

3 March 2023

Attention:
The Energy Reform Team
Essential Services Commission
Via: engage.vic.gov.au

Making a Land Access Code of Practice: Consultation paper

Thank you for the opportunity to respond to the Essential Services Commission's *Making a Land Access Code of Practice: Consultation paper* (the consultation). We welcome the Essential Services Commission's (the Commission) continued focus on the important issues of electricity transmission land access in the context of the increasing demand for renewable energy. We consider it is timely to examine the best ways to manage and support the important opportunities and challenges the fast-paced energy transition presents for Victorian consumers, businesses and the broader community.

An effective and well-designed *Land Access Code of Practice* (Code) offers a number of important opportunities to improve outcomes for affected individuals and organisations, including landholders and transmission companies, government, community groups, consumers and other businesses. We consider an important enabler of future success is an effective Code which provides an ongoing role to EWOV as the sole pathway for free, fair, accountable, independent, trusted and experienced dispute resolution.

In this submission, we outline:

- EWOV's unique role and value in the transforming energy market
- our current community and market insights about relevant land access issues, including opportunities for the Code to support fair and reasonable outcomes
- EWOV's role in handling land access cases (consultation question 6).

1. EWOV's unique role and value in the transforming energy market

The Energy and Water Ombudsman Victoria (EWOV) provides free, independent redress to Victorian consumers by receiving and resolving energy and water complaints. We work to ensure fair and reasonable outcomes when energy and water problems arise.¹ We also use our unique data insights about consumer and community experiences of the Victorian energy and water markets to improve outcomes, through our engagement with businesses, government, regulators and the wider community. Our work is guided by and accountable to the principles in the Commonwealth Government's *Benchmarks for Industry-based Customer Dispute Resolution*², and performance against these benchmarks is independently assessed every five years.

¹ Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

² EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

EWOV is the Commission's approved customer dispute resolution scheme for energy and gas complaints that arise between residential and small business consumers and energy and gas companies in Victoria.³ As the consultation notes, EWOV is the current complaints dispute resolution body for the resolution of disputes involving electricity transmission companies under the Commission's *Electricity Transmission Land Access Statement of Expectations* made on 17 May 2022 (the Statement of Expectations).

We currently have jurisdiction to handle and resolve complaints and disputes about land access on a case-by-case (or project) basis through transmission companies' licence terms. 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). We do not have a role in preventing a transmission company from accessing land, sending communications about accessing land, or changing the proposed route of a transmission infrastructure project.

As an experienced and established scheme, EWOV is well-positioned to provide the fair and independent dispute resolution pathway for Victorian consumers in the transitioning energy market on an ongoing basis. We consider it is particularly important that land access matters involving new electricity transmission have a single, experienced, free, fair and independent pathway, to ensure that consumers, businesses and communities have trust and confidence in the transformational changes of the current and future energy markets.

Our decades-long experience as the Victorian energy ombudsman scheme means EWOV is ready to play a key role in ensuring that fair and reasonable outcomes are reached when problems arise. Helping consumers and landholders to access an experienced, independent complaints and dispute resolution body like EWOV is increasingly important as consumers drive demand for more renewable energy, and as consumers, communities, businesses and government invest in new approaches to meet and deliver on this demand.

2. EWOV's insights about current land access issues

Since the Statement of Expectations came into effect on 1 June 2022, we have received 30 complaints about relevant land access issues.

Our top three land access-related complaint issues and themes have generally related to landholders' concerns about the nature of:

- community consultation and engagement (approximately 40% of all land access complaints)
- contact between transmission companies and landholders (approximately 20% of all land access complaints)
- broader communication and information updates (approximately 40% of all land access complaints).

As a proportion of EWOV's overall cases, the number of complaints peaked during June – August 2022. Recently, land access-related complaints have averaged one new complaint per month, related to the Western Renewables Link project.

³ Section 28(2) of the *Electricity Industry Act 2000* (Vic) and section 36(2) of the *Gas Industry Act 2001* (Vic).

Community consultation and engagement

The Statement of Expectations sets out the Commission's expectations of Victorian electricity transmission licence holders' approach to community and engagement. Principle 2 requires staged, timely engagement and consultation.

Through our recent land access dispute resolution experiences, we have observed that 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. This can also be a useful pathway for building a shared understanding of key facts, issues and sensitivities.

There is an opportunity for the Code to facilitate more transparency and community engagement about electricity distribution projects requiring land access. For example, the Code could outline reasonable measures that transmission companies are best placed to undertake during community consultation on transmission projects and land access. This could include the Code requiring that an appropriately independent and qualified facilitator convene community consultation discussions between the parties. This will help ensure that affected people feel they have been heard, that their concerns are understood and options for problem-solving and reducing impacts can be considered early.

To address some of the concerns we have observed in our cases, there is an opportunity for the Code to include a requirement that electricity transmission companies also contact properties that will not have a planned easement on their land but will border a property with a planned easement. This will ensure that landholders who may border a proposed easement are notified.

Identifying and contacting landholders

The Statement of Expectations establishes the Commission's expectations of Victorian electricity transmission licence holders' approach to identifying and contacting those affected by a project. Principle 6 requires an electricity transmission company to make diligent and comprehensive efforts to identify and contact landowners and others likely to be directly affected by its proposed land access.

Our complaints and dispute insights show that it is important to ensure landholders are notified of any proposed access to their property by transmission companies or their agents, and that landholders are provided meaningful and accessible opportunities to raise concerns. This could be facilitated by ensuring that landholders receive 'section 93 access' letters.⁴ Effective letters to landholders can help ensure compliance, accountability and appropriate record keeping by transmission companies, as well as supporting a shared understanding of the required access. There is an opportunity for a Code to provide clear guidance about the reasonable steps transmission companies must undertake to identify and contact landholders who may be affected by infrastructure projects. The Commission may also wish to consider whether the Code should include definitions or illustrations of what constitutes 'reasonable notice'.

⁴ This commonly used phrase refers to section 93 of the *Electricity Industry Act 2000* (Victoria).

Good practices are also required to support formal notice requirements. There is an opportunity for the Code to address some of the concerns we have observed in our cases. For example, it would be helpful for a Code to ensure transmission companies make reasonable efforts to reach out to affected landholders. This could include, for example, that the transmission company creates and follows a 'minimum requirement' checklist for the project, to ensure that reasonable actions are taken to send section 93 letters to correct addresses and any issues reasonably identified and addressed early through engagement. It would also be helpful for the Code to advise how many days' notice a transmission company needs to provide landholders prior to a section 93 access. These standards will help ensure that transmission companies have reasonably notified affected landholders, and landholders are reasonably aware of the transmission companies' intention to access their property under section 93 of the Act.

Ensuring access to accurate and up-to-date information

Our land access dispute resolution experiences highlight that ensuring landholders have accurate and up-to-date information about infrastructure projects is key to ensuring transparency and enabling parties to make informed decisions. We consider a Code can play an important role in facilitating transmission companies' provision of relevant, timely and accurate information that is reasonably accessible by members of the public, requiring reasonable updates as new and more reliable or specific information becomes available.

To enable stakeholders to make informed decisions, there is an opportunity for the Code to specify the types of information transmission companies must make available to the public, considering accessibility requirements and when and how new and more reliable information must be made available.

There is also an opportunity for this aspect of the Code development to be informed by behavioural insights and/or other consumer testing research, as well as international land access experiences and insights. We consider that drawing on these insights will help determine good practice and the most effective evidence-based engagement methods or mediums that are likely to support fair outcomes and engagement throughout. This will also assist the design of engagement measures and practices that are known to be effective in meeting different communications needs and preferences.

Preferred method of communication

Principle 5 of the Statement of Expectations establishes the Commission's expectation that Victorian electricity transmission licence holders employ respectful two-way communication.

Related to the points above, our complaints and dispute insights show that it is important to ensure that electricity transmission companies take into account landholders' preferred method of communication and their individual circumstances.

There is an opportunity for the Code to ensure transmission companies identify and then communicate with landholders via the landholder's preferred method of communication. This will facilitate the groundwork for respectful two-way communication and set an agreed upon channel for communication.

Record keeping

Principle 13 of the Statement of Expectations establishes the Commission's expectations of Victorian electricity transmission licence holders to, in accordance with their licence, maintain access-related records of its contact with landowners and parties interested in land for a period of seven years.

Our recent dispute resolution experiences highlight that it would be beneficial for the Code to require retention of electronic information related to land access under section 93, including photographs and video footage for a reasonable period of time. This could be developed by including a reasonably standard definition of 'information' in the Code.

Biosecurity

Principle 18 of the Statement of Expectations establishes the Commission's expectation that Victorian electricity transmission licence holders implement environmental and biosecurity controls. Our land access dispute resolution experiences highlight a need for the Code to require a transmission company to demonstrate the reasonable steps it has taken to identify the nature of the landholder farming operations (i.e., crops, cattle, or both), and the biosecurity plan the transmission company has implemented prior to accessing property under section 93 access. This area is often a significant concern for landholders, given the significant livelihood and security implications this can have.

3. EWOV's role in providing effective land access dispute resolution

Question 6 of the consultation seeks stakeholders' views about whether there are other options for complaint handling that the Commission should consider as it develops the code of practice, and what the costs and benefits of those options would be.

As we note in our recent submission to the now Department of Energy, Environment and Climate Action on protecting consumers of distributed energy resources (DER), ombudsman schemes like EWOV can play a unique role in transitioning markets, by helping to ensure that consumers and businesses can access direct, independent and effective redress when things go wrong. In complex and evolving markets, a clear and simple complaints pathway helps consumers to stay engaged in, derive benefits from and have trust and confidence in the market.⁵

Ombudsman schemes are an established, accessible and cost-effective way to resolve individual disputes compared to formal legal or regulatory avenues. There are a range of scale, administrative, regulatory, cost and efficiency benefits in ensuring that EWOV provides free, independent, accountable and fair dispute resolution services in electricity transmission land access matters. EWOV is well-placed to leverage its existing expertise, experience and awareness in the community to provide land access-related complaints handling under the Code. We draw on established experience in providing dispute resolution, data analysis, communications, engagement and outreach to benefit consumers, businesses and the wider community.

⁵ EWOV, *Protecting Consumers of Distributed Energy Resources (DER) - Submission to the then Department of Environment, Land, Water and Planning (Victoria)*, 18 November 2022: <https://www.ewov.com.au/uploads/main/Energy-and-Water-Ombudsman-Victoria-Submission-to-DELWP-Protecting-consumers-of-DER-18-November-2022.pdf>

Businesses that hold a licence (granted by the Commission) to distribute, supply or sell gas or electricity are required to join EWOV under their licence conditions. Electricity retail, distribution and transmission companies operating in Victoria are already participants in the EWOV scheme, meaning EWOV already has in place arrangements for those businesses to pay EWOV membership and case fees. Electricity transmission businesses AusNet Services, Basslink and TransGrid are all current members of the EWOV scheme. Including in the Code a mechanism for EWOV to handle complaints about land access issues related to renewable electricity distribution projects will therefore not create additional administrative burden and is already scalable and cost-effective.⁶

As the Australian Productivity Commission has observed, approximately 80 per cent of matters raised with ombudsman schemes are generally resolved within one month and 97 per cent within six months.⁷ Alongside this, it has been noted that disadvantaged people in particular face a number of barriers when seeking to access formal resolution pathways, meaning consumers in vulnerable circumstances are both more susceptible to, and less well equipped to deal with, legal disputes.⁸ In its *Access to Justice Inquiry*, the Productivity Commission concluded that, when governments assess regulatory and other frameworks to enable appropriate pathways for dispute resolution, consideration should be given to subsuming new roles within existing ombudsman schemes rather than creating new bodies.⁹

In a many of ways, proof of concept of EWOV's capacity and capability to handle land access-related complaints is already in place. We are managing a number of cases about the Western Renewables Link project, where EWOV has been able to handle complaints and gain insights into the effective engagement with impacted landowners and communities. In these cases, we were able to quickly apply our land access, customer service expertise and capabilities to cover a new area where there was demand for this. Some of the key outcomes and approaches we have successfully employed in these cases include:

- Carefully listening to the concerns expressed by affected landholders, taking steps to ensure that the business addresses outstanding questions raised by affected landholders and clarifies technical issues related to applicable legislation, codes and policies.
- Conducting best practice investigations to determine whether the business is following the Statement of Expectations. Through this process, we have provided affected landholders with the assurance that their concerns are being independently assessed, and where required, we are working to ensure that the business makes fair and reasonable improvements to its processes.
- Conducting best practice investigations to fairly and independently resolve complaints about the information the business publishes and communicates.

⁶ A full list of EWOV's current members is published on our website: <https://www.ewov.com.au/members/find-a-member>

⁷ Productivity Commission, *Access to Justice Inquiry Report*, 2014, p. 11. As the national Inquiry noted in 2014, at that time, ombudsman schemes had capacity to consider approximately 542,000 cases nationally requiring approximately \$481 million combined government and industry funding across all ombudsman schemes. Tribunals had capacity to consider approximately 395,000 matters, required parties to pay registry and legal fees if represented and required approximately \$508 million in government funding support. Civil courts had capacity to consider approximately 673,393 matters, required payment of registry, costs and other legal fees and required approximately \$836 million government funding.

⁸ *Ibid*, p. 11.

⁹ *Ibid*, p. 50.

- Establishing and communicating clear expectations between landholders and the business. This has enabled EWOV to facilitate meetings between the landholders and the business in a constructive and open environment, where landholders are able to ensure that their concerns and expectations have been understood by the business prior to the meetings. This has generally assisted in developing a shared understanding of the key issues and concerns, and resolving issues fairly and reasonably and satisfactorily resolving all investigations to date (over 20 cases).
- Helping to ensure that both landholders and business have a shared understanding about the project and relevant redress and resolution options.
- Analysing and sharing our unique data and expertise to generate insights to share with businesses and market stewards in a fast-evolving market, thereby improving outcomes and informing evidence-based solutions to current and emerging issues.

We trust this submission will assist the Commission in the important task of considering how best to support trust and confidence in the transitioning energy market in this area.

In addition to the insights shared in this submission, EWOV regularly shares and publishes data, reports and case studies about the Victorian energy market. We would be pleased to share with the Commission further data insights and information to inform the Code as it progresses.

If you would like to discuss any aspect of our submission, please do not hesitate to contact me or Bronwen Jennings, Assistant Ombudsman – Insights & Engagement, at Bronwen.jennings@ewov.com.au.

We would welcome the opportunity to discuss this submission, the consultation and the Commission's next steps.

Yours sincerely



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