



Australian Government

Australian Energy Infrastructure Commissioner

4 August 2023

Mr Jean Paul Dussaubat
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

via email to: energyreform@esc.vic.gov.au

Dear Mr Dussaubat

Re: Making a Land Access Code of Practice – Draft Decision

The Australian Energy Infrastructure Commissioner (**AEIC**) welcomes the opportunity to make a submission in response to the Making a Land Access Code of Practice Draft Decision.

The AEIC fulfils a national, independent role in Australia's energy sector and our responsibilities include:

- facilitating the handling of complaints from concerned community residents about planned and operating wind farms, solar farms, energy storage facilities and new large-scale transmission projects
- identifying and promoting best practices for industry, government and related agencies to adopt with regard to the planning, operation and governance of such projects
- improving information access and transparency about proposed and operating projects, and relevant government and industry information more broadly.

1. Overview

Australia is in the midst of an essential and rapid transition to renewable electricity generation. Our existing transmission infrastructure was developed to service an electricity network supplied by coal-fired power plants and is not equipped to meet the needs of our new renewable generation assets. Collectively, we face a significant challenge in ensuring that our transmission network can meet the electricity demands of our communities and that the potential impacts for regional communities and landholders are appropriately managed.

We are delighted that the Essential Services Commission (**ESC**) has published a Draft Decision on Making a Land Access Code of Practice. The power to access land under section 93 of the *Electricity Act 2000* (**Act**) must be appropriately regulated to provide clarity and enforceability that will benefit both the community and the transmission companies responsible for developing these essential infrastructure projects. We are pleased by the progress that has occurred from the development of the Statement of Expectations to this point and are grateful for the opportunities that we have had to contribute to the

development of the Draft Code of Practice. We look forward to the commencement of the Code of Practice later this year.

2. Scope of the Code of Practice

We strongly support the development of an enforceable Code of Practice that provides clarity for the nominated dispute resolution scheme, transmission companies, landholders and communities. Clarity within the Code will facilitate its operationalisation by placing distinct, enforceable obligations on transmission companies. Transmission companies must be able to operationalise their obligations, including by developing new processes, monitoring and reporting on compliance and providing training to staff.

We are concerned that if the obligations set out in the Code are too onerous for the transmission company to operationalise, compliance with the Code may become unmanageable. We recommend that the ESC give careful consideration to ensuring that the Code sets clear minimum standards for transmission companies without creating a high burden that is counterproductive to its purpose. Transmission companies should carefully consider how they will operationalise the Code and the staff and resources required to facilitate this.

In its current form the Code of Practice creates a two-pronged system in which the obligations on transmission companies differ for access to existing infrastructure and new transmission projects or infrastructure that undergoes significant upgrade. There is a risk that this will create confusion within the community and add to the burden on transmission companies which must comply with two separate land access processes. We consider that a uniform approach to land access across all transmission infrastructure is preferable.

The development of the Code of Practice is a response to the acute and immediate need of the community for a clear and enforceable process for land access under section 93 of the Act. This need has arisen in the context of current and anticipated major infrastructure developments, including new transmission projects and significant upgrades. To address the immediate need for clarity on these types of projects, we recommend that the operationalisation of the Code within the current timeframe be prioritised. If further work is required to expand the Code to include existing transmission infrastructure, we recommend that this work be completed separately to avoid delay to the current process.

We agree with the ESC that the Code of Practice should apply to all stages of a new transmission project in which section 93 access may be required. The Code should apply to all activity that falls within the scope of section 93 of the Act.

3. Notice Requirements

We agree with the timeframes for notice that are proposed in the Draft Code of Practice, including that:

- information is to be provided to an affected party at least 20 business days before a Notice of Access is issued,
- an access period is to commence no earlier than 10 business days after the issue of a Notice of Access, and
- the maximum access period is 6 months, noting that a new notice may be issued if additional time is required.

4. Risk mitigation and dispute resolution

The Code includes the following obligations to be completed “*when land access has concluded*”,

- when accessing land, an electricity transmission company must inform affected parties in writing when land access has concluded, outlining the activities that were undertaken on the land (9.2.1(g)), and
- an electricity transmission company must provide a report to affected parties within 15 business days after land access has concluded (9.3.1(d)).

For the avoidance of doubt, we wish to state that these timeframes should apply to the conclusion of an access event and not the conclusion of an access period.

We agree with the ESC that the Energy and Water Ombudsman Victoria is an appropriate choice for the proposed dispute resolution scheme.

5. Record keeping and reporting obligations

We consider that transmission companies should keep records of contact with affected parties including records of contact attempts (e.g. telephone messages), records of telephone, video and in person communications and records of written communications (including text messaging and other messaging services). The requirement that the transmission company retain these records for seven years is appropriate.

6. Opposed access

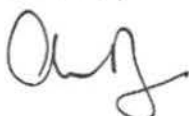
It is our strong recommendation that access be effected under section 93 of the Act only if absolutely necessary. Transmission companies should establish a clear process for internal approval of the decision to effect access under section 93 of the Act. This decision should be authorised by the Chief Executive Officer or authorised delegate.

Situations may arise in which legitimate access under section 93 of the Act is physically opposed by the affected party. This could include preventing access to the land by locking gates and/or blocking entryways. It is essential that there is a fair, efficient and acceptable procedure to facilitate approved access in these circumstances. We recommend that the ESC further consider how the powers of access available under section 93 of the Act may be achieved, including the circumstances in which a court order may be required.

7. Other matters

Thank you for the opportunity to make a submission on this important consultation. Should you have any queries or require additional information please do not hesitate to contact us by email (██████████) or telephone (██████████).

Sincerely



Andrew Dyer
Commissioner