. Complaint handling and dispute resolution obligations</p>	<p>The code of practice proposes to require transmission companies to implement effective complaint handling and dispute resolution processes and provide affected parties with the right to escalate disputes related to land access to a customer dispute resolution scheme approved by the commission. It is proposed that the dispute resolution scheme will be the Energy and Water Ombudsman.</p>
<p>9. Record-keeping obligations</p>	<p>The code of practice is proposed to contain record-keeping obligations, including requiring transmission companies to retain all land access related information for seven years.</p>

10. Reporting obligations	We propose that transmission companies should provide to the commission periodic reports about land access and to report potential breaches to the commission within 30 calendar days.
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Summary of questions for stakeholders

We welcome stakeholder views and feedback on the following questions and any other issues related to this draft decision or the draft code of practice:

Table 2: Summary of stakeholder questions

Topic	Question
The need for an enforceable Land Access Code of Practice	1. Do you consider that the current proposed obligations in the code of practice provide enough clarity on what is expected from transmission companies when accessing land? Do the proposed obligations provide sufficient flexibility to develop new transmission projects and undertake significant upgrades?
What activities should the code of practice apply to?	2. Do you identify any issues with the proposed scope of the code of practice – that it would apply to all new transmission projects and significant upgrades on existing transmission projects? 3. Do you agree to the code of practice applying to all stages of a new transmission project in which section 93 access may be required?
Obligations prior to accessing land	4. Do you have any comments on the proposed general communication and engagement obligations on transmission companies before accessing land? 5. Do you have any comments on the proposed information and notices that should be provided by transmission companies to affected landowners and occupiers before accessing land under section 93 of the Act or entering into a voluntary access agreement? Should any information be added, removed or amended?

Topic	Question
	<p>6. Do you consider that the proposed timing of 10 business days is sufficient period for a Notice of Access?</p> <p>7. Do you have any comments on the proposed maximum access period?</p>
<p>Obligations during land access</p>	<p>8. Do you have any comments on the proposed risk mitigation obligations in the draft code of practice?</p> <p>9. Do you have any comments on the proposed specific risk mitigation obligations in the draft code of practice related to biosecurity protocols, fire risk management and health management?</p>
<p>Dispute resolution, record keeping and reporting</p>	<p>10. Do you have any comments on the proposed complaints handling and dispute resolution obligations in the draft code of practice?</p> <p>11. Do you have any comments on the Energy and Water Ombudsman Victoria (EWOV) being the proposed dispute resolution scheme? Are there other dispute resolution bodies we should consider? What would be the costs and benefits of those options?</p> <p>12. For what period of time should transmission companies be required to retain records related to land access?</p> <p>13. What scope of records should transmission companies be required to retain?</p> <p>14. Are the proposed reporting requirements appropriate to monitor compliance with this draft code of practice? If no, what reporting should be required? Do you have any comments on whether the monthly reports should be used for additional purposes?</p>
<p>Implementation considerations</p>	<p>15. Is there any additional information we should consider on the expected costs and benefits of the draft code of practice?</p> <p>16. Are there any other issues with implementing the code of practice we should consider?</p>

How to give us your feedback

We want to hear your views on the draft Land Access Code of Practice. Submissions should be made by 5pm, 27 July 2023 via [Engage Victoria](#).

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential, in accordance with our [Submissions Policy](#). Submissions should clearly identify which information you consider to be sensitive or confidential, and the basis for your claim.

We will continue to proactively engage with the community, transmission companies, government departments and agencies through individual meetings as this review progresses.

If you have any questions or would like to arrange a meeting, please contact us at energyreform@esc.vic.gov.au.

Introduction

As holders of licences issued by the commission, transmission companies have powers under section 93 of the *Electricity Industry Act 2000* (the Act) to access private land where necessary to provide their transmission services.¹

In practice, land access often occurs through a voluntary access agreement between a transmission company and a landowner. If a voluntary access agreement is unable to be reached, transmission companies can exercise their powers under section 93 of the Act.

If access to land is made under section 93 of the Act, there is an obligation on the transmission company under section 93(2) to do ‘as little damage as may be’ and to pay compensation for damage caused through access under that section.

These powers and obligations apply to ‘electricity corporations’, which are defined in the Act as licensed electricity distribution, transmission or generation companies.

In developing our draft decisions on the code of practice we have taken into account:

- the objectives of the commission and the matters the commission regards under Part 2 of the Essential Services Commission Act 2001 (ESC Act)
- the purposes of the Electricity Industry Act 2000 (the Act) and the Essential Services Commission Act
- the requirements of Part 6 of the Essential Services Commission Act for making codes of practice
- the provisions of section 93 of the Electricity Industry Act
- the relevant requirements of the *Subordinate Legislation Act 1994*.

The code of practice legal framework

The commission’s powers to make, amend or revoke codes of practice are provided by Part 6 of the *Essential Services Commission Act 2001* (ESC Act).²

Our power to make codes of practice was introduced by the *Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021* as part of reforms to the enforcement framework under which we operate. As a result of those amendments, codes we

¹ The commission has powers to issue an electricity transmission company a licence under section 19 of [the Electricity Industry Act 2000](#).

² Section 10(da) [Essential Services Commission Act 2001](#).

make for the energy industry are now subordinate legislative instruments and are no longer applied only as a condition of licences or exemptions.

Codes of practice may be made with respect to a regulated industry, which includes the distribution, transmission, and generation of electricity.

Our ability to make a code of practice about land access is also expressly provided for in section 93(5) (d) of the Act, which provides that the exercise of a power to access land is subject to any provision of a code of practice.

Matters beyond the scope of the Land Access Code of Practice

There are several issues that were raised in submissions to the consultation paper that are beyond the scope of the proposed code of practice:

- **Compensation:** The code of practice will not cover compensation issues. These issues are instead covered by the *Land Acquisition and Compensation Act 1986*. This is consistent with section 93(2) and (3) of the Act, which provides that:
 - an electricity corporation must make full compensation to the owner of and all parties interested in any land for any damage they sustained in consequence of the exercise of its powers
 - compensation shall be either a gross sum or a yearly rent as may be agreed
 - compensation shall, in default of agreement, be determined in the manner provided in the Land Acquisition and Compensation Act.
- **Acquisition of easements:** The code of practice does not cover the acquisition of easements over land. This is beyond the scope of section 93 and the matters that the code of practice can cover. Easements may be voluntarily agreed between the transmission business and relevant landowners. Where agreement cannot be reached, a transmission business may compulsorily acquire an easement with the approval of the Victorian Governor in Council under section 86 of the Act for the purposes of erecting, laying or maintaining power lines. The Land Acquisition and Compensation Act and the *Valuation of Land Act 1960* governs compensation for easements.
- **Obligations on landowners:** The code of practice proposes to regulate the actions of transmission companies, it cannot impose obligations on persons who are not regulated entities such as landowners, occupiers or other parties³.

³ Under the draft code of practice, an affected party is 'a landowner or occupier in respect of private land that is accessed, or proposed to be accessed, by an electricity transmission company in connection with a new transmission project or a significant upgrade'.

Our process to date

In 2022, in response to community concerns, we developed a statement of expectations that set out principles transmission companies should follow when accessing private land. This was an interim measure to address immediate concerns, as we worked to develop an enforceable set of rules for land access – a code of practice.

Our draft code of practice has been developed taking into consideration all stakeholder feedback we have received to date, including feedback we heard during the development of the statement of expectations.

Following the release of the statement of expectations, we continued engaging with community stakeholders through public forums, one-on-one meetings and receipt of submissions. In developing the draft code of practice, we have sought to engage with stakeholders from various groups to ensure the obligations in the code of practice capture all issues which are important to the community.

We have also reviewed AusNet Transmission Group's reports under the statement of expectations and data we have received from the Energy and Water Ombudsman Victoria (EWOV) about complaints related to major transmission projects and land access issues, as discussed in the following section.

We have also considered land access precedents from other industries and jurisdictions and guidance published by a range of bodies including the Victorian Farmers Federation (VFF), the Australian Energy Infrastructure Commissioner (AEIC), the Energy Charter and the First Nations Clean Energy Network.⁴

On 13 December 2022, we held a public forum where stakeholders shared their experience with land access following the release of the statement of expectations and gave their initial views on what the code of practice should address. A recording of this public forum is available on the commission's project webpage here: [Developing a Land Access Code of Practice](#).

On 3 March 2023, we released our [Making a Land Access Code of Practice: Consultation Paper](#).

We received 10 submissions on the consultation paper from the following organisations, plus one confidential submission:

- Australian Energy Infrastructure Commissioner
- Australian Energy Market Operator (AEMO)

⁴ As part of our review, we have considered the Victorian Farmers Federation's [Managing entry to farms](#) and [Land-Access Information Sheet](#), the Australian Energy Infrastructure Commissioner's [Considerations for Landholders before entering into Commercial Agreements](#), The Energy Charter, [Better Practice Social Licence Guideline](#) and the First Nations Clean Energy Network, [Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects](#).

- AusNet Transmission Group
- Melton City Council
- Consumer Policy Research Centre (CPRC)
- Energy and Water Ombudsman
- Law Institute of Victoria
- RE-Alliance
- Victorian Farmers Federation.

Stakeholders were also able to provide feedback through answering survey questions via Engage Victoria. We received five survey responses, three of which were from community stakeholders and two were anonymous. We have used these survey responses to inform the draft code of practice.

All public submissions to our consultation paper are available on our [Developing a Land Access Code of Practice](#) webpage.

Structure of this paper

- The next chapter explains [why an enforceable code of practice is needed](#), how the code of practice will be enforced and our objectives and desired outcomes.
- We then present the [scope of the code of practice](#), including the activities that we consider should be regulated.
- The following chapters explain the proposed [content of the code of practice](#), including the obligations that will apply before, during and after a transmission company accesses land.
- The next chapter highlights [our objectives when developing the Land Access Code of Practice](#) and our assessment of the costs and benefits of implementing the code of practice.
- The following chapter presents our [next steps and the indicative timeline](#) for the release of the final version of the code of practice.
- Finally, [Appendix A](#) details the options we considered for our assessment of the costs and benefits of making the code of practice.

The need for an enforceable code of practice for land access

Victoria's *Climate Change Act 2017* introduced a long-term target for the state of net-zero greenhouse gas emissions by 2050, with five-yearly interim emissions reduction targets.⁵ Victoria's Climate Change Strategy⁶ also reiterates the key role renewable energy plays in reducing greenhouse gas emissions, with Victoria targeting 50% of electricity coming from renewable sources by 2030.⁷ The Victorian Government recently announced its intention to legislate updated renewable energy targets of 65% by 2030 and 95% by 2035.⁸

The current transition of the electricity sector to renewable generation is expected to require extensive investment in new transmission lines over coming years and decades. The Australian Energy Market Operator's Integrated System Plan (ISP) forecasts that over 10,000 km of new transmission will be needed between now and 2050 to connect geographically and technologically diverse new low-cost renewable generation and storage projects.⁹

The Victorian Government has stated that new transmission infrastructure is critical to support the energy transition while ensuring the energy system remains secure, reliable and affordable. To allow more renewables in the energy system, Victoria needs to build new and upgrade existing transmission lines to allow for more capacity and provide new paths for electricity to be transported.¹⁰ These processes will require access to private land, particularly during planning and construction phases.

Historically, very few major transmission projects have been developed in recent decades, however new transmission infrastructure will be needed over the coming years. We recognise the potential effect on communities and landowners during these key activities. We released the statement of expectations in 2022 as an interim measure to quickly address community concerns regarding the development of newly proposed transmission projects. While the statement sets clear expectations on transmission companies and increases transparency through published monthly reports, there continues to be a need for enforceable rules on transmission companies when using their powers under section 93 of the Act to access private land.

⁵ *Climate Change Act 2017*, section 6 and section 10.

⁶ Department of Environment, Land, Water and Planning, *Victoria's Climate Change Strategy*, May 2021, p.19, available at https://www.climatechange.vic.gov.au/data/assets/pdf_file/0026/521297/Victorian-Climate-Change-Strategy.pdf

⁷ *Renewable Energy (Jobs and Investment) Act 2017*, section 7.

⁸ [Victorian renewable energy and storage targets](#) and [Victoria's 2035 Emissions Reduction Target](#).

⁹ AEMO, *2022 Integrated System Plan (ISP)*, June 2022, p8, available at <https://aemo.com.au/en/energy-systems/major-publications/integrated-system-plan-isp/2022-integrated-system-plan-isp>.

¹⁰ For more information, see [Transmission and grid upgrades \(energy.vic.gov.au\)](#).

While there have been some improvements, stakeholders continue to indicate challenges with land access. The remaining problem include a lack of clarity on the obligations and processes that transmission companies should follow, and the rights of landowners and other affected parties. There are also continued concerns from the community about insufficient and ineffective consultation (particularly in relation to notice periods for access and the transparency of the land access process) and risk mitigation on the impacts of major transmission projects (particularly in relation to biosecurity concerns and information sharing).

We note that a new code of practice will introduce prescriptive obligations that transmission companies will have to comply with when accessing private land. In response to our consultation paper, the Law Institute of Victoria (LIV) stated that:¹¹

While the [Electricity Transmission Company Land Access Statement of Expectations](#) is primarily self-regulatory, from a transmission company perspective, a Code will require more prescriptive obligations and must set out how a breach of a Code will be enforced, and how a landowner, or other person with an interest in affected land, may involve an appropriate ombudsman, or implement mediation, if there is a dispute with a transmission company. A transmission company must be obliged, at the outset, to provide all information on how a landowner's land will be affected over the short, medium, and long term (...).

The Australian Energy Market Operator (AEMO) considered that:¹²

(...) 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.

AusNet Transmission Group stated that:¹³

If the Commission is to convert some or all the voluntary SOE principles to enforceable obligations under the Land Access Code of Practice, we invite the Commission to consider whether the current drafting of those principles is appropriately specific for a binding and

¹¹ Law Institute of Victoria, *Essential Services Commission 2023, Making a Land Access Code of Practice: Consultation Paper, 2 February*, March 2023.

¹² Australian Energy Market Operator, *Response to Making a Land Access Code of Practice Consultation Paper*, March 2023.

¹³ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

enforceable obligation. We also ask that the Commission have regard to additional regulatory burden the new obligation will impose (...).

We consider that the proposed obligations in our draft code of practice have a level of prescription that is consistent with other land access legislated obligations for the purpose of building new infrastructure, such as those regulated in the *Gas Industry Act 2001* and the *Pipelines Act 2005*. We are seeking feedback from stakeholders on whether the proposed obligations outlined in the draft code of practice are balanced in a way that provides clarity while granting sufficient flexibility to all parties.

While transmission companies will have to comply with new prescriptive obligations, we expect that the proposed obligations in the draft code of practice will facilitate consultation and engagement, enabling transmission companies to engage early with landowners and other affected parties, increasing the likelihood of landowners and other affected parties agreeing to land access on terms that meet their needs.

By complying with the code of practice, transmission companies must keep landowners appropriately informed about all stages of the land access process, and landowners will be afforded reasonable protections. We consider that these actions will provide a more appropriate basis for engagement with affected parties and can support a social licence for transmission companies to operate.

Land access complaints to EWOV on consultation and engagement, communication and updates

To inform our considerations, we have analysed continued feedback from stakeholders, complaints received by EWOV, and monthly reports from AusNet Transmission Group on its performance against the principles in the statement of expectations (which are published on our [website](#)).

We have crosschecked the complaints data provided in AusNet Transmission Group's reports with complaints data from EWOV. We have reviewed these reports to examine how they compare with the experiences of landowners who have had their land accessed.

EWOV has provided the commission with details of complaints it has received related to transmission companies and other electricity licensees accessing land. We have analysed this information and used it to inform decisions on the appropriate scope of the draft code of practice.

EWOV's submission to the consultation paper noted that the top three land access related complaints it currently receives relate to:¹⁴

- community consultation and engagement: about 40% of land access complaints
- contact between transmission companies and landowners: about 20% of complaints
- broader communication and information updates: about 40% of complaints.

EWOV's submission also noted that the number of land access related complaints peaked during June-August 2022. Complaints to EWOV related to the Western Renewables Link project have averaged one new complaint per month.¹⁵

Enforcement of the code of practice

The primary difference between the code of practice and the statement of expectations is that the code of practice will be enforceable.

The commission can take a range of enforcement actions for a breach of the code of practice as set out in Part 7 of the ESC Act. Among other potential orders for a breach of a code of practice, the commission can issue a civil penalty notice and a court may impose civil penalties for the contravention of a civil penalty requirement.¹⁶

Schedule 1 of the draft code of practice designates the provisions that are proposed to be civil penalty requirements. We are proposing to specify almost all obligations on transmission companies undertaking land access activities regulated by the code of practice as civil penalty requirements. We consider that if the code of practice imposes an obligation, it should be enforceable. This is consistent with the approach taken to our Energy Retail Code of Practice and our Electricity Distribution Code of Practice, and underpinned by a rationale that the commission should be capable of effective enforcement of obligations in its codes of practice.

Our approach to compliance and enforcement is set out in our [Compliance and Enforcement Policy](#). We take a risk-based approach to enforcement, aiming to deter possible breaches to prevent harm to Victorian customers. We assess possible breaches on a case-by-case basis,

¹⁴ Energy and Water Ombudsman Victoria, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

¹⁵ Ibid.

¹⁶ Under section 54A of the *Essential Services Commission Act 2001*, the maximum penalty for a contravention of a civil penalty requirement by a licensee is the greater of:

- 1,200 penalty units (approximately \$220,000);
- three times the value of any monetary benefit arising from the contravention; or
- 10% of the licensee's annual turnover.

Under section 54B of the *Essential Services Commission Act 2001*, the maximum penalty for an officer of a licensee is 240 penalty units (approximately \$44,000).

The need for an enforceable code of practice for land access

considering several factors such as the strategic significance of the matter, and the conduct and compliance history of the licensee.

Commission's objectives and desired outcomes

In making the code of practice, the commission is seeking to create an enforceable regulatory instrument that addresses specific gaps and uncertainties in the existing regulatory framework for transmission companies accessing land under section 93 of the Act.

We aim for a Land Access Code of Practice to:

- improve consultation and engagement with landowners and other affected parties on proposed land access
- enable landowners to make more informed decisions about whether to enter into a voluntary access agreement as an alternative to land access under section 93
- improve outcomes for landowners and other parties affected by land access
- improve public confidence in the land access regime
- reduce costs, delays and disputes related to land access by introducing minimum requirements to implement transparent, respectful and responsive complaints-handling and dispute resolution processes
- enable more effective monitoring, reporting and enforcement of transmission companies' compliance with their land access obligations.

The purpose of the code of practice will be to set rules that transmission companies must follow at the early stages of their transmission projects, prior to entering into an access agreement or entering land under section 93. If an agreement is not reached, and therefore transmission companies must use their statutory powers to access land, the code of practice will set minimum requirements that companies must comply with when accessing land, including minimum notice requirements and risk minimisation obligations.

Draft decision

Draft decision 1: An enforceable land access code of practice is needed to regulate how transmission companies can access private land

To support the energy transition, build social licence, protect landowners and address gaps in the existing regulatory framework, we consider that there is a need for an enforceable code of practice with prescriptive obligations that will provide reasonable protections and support effective engagement between communities and transmission companies.

The need for an enforceable code of practice for land access

Question 1

Do you consider that the current proposed obligations in the code of practice provide enough clarity on what is expected from transmission companies when accessing land? Do the proposed obligations provide sufficient flexibility to develop new transmission projects and undertake significant upgrades?

Scope of the Land Access Code of Practice

This chapter presents our proposed scope of the code of practice. The proposed scope has been informed by feedback on our statement of expectations, submissions to our consultation paper and meetings with stakeholders, including community members.

Our draft decision proposes that all licensed transmission companies that use their statutory powers to access land for the development of new transmission projects or to undertake significant upgrades on existing projects must comply with the code of practice. Additionally, transmission companies must comply with the code when using section 93 powers at any stage of a project.

The code of practice will regulate land access under section 93 of the Act for new transmission projects and for significant upgrades on existing transmission assets. Transmission companies must comply with the code when using section 93 powers at any stage of a project. This approach is consistent with the statement of expectations, which applies to *'all stages of a transmission project lifecycle (that is, planning, investigation, construction, maintenance and operation).'*¹⁷

While the statement of expectations only applies to access to private land for greenfield sites relating to major transmission projects, the code of practice will apply to all transmission companies, being companies with current electricity transmission licenses issued by the commission. The content of voluntary access agreements will not be regulated. However, the code will outline the processes and procedures that transmission companies must follow prior to entering into voluntary access agreements with private landowners.

Activities regulated under the code of practice

We assessed the following three options on which projects and activities the code of practice should apply to:

- **Option 1:** 'Major' new transmission greenfield projects applying during all stages of a transmission project lifecycle (that is, planning, investigation, construction, maintenance and operation) – this is the same scope that the current statement of expectations applies to.
- **Option 2:** All new transmission projects applying to all activities across the project's lifecycle, and significant upgrades on existing transmission lines only applying to activities relating to the upgrade.

¹⁷ Statement of expectations, 1.3.2.

- **Option 3:** All new transmission projects and existing transmission lines, applying to all activities relating to transmission.

Based on stakeholder feedback and our own analysis, we propose option 2 as the preferred option. We consider that the code of practice should apply to transmission companies who are accessing land in a way that may cause similar impacts to the pre-construction activities undertaken for new transmission projects.

Stakeholder views

Stakeholders had a wide range of views on whether the scope of the code of practice should be limited to major transmission projects on greenfield sites consistent with the scope of the statement of expectations, or whether it should extend to other projects. For example, smaller projects or works on brownfield sites that already contain existing transmission assets.

In support of option 1, AusNet Transmission Group considered that the code of practice should only apply to new greenfield transmission projects and opposed extending the scope to other activities.¹⁸ Similarly, RE-Alliance considered that the code of practice should only apply to 'new large-scale transmission'.¹⁹

Option 2 is broader than the scope of the statement of expectations. We note that several stakeholders supported this approach, such as Melton City Council and RE-Alliance who proposed the code should apply to all 'new' projects (rather than only 'major' projects).

In particular, Melton City Council proposed that the scope should be limited to 'new transmission projects', including projects on both greenfield and brownfield land.

The Australian Energy Market Operator (AEMO) further considered it would be appropriate for the code to apply to brownfields upgrades, but not for operations, maintenance and any brownfields upgrades where the activities planned are not similar to greenfields activities. AEMO stated that an example of what is not similar to a greenfields activity is the upgrade of an existing tower that does not alter the footprint of the tower.²⁰

In support of option 3, the Victorian Farmers Federation considered that the code of practice should apply to all projects and 'all stages of the transmission development life cycle (preconstruction, construction, operation and decommissioning)'.²¹ It also suggested that the code

¹⁸ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

¹⁹ RE-Alliance, *Submission for Essential Service Commission Land Access Code of Practice*, March 2023.

²⁰ Australian Energy Market Operator, *Response to Making a Land Access Code of Practice Consultation Paper*, March 2023.

²¹ Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

apply to any activities on existing transmission lines, and provided a case study of land access concerns related to an existing transmission line.

No stakeholders proposed extending the scope of the code of practice to businesses other than transmission companies, for example, to distribution or generation licensees.

Commission draft decision

Activities regulated under the code of practice

We consider that the code of practice should apply to licensed transmission companies who propose to access land under section 93 for the development of new transmission projects or to undertake significant upgrades on existing transmission projects that require access to private land. This is broader than the scope of the statement of expectations.

We propose that the code of practice also applies to significant upgrades of existing transmission lines, particularly where those upgrades lead to pre-construction activities that require land access beyond existing easements. We consider that these activities can lead to similar impacts on land when using section 93 powers for new transmission projects, and so consider that similar protections for landowners should be in place.

The draft code of practice therefore applies to land access to all new transmission projects.²²

Regarding significant upgrades to existing transmission projects, we are particularly concerned of access to private land by transmission companies on areas where there are no access agreements or easements. For example, a significant upgrade could include an extension of an existing transmission line beyond existing easements to parcels of land, or the widening of existing assets beyond existing easements. These upgrades may require the use of section 93 powers to access the asset or to perform the upgrades. This would capture similar activities for land access purposes as for new transmission projects.

However, in our initial approach for this draft decision, we are not proposing for the code to apply to existing transmission lines broadly, particularly for general operation and maintenance activities.²³ We understand that, where private land contains existing electricity transmission assets, those assets will be located on an easement that is held by the transmission company and permits it to access the land. We understand that access to that land therefore occurs under the terms of the easement and only under exceptional circumstances (and at times, only in emergencies) will occur under section 93 of the Act.

²² Unlike in the statement of expectations, we do not propose limiting the scope of new transmission projects to 'major' transmission projects. Any threshold for defining which projects are 'major' and therefore covered by the code of practice would be arbitrary and would not recognise that even smaller transmission projects that require access to land under section 93 can have a significant impact on landowners and other parties.

²³ For the avoidance of doubt, a significant upgrade would not include works that solely include activities such as routine maintenance or vegetation clearance or activities within agreements on existing easements.

While our draft decision is to not propose for the code to apply to general activities on existing transmission lines, we intend to formally obtain further information from existing transmission licensees about the extent of previous accesses using section 93 powers, and the processes that have been followed. In particular, we note the concerns raised by the Victorian Farmers Federation²⁴, and welcome further experiences from previous section 93 land access powers being used on existing transmission lines, to inform our final decision.

Stages of a project regulated under the code of practice

Some stakeholders, such as the Law Institute of Victoria, considered that the scope of the code of practice should be expanded from that in the statement of expectations to also include the replacement and decommissioning of a transmission line, for consistency in regulating private land access across the transmission project lifecycle.²⁵

Our draft decision is for the code of practice to regulate the use of section 93 powers at any stage of a new transmission project.²⁶ However, for significant upgrades to existing transmission lines, the code will only apply to preliminary and construction activities, as indicated in the table below.

Stages	New transmission projects (construction begins after the making of the Land Access Code of Practice)	Existing transmission lines (operational prior to the making of the Land Access Code of Practice)
Preliminary activities (initial planning, consultation, approvals)	✓	✓ for significant upgrades
Construction	✓	✓ for significant upgrades
Operation (maintenance)	✓	✗
Replacement or augmentation	✓	✗
Decommissioning	✓	✗

²⁴ Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

²⁵ Law Institute of Victoria, *Essential Services Commission 2023, Making a Land Access Code of Practice: Consultation Paper, 2 February*, March 2023.

²⁶ The lifecycle of an electricity transmission project includes various stages, with each stage involving a distinct set of activities. The key stages include:

- initial planning, consultation, approvals and preliminary activities
- construction
- ongoing operation and maintenance
- replacement or augmentation
- decommissioning.

The proposed code will mainly apply to land access relating to preliminary activities

We understand that land access powers under section 93 are mainly used for preliminary activities that occur as part of the route selection, assessment and approvals stage prior to construction commencing. This includes preliminary activities such as:

- conducting field surveys and investigations to inform project planning and route selection
- conducting surveys and investigations to inform approvals processes including preparation of an Environmental Effects Statement
- undertaking Aboriginal cultural heritage field surveys and site visits
- investigations and testing, including soil and water testing and geotechnical investigations.

Our understanding is based on discussions with stakeholders including AusNet Transmission Group and the Australian Energy Market Operator, and materials we have reviewed about land access information and protocols, consent forms and access agreements.²⁷

The proposed code to not apply when transmission companies use easements to access land

The code of practice will not apply when transmission companies use easements to access land. Where an easement exists, access to the land covered by the easement occurs in accordance with the easement rather than under section 93 powers.

When the project proceeds to the construction stage, transmission companies will obtain easements to secure tenure on the land on which the transmission assets will be located. We understand that transmission companies also obtain easements over land they need to cross to obtain access to the transmission assets during the operation and decommissioning stages of a transmission project. Transmission companies may voluntarily negotiate an easement with the landowner. Where agreement cannot be reached, a transmission business may compulsorily acquire an easement with the approval of the Governor in Council under section 86 of the Act for the purposes of erecting, laying or maintaining power lines.

This means that land access for construction, operation, maintenance (or any other post-construction activities) and decommissioning is generally regulated by the terms of the easement rather than section 93. We understand that access under section 93 of the Act for these activities only occurs in emergencies when access through the easement is not possible and an alternative access route is required.

²⁷ For instance, AusNet Transmission Group has released the following guidelines that provide information on existing processes related to land access: [Land access for field surveys and investigations](#), [Land access, easements and compensation](#) and [Option for Easement process and compensation](#). In addition, Marinus Link has published its [Victorian Land Access and Easement Acquisition Process](#) guideline, which details the key steps in the land access and easement acquisition process for that project.

As a result, section 93 powers are mainly used for land access that is required for preliminary activities that occur prior to the acquisition of easements and the beginning of construction. In those exceptional cases, a transmission company will have to comply with the code of practice if section 93 powers are used at any stage of a new transmission project.

We also understand that maintenance activities do not cause similar impacts to landholders and decommissioning activities would likely take place within an existing easement.

Transmission companies regulated by the code of practice

Melton City Council requested greater clarity on which entities are 'electricity corporations' that have land access powers under section 93 and how the code of practice will apply to actions by contractors and employees of transmission businesses.²⁸

The current licensed transmission companies who would be subject to the code of practice if they propose to access land under section 93 for activities the code of practice covers are:

- AusNet Transmission Group²⁹
- Transgrid³⁰
- Basslink³¹
- Transmission Operations Australia.³²

The code of practice would also apply to any future transmission licensees.

The commission does not consider that the code of practice should apply to electricity distribution or generation companies. No submissions supported extending the scope of the code of practice to these companies. The commission is not aware of similar level of concerns related to land access under section 93 by distribution or generation companies, and we are not aware of extensive complaints to EWOV in this area.

The commission understands that distribution and generation companies do not regularly rely on section 93 to access land and are more likely to access land under voluntary access agreements or easements. Some activities by distributors that require land access are also regulated by other legislation, for example the *Electricity Safety Act 1998* and Electricity Safety (Electric Line Clearance) Regulations 2020.

²⁸ Melton City Council, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

²⁹ AusNet's transmission licence is held by AusNet Transmission Group Pty Ltd.

³⁰ Transgrid's transmission licences are held by TransGrid Services Pty Ltd and NSW Electricity Network Operations Pty Ltd.

³¹ Basslink Pty Ltd.

³² Transmission Operations (Australia) Pty Ltd and Transmission Operations (Australia) 2 Pty Ltd.

If we identify evidence of significant community concerns about land access under section 93 by distribution or generation companies, we will consult with stakeholders on potentially extending the scope of the code of practice in future. We may also consider including reporting obligations for land access under section 93 in other relevant instruments such as the Electricity Distribution Code of Practice.

Draft decision 2: Activities covered by the code of practice

The code of practice is proposed to apply to all new transmission projects, at any stage of a project, and significant upgrades on existing transmission projects that require access by a transmission company to private land.

Question 2

Do you identify any issues with the proposed scope of the code of practice – that it would apply to all new transmission projects and significant upgrades on existing transmission projects?

Question 3

Do you agree to the code of practice applying to all stages of a new transmission project in which section 93 access may be required?

Application to voluntary access agreements

The statement of expectations only applies to access to land when a transmission company is using its land access powers under section 93.

However, it also states:³³

Though this statement of expectations does not apply to voluntary agreements entered into by an electricity transmission company and landowner or party interested in land, the commission expects that in developing such agreements, an electricity transmission company will be guided by the principles set out in this statement.

³³ Essential Services Commission, *Electricity Transmission Company Land Access Statement of Expectations*, May 2022.

Stakeholder views

AusNet Transmission Group opposed extending the scope of the code of practice to cover voluntary access agreements.³⁴

The Law Institute of Victoria noted that it is common for a transmission company to negotiate an agreement directly with a landowner to provide for access rather than relying on its section 93 powers. It considered that these direct agreements are good practice and should be encouraged to address landowners' unique concerns. The institute considered the code of practice should apply to access under section 93 of the Act and incorporated into voluntary access agreements, either in full or by reference.³⁵

The Australian Energy Infrastructure Commissioner (AEIC) stated that the code of practice should encourage transmission companies to effect access by way of voluntary arrangements where possible. It proposed that this could be achieved by setting threshold requirements that the transmission company must satisfy to make a successful application to access land under section 93 of the Act. The AEIC also proposed that transmission companies should be encouraged to develop and make publicly available a policy for negotiating voluntary access to land and, if voluntary access cannot be achieved, the circumstances in which they intend to rely on section 93 of the Act. The AEIC set out a range of matters that should be addressed in access agreements.³⁶

Other submissions did not address this issue.

Commission draft decision

An important objective of the code of practice is to enable landowners, occupiers and other relevant parties affected by land access to make informed decisions about whether to agree to land access as an alternative to the transmission company exercising its access powers under section 93.

To help achieve this objective, we consider that it is important that the code of practice contains obligations on transmission companies to engage and consult with affected parties and provide them information on proposed land access prior to entering into an access agreement. The draft code of practice therefore sets out a series of actions transmission companies must take before they access land under section 93 or enter into an access agreement, as discussed in more detail in the section below on obligations prior to accessing land.

³⁴ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

³⁵ Law Institute of Victoria, *Essential Services Commission 2023, Making a Land Access Code of Practice: Consultation Paper*, 2 February, March 2023.

³⁶ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

Voluntary access agreements

The draft code of practice also includes reporting obligations that apply to voluntary access agreements. These obligations will provide us with visibility of the progress of access negotiations and the extent of complaints or disputes related to those negotiations.

Some stakeholders suggested that we should also go further and regulate the contents of voluntary access agreements. We consider that negotiating voluntary access agreements provides greater flexibility and allows parties to decide the content of those agreements, tailoring them to their specific circumstances and needs, such as introducing obligations to manage specific risks or establishing tailored processes for notifications and communications. The draft code of practice therefore does not include any obligations related to the content of access agreements.

From responses to the survey that we conducted alongside the consultation paper, we heard from stakeholders about the reasonable time and effort that landowners put into the negotiation process.³⁷ Similar to the statement of expectations, the commission expects transmission companies to consider the code of practice's obligations related to land access under section 93 as minimum standards to guide the content of access agreements.

We expect the code of practice to facilitate the negotiation process as it will provide a basis to negotiate voluntary access agreements. When receiving a draft voluntary access agreement, affected landowners and affected occupiers will be able to compare its content with the obligations established in the code of practice, and use this to assist in negotiations with a transmission company. If landowners decline entering into an agreement, a transmission company will have to comply with the obligations established in the code of practice when accessing land using their statutory powers.

The draft code of practice's obligations related to issuing a Notice of Access at least 10 business days prior to accessing land under section 93 and the obligations during land access under section 93 (discussed below) do not apply to access under voluntary access agreements. The commission expects transmission companies to address those matters in their voluntary access agreements.

Draft decision 3: Application to voluntary access agreements

To enable landowners and other affected parties to make informed decisions about whether to enter into voluntary access agreements as an alternative to section 93 access, the code of practice is proposed to require transmission companies to engage with affected parties and provide them information before entering into an access agreement.

³⁷ Survey response from Michael Harkin.

We are proposing not to include obligations related to the content of voluntary access agreements in the code of practice. However, we expect transmission companies to consider the code of practice's obligations related to land access under section 93 as minimum standards to guide the content of voluntary access agreements.

Content of the Land Access Code of Practice

This chapter outlines the approach we have taken to make an enforceable and fit-for-purpose code of practice. In alignment with the statement of expectations and stakeholder feedback, the draft code of practice is structured in four parts that are designed to make clear the obligations that will apply to transmission companies before, during and after using section 93 powers to access private land.

Our approach to processes and obligations is to provide a set of obligations for land access that is transparent and respectful. The code of practice first introduces communication and engagement processes before a landowner decided if they prefer to enter into a voluntary access agreement. If transmission companies need to use their legal powers to access land, the code of practice then regulates the minimum requirements that will apply when using section 93 powers. Finally, the proposed code of practice will establish the obligations that a transmission company will have to comply with after accessing land.

Approach in the statement of expectations

The statement of expectations contains the following 22 principles that the commission currently expects to apply to communication and engagement activities before a transmission company accesses land:

Table 3: General principles from the statement of expectations

General principles for land access	
General principle	1. Comply with this statement of expectations
Approach to communication and engagement	2. Ensure staged, timely engagement and consultation 3. Be accessible and responsive 4. Use accessible, readable communications 5. Employ respectful two-way communication
Process of communication and engagement	6. Identify and contact those affected 7. Provide identification on contact 8. Outline access rights and obligations

	<ul style="list-style-type: none"> 9. Make clear when and why access is required 10. Explain the processes involved 11. Commit to details on how access will occur 12. Give reasonable notice of proposed accessed 13. Keep records 14. Maintain confidentiality and respect privacy
Managing impacts of access	<ul style="list-style-type: none"> 15. Minimise impact on land and landowners 16. Meet expected work standards 17. Meet requirements for field-based employees and contractors accessing land 18. Implement environmental and biosecurity controls 19. Manage fire risks 20. Manage COVID and other health risks
Managing complaints and disputes effectively and fairly	<ul style="list-style-type: none"> 21. Implement effective complaint handling 22. Offer dispute resolution

The statement of expectations also contains examples of actions to comply with each of these principles.

Stakeholder views

The Victorian Farmers Federation (VFF), Energy and Water Ombudsman Victoria (EWOV), Melton City Council, Law Institute of Victoria, Australian Energy Market Operator (AEMO), the Australian Energy Infrastructure Commissioner (AEIC) and AusNet Transmission Group provided comments on obligations related to communication and engagement, including recommended changes to the principles and examples contained in the statement of expectations.

Melton City Council considered that the statement of expectations' principles provided a good basis for the code of practice. However, it considered there should be a greater State Government role in initial engagement on transmission projects.³⁸

³⁸ Melton City Council, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

The AEIC recommended that the code of practice address the following issues:³⁹

- confirmation of the need and requirement to access the land
- ensuring all reasonable avenues to achieve a voluntary access agreement have been exhausted
- obtaining authority to access land
- developing a land access arrangement
- protocols for specific land access activities under section 93
- key considerations at the conclusion of access to land
- complaints and dispute resolution
- other statutory powers to access land.

The AEIC proposed that the code of practice should require a transmission company to obtain authorisation prior to accessing land, and should set out the form of application for approval, matters the decision maker will take into account and the opportunity to attach conditions. It also proposed that transmission companies should provide landowners with a written notice of the authority to access land that sets out a range of specified matters.⁴⁰

AusNet Transmission Group supported the commission including most of the statement of expectations' principles and examples in the code of practice. It noted that some of the current principles needed to be clarified when turning them into enforceable obligations. AusNet Transmission Group suggested including a limited number of specific obligations of limited scope.⁴¹

EWOV considered that it would be helpful for a code of practice to include minimum obligations to ensure transmission companies make reasonable efforts to notify affected landowners, and landowners are reasonably aware of the transmission companies' intention to access their property under section 93. EWOV also recommended that the code of practice specify the types of information that transmission companies must make available to the public, considering accessibility requirements, when and how new and more reliable information must be made available, and using an agreed channel for communication.⁴²

³⁹ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁴⁰ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁴¹ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁴² Energy and Water Ombudsman Victoria, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

AEMO suggested that some features of the *Pipelines Act 2005* arrangements for land access for gas pipeline infrastructure could be replicated in the code of practice, including:⁴³

- requiring transmission companies to develop a consultation plan that the regulator approves prior to issuing a notice of intention to enter land
- prescribed notices with specified formats and timelines.

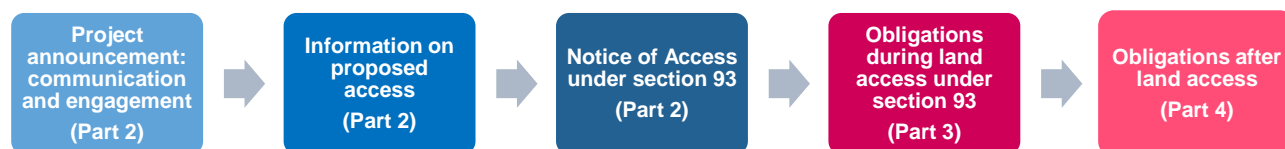
Responses to the survey that we conducted alongside the consultation paper included the following comments:

- Engagement, offering the ability to influence, visibility of selection criteria, transparency and openness, is the only way communities will embrace new infrastructure. Each landowner has their own way of communicating.⁴⁴
- Transmission companies should listen to the community and fit in with their needs.⁴⁵
- The code of practice should require more consultation with landowners and affected neighbours and consideration of the impacts on the environment.⁴⁶

Commission draft decision

We have structured the draft code of practice in four parts:

- Part 1 contains preliminary matters, including definitions and the application of the code of practice.
- Part 2 sets out obligations that must be complied with prior to accessing land.
- Part 3 contains obligations during land access under section 93.
- Part 4 addresses dispute resolution, record keeping and reporting obligations.



⁴³ Australian Energy Market Operator, *Response to Making a Land Access Code of Practice Consultation Paper*, March 2023.

⁴⁴ Survey response from Michael Harkin.

⁴⁵ Survey response from Rosemary Irving.

⁴⁶ Survey response from Russel Coad.

The obligations in each part of the draft code of practice are largely based on the statement of expectations' principles and examples, supplemented by further obligations based on stakeholder feedback, precedents from other industries and other jurisdictions, and the commission's analysis.

As an enforceable instrument with significant penalties for non-compliance, to ensure that the commission can use its compliance and enforcement powers, the obligations contained in the code of practice must be clearer, more specific and more readily enforceable than many of the principles in the statement of expectations.

We note that the AEIC proposed that a transmission company should obtain authorisation before accessing land.⁴⁷ Similarly, AEMO suggested that the regulator could approve a consultation plan before a transmission company issues a notice to access land. However, we consider that requiring pre-approval goes against the purpose of granting statutory powers to transmission companies to access land. As an alternative to pre-approving access, we consider that transmission companies should be accountable throughout the whole land access process and follow the proposed obligations established in the draft code of practice before, during and after accessing land.⁴⁸

The commission has reviewed each of the principles and examples contained in the statement of expectations and amended them as appropriate for an enforceable code of practice and to address stakeholder feedback. Many, but not all, of these provisions have been converted into binding obligations in the draft code of practice. Some of the principles take the form of objectives to guide interpretation of the more specific obligations that are contained in each Part of the draft code of practice. The examples from the statement of expectations have been reviewed and amended to be suitable as enforceable obligations rather than examples of permissible ways to comply with the principles.

⁴⁷ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁴⁸ Australian Energy Market Operator, *Response to Making a Land Access Code of Practice Consultation Paper*, March 2023.

Obligations prior to accessing land

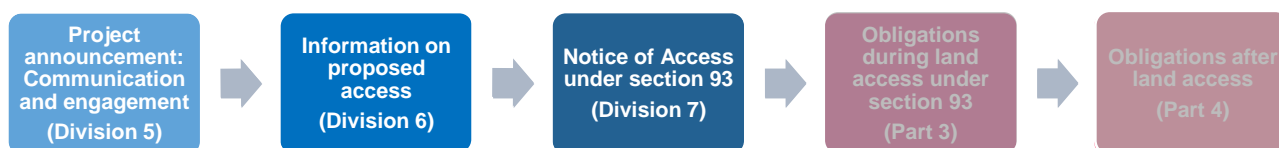
Information on proposed access

We are proposing to introduce a number of obligations that transmission companies must follow prior to accessing land on Part 2 of the draft code of practice (Divisions 5, 6 and 7). We note that several activities take place before a landowner decides if they want to enter into a voluntary access agreement with a transmission company. These obligations are broadly focused on ensuring that landowners are consulted and that they receive detailed information about the transmission project and the purpose of the access, so they can make an informed decision when deciding to enter into a voluntary access agreement.

Notice of Access

If a voluntary access agreement is not reached, under the draft code of practice a transmission company will have to provide a formal 'Notice of Access', issued at least 20 business days after providing information on the proposed access, and at least 10 business days before the land is accessed, informing landowners and occupiers about the purpose, duration and specific details of the access.

We expect that affected landowners are informed about a prospective transmission project at the earliest opportunity, prior to the issue of a Notice of Access, to ensure that all necessary information, including potential risks and land access impacts are discussed and addressed in advance of any access requests.



Approach in the statement of expectations

The statement of expectations contains the following principles that the commission currently expects to be communicated by transmission companies when managing impacts of accessing land, prior to accessing it:

- minimise the impacts on land and landowners
- meet expected work standards
- meet requirements for field-based employees and contractors

- implement environmental and biosecurity controls.

The statement of expectations also contains examples of actions to comply with each of these principles.

Stakeholder views

There was general consensus across stakeholders on the importance of providing clear and timely information before accessing land so landowners can make an informed decision.

The Australian Energy Market Operator (AEMO) suggested that guidance regarding obligations prior to accessing land should be more prescriptive in nature and should not be required during voluntary access agreement negotiations. AEMO also mentioned that a key issue related to accessing land is ensuring that there are documented processes and prescribed notice formats for access under section 93 of the Act.⁴⁹

The AEIC mentioned that a transmission company should share property-specific information with the landowner when preparing to access land that provides details about the affected land and biosecurity requirements.⁵⁰

Based on its land access dispute resolution experiences, EWOV highlighted the benefits of early communication and community engagement:⁵¹

Effective, timely and transparent communication and community engagement are important for both preventing and addressing disputes and concerns that arise between landholders and transmission companies. Proactive, effective and meaningful consultation with affected communities and individuals – during both the initial planning and implementation phases – can help ensure landholders' concerns and feedback are considered and issues addressed before escalating.

EWOV also stated that ensuring landowners have accurate and up-to-date information about infrastructure projects is key to ensuring transparency and enabling parties to make informed decisions. EWOV declared that the code of practice could play an important role facilitating transmission companies' provision of relevant, timely and accurate information that is reasonably

⁴⁹ Australian Energy Market Operator, *Response to Making a Land Access Code of Practice Consultation Paper*, March 2023.

⁵⁰ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁵¹ Energy and Water Ombudsman Victoria, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

accessible by members of the public, which should be updated as new and more reliable or specific information becomes available.⁵²

Melton City Council recommended improved training for transmission company employees and contractors, as there have been instances of workers not understanding the property-specific details of the land being accessed, including livestock. Melton city Council recommended as an expel to introduce a mandatory basic course for employees which familiarises them with the Act, the statement of expectations and the code of practice. Melton City Council also state that better communication between transmission companies and landowners would provide greater certainty about when the time of access will happen, and what part of the land will be impacted.⁵³

The Law Institute of Victoria suggested that a transmission company must be obliged, at the outset, to provide all information on how a landowner's land will be affected over the short, medium, and long term.⁵⁴

AusNet Transmission Group declared that the code of practice presents a valuable opportunity to educate key stakeholders about the rights established in section 93 of the Act and what a transmission company is permitted to do when exercising those rights.

The Victorian Farmers Federation noted the importance of providing sufficient information to landowners so they are fully informed and to introduce an opportunity to provide comments on the transmission project.⁵⁵

RE-Alliance recognised the need to have clear and consistent land access protocols as having clear steps for engagement and expectations for landowners and the transmission company make accountability possible.⁵⁶

Commission draft decision

Part 2 of the draft code of practice proposes to regulate activities prior to accessing land. Transmission companies will have to start complying with the code of practice if a need to use section 93 powers is identified, before using its legal powers. The obligations on transmission companies under Part 2 of the draft code of practice aim to provide enough information to landowners, occupiers and other relevant parties affected by land access, to help them make an

⁵² Ibid.

⁵³ Melton City Council, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁵⁴ Law Institute of Victoria, *Essential Services Commission 2023, Making a Land Access Code of Practice: Consultation Paper*, 2 February, March 2023.

⁵⁵ Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁵⁶ RE-Alliance, *Submission for Essential Service Commission Land Access Code of Practice*, March 2023.

informed decision about whether to voluntarily agree to access and to understand what will happen if a voluntary access agreement is not reached and a transmission company relies on its access powers under section 93 of the Act.

We agree with the AEIC and several other stakeholders' comments that voluntary access agreements may be more beneficial to a landowner or more tailored for their needs and should be encouraged. Section 93 access should be a last resort measure.

Landowners and other affected parties should have access to clear information about the proposed land access and associated rights and obligations before deciding whether to enter into a voluntary access agreement. This information can also help affected parties and transmission companies negotiate more effective access agreements.

The obligations in Part 2 of the draft code of practice are designed to encourage effective engagement between transmission companies and landowners, occupiers and other affected parties. They recognise that the transmission company has the most knowledge of the project and what activities need to be conducted during land access, and so should have the responsibility to communicate that information to parties who may be affected by land access.

The objective of Part 2 is to require transmission companies to consult with, and provide relevant information to, affected parties in a manner that:

- involves staged, timely, relevant and appropriate engagement and consultation
- involves open, honest and respectful communication
- results in transmission companies understanding and taking into account property-specific needs
- provides information to affected parties that enables them to understand the nature and potential impact of the project and proposed land access, their rights and obligations and the rights and obligations of the transmission company
- provides information to affected parties on the details of how land access is proposed to occur, and involves consultation with them before finalising those details
- provides advance notice to affected landowners and occupiers of proposed land access
- provides affected parties with enough information to enable them to make informed decisions whether to enter into an access agreement.

The draft code of practice sets out a series of steps that a transmission company must complete before it considers use of section 93 powers or enters into an access agreement. These steps are explained in more detail in the following sections. Table 4 below summarises the obligations before accessing land.

Table 4: Summary of obligations prior to accessing land

Part 2 – Obligations prior to accessing land	
<p>General communication and engagement obligations: obligation to consult and provide information (Division 5)</p>	<p>At the start of planning a relevant transmission project, the transmission company must:</p> <ul style="list-style-type: none"> • communicate broadly with potentially affected parties about the key details of the project • publish on its website details of the projects and a summary of the affected parties' rights and the transmission company's obligations • provide a point of contact for enquiries about land access • have regard to feedback when making decisions about proposed land access • ensure that anyone contacting any affected parties or other parties interested in land has had stakeholder engagement training, (including training on engagement with traditional owners) and has the relevant skills, training and qualifications to undertake their allocated tasks in accordance with the code of practice
<p>Information on proposed access (Division 6)</p>	<ul style="list-style-type: none"> • Prior to accessing land or entering into an access agreement, the transmission company must provide information to affected landowners and occupiers about their rights and obligations, the transmission company's rights and obligations and detailed information about its proposed access to land
<p>Notice of Access under section 93 (Division 7)</p>	<ul style="list-style-type: none"> • The transmission company must issue a formal 'Notice of Access' with specific details and planned dates of access. • This notice must be sent at least 20 business days after providing information in accordance with Division 6 of the code of practice • This notice must be sent at least 10 business days prior to accessing the land, can only cover access to the land for 6 months, and must be updated if details change • The 'Notice of Access' requirements do not apply if all affected parties of the relevant land consent in writing to the entry or in an emergency

General communication and engagement obligations

Division 5 of the draft code of practice imposes obligations on transmission companies to provide general information to parties who land access may affect.

Transmission companies must publish specified information on their websites about each relevant transmission project they propose to undertake that the code of practice covers. This will provide

potentially affected parties with information about the project and its potential effects, and information on how they can participate in consultation on the project.

Transmission companies must then identify and contact landowners, occupiers and other parties who land access may affect. The draft code of practice contains a series of obligations related to communication and engagement with parties who land access may affect, including obligations to:

- identify and contact people who land access may affect
- provide affected parties with a point of contact and promptly respond to their issues and questions related to land access
- ensure anyone contacting affected parties clearly identifies themselves, carries identification when accessing land and has appropriate training and qualifications
- ensure all information and notices are written in plain English, are designed to be readily understandable and include contact details of translation and interpreter services
- share the outcomes of surveys and other relevant investigations with landowners.

These obligations are intended to ensure that all people who may be affected by land access are informed of the proposed project and potential land access early in the development of the project, can start to understand the potential impacts on them and have an opportunity to provide input on the project and proposed land access.

In relation to skills and training, we note that Melton City Council recommended introducing a mandatory course for employees to understand the requirements under the Act, the statement of expectations and the code of practice.⁵⁷ Instead of introducing a mandatory course, our proposed approach is to mandate transmission companies to ensure that its employees have relevant skills, training and qualifications to undertake their allocated tasks in accordance with the code of practice.

Specifically, regarding communication and engagement, a transmission company will have to ensure that anyone contacting any affected parties or other parties interested in land will have to have training in appropriate and effective stakeholder engagement, including training on engagement with traditional owners and training on the requirements of the code of practice. In addition, transmission companies would have to implement similar training and contractual requirements for its contractors.

We note that the Energy Charter, a coalition of a number of Australian energy businesses, recently released its Better Practice Social Licence Guideline⁵⁸, which encourages strong communication and engagement between transmission companies and relevant parties. These general communications and engagement obligations established in the draft code of practice align well

⁵⁷ Melton City Council, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁵⁸ See [The-Energy-Charter_Better-Practice-Social-Licence_2023_GUIDELINE.pdf](https://theenergycharter.com.au/wp-content/uploads/2023/03/The-Energy-Charter-Better-Practice-Social-Licence-2023-GUIDELINE.pdf) (theenergycharter.com.au).

with the Better Practice Social Licence Guideline, which among other matters, recommends providing a designated point of contact as well as clear schedules that detail requirements for accessing land.

Recognising First Peoples and Cultural Heritage Protection

The draft code of practice considers the effect of private land access on First Peoples' ongoing connection to all land in Victoria.

We heard from stakeholders that Traditional Owners should be notified of works and entry before an electricity company undertakes works.⁵⁹ The current definition of landowner in the draft code of practice includes the native title holder of the land. This means that the protections provided to landowners in the code of practice apply to native title holders. In addition, the *Native Title Act 1993 (Cth)* recognises Indigenous people's rights and interests in the land. The development of new transmission projects and undertaking significant upgrades to existing projects must consider the application of the *Native Title Act 1993*.

One of the initial information obligations established in the draft code of practice relates to cultural heritage protection when accessing land. A key preliminary activity transmission companies usually undertake on private lands is an Aboriginal cultural heritage assessment to create a Cultural Heritage Management Plan. Registered Aboriginal Parties prepare these assessments and plans to assess the potential impacts of a proposed activity on Aboriginal cultural heritage. Under the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*, we understand that it is likely that most projects subject to the code of practice will require a mandatory Cultural Heritage Management Plan. The code of practice is proposed to require consultation with Registered Aboriginal Parties to assess potential impacts of a proposed activity on Aboriginal cultural heritage where a Cultural Heritage Plan is not mandatory.

The code of practice seeks to support safe and appropriate private land access. Moreover, the code of practice emphasises the importance of safe and respectful engagement and communication.

⁵⁹ Anonymous survey response.

Draft decision 4: General communication and engagement obligations

The code of practice proposes to require transmission companies to identify and contact people who may be affected by land access and provide them with specified information about proposed transmission projects and proposed land access.

Question 4

Do you have any comments on the proposed general communication and engagement obligations on transmission companies before accessing land?

Information required to be provided prior to accessing land

Under Division 6 of the draft code of practice, prior to accessing land under section 93 or entering into an access agreement, a transmission company must provide a range of specified information to all affected landowners and occupiers including information on:

- the processes for making decisions relating to the proposed land access
- opportunities to participate in consultation
- the planned dates and times when access is sought
- the estimated duration of each instance of access
- variables that may affect the planned dates, times or duration of access
- the purpose of access and types of activities to be conducted on the land during access
- the areas of land which are requested to be accessed
- the equipment expected to be brought onto the land
- the number of people expected to enter the land
- how the transmission company will comply with biosecurity obligations
- the period of notice that will be provided prior to accessing land
- how any changes to the proposed dates or details of access will be communicated
- the proposed terms of any access agreement it is offering to enter into as an alternative to access under section 93.

Transmission companies must also establish a process to answer questions from affected landowners and occupiers on these matters and have regard to their feedback.

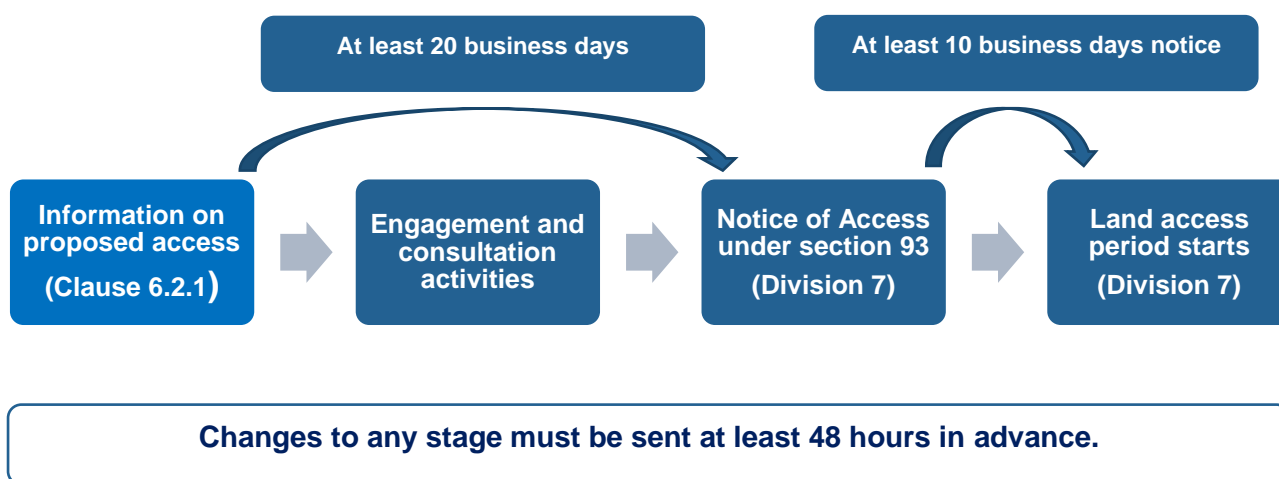
The provision of this information is intended to enable affected landowners and occupiers to understand the details of the land access that the transmission company proposes. It will also enable them to make more informed decisions whether to enter into a voluntary access agreement as an alternative to access under section 93 and the appropriate terms of any access agreement.

If the transmission company does not enter into access agreements with all affected landowners and occupiers following the provision of information in accordance with Division 6 of the code of practice, and instead seeks to rely on its section 93 powers, the transmission company must provide a 'Notice of Access' to each relevant landowner and occupier that complies with the code of practice prior to accessing land.

Notice required to be provided prior to accessing land

Division 7 of the draft code of practice regulates this Notice of Access, which must contain the dates and details of access, including all of the information noted above or any updates to that information.

Figure 2: Notice of Access requirements



Minimum period between provision of information and providing a Notice of Access

The Notice of Access must be sent to each affected landowner and occupier at least 20 business days after providing initial information in accordance with Division 6 of the draft code of practice.

We consider that these provisions provide sufficient time to landowners since they receive specific information in accordance with clause 6.2.1 of the draft code of practice to ask questions, provide feedback and make an informed decision before a transmission company is allowed to issue a Notice of Access.

These provisions are intended to enable affected landowners and occupiers to understand the details and likely impacts of land access and take actions to minimise the impacts on them. They should also help minimise disputes about land access by clearly setting out the permitted timing and scope of access.

We would value stakeholders' views on whether this 20-business day period provides sufficient time to affected parties to make an informed decision.

Minimum period between providing a Notice of Access and accessing land

In addition, the Notice of Access must be sent to each affected landowner and occupier at least 10 business days prior to accessing the land.

We considered various options for the advance notice requirement. We considered whether a specified period of notice is required or whether simply requiring ‘reasonable advance notice’ is sufficient. We also considered different options for how much notice to require and whether the period should be measured from when the notice is sent or when it is deemed to be received.

We consider that requiring a minimum notice period of 10 business days from when the notice is sent provides a clear and readily enforceable standard that best balances the benefits of advance notice with the costs to transmission companies and the potential impact on their projects. In setting this notice requirement, we have reviewed rules for accessing land to build infrastructure projects in other regulatory frameworks. For instance, the *Gas Industry Act 2001*, which allows gas distribution companies and gas transmission companies to enter lands to conduct works after giving 7 calendar days’ notice in writing to the occupier,⁶⁰ while the *Pipelines Act 2005* allows a proponent for a pipeline to apply for consent to enter the land 14 calendar days after giving notice to affected owners and occupiers.⁶¹ We would value stakeholders’ views on whether this 10-business day period strikes the best balance between the relevant interests, providing sufficient certainty and reasonable flexibility to transmission companies, affected owners and affected occupiers.

Maximum access period under a Notice of Access

The code of practice proposes to regulate a maximum access period. A Notice of Access will only be valid for the access period set out in the notice, which must not exceed 6 months.

The notice applies to all instances of land access that occur within the access period. If a transmission company wishes to continue to access land after the expiry of the access period, it must provide a new Notice of Access. We consider 6 months to be a reasonable notice period that minimises the costs of issuing multiple notices where land needs to be accessed on more than one occasion, while avoiding the uncertainty that an open-access notice would create. However, a transmission company must send a reminder to affected landowners and affected occupiers at least 48 hours before each access during the six-month period. This 48 hours’ reminder is consistent with the Victorian Farmers Federation’s Managing Entry to Farms Policy Statement that requires a minimum 48 hours’ notice prior to accessing land.

⁶⁰ Section 148B, *Gas Industry Act 2001*.

⁶¹ Section 22, *Pipelines Act 2005*.

We also propose that the notice period should not apply in emergencies, and to provide for both landowners and transmission companies making reasonable changes to reschedule the time of access.

If a transmission company wishes to change the dates or times of access from the planned dates and times set out in the Notice of Access, or any other details of access that were provided in the Notice of Access, it must give the relevant landowners and occupiers at least 48 hours' notice of the amended dates and times, except in emergencies.

As with the 10-day minimum notice period above, we considered whether a specific period of notice was required or whether 'reasonable advance notice' was sufficient. We would appreciate stakeholders' comments on whether this 48-hour period is appropriate or whether it could unduly restrict a transmission company's flexibility in certain circumstances, for example if it needs to reschedule access at late notice due to bad weather.

The draft code of practice does not require a transmission company to obtain approval from the commission or another decision maker prior to accessing land under section 93, as was proposed in some submissions. Such a requirement would be inconsistent with transmission companies' powers under section 93.

The proposed code of practice is not intended to regulate what happens if a landowner or occupier prevents access under section 93 of the Act. However, the code of practice should improve the information that is provided to affected parties about their rights and the rights and obligations of transmission companies. If a landowner or occupier refuses to engage with the transmission company or to allow access despite the transmission company's compliance with the code of practice, the transmission company's powers are as set out in section 93 of the Act. As explained in section 4 of the statement of expectations, in these circumstances the transmission company should document the refusal and surrounding circumstances and it may exercise its statutory powers of access under section 93 but must do as little harm as possible and compensate for damage it causes as required by sections 93(2) and (3) of the Act.

Exemptions to the Notice of Access

Each of the above notice requirements does not apply if all affected landowners and occupiers of the relevant land consent in writing to the entry, or in an emergency.

The draft code of practice allows an affected landowner or occupier to request that the transmission company changes the planned dates or times of access. A transmission company must agree to any such request unless more than three requests for changes have already been made or agreeing to the request would be likely to have a material cost impact or lead to a material delay to the project. We recognise that rescheduling access could create some costs and impacts for transmission companies, but we consider that landowners and occupiers should be able to request these changes where it is reasonable and will not lead to material costs or delays.

Draft decision 5: Information and notice obligations prior to accessing land

The code of practice proposes to require that, prior to accessing land or entering into an access agreement, a transmission company must provide information to affected landowners and occupiers about its proposed access to land. The transmission company must issue a formal 'Notice of Access' to affected landowners and occupiers with specific details and planned dates of access. This notice must be sent at least 20 business days after providing information on the proposed access and at least 10 business days prior to accessing the land for the first time. This notice must be updated if details change.

Question 5

Do you have any comments on the proposed information and notices that should be provided by transmission companies to affected landowners and occupiers before accessing land under section 93 of the Act or entering into a voluntary access agreement? Should any information be added, removed or amended?

Question 6

Do you consider that the proposed timing of 10 business days is sufficient period for a Notice of Access?

Question 7

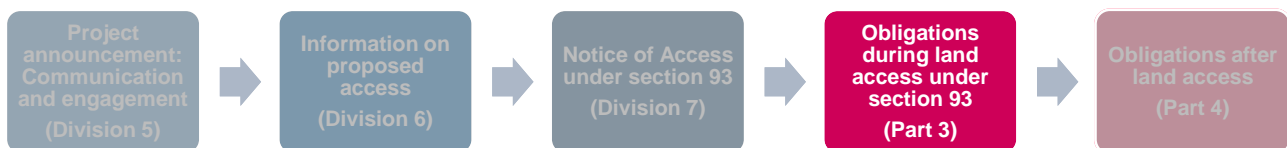
Do you have any comments on the proposed maximum access period?

Obligations during land access under section 93 of the Act

This chapter explains the obligations for transmission companies whilst accessing land using section 93 powers. The purpose of these obligations is to minimise the impact of land access by causing as little harm as possible.

Transmission companies will have to comply with general risks minimisation obligations and with specific requirements related to biosecurity controls. All projects must be undertaken safely, including having in place fire and health risk management measures, and done in respect of the land being accessed.

Approach in the statement of expectations



The statement of expectations contains the following principles related to managing the impacts of land (and examples of actions to comply with these principles):

- Principle 15: minimise impact on land and landowners
- Principle 16: meet expected work standards
- Principle 17: meet requirements for field-based employees and contractors accessing land
- Principle 18: implement environmental and biosecurity controls
- Principle 19: manage fire risks
- Principle 20: manage COVID and other health risks.

Stakeholder views

Stakeholders provided comments on general access obligations and specific obligations related to minimising risks during land access, including recommended changes to the principles and examples contained in the statement of expectations.

The Australian Energy Infrastructure Commissioner (AEIC) recommended that the code of practice should prescribe general conditions for access under section 93 of the Act, including carrying

identification and/or certification, as well as limitations on access to land and buildings. The AEIC also suggested that transmission companies should be prepared to continue to engage with landholders while access under section 93 of the Act takes place.⁶²

AusNet Transmission Group suggested that all persons accessing land should respect the landowner's privacy, private assets and infrastructure and follow landholder preferences and requirements where agreed between the transmission company and the landholder.⁶³

Specific risk mitigation obligations

The Victorian Farmers Federation's submission referred to its Managing Entry to Farms Policy Statement, which outlines specific needs the federation considered should be addressed for farmland. The federation considered that the code of practice should contain a broad range of minimum standards to be met where there is no access agreement.⁶⁴

The Victorian Farmers Federation stated that:⁶⁵

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 the survey conducted alongside the consultation paper included the following comments:

⁶² Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁶³ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁶⁴ Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁶⁵ Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

- Biosecurity protocols should be enhanced.⁶⁶
- The code of practice should require compensation for any disruptions contractors cause.⁶⁷
- There have been issues with contractors entering properties for maintenance without formal communication or notices, leaving gates open. Proper notification of intent to enter properties, proper protocols for farm biosecurity, correct washdown and designated locations for washdowns should be included.⁶⁸
- Transmission companies should pay compensation on an ongoing yearly basis and respect the traditional owners of the land.⁶⁹
- The code should require that, like national parks, you must leave the area you visit clean and clear of rubbish and obstructions and take nothing but photos and leave nothing but footprints.⁷⁰

The Energy and Water Ombudsman Victoria (EWOV) recommended that the code of practice should require transmission companies to demonstrate the reasonable steps it has taken to identify the nature of the landholder farming operations and the biosecurity plans that the transmission company has implemented.⁷¹

RE-Alliance stated that the code of practice needs to ensure that the health and safety of all parties is protected and that farm biosecurity is managed appropriately.⁷²

The Law Institute of Victoria noted that the needs of individual landowners could vary significantly and that biosecurity protection should be understood and determine on a case-by-case basis.⁷³

Commission draft decision

Overarching objective of the draft obligations during land access

Part 3 of the draft code of practice outlines obligations that apply to transmission companies when they are accessing land using section 93 powers.

The objective of Part 3 of the draft code of practice is to require transmission companies to take actions when accessing land under section 93 to minimise the impact of land access on affected

⁶⁶ Survey response from Rosemary Irving.

⁶⁷ Survey response from Russel Coad.

⁶⁸ Survey response from Russel Coad.

⁶⁹ Anonymous survey response.

⁷⁰ Anonymous survey response.

⁷¹ Energy and Water Ombudsman Victoria, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁷² RE-Alliance, *Submission for Essential Service Commission Land Access Code of Practice*, March 2023.

⁷³ Law Institute of Victoria, *Essential Services Commission 2023, Making a Land Access Code of Practice: Consultation Paper*, 2 February, March 2023.

parties, and on the land itself, consistent with their obligations under section 93(2) of the Act to ‘do as little damage as may be’ when exercising their land access powers.

The obligations in Part 3 only apply when transmission companies are compulsorily accessing land under section 93 for relevant activities. They do not apply to access under a voluntary access agreement or easement. If a transmission company is accessing land in accordance with the terms of an access agreement or easement, its obligations during access are governed by the terms of that access agreement or easement.

As noted earlier in this draft decision, compensation issues are not within the scope of the code of practice. Section 93 provides that compensation issues are to be agreed between the parties or determined in accordance with the Land Acquisition and Compensation Act 1986.

Stakeholder feedback, the Victorian Farmers Federation’s Managing Entry to Farms Policy Statement and other relevant guides prepared by other bodies and precedents from other jurisdictions have informed us when developing the obligations in the draft code of practice.

We note that these obligations are consistent with the Energy Charter’s Better Practice Social Licence Guideline which encourages transmission companies to provide clear schedules for land access and relevant information prior to access.

General risk mitigation obligations

The draft code of practice imposes a number of obligations on transmission companies to minimise impacts when accessing land under section 93 of the Act. These obligations cover:

Table 5: General risk mitigation obligations

Part 3 – Obligations during land access under section 93 of the Act	
General obligations during access (clause 9.1.1)	<ul style="list-style-type: none"> ensuring all staff and contractors have the relevant skills, training and qualifications respecting the privacy, assets and infrastructure of affected landowners and occupiers
Risk minimisation during access (clause 9.2.1)	<ul style="list-style-type: none"> causing as little harm, inconvenience and damage as possible not staying longer than is reasonably necessary removing all equipment brought onto the land minimising attendance leaving all gates, fences and grids as found where practicable, ensuring vehicles use existing roads and designated work areas informing affected landowners and occupiers in writing when land access has concluded and outlining the activities that were undertaken on the land

Consistent with the obligations under section 93(2) of the Act to 'do as little damage as may be' in the exercise of the land access powers, we propose to introduce general obligations to ensure that people accessing land from or on behalf of the transmission company have the relevant skills, training and qualifications to undertake their allocated tasks.

To avoid unnecessarily disrupting landowners and occupiers, or impacting the land, we consider that a transmission company must not stay on the land any longer than is reasonably necessary and should take all possible measures to cause as little harm, inconvenience and damage as possible to the land, as well as to anything living on or growing on the land.

Transmission companies will have to communicate to landowners and occupiers when access has concluded and will have to inform in writing the activities that were undertaken on the land.

Draft decision 6: Risk mitigation obligations when accessing land

The code of practice proposes to require transmission companies to take actions when accessing land under section 93 of the Act to minimise the impact of land access, consistent with their obligations under section 93(2) of the Act to 'do as little damage as may be' in the exercise of their land access powers.

Question 8

Do you have any comments on the proposed risk mitigation obligations in the draft code of practice?

Specific risk mitigation obligations

Transmission companies will have to consult and take into consideration property-specific needs associated with biosecurity protocols, fire risk management and health management. This will provide an opportunity to the landowner to present relevant information related to their land that the transmission company will have to take into consideration before accessing that parcel of land.

We note that different lands may have different needs and different protocols in place to address specific needs. Based on our analysis and stakeholder feedback, Table 6 summarises our proposed risk mitigation obligations tailored to each land.

Table 6: Specific risk mitigation obligations

Part 3 – Obligations during land access under section 93 of the Act

Biosecurity controls (clause 9.3.1)	<ul style="list-style-type: none"> • consult with affected landowners and occupiers to understand property-specific biosecurity needs, including any applicable biosecurity management plans • develop and implement environmental and biosecurity policies and procedures in accordance with good industry practice to minimise the spread of weeds, pests or pathogens • provide affected landowners and occupiers with details of any applicable environmental and biosecurity policies and procedures on request before accessing land • provide a report to affected landowners and occupiers once land access has concluded • document any environmental or biosecurity incidents that may occur when accessing land and communicate them to affected landowners and occupiers.
Fire risk management (clause 9.4.1)	<ul style="list-style-type: none"> • consult with affected landowners and occupiers on property-specific needs associated with fire risks • implement policies to manage fire risks • provide affected parties with a copy of relevant plans and polices
Health risk management (clauses 9.5.1 and 9.5.2)	<ul style="list-style-type: none"> • consult with affected landowners and occupiers on property-specific needs associated with health risks • implement policies, measures and protocols to manage health risks.

We understand that transmission companies have default policies and processes for accounting for these risks and impacts to lands. However, from our stakeholder engagement activities, we consider that there is an increased need in making these policies and processes clear and transparent for landowners and occupiers.

In relation to farming activities, we consider that transmission companies should take into consideration and communicate to landowners and occupiers how they expect to comply with existing processes, protocols and obligations. Transmission companies should also take into consideration existing industry protocols and management plans, such as the Victorian Farmers Federation’s Managing Entry to Farms Policy Statement.

We have designed the code of practice to increase communication and facilitate any engagement between a transmission company and landowners and occupiers. These specific risk mitigation obligations require transmission companies to actively reach out and consult on whether there are particular risks to land that should be considered prior to access. And in any event, there will be a default set of procedures that landowners should be able to easily access and understand.

Biosecurity protections when accessing land

We heard from stakeholders that biosecurity risks are a key concern when transmission companies access private lands and how damaging pests, weeds and diseases could adversely impact agricultural production.

In addition to the obligations introduced in the code of practice, transmission companies will have to comply with existing processes, protocols and obligations established by different Commonwealth and Victorian agencies, such as the recently released Commonwealth Biosecurity 2030 Action Plan⁷⁴ and Agriculture Victoria's legislation, policies and permits.⁷⁵ For example, biosecurity signage obligations are regulated in the *Livestock Management Act 2010*, under which it is an offence to contravene a biosecurity measure where there is such a sign. We understand that the framework governing livestock management improves community understanding regarding biosecurity controls.

The code of practice will complement existing obligations and will require transmission companies to consult with landowners on their specific biosecurity needs for land access, develop biosecurity policies and procedures, provide relevant information to landowners before and after accessing land and document and communicate incidents immediately.

Draft decision 7: Biosecurity obligations when accessing land

The code of practice proposes to require transmission companies to take actions when accessing land under section 93 to minimise biosecurity risks associated with land access, including consulting with affected landowners and occupiers to understand property-specific biosecurity needs and developing biosecurity policies and procedures.

Question 9

Do you have any comments on the proposed specific risk mitigation obligations in the draft code of practice related to biosecurity protocols, fire risk management and health management?

⁷⁴ See <https://www.agriculture.gov.au/biosecurity-trade/policy/commonwealth-biosecurity-2030#annual>.

⁷⁵ For more information, see [Legislation, policy and permits | Protecting Victoria | Biosecurity | Agriculture Victoria](#).

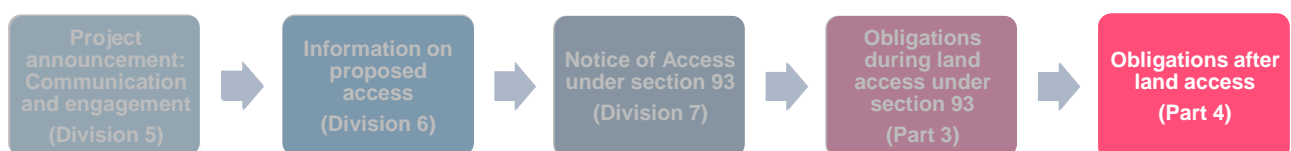
Obligations after accessing land: dispute resolution, record keeping and reporting

This chapter outlines how transmission companies should handle internal complaints and the right of affected parties to refer a complaint to a third-party customer dispute resolution scheme approved by the commission. The code of practice also includes record keeping and reporting obligations that are aimed to ensure transparency between transmission companies and landowners.

Transmission companies will be required to report on their performance in a monthly report that must provide details regarding:

- voluntary access agreements
- land access notices
- how many complaints were received
- number of times land was accessed.

Transmission companies will also be required to report potential breaches to the commission within 30 calendar days (this is consistent with our other codes of practice).



Approach in the statement of expectations

The statement of expectations contains principles related to complaints and disputes that require transmission companies to:⁷⁶

- implement effective complaint-handling processes and standards
- ensure honest, respectful, and timely responses to issues landowners and parties interested in land affected by land access raise

⁷⁶ Essential Services Commission, *Electricity Transmission Company Land Access Statement of Expectations*, May 2022.

- offer third-party dispute resolution to landowners and parties interested in land affected by land access
- provide landowners and parties interested in land affected by land access with EWOV's details.

The statement of expectations requires transmission companies to maintain access-related records of their contact with landowners and parties interested in land for seven years.

Reporting obligations are not contained in the statement of expectations itself. Instead, the commission requires transmission companies that are accessing land for the development of new major transmission projects to report on its performance against the statement of expectations' principles under reporting requirements under its transmission licence. Currently only AusNet Transmission Group is required to report on the Western Renewables Link project.

The required contents of these reports are set out in a letter from the commission to AusNet Transmission Group, which requires to provide a monthly report containing:

- the number of voluntary access agreement negotiations underway, and how the relevant principles are being applied to those negotiations
- the number of voluntary access agreements entered into, and how the relevant principles were applied during the period of negotiation
- the number of notices issued on proposed access under section 93, and how the relevant principles were applied before issuing each notice
- the number of times land was accessed under section 93, and in each instance: whether each access was under a notice, the time between issuing a notice and access occurring, and how the relevant principles were applied
- the number and nature of complaints received (including those forwarded to EWOV) about section 93 access, the time to respond to each complaint, and actions taken (if any) in response to the complaint
- a brief description of how the relevant principles were applied, and if a principle was not applied, details of why that was the case.

Public versions of AusNet Transmission Group's reports are available on the [Reporting against electricity transmission company land access statement of expectations](#) page on the commission's website.

Stakeholder views

The Energy and Water Ombudsman Victoria (EWOV), the Consumer Policy Research Centre (CPRC), RE-Alliance, Melton City Council, Law Institute of Victoria, Australian Energy Market Operator and AusNet Transmission Group supported the code of practice containing complaint handling obligations and access to independent dispute resolution.

In our *Making a Land Access Code of Practice: Consultation paper*, we asked if there were other options for complaint handling that we should consider as we develop the code of practice and what would be the costs and benefits of those options.

There were a range of views on who would be the most appropriate dispute resolution body. Several stakeholders supported EWOV, while others proposed potential alternative complaints and dispute resolution bodies.

EWOV considered that it is well-positioned to provide fair and independent dispute resolution services for landowners affected by land access. EWOV noted that it currently has jurisdiction to handle complaints about land access on a case-by-case basis through transmission companies' licence terms. EWOV stated that this means that 'depending on the project, we are able to handle complaints about land access (property damage and safety), customer service (communication and information) and provision (work standards)'.⁷⁷

The CPRC stated that it strongly believes that EWOV should be the dispute resolution body for land access disputes involving transmission companies:⁷⁸

Consumers benefit when they can lodge complaints about a wide range of energy issues with one body. Multiple dispute schemes across a sector have high potential to increase consumer confusion and reduce quality of outcomes overall.

RE-Alliance proposed that a new independent compliance body be established and be responsible for overseeing compliance with the code of practice and complaints. RE-Alliance proposed that this body would replace EWOV for complaints and dispute resolution on land access.⁷⁹

The Law Institute of Victoria suggested that an option for complaints handling that should be considered is the Victorian Small Business Commission, if it is willing and able to mediate disputes.⁸⁰

The Australian Energy Market Operator suggested that options for dispute resolution included EWOV, the AEIC or other third-party dispute resolution services.⁸¹

⁷⁷ Energy and Water Ombudsman Victoria, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁷⁸ Consumer Policy Research Centre, *Submission to the Essential Services Commission regarding a Land Access Code of Practice*, March 2023.

⁷⁹ RE-Alliance, *Submission for Essential Service Commission Land Access Code of Practice*, March 2023.

⁸⁰ Law Institute of Victoria, *Essential Services Commission 2023, Making a Land Access Code of Practice: Consultation Paper, 2 February*, March 2023.

⁸¹ Australian Energy Market Operator, *Response to Making a Land Access Code of Practice Consultation Paper*, March 2023.

The AEIC stated that transmission companies should be encouraged to develop and make publicly available an internal dispute resolution process. The AEIC proposed that if a complaint cannot be resolved through an internal dispute resolution process, landowners may complain to the AEIC, EWOV, or the Department of Energy, Environment and Climate Action.⁸²

AusNet Transmission Group stated that the practical application of the complaints and dispute resolution principles in the statement of expectations has led to several unintended and counter-productive outcomes, including:

- EWOV is receiving complaints about all aspects of the Western Renewables Link project, most of which are unrelated to land access issues. AusNet Transmission Group proposed that the code of practice be clear about the types of matters that can be referred to EWOV for dispute resolution.
- There is no distinction between a 'complaint' and a 'dispute'. This makes it difficult to ensure that concerns are being handled under the appropriate process. It also means issues that should initially be dealt with by the licensee's internal complaints handling process are being investigated by EWOV, which creates an increased workload and confusion about EWOV's jurisdiction.
- Many landowners are confused about the purpose of third-party dispute resolution and what outcomes it is intended to deliver for statutory land access. The code should clarify that third-party dispute resolution for land access is limited to the way a licensee has exercised its statutory land access powers, and not wider concerns such as the route, environmental impacts of the project or compensation.
- Complaints and dispute resolution processes should not be exploited to delay genuine engagement in land access processes or undermine the lawful and appropriate use of section 93.⁸³

The only submission that addressed record-keeping issues was EWOV. EWOV stated that its dispute resolution experience highlights that:⁸⁴

it would be beneficial for the code of practice to require retention of electronic information related to land access under section 93, including photographs and video footage, for a reasonable period of time.

⁸² Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁸³ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁸⁴ Energy and Water Ombudsman Victoria, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

A response to the survey that we conducted alongside the consultation paper commented that ‘When the community meets with Ausnet, Ausnet publishes a record of the meeting which is not how the community sees it’.⁸⁵

The only submission that addressed reporting issues was AusNet Transmission Group. AusNet Transmission Group considered that there are opportunities to streamline reporting to better present and highlight the pertinent facts, reduce the volume of material reported, and improve readability of the reports and summary data. AusNet Transmission Group also suggested that reports could include more information on biosecurity issues to provide further confidence to parties.⁸⁶

Commission draft decision

Complaint handling and dispute resolution

Division 11 of the draft code of practice requires transmission companies to implement effective complaint handling and dispute resolution processes and provides that affected parties have the right to escalate disputes related to land access to a third-party dispute resolution scheme approved by the commission:

Table 7: Complaint handling and dispute resolution processes

Part 4 – Dispute resolution, record keeping and reporting	
Complaint handling and dispute resolution (clause 11.1.1)	<ul style="list-style-type: none"> • provide timely responses to complaints • develop, implement, publish and regularly review complaint-handling processes • publish clear information on the steps to follow and relevant people to contact to escalate complaints and disputes within the transmission company’s management • enter into a customer dispute resolution scheme approved by the commission and remain a participant in that scheme while any access under section 93 of the Act is being considered or undertaken • inform affected parties of their right to refer complaints to the dispute resolution scheme • provide the details of the dispute resolution scheme approved by the commission

⁸⁵ Survey response from Rosemary Irving.

⁸⁶ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

Complaints or disputes should be referred to the transmission company in the first instance. Disputes or complaints related to land access can then be escalated to the third-party dispute resolution body approved by the commission if they are not satisfactorily resolved by the transmission company.

In response to comments from AusNet Transmission Group, the code of practice clarifies the types of complaints and disputes that are covered by these obligations. These provisions apply to complaints and disputes related to land access or proposed land access under section 93 and to relevant preliminary activities that are within the scope of the code of practice. They also apply to complaints or disputes related to compliance with the code of practice.

They do not apply to complaints or disputes that are not related to land access or relate to land access that occurs under a voluntary access agreement. Any disputes related to land access under voluntary access agreements are to be resolved in accordance with the terms of the access agreement, including any third-party dispute resolution arrangements that apply under the agreement.

For broader complaints that are not related to land access issues and are not satisfactorily resolved by the transmission company, for example issues relating to the overarching project or broader community concerns, other bodies such as the AEIC are the most appropriate person to contact.

Easy and timely access to records of access upon request and the provision of clear steps and contacts for complaints resolution is also a key aspect of the Energy Charter's Better Practice Social Licence Guideline.

EWOV as the most appropriate third-party dispute resolution body for land access under section 93

The code of practice proposes to require transmission companies that propose to access land under section 93 of the Act to enter into a customer dispute resolution scheme approved by the commission. A transmission company will have to remain participating in that scheme while access under section 93 of the Act is being considered or undertaken.

The commission considers that EWOV is the most appropriate dispute resolution body to resolve complaints related to land access under section 93 and compliance with the code of practice. Our view is based on the understanding that EWOV has:

- established skills and experience in working with consumers and energy companies to effectively resolve these disputes
- established funding arrangements and fee structures to recover its costs from licensees as it is already handling disputes related to the statement of expectations, and

- established membership base. Almost all current electricity transmission licensees are already members of EWOV and EWOV has powers to hear disputes related to land access by those companies.⁸⁷

It would be the commission's intention to approve the established EWOV scheme as the customer dispute resolution scheme for land access matters regulated in the code of practice.

Adopting EWOV as the dispute resolution body is expected to result in a more efficient process and lower costs for parties to a dispute compared to a new body as suggested by RE-Alliance or other bodies proposed by some stakeholders.

Draft decision 8: Complaint handling and dispute resolution obligations

The code of practice proposes to require transmission companies to implement effective complaint handling and dispute resolution processes and provide affected parties with the right to escalate disputes related to land access to a customer dispute resolution scheme approved by the commission. It is proposed that the dispute resolution scheme will be the Energy and Water Ombudsman.

Question 10

Do you have any comments on the proposed complaints handling and dispute resolution obligations in the draft code of practice?

Question 11

Do you have any comments on the Energy and Water Ombudsman Victoria (EWOV) being the proposed dispute resolution scheme? Are there other dispute resolution bodies we should consider? What would be the costs and benefits of those options?

Record keeping

The draft code of practice requires transmission companies to retain 'land access related information' for seven years. This information is defined as any information related to land access, including:

- records of all contact with affected parties related to land access
- any photographs or videos taken while accessing private land

⁸⁷ The current electricity transmission licence holders that are EWOV members are AusNet Transmission Group, Transgrid and Basslink. Australian Energy Operations holds a transmission licence and owns and operates two small contestable parts of the transmission network but is not currently an EWOV member.

- copies of all access agreements.

This record-keeping obligation covers a broader range of information than in the statement of expectations and equivalent obligations in our other instruments, such as the Energy Retail Code of Practice. We agree with EWOV's submission that a broad record-keeping obligation is beneficial to assist with dispute resolution, and consider that it will also assist our compliance and enforcement activities.

The seven-year period for retention of records is consistent with the statement of expectations but is longer than standard under our other instruments. For example, the Energy Retail Code of Practice requires certain information to be retained for two years. We consider that a longer retention period is appropriate given the duration of transmission projects that will be covered by the code of practice and the nature of the information that is to be retained.

The draft code of practice also requires transmission companies to record verbal communications with affected parties related to land access in writing, and make records of communications with affected parties available on request.

Draft decision 9: Record-keeping obligations

The code of practice is proposed to contain record-keeping obligations, including requiring transmission companies to retain all land access related information for seven years.

Question 12

For what period of time should transmission companies be required to retain records related to land access?

Question 13

What scope of records should transmission companies be required to retain?

Reporting

The draft code of practice proposes to require transmission companies to provide monthly reports to the commission on specific obligations within the code. Only transmission companies developing new transmission projects or undertaking significant upgrades to existing projects will have to provide monthly reports for the period they are conducting those activities.

We consider that the data we would be able to collect can give insight into whether transmission companies are making tangible improvements in relation to land access. These reports will allow us to identify trends and issues with land access. We will publish these monthly reports to promote

transparency around land access negotiations and promote effective engagement between landowners and transmission companies.

Under the obligations proposed in the code of practice, transmission companies will also have to report to us breaches of the obligations in the code of practice within 30 calendar days. Further information on the timing of these reports is available in Schedule 2 of the draft code of practice. We review breaches of our codes and take non-compliance with these obligations seriously. In line with our [Compliance and Enforcement policy](#), we will consider taking compliance or enforcement action when necessary. Suspected breaches may also be reported directly to the commission by members of the public.

If a member of the public is concerned that the code of practice has been breached, we expect them to be able to first raise this concern with the transmission company to resolve immediate issues appropriately and timely. As mentioned in the ‘Complaint handling and dispute resolution’ section above, transmission companies will be required to have complaint-handling processes in place and affected parties will have the right to refer their complaint to an external customer dispute resolution scheme approved by the commission.

To provide an overview of breaches over a longer period, a transmission company must send an annual summary report of all identified breaches to the commission.

These reporting requirements are intended to enable the commission to monitor compliance with obligations set out in the draft code.

This also helps identify and inform decision making for potential future amendments of the code.

The commission considers that the reporting obligations proposed in the draft code of practice are reasonable and appropriate to meet this objective.

Table 8: Monthly reporting obligations

Part 4 – Dispute resolution, record keeping and reporting	
Information to be contained in monthly reports (clause 13.5.1)	<p><i>Negotiations and entry into access agreements:</i></p> <ul style="list-style-type: none"> • number of access agreement negotiations underway by the end of that month • number of access agreements entered into during that month • number of notices of proposed access and notices of access issued during that month • number of times land was accessed and for each occasion:

- whether the access was made under s 93 or access agreements
- whether access was under a notice under clause 7 of the draft code of practice
- the days from issue of notice to the land access occurring.

Complaints related to land access:

- number of complaints received by the transmission company
- number of complaints notified by the relevant ombudsman
- number of days to respond to each complaint
- any actions taken in response to the complaint
- a summary of the nature of the complaints received during the period.

Draft decision 10: Reporting obligations

We propose that transmission companies should provide to the commission periodic reports about land access and to report potential breaches to the commission within 30 calendar days.

Question 14

Are the proposed reporting requirements appropriate to monitor compliance with this draft code of practice? If no, what reporting should be required? Do you have any comments on whether the monthly reports should be used for additional purposes?

Considering our objectives when developing the Land Access Code of Practice

This chapter explains our consideration of our objectives and other matters, such as the costs and benefits of making a code of practice. Our analysis supports the introduction of enforceable obligations on electricity transmission licensees, noting that all submissions to the consultation paper supported an enforceable code of practice.

In exercising our powers to make, amend or revoke codes of practice, our objective is to promote the long-term interests of Victorian consumers. In seeking to achieve this objective, we must have regard to the price, quality and reliability of essential services.⁸⁸

To achieve our objective, the ESC Act requires us to consider the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for consumers and users of products or services (including low income and vulnerable consumers) and regulated entities, among other matters.⁸⁹

The commission has considered the costs and benefits of making the code of practice. To inform our considerations, the commission has applied Better Regulation Victoria's *Victorian Guide to Regulation*⁹⁰ to the extent possible when developing its cost-benefit assessment.

Consistent with the guide, the commission has assessed the indicative cost estimates and benefits of the draft code of practice by comparison with a 'base case'. The base case reflects the current arrangements. Under the base case, the statement of expectations (and the associated reporting obligations under AusNet Transmission Group's licence conditions) would continue to apply but there would not be a code of practice on land access. The options that were considered are summarised in [Appendix A: Costs and benefits of a code of practice compared with other options](#).

⁸⁸ Section 8 of the *Essential Services Commission Act 2001*.

⁸⁹ Section 8A(1) of the *Essential Services Commission Act 2001* requires us to consider the following matters to the extent that they are relevant to the code of practice:

- a) efficiency in the industry and incentives for long term investment
- b) the financial viability of the industry
- c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries
- d) the relevant health, safety, environmental and social legislation applying to the industry
- e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for (i) consumers and users of products or services (including low income and vulnerable consumers); (ii) regulated entities
- f) consistency in regulation between States and on a national basis and
- g) any matters specified in the empowering instrument.

⁹⁰ Better Regulation Victoria, *Victorian Guide to Better Regulation*, available at <https://www.vic.gov.au/how-to-prepare-regulatory-impact-assessments#victorian-guide-to-regulation>

Assessing the benefits and costs of a code of practice for land access

The content of the code of practice is based on the statement of expectations. The main difference between the base case and the draft code of practice for the purposes of a cost-benefit assessment, is that the code of practice imposes enforceable obligations on transmission companies. The content of the draft code of practice has therefore been drafted to reflect its status as a binding instrument, while the statement of expectations is non-binding.

Currently, the statement of expectations only applies to the Western Renewables Link project, as it is the only new transmission project that has needed to access private lands. We expect the code of practice to apply to the Western Renewables Link project and new projects in the future, as would the statement of expectations if it continued.⁹¹ The code of practice is proposed to also apply to significant upgrades on existing transmission assets. Most or all of these projects would also be covered by the statement of expectations under the base case.

The commission has assessed the benefits and costs of making the draft code of practice. We consider that the benefits of developing an enforceable code of practice to regulate land access outweigh the implementation and ongoing costs that licensees may incur. Our assessment is based on submissions to the consultation paper, discussions with stakeholders, AusNet Transmission Group's reporting under the statement of expectations and the commission's own analysis.

We are seeking feedback from stakeholders on our assessment of costs and benefits, including whether there are any other costs or benefits that we should consider and comments from any other stakeholders who consider that they are likely to incur costs under the code of practice.

Benefits

We have identified a range of benefits to introducing enforceable regulatory obligations on transmission companies when accessing land. While many of these benefits are difficult to quantify, we note that all stakeholder submissions to our consultation paper supported an enforceable code of practice. In particular, the Victorian Farmers Federation, the Australian Energy Infrastructure Commissioner, RE-Alliance, Melton City Council, Law Institute of Victoria and

⁹¹ Transmission projects that could be covered by the code of practice in future include:

- the projects identified in AEMO's 2022 ISP, including the Victorian portion of the Victoria-NSW Interconnector West project (VNI West) and the Victorian portion of MarinusLink,
- projects to facilitate new Renewable Energy Zones in Victoria or other transmission projects developed in accordance with the Victorian Government's proposed new [Victorian Transmission Investment Framework](#) and which require access by transmission companies to greenfield sites, and
- transmission assets required to connect new generators, such as major connection assets that may be needed to connect new offshore wind farms, where they are undertaken by licensed transmission companies with section 93 powers and require access to greenfield sites.

AusNet Transmission Group considered that implementing an enforceable code would provide significant benefits.

For example, the Victorian Farmers Federation stated:⁹²

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).

The Australian Energy Infrastructure Commissioner stated:⁹³

The development of a robust and enforceable Code of Practice will provide the community and transmission companies with confidence that the processes, procedures and protocols utilised in accessing land under section 93 of the Act are appropriate.

AusNet Transmission Group stated:⁹⁴

We fully support the establishment of the Land Access Code of Practice. The Commission's interim Electricity Transmission Company Land Access Statement of Expectations (SOE) sets out a balanced set of initial principles and provides a strong foundation for the code of practice. We have invested significant personnel and financial resources into designing and implementing processes to facilitate constructive, effective relationships between transmission licensees and landholders as envisaged by the SOE, thereby enabling us to build further trust within Victorian communities. AusNet now has considerable lived experience of the practical application of the SOE and is well-placed to identify the changes that are crucial to designing a land access code of practice that meets both the above objectives.

⁹² Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁹³ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁹⁴ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

The commission considers that the draft code of practice will deliver the following benefits compared with the base case:

- **Supporting transmission companies, landowners and other affected parties to understand their rights and comply with their obligations on land access:** The code of practice's obligations will provide increased transparency for all relevant stakeholders about their rights and obligations related to land access. The expanded information provision and engagement obligations will improve consultation and engagement in the early stages of transmission projects and increase the likelihood of landowners and other affected parties agreeing to land access on terms that meet their needs.
- **Reducing transactions costs of negotiating land access:** The code of practice will enable landowners to make more informed decisions about entering into a voluntary access agreement as an alternative to access under section 93, and more informed decisions on the terms of those agreements. The code of practice will not regulate the terms of voluntary access agreements but should reduce the transaction costs for transmission companies negotiating those agreements by providing guidance on the expected content of those agreements.
- **Reducing the costs of disputes related to land access:** The code of practice clarifies parties' rights and obligations and improves the information provided to affected parties, which is expected to reduce the likelihood of land access disputes and the costs of resolving those disputes.
- **Improving the commission's ability to monitor, report on and enforce compliance with land access obligations:** The commission currently has limited powers to monitor and report on land access issues and no power to enforce obligations on transmission companies. The code of practice will give the commission clear monitoring, reporting and enforcement powers and is expected to lead to greater compliance by transmission companies with their obligations.
- **Promoting public confidence in the regulation of land access for electricity transmission projects:** The code of practice is expected to help improve current community concerns related to land access for transmission projects, by providing necessary protections for landowners. The improved clarity provided by the code of practice could also assist transmission companies in establishing processes for land access, leading to more efficient investment in electricity transmission infrastructure.

Indicative cost estimates

Given that the scope of the draft code of practice is similar in scope to the statement of expectations, we do not expect a material increase in costs compared to the base case. Importantly, transmission companies would need to develop internal protocols and processes for land access even if there was no code of practice or if the statement of expectations were not in

place. This is evident by the processes and policies already established by current transmission licensees and similar organisations, which are publicly available.⁹⁵

The only parties who are expected to incur costs under the draft code of practice are transmission companies, the commission and third-party dispute resolution bodies.

We note that only one transmission company, AusNet Transmission Group, is currently expected to be immediately affected by the code of practice upon its commencement, with construction of the Western Renewables Link project scheduled to start in 2025.⁹⁶ However, AusNet Transmission Group's submission to the consultation paper supported making a code of practice that was based on the content of the statement of expectations with appropriate amendments, and did not raise any concerns about the costs it may incur.

In comparison with no enforceable obligations (or a statement of expectations), we expect that transmission electricity companies' costs related to the draft code of practice will involve:

- **One-off transition or implementation costs:** These could include costs to establish or amend compliance materials, update internal materials, processes and training documents, update existing published materials, or update existing communications templates.
- **On-going administration costs:** These could include costs for record keeping, data collection and reporting of land access that has occurred.
- **On-going compliance costs:** As the code of practice imposes enforceable obligations, there will be costs to monitor and ensure compliance with the code, such as setting up processes and having resources to monitor, identify and report potential breaches to the commission, and training of staff.

We estimate a modest overall industry cost of \$0.784 million per annum, based on five new transmission projects and licensees implemented sequentially over the next ten years.⁹⁷

However, we consider even these costs to likely be an over-estimation, given transmission businesses would incur costs to develop processes and materials relating to land access, even in the absence of enforceable obligations.

Table 9 provides an indicative estimate of implementation costs, with assumptions based on industry practice and salaries.

⁹⁵ See AusNet Transmission Group's [Land access for field surveys and investigations](#), [Land access, easements and compensation](#) and [Option for Easement process and compensation](#). Marinus Link has published its [Victorian Land Access and Easement Acquisition Process](#) guideline, which details the key steps in the land access and easement acquisition process for that project.

⁹⁶ For AusNet Transmission Group's timeline for the Western Renewables Link, see <https://www.westernrenewableslink.com.au/about/>.

⁹⁷ The total annual industry cost is based on the annualised sum of once-off and annual costs, annualised over a 10-year period using a 4 per cent discount rate.

Table 9: Breakdown of indicative cost estimates and assumptions to implement a Land Access Code of Practice ⁹⁸

Costs	Likely activities required additional to the base case	Key assumptions per organisation	Estimated cost per organisation
Administration costs of licensees	1. Reporting requirements, including collection of data, record keeping and reporting.	0.5 dedicated staff per year	\$48,000 annually
Compliance costs of licensees	2. Training costs, such as education and training of staff and contractors to implement new protocols.	Approximately 200 staff trained over half-day sessions	\$30,000 annually
	3. Compliance monitoring, such as on-site monitoring of staff and contractors.	2 staff monitoring 1 day per week	\$36,000 annually
	4. Internal compliance activities, such as regular audits.	Two-week audits conducted every six months by 2 staff, including external fees	\$140,000 annually
One-off transition or implementation costs	5. Compliance strategy and controls, including establishing new or amending existing compliance strategy and internal controls.	One month of 2-3 compliance staff to develop controls.	\$19,000 once-off
	6. Developing or updating internal materials and other process relevant to land access.	Two months of 3 compliance staff to develop processes.	\$66,000 once-off
	7. Developing or updating external materials, such as website content, collateral and fact sheets.	Two months of 3 staff to develop materials including external fees.	\$196,000 once-off
	8. Developing or updating landholder communications templates, notice letters, etc.	Two months of 2 staff to develop materials.	\$46,000 once-off
	9. Updating reporting templates and materials.	Two weeks of 2 staff to develop materials.	\$8,000 once-off

We also note there are likely to be increased costs faced by the commission and dispute resolution bodies. The commission will face increased one-off costs to make the code of practice, as well as ongoing reporting, monitoring, compliance and enforcement costs.

⁹⁸ Costs are rounded to the nearest thousandth dollar and are based on industry-standard salaries, once-off and annual costs.

Indicative cost estimates to dispute resolution bodies under the code of practice are not expected to be materially different compared with those under the statement of expectations, which states that transmission companies should have complaint processes (principle 21) and dispute resolution mechanisms (principle 22), as noted in Table 10 below.

Table 10: Statement of expectations. Managing complaints and disputes effectively and fairly

Principle	Examples
<p>Principle 21: Implement effective complaint handling</p> <p>An electricity transmission company will implement effective complaint-handling processes and standards that meet current Australia and New Zealand standards for complaints handling.</p> <p>This process is to ensure honest, respectful, and timely responses to issues raised by landowners and parties interested in land affected by its land access.</p>	<ul style="list-style-type: none"> • Publish clear steps to follow and relevant persons to contact to escalate complaints, for people who have concerns or are not satisfied with an electricity transmission company’s response or actions. • Such steps may be: <ul style="list-style-type: none"> – Contact the designated land liaison officer (with contact details provided). – If not satisfied, escalate concerns to a complaint resolution team (with an email address provided). If a complaint cannot be resolved following further internal investigation, contact the Energy and Water Ombudsman Victoria.
<p>Principle 22: Offer dispute resolution</p> <p>An electricity transmission company will offer third party dispute resolution to landowners and parties interested in land affected by its land access.</p> <p>An electricity transmission company will provide landowners and parties interested in land affected by its land access with details of the Energy and Water Ombudsman Victoria (EWOV) scheme.</p> <p>An electricity transmission company is encouraged to include provision for third party dispute resolution in its negotiated access agreements.</p>	<ul style="list-style-type: none"> • EWOV may resolve disputes involving its electricity transmission company members. • Where statutory access does not meet reasonable expectations under this statement of expectations, landowners and parties interested in land may pursue dispute resolution through EWOV. • Where a voluntary access agreement is in place, parties should utilise any third party dispute resolution body nominated under their agreement.

Indicative cost estimates could be lower due to the increased clarity of obligations provided by the draft code of practice. In addition, we expect dispute resolution bodies to have cost recovery policies in place. For instance, if the commission approves the established EWOV scheme as the customer dispute resolution scheme for land access matters regulated in the code of practice, it has existing fee structures that recover its costs from licensees.

Question 15

Is there any additional information we should consider on the expected costs or benefits of the draft code of practice?

Question 16

Are there any other issues with implementing the code of practice we should consider?

Next steps and indicative timeline

The Land Access Code of Practice will regulate the procedures and processes that transmission companies must follow when accessing private land under section 93 of the Act. It introduces general and specific obligations on transmission companies before, during and after land access with the purpose of improving consultation and engagement with affected parties while minimising the impact of access.

We welcome feedback on the draft Land Access Code of Practice and this decision paper to ensure that the code is practical, effective, and fit for purpose.

The key dates for making the Land Access Code of Practice are as follows:

Next step	Timing
Draft decision consultation	15 June – 27 July 2023
Draft decision public forum	July 2023 (details of the forum will be made available on our website)
Final decision on the Land Access Code of Practice	Expected September 2023
Land Access Code of Practice takes effect	Expected October 2023

How to give us your feedback

We want to hear your views on the draft Land Access Code of Practice. Submissions should be made by 5pm, 27 July 2023 via [Engage Victoria](#).

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential, in accordance with our [Submissions Policy](#). Submissions should clearly identify which information you consider to be sensitive or confidential, and the basis for your claim.

We are also open to meeting with individual stakeholders to discuss specific feedback.

We will continue to proactively engage with the community, transmission companies, government departments and agencies through individual meetings as this review progresses.

If you have any questions or would like to arrange a meeting, please contact us at energyreform@esc.vic.gov.au.

Appendix A: Costs and benefits of a code of practice compared with other options

The commission has sought to identify other regulatory options to address the problem definition set out above and consider the relative costs and benefits of those options. These options are described in the next section.

The commission has undertaken a qualitative assessment of costs and benefits. This assessment is based on submissions to the consultation paper, discussions with stakeholders, AusNet Transmission Group's reporting under the statement of expectations and the commission's own analysis.

The commission would appreciate feedback from stakeholders on its assessment of costs and benefits, including whether there are any other costs or benefits that we should consider or any evidence of the likely extent of the relevant costs and benefits.

Options considered

The commission considered whether any other regulatory instruments (for example, guidelines or licence conditions) would be suitable alternatives to a code of practice. The commission also considered different approaches to the scope and content of a code of practice, to better understand the range of regulatory options and their respective costs and benefits.

Overall, the commission considers that each of the viable regulatory options that would address the problem definition involve an enforceable code of practice.

Other instruments made by the commission such as guidelines or licence conditions are unlikely to deliver material improvements in behaviour relative to the statement of expectations and would not address the problem. As guidelines cannot set statutory obligations, they cannot compel a duty holder to undertake an action. While licence conditions may set a compliance obligation, these conditions would have to be established for each individual license. This is not as transparent or as efficient as housing obligations within a single code of practice that can regulate enforceable obligations for different types of activities related to land access.

While the development of new regulations by government could be an alternative option, the commission does not consider this to be a suitable option to assess. This is because the Act specifically provides for the commission to address land access issues through a code of practice, which has advantages in terms of the time required to make it and the commission's enforcement powers.

The options that were considered are summarised below in Table 11.

Table 11: Summary of options considered

Issue	Base case⁹⁹	Code of practice	Alternative options considered
Is the instrument enforceable?	No (other than reporting obligations)	Yes	Yes (licence conditions and guidelines)
Which types of licensees are covered?	Transmission companies	Transmission companies	Considered whether to extend scope to include electricity distribution and/or generation companies
Which types of projects are covered?	Major transmission projects on greenfield sites	All new transmission projects and significant upgrades on existing transmission projects	Considered whether to extend scope to all transmission projects
Which types of activities are covered?	All stages of major transmission projects	All project stages	Considered whether to apply the code of practice to preliminary activities only
To what extent are voluntary access agreements covered?	Not covered, but the commission expects transmission companies to be guided by the statement's principles when developing access agreements	Applies to activities prior to entry into an access agreement. Does not regulate contents of access agreements, but the commission expects transmission companies to be guided by the code of practice when developing access agreements	Considered imposing obligations on the minimum content of access agreements and applying the code of practice to land access that occurs under an access agreement
What obligations prior to accessing land are included?	Non-binding principles and examples of expected approach to consultation and engagement	Binding communication, engagement and notice obligations. Obligations are based on the statement of expectations, with appropriate amendments based on stakeholder feedback and to make them suitable as enforceable obligations	Considered options for a smaller number of binding obligations as proposed by AusNet Transmission Group. Also considered options for a range of further obligations proposed by other stakeholders

⁹⁹ Continuation of the statement of expectations and associated licence condition reporting obligations, without any enforceable code of practice.

Issue	Base case ⁹⁹	Code of practice	Alternative options considered
What obligations during land access are included?	Non-binding principles and examples related to managing the impacts on land during access	Binding obligations related to managing the impacts on land during access. Obligations are based on the statement of expectations, with appropriate amendments based on stakeholder feedback and to make them suitable as enforceable obligations	Considered options for a smaller number of binding obligations as proposed by AusNet Transmission Group. Also considered options for a range of additional obligations proposed by other stakeholders
What reporting obligations are included?	Reporting obligations are imposed on AusNet Transmission Group under licence conditions	Reporting obligations apply to all transmission businesses covered by the code and are set out in the code of practice	Considered options for the content of the reporting obligations