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The Energy Reform Team
Essential Services Commission

By Email: energyreform@esc.vic.gov.au

Submission to the Essential Service Commission's consultation paper - Revoking the Electricity System Code

Thank you for the opportunity to engage in the Essential Services Commission's (the Commission) consultation on Revoking the Electricity System Code (the Code).

Our submission is primarily concerned with the need to support a foundational level of trust and confidence within the community in relation to initiatives to support Australia's achievement of its net zero commitments. Proposed new renewables transmission and generation infrastructure is a critical part of this effort.¹ Tight delivery timeframes increase the importance of securing support among impacted communities and landholders to enable expeditious planning, construction and operation of this new infrastructure, on terms which those stakeholders have been able to engage with and have the opportunity to influence in a meaningful way. Our submission is informed in part by our direct experience managing landholder complaints with transmission providers – see examples attached at appendix 1.

In updating and simplifying electricity transmission licence conditions, the Commission should consider the need for clear internal dispute resolution (IDR) and external dispute resolution (EDR) pathways for transmission networks service providers (TNSPs). The Commission should also consider how ombudsman services can play a key role in dispute resolution in building new transmission assets – which can deliver improved outcomes for both landholders and the broader regulatory community compared with alternative EDR mechanisms such as private mediation.

The measures introduced through the Commission's proposed approach, incorporating appropriate dispute resolution mechanisms, could supplement the National Electricity Rules and reinforce consumer protections to support Victorian landholders' experiences and outcomes across the entire energy system. In light of the significant amount of transmission assets required to deliver the overarching policy aim of Net Zero,² clear and effective pathways to dispute resolution are key to the consumer protection framework and to facilitate social licence.

1. The Commission consider obligations for TNSPs to develop Internal Dispute Resolution and External Dispute Resolution

There have been a range of recent regulatory consultation processes seeking to address the need for new renewable infrastructure and how to build social licence for these projects in light of community resistance.

¹ AEMO, *Integrated System Plan*, June 2022, 9-14.

² Ibid.

We welcomed the Australian Energy Market Commission's (AEMC) recent rule change relating to enhanced obligations for Transmission Network Service Providers (TNSPs) when engaging in community consultation to help on build social licence. However, in our joint submission with other Energy and Water Ombudsman schemes (EWOs) we noted the AEMC's draft rule change was silent on any heightened obligations for TNSPs around the need for clear, easy access to both IDR and EDR pathways. Good community engagement requires businesses and those entities engaged in planning and building transmission infrastructure to provide landholders information about IDR and EDR processes available to them at all stages of the project.³ This may be complicated where government or government bodies are the initiators of a new transmission project, creating the potential for a lack of continuity between complainants and builders of the new transmission asset. Clear and accessible complaint pathways, actively promoted, are a crucial part of building community and landholder confidence in consultation and stakeholder engagement processes.

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.⁴ Conversely, effective IDR and EDR can serve to enhance the relationship between disputing parties, as confidence grows in appreciating that when an issue does arise, it can be efficiently and effectively resolved.

2. Ombudsman schemes can play a key role as preferred EDR mechanism for new transmission projects

Consultation around building social licence for new renewable energy infrastructure has also considered preferred avenues for EDR. In our joint Energy and Water Ombudsman scheme (EWO) submission to the Australian Energy Infrastructure Commissioner, we outlined how Ombudsman services are well positioned to address gaps in the current regulatory framework relating to dispute resolution.

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 options 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, particularly by landholders. 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.

In our submission to the ESC's land access code, EWOV noted we would be able to provide dispute resolution services for land access complaints related to the Western Renewables Link in only

³ Joint EWO Submission, *AEMC Draft Rule Determination - Enhancing Community Engagement in Transmission Building*, September 2023, available online: <https://www.ewov.com.au/uploads/main/Joint-Submission-AEMC-Draft-Rule-Determination-Enhancing-Community-Engagement-in-Transmission-Building-2023.pdf>

⁴ 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>

approximately 5% of land access cases as all other access may be through voluntary agreements which are not currently required to nominate EWOV as the avenue for EDR.⁵ It is EWOV's understanding that for other planned renewable transmission infrastructure projects in Victoria, the intention is for access to be obtained predominantly through voluntary agreements.

EWOV has reviewed a number of draft voluntary access 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, appointment of a 'binding' expert or arbitration and court..

Key limitations of private dispute resolution services include:

- **Cost and time barriers for landholders** - landholders may be required to incur a share of private mediation or other dispute resolution service costs. The Resolution Institute (a membership body incorporating Institute of Arbitrators and Mediators) resolved that from September 2016 parties who have agreed that a dispute arising or having arisen between them shall be submitted to mediation in accordance with its 2016 edition of its rules. The *2016 Resolution Institute Mediation Rules* provide that unless otherwise agreed by parties, each party shall pay its own costs of or incidental to the mediation.⁶
- **No "final decision" maker** – where private mediation does not resolve the dispute, then the landholder's primary other form of recourse will be to take the matter to court which is an expensive and time-consuming process.
- **Power asymmetry** - There are likely to be substantial power imbalances between electricity transmission companies and landholders in private dispute resolution proceedings. Power imbalances are likely to manifest through available resources and information asymmetries in dispute resolution and land access policy and legal knowledge.
- **Consistency of outcomes** - it can be harder to achieve consistency of practices and outcomes where disparate private dispute resolution services are engaged, without transparency of outcomes or principles informing decisions.
- **Lack of accountability** – in comparison to Ombudsman schemes there may not be requirements for dispute resolution service providers to meet performance standards and/or undergo independent reviews which can undermine accountability of their services.
- **Lack of transparency, regulatory oversight or policy insight** - matters resolved through private dispute resolution mechanisms are unlikely to be published, contributing to a lack of transparency of both issues and outcomes for both regulators and policymakers. These insights are key in regulated markets to improve community engagement processes.

By comparison, EDR delivered through an ombudsman scheme provides a range of advantages to both landholders and broader policy and regulatory outcomes – as outlined in our submissions to the Land

⁵EWOV Submission to the ESC, *Developing a Land Access Code of Practice: Consultation on Draft Code*, August 2023, available online <https://www.ewov.com.au/uploads/main/EWOV-submission-to-Essential-Service-Commission-Draft-Land-Access-Code-of-Practice-August-2023.pdf>. EWOV's estimate is based on Ausnet's Statement of Expectations monthly reporting to the Commission relating to the Western Renewables Link. Since June 2022, AusNet has entered into 587 voluntary land access agreements whereas they have accessed land under section 93 of the *Electricity Industry Act 2000* 29 times. Based on this historical data, and working on the assumption that all WRL voluntary access agreements provide for private mediation rather than reference to EWOV, EWOV would only be able to provide dispute resolution services for land access related to the Western Renewables Link in 5% of land access cases.

⁶ *Resolution Institute Mediation Rules 2016* (Australia), rule 9.

Access Code of Practice and the Australian Energy Infrastructure Commission's *Community Engagement Review*.⁷

In updating and simplifying Electricity Transmission licence conditions, the Commission should consider key how to ensure appropriate dispute resolution is available to landholders, to ensure complaints are quickly and efficiently resolved, to facilitate trust as a key component of social licence for new transmission projects. EWOV considers that disputes regarding land access, including those that arise from voluntary agreements, should require:

- A robust internal dispute resolution process, which adheres to the relevant standard AS 10002:2022.,⁸ and
- The option for complainants to have their complaint referred to an existing 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 that Energy Ombudsman scheme. It should be noted that the existing Energy Ombudsman schemes all adhere to, and are independently reviewed against the Commonwealth Government 2015 *Benchmarks for Industry-based Customer Dispute Resolution*.

If you have any questions about this submission, or if you require any further information regarding our submission, please contact Janine Rayner, Assistant Ombudsman Insights and Engagement [REDACTED] or Ben Martin Hobbs, Policy Insights and Engagement Manager [REDACTED]

Yours sincerely,

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⁷ EWOV, Submission to the ESC - Developing a Land Access Code of Practice: Consultation on Draft Code, August 2023, <https://www.ewov.com.au/uploads/main/EWOV-submission-to-Essential-Service-Commission-Draft-Land-Access-Code-of-Practice-August-2023.pdf>; Joint Energy and Water Ombudsman submission to the Australian Energy Infrastructure Commissioner - Community Engagement Review, October 2023, <https://www.ewov.com.au/uploads/main/Joint-EWO-submission-to-the-AEIC-Community-Engagement-Review-October-2023.pdf>

⁸ 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/benchmarks-for-industry-based-customer-dispute-resolution)

Appendix 1 - EWOV pilot jurisdiction – highlighting various issues with current community engagement on renewable energy infrastructure projects

EWOV operated a pilot jurisdiction under the Land Access Statement of Expectations, adopting an expansive approach. This allowed EWOV to receive and consider an extensive range of concerns and complaints being raised by landholders and community members.

Example of poor TNSP community engagement:

- A landholder made a complaint to EWOV about a transmission business. She had initially been advised by the TNSP that her property would not be affected by a proposed transmission route. Three years on the transmission business made contact to advise her property was now directly impacted, and the proposed transmission line would cross her property. The change in route had occurred as a result of consultation with local township, however the landholder had not received any further information or been invited to subsequent consultation.
- After EWOV referred the matter to the TNSP to action, the business apologised directly to the complainant, acknowledging a significant change had occurred, and that the landholder had not been adequately consulted. The business outlined a range of information sources, including the processes around compensation schemes and provided the opportunity for further consultation on a number of matters, including contact details for a direct liaison officer.

Another example that demonstrates how the Ombudsman's fair and reasonable approach to dispute resolution can quickly resolve complaints through information gathering:

- The customer raised concerns with EWOV about the TNSP failing to respond to their questions about the transmission project, stating TNSP had only contacted them five times in two years. The customer states they were only contacted because they made a complaint to their local council, who then complained directly to the TNSP on their behalf.
- Through EWOV-facilitated resolution, EWOV found the TNSP had contacted the customer on 14 occasions via various methods of communication, including via email and phone. The TNSP contacted the customer, regularly responded to their questions, and offered to meet with them. EWOV found the TNSP had met with and complied with section 2 of the ESC's *Statement of Expectations*, and ensured that its approach to communication and engagement with this customer was staged and timely.