

26 September 2023

Mr Ben Barr
Chief Executive Officer
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

Online via: <https://www.aemc.gov.au/contact-us/lodge-submission>

Dear Ben

ERC 0357 – Draft Rule Determination – Enhancing Community Engagement in Transmission Building

Thank you for the opportunity to comment on this draft rule determination for enhancing community engagement in transmission building.

The comments set out in this letter reflect the views of the Energy and Water Ombudsman Queensland (EWOQ), Energy & Water Ombudsman South Australia (EWOSA), Energy & Water Ombudsman NSW (EWON), and Energy & Water Ombudsman Victoria (EWOV). We are the industry-based external dispute resolution schemes for the energy and water industries in Victoria, New South Wales, South Australia and Queensland.

We have collectively reviewed the draft rule and welcome the objective of the rule to enhance community engagement in transmission building which traverses each state of the National Electricity Market.

We welcome the Commission's determination to expedite these enhanced community engagement expectations to create greater consistency and clarity over transmission networks services providers (TNSP) obligations to engage with local communities early in the transmission planning process. In relation to Question 1 on local community stakeholders we agree they have been appropriately captured and defined for the purposes of TNSP community engagement activities.

We concur that social licence is critical to the timely delivery of transmission infrastructure as part of the transition to net zero by 2050. We also acknowledge the draft determination builds on the transmission planning and investment review recommendations and aims to ensure that TNSP obligations and expectations around community engagement are clear and consistent for all major transmission projects identified through the Integrated System Plan (ISP) and Renewable Energy Zone (REZ) design report.

We are encouraged by the acknowledgement that local communities, and other stakeholders affected by major transmission project are critical partners in the delivery of major transmission. Further, that the energy transformation is national with expansive infrastructure development across jurisdictions and inter-dependent transmission and generation projects required to achieve net zero. The practical reality of a bold vision to support decarbonisation requires effective community understanding and support down to the individual land holders and traditional owners. Building social licence for the significant transmission development requires proper planning processes and engagements with integrity, honesty, respect, transparency and a clear mandate on why infrastructure is required. . Moreover, the long-term success of these projects requires a foundation of trust and good faith, clear understanding of what is being proposed and the benefits and impacts for individual landholders and their communities to enable a stable, sustainable relationship between different parties.

There is significant asymmetry of information between proponents (both TNSPs and generation proponents) and the landholders and communities affected by proposed energy infrastructure. While the focus of this rule change is transmission, generation proponents are an important cohort that the communities, impacted landholders and interested parties must consider in these interconnected projects in totality not projects in isolation. Communities therefore must be supported to effectively participate in community engagement, and be informed in land access negotiations given the extensive footprint of renewables projects, and the ongoing land use impacts from these long life assets.

In relation to Question 2, we consider the transitional rules are appropriate. We encourage adoption by the industry (TNSPs and generation proponents) of the improved community engagement and preparatory activities standard as soon as possible in order to address the current gaps in preparatory activities.

As the industry-based external dispute resolution schemes for the energy and water industries, we note customers, and members should expect access to our services to assist resolving their issues.

While each of our EWO schemes have slightly different roles/jurisdiction in large scale renewables development and land access, Ombudsman schemes can provide an important service to support achievement of fair and reasonable outcomes through the planning, development and whole of life management of assets and their land and community impacts.

We note the rule change is silent on any heightened obligations for TNSPs around the need for clear, easy access to both internal dispute resolution (IDR) pathways or external dispute resolution (EDR) pathways. Good community engagement requires involved entities to provide landholders with information about IDR and EDR processes available to them. This isn't limited to the RIT-T proponents – it applies to all involved entities, requiring generators, government and regulators embarking on community engagement to promote both their own IDR and EDR processes. Clear complaint pathways, actively promoted, are a crucial part of communities and individuals having confidence in consultation and stakeholder engagement processes.

Throughout the engagement process, a clear pathway to decision is imperative for expeditious resolution, in order for the parties to quickly move from dispute to resolution, and to prevent protracted conciliation and delays. In the absence of effective IDR and EDR, disputes can unnecessarily spiral, potentially resulting in a breakdown of relationship and loss of trust between parties, raising questions about social licence of key projects.¹

Ombudsman schemes should not be excluded by voluntary agreements

TNSPs have, and are expected to, reach voluntary agreements for land access in respect of the projects they operate. Such agreements may initially be entered into for preliminary work such as surveys, then option for easement agreements and then potentially easement or acquisition agreements.

Understandably, when such agreements are being entered into, little attention is likely to be paid to the dispute resolution clause. Focus is usually on the intricacies of the access, the impact it will have and the compensation to be paid for it. However, given the longevity of some of these agreements and the projects themselves, it is anticipated that most agreements may at some point need to activate the dispute resolution clause. This is because regardless of how well each party conducts themselves, there will inevitably be issues that neither were able to predict and on which they may not be aligned when they do eventuate.

¹ Cait Kelly and Adam Morton, "Australia urgently needs a grid upgrade – but the march of new power lines faces a bush revolt", *The Guardian*, Thursday 24th April 2023, <https://www.theguardian.com/australia-news/2023/aug/23/renewable-energy-new-power-lines-for-transmission-risks-concerns>; Rhiana Whitson, "Farmers battle prospect of high-voltage electricity lines on properties as expert's alternative plan rejected", *ABC News*, Wednesday 2nd August 2023, <https://www.abc.net.au/news/2023-08-02/calls-to-scrap-vni-west-transmission-line-730/102675146>

EWOV has reviewed several draft agreements prepared by TNSPs. Each of these agreements specified a form of internal dispute resolution and then an escalation pathway that involved either mediation then court, 'binding' mediation or arbitration and court. Where agreements contain escalation pathways that exclude referral to an Ombudsman service and rely on court process as an ultimate decision-maker, dispute resolution can be more costly, time consuming, result in inconsistent outcomes between disputes, and a lack of transparency for regulators and policymakers around market outcomes.

The EWOs consider that disputes regarding land access, including those that arise from voluntary agreements, should require:

- A robust internal dispute resolution process, adhering to the 2015 *Benchmarks for Industry-based Customer Dispute Resolution* or Australian Standard 10002:2022,² and
- The option for complainants to have their complaint referred to an energy Ombudsman scheme where the complaint has not been resolved to their satisfaction within a reasonable specified period of time and the dispute is appropriate for resolution by an Ombudsman scheme.

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.³

Ombudsman schemes have a history of an evolving jurisdiction. Since their original electricity jurisdiction, EWOs have expanded to include gas, water and more recently, embedded networks. This has brought hundreds of additional members and complaints into EWO jurisdiction. We anticipate this to continue as the market for renewables evolves and see EWOs proven adaptability to be beneficial in this regard.

Utilising the existing EWOs is the most expedient way to assist with obtaining and maintaining social licence for transmission projects. Not only do they have all the benefits of Ombudsman schemes, they have experience in land access disputes and are state based. Ombudsman schemes are trusted sources of independent, fair and efficient dispute resolution, and generating and retaining public trust in the sectors they operate in is one of their key functions.⁴ This means the EWOs are already well equipped to handle land access complaints which by their nature requiring understanding and addressing local concerns.

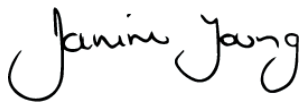
If you require any further information regarding our submission, please contact Mr Jeremy Inglis, Manager Policy and Research (EWOQ) on 07 3087 9423, Mr Antony Clarke, Policy and Governance Lead (EWOSA) on 08 8216 1861, Mr Ben Martin Hobbs, Policy Insights and Engagement Manager (EWOV) on 03 8672 4239, or Dr Rory Campbell, Manager Policy and Systemic Issues (EWON) on 02 8218 5266.

² The Australian Government the Treasury, *Benchmarks for Industry-based Customer Dispute Resolution*, 2015, [Benchmarks for Industry-based Customer Dispute Resolution \(treasury.gov.au\)](https://www.treasury.gov.au)

³ Productivity Commission, *Access to Justice Inquiry Report*, 2014, p. 50.

⁴ Creutzfeldt, N and Gill, C "The Impact and Legitimacy of Ombudsman and ADR Schemes in the UK", The Foundation for Law, Justice and Society, 2014; Gill, C and Hirst, C 2016, *Defining Consumer Ombudsman: A Report for Ombudsman Services*, <https://eresearch.qmu.ac.uk/handle/20.500.12289/4556>

Yours sincerely



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