

Making a Land Access Code of Practice

Final Decision

30 November 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

The electricity transmission network transports electricity from where it is generated to where it is used by consumers in the community. New transmission assets are in development to support Victoria's transition to renewable energy. To enable a smooth transition, these developments must be completed as a partnership between an electricity transmission company (transmission company) and the community. In particular, with a landowner and occupier who host electricity transmission infrastructure on their private land.

Where a transmission company and a landowner or occupier cannot enter into a voluntary access agreement (access agreement), a transmission company may exercise existing statutory powers under section 93 of the *Electricity Industry Act 2000 (Vic)* (the Act), to access private land to plan, design and construct new assets. A transmission company can also use its statutory powers to undertake works on existing transmission assets.

One of the first steps involved in a new electricity transmission project is to survey land to establish viable routes for a new transmission line. A transmission company may request access to land from a landowner for these purposes.

We recognise that in recent years, there have been significant challenges associated with how a transmission company engages a landowner to access private land. We heard from the community about the need for genuine, respectful engagement and the provision of transparent information at the start of the transmission project. We responded by developing a statement of expectations, highlighting principles a transmission company should follow when accessing private land using its statutory powers.

Given the challenges and stresses for communities associated with new transmission projects along or near their private land, the statement of expectations was designed as a temporary measure until we had sufficiently developed a more permanent, enforceable instrument in consultation with stakeholders to regulate how a transmission company can exercise its statutory powers to access private land.

The need for an enforceable set of rules for land access

We have made a new Land Access Code of Practice (code of practice) to regulate how a transmission company accesses private land. The code of practice puts obligations on a transmission company before, during and after accessing private land (particularly when the use of statutory powers is being considered and used).

The code of practice and the obligations contained in it are enforceable, and we can take regulatory action against a transmission company for breaching the code of practice.

Summary

The development of the code of practice follows over 17 months of engagement with stakeholders, reviewing community experiences, and consideration of the current practices and processes of transmission companies.

The objective of the code of practice is to provide landowners, occupiers and other parties interested in land with clear information at an early stage of a new transmission project and early in the process in relation to works on existing transmission assets regulated under the code of practice. The code of practice is also designed to encourage constructive engagement between an affected party (landowners and occupiers) and a transmission company early on so an affected party can consider allowing voluntary access on their land (by entering into an access agreement).

The code of practice will apply to a transmission company for new projects or upgrades

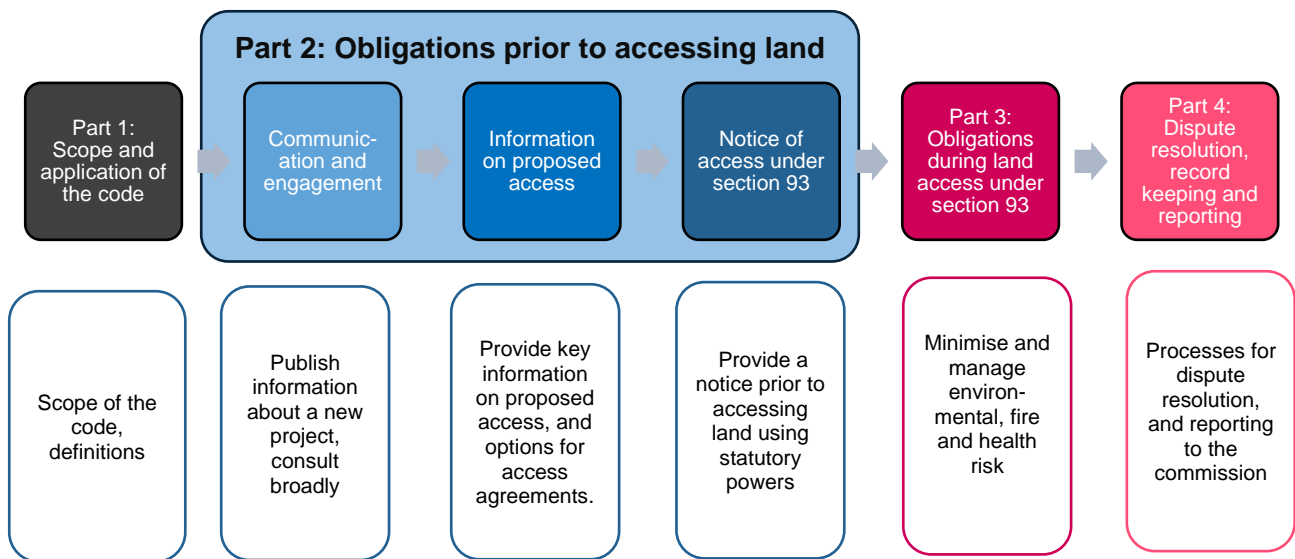
The code of practice applies to any Victorian electricity transmission company licensed by the Essential Services Commission (the commission). It applies to all situations of access for new transmission projects, and to any upgrades or decommissioning of existing transmission lines. The term 'significant upgrades' was proposed in the draft code of practice and created confusion for stakeholders. We have retained the intent of the draft code of practice but have now adopted the term 'new transmission project or upgrade' instead. The code of practice applies to new transmission projects and to upgrades to existing transmission lines that go beyond an existing easement and includes augmentations, replacement and decommissioning of existing assets.

The code of practice does not apply to the operation and maintenance of existing transmission lines, or where agreements and easements have previously been established with a landowner and occupier. While there have been few reported complaints about access to private land via historical agreements and easements, we recognise a growing need to update previous processes in line with community expectations.

We have begun a separate process with AusNet Transmission Group (AusNet) to review and consider modernising the way it engages with landowners and occupiers already hosting transmission lines.

The code of practice is structured into three main parts, with a focus on obligations for a transmission company before, during and after access of private land.

Figure 1: Land access Code of Practice structure



Obligations prior to access under section 93 of the Act or access agreements to facilitate early engagement with an affected party

A key aim of the code of practice is for a transmission company to effectively engage with an affected party prior to accessing any private land. For many affected parties, their first interaction with a transmission company may be a discussion on the need to access their private land. It is vital that effective engagement with an affected party occurs prior to land access.

Effective engagement relies on clear and transparent information about processes, potential impacts on the land, and genuine consideration of an affected party’s concerns and needs.

There are four key pieces of information that a transmission company is obligated to provide under the code of practice:

1. **Broad information** about a new transmission project or upgrade, as early as practicable.
2. **Information on access options, rights and obligations**, setting out the obligations and processes the transmission company must follow, if private land is to be accessed.
3. **Detailed information** for an affected party whose land is proposed to be accessed, provided 30 business days before the first day of access. It must contain specific information about:
 - why the proposed access is required
 - intended dates for when access is required
 - the point of access and the areas of land requested to be accessed, and

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- the types of activities, equipment or chemicals that will be conducted or used during the access.

A transmission company must consider and respond to feedback or requests for changes from the affected party. It must also consult with an affected party to understand site-specific biosecurity needs, or other property-specific needs relating to fire, health and cultural heritage risks.

This is a critical engagement point where an affected party should be able to understand why their land needs to be accessed and the works that will be undertaken. This is also a crucial stage in the land access process where an affected party can ask questions and provide feedback, including feedback on their preferred dates for a transmission company to access the land.

4. **If the use of statutory powers is required, a 'Notice of Access'** (as defined in the code of practice) must be sent to an affected party at least 10 days before the first day of access (and at least 20 business days after the previous information (as outlined in 3 above) was provided), and specify:

- the access period
- the planned dates and times to access land
- details of the access, and
- how an affected party can lodge a complaint with the Energy and Water Ombudsman of Victoria.

A Notice of Access can cover a maximum period of six months and must set out all instances of land access to occur within that period. This notice is not required if an affected party enters into an access agreement.

A transmission company must remind an affected party (landowners and occupiers) at least 48 hours before each proposed access. This reminder may be made in person or sent via telephone, email or text message.

A transmission company may change a date of access if it is due to circumstances beyond its reasonable control. If a change is required, the transmission company must use its best endeavours to contact the affected party of the change, at least 48 hours beforehand.

A transmission company must also ensure that anyone contacting an affected party has the relevant skills, training, and qualifications to undertake their tasks. They must also be able to be identifiable, at least by a first name, role and telephone number.

Obligations during access under section 93 of the Act to minimise the impact of land access

A transmission company must respect the privacy and private assets of an affected party.

When undertaking land access activities, a transmission company must minimise harm, inconvenience and damage to the land as well as anything living on or growing on the land. This is consistent with their obligation to do 'as little damage as may be' under section 93(2) of the Act. To this end, a transmission company must:

- develop and implement environmental and biosecurity policies and procedures in accordance with good industry practice, and consistent with any existing requirements or plans provided by an affected party
- implement policies and procedures relating to fire risk and health risk management, and
- document any incidents that have occurred and communicate them to an affected party immediately.

A transmission company must:

- not stay on the land any longer than is reasonably necessary
- leave gates, fences, grids and any other assets as found unless otherwise directed by an affected party, and
- provide a report to an affected party within 15 business days following conclusion of land access that outlines activities undertaken and materials or chemicals used.

A constructive experience during these early processes can help establish a long-term partnership between a transmission company and an affected party, particularly once a transmission line is operational in the longer term.

Ongoing dispute resolution, record keeping and reporting obligations

The code of practice requires a transmission company to develop, implement and publicly communicate their internal complaint-handling processes. It also mandates a transmission company to provide timely responses to complaints.

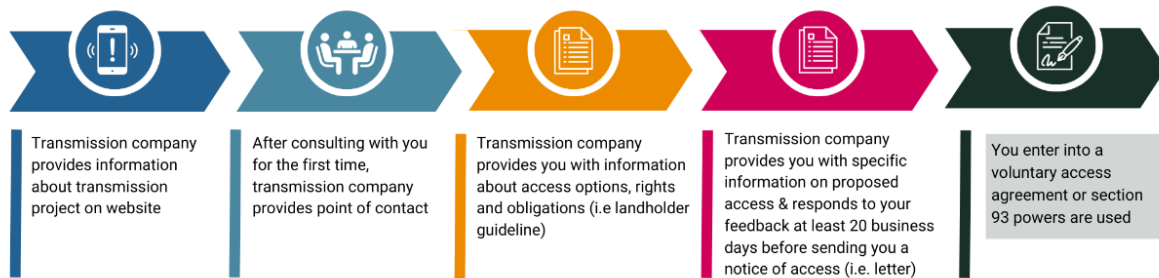
An affected party will also have the right to make a complaint related to land access and compliance with the code of practice to the Energy and Water Ombudsman of Victoria (EWOV) if they are not satisfied with the transmission company's response to their complaint.¹

A transmission company will also be required to report regularly to the commission about the types of access undertaken, and on complaints received, on a monthly basis. As a licensee, a transmission company must self-report any potential breaches of the code of practice, where identified.

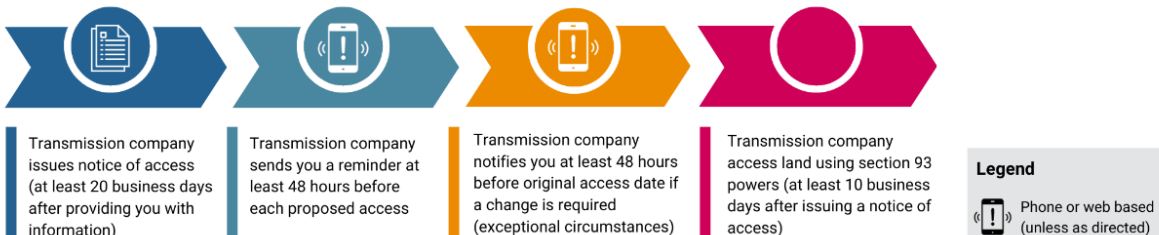
The following figure summarises the processes that a landowner should expect, as a minimum, when their land is being accessed by a transmission company.

Figure 2: Key milestones before, during and after land access

1 - Key milestones before land access for all pathways



2 - Key milestones before land access if section 93 powers are being used



Legend

- Phone or web based (unless as directed)
- Notice/documents/written information
- Contract (access agreement)
- Direct consultation/verbal update

3 - Key milestones during land access if section 93 powers are being used



¹ This is where the complaint relates to any of the obligations set out in the Land Access Code of Practice.

Summary

Implementing the Land Access Code of Practice

The code of practice will take effect from 1 March 2024, meaning the code of practice and its obligations are enforceable from this date. This will provide at least three months (December – February) for a transmission company to setup its processes to ensure compliance with the obligations of the code of practice.

We believe these enforceable obligations will better protect the rights of an affected party and improve a transmission company’s social licence to operate so they can build new transmission infrastructure and upgrade existing transmission assets that are needed in Victoria. They will also promote the long-term interests of Victorian consumers.

We expect a transmission company to start implementing the processes set in the code of practice voluntarily during the transitional period between the release of this final decision paper and 1 March 2024. The [Electricity Transmission Company Land Access Statement of Expectations](#) will remain in place until the code of practice comes into effect.

1. Introduction

As Victoria continues to decarbonise the energy system, new and upgraded electricity transmission infrastructure is required to support the integration of renewable technologies, as well as broader energy security, reliability and affordability.

Construction of transmission infrastructure will often be required on privately-owned land. An electricity transmission company has statutory powers under section 93 of the Act to access private land to plan, design and construct new assets if they cannot enter into an access agreement with a landowner.

A statement of expectations for land access as an interim measure

In 2021, we began hearing community concerns about how AusNet was exercising its statutory right to access land for the development of the Western Renewables Link project. We heard from the community about a lack of early engagement and transparent information from transmission company representatives.

In May 2022 we issued a targeted and interim measure, setting out our expectations on transmission companies of their actions and behaviours. We published an [Electricity Transmission Company Land Access Statement of Expectations](#) and required AusNet to report its land access activities regularly to the commission.

A new enforceable code of practice to regulate land access by a transmission company

As foreshadowed in our statement of expectations, we began the development of an enforceable code of practice to regulate land access by a transmission company in December 2022. Following extensive stakeholder engagement and consultation, which included public forums, one-on-one meetings, a [consultation paper](#) and a [draft decision](#), we are now releasing the final version of the code of practice.

The code of practice has been made under section 47 of the *Essential Services Commission Act 2001* and for the purpose of section 93(5)(d) of the Act, which states that the statutory powers to access land apply subject to any provision of a code of practice about land entry. The code of practice will apply to a transmission company who holds a transmission licence. A list of the entities that currently hold licences and copies of their licences are available on the [commission's website](#).

The primary difference between the code of practice and the statement of expectations is that the code of practice is 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 Essential Services Commission Act, including the issuance of a penalty notice. A court may also impose civil penalties for the contravention of a civil penalty requirement².

The code of practice specifies almost all obligations on a transmission company as civil penalty requirements. This is consistent with the approach taken to our Energy Retail Code of Practice and our Electricity Distribution Code 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, considering several factors such as the strategic significance of the matter, and the conduct and compliance history of the licensee.

See the [Implementation](#) chapter for further information about the implementation of the code of practice and breach reporting obligations.

Our approach to developing the code of practice

The commission's powers to make, amend or revoke codes of practice are provided by Part 6 of the Essential Services Commission Act.³ Codes of practice may be made with respect to a regulated industry, which includes the distribution, transmission, generation and retail of electricity.

Land access under section 93 of the Act is subject to any code of practice made by the commission, in accordance with section 93(5)(d) of the Act.

In making a code of practice, we must consider the commission's legislated objectives – in particular, to regulate the electricity industry for the long-term interests of Victorian consumers. We have taken a consultative approach, publishing a draft decision for consultation, and considered the costs and benefits in setting obligations on the energy industry. In our draft decision, we presented the options we considered for our assessment of the costs and benefits of making the code of practice, which are summarised in [Appendix A: Consideration of costs and benefits](#)

² On commencement, breaches of the Land Access Code of Practice will attract default penalty levels as set out in the Essential Services Commission Act 2001. Relevantly, for a transmission company that is a body corporate, a notice penalty may be issued for 200 penalty points. Alternatively, civil penalties may be able to be awarded by a court up to the value of 1200 penalty units per contravention of the code of practice.

³ Sections 10(da) and 47, [Essential Services Commission Act 2001](#).

compared with other options. We did not receive any feedback on our assessment and have not updated our analysis.

Legislative considerations when making a code of practice

In developing our final decision on the code of practice we have accounted for the legal framework relevant to private land access matters, including the following:

- The objectives of the commission and the matters the commission must have regard to under Part 2 of the Essential Services Commission Act.
- The purposes of the Electricity Industry 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 Act.
- The relevant requirements of the *Subordinate Legislation Act 1994*.

Our stakeholder engagement process

The code of practice has been developed taking into consideration stakeholder feedback on a [consultation paper](#) released in February 2023, and a [draft decision](#) (including a draft code of practice) released in June 2023. Our development of the code of practice also builds on our statement of expectations, which was released in May 2022.

Throughout the process, we have sought to engage with stakeholders from various groups to ensure the obligations in the code of practice capture all issues of importance to the community and transmission companies. To this end, the feedback we received at our various public forums has been extremely valuable in guiding the development of the code of practice.

We have also reviewed AusNet's reports under the statement of expectations and data we have received from the EWOV about complaints related to major transmission projects and land access issues.

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

⁴ As part of our review, we have considered the AEMC's [Enhancing Community Engagement in Transmission Building Rule Change](#), the AER's [Social Licence for Electricity Transmission Projects Directions Paper](#), 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's

Consultation paper

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. They also provided their initial views on the matters 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 2 February 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 (AEIC)
- Australian Energy Market Operator (AEMO)
- AusNet
- Melton City Council
- Consumer Policy Research Centre (CPRC)
- Energy and Water Ombudsman of Victoria (EWOV)
- Law Institute of Victoria (LIV)
- RE-Alliance
- Victorian Farmers Federation (VFF)

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

Draft decision

On 15 June 2023, we released our [Making a Land Access Code of Practice Draft Decision](#) with a draft version of the Land Access Code of Practice for consultation. We received 9 submissions from individual community members and 11 submissions from the following organisations:

- Australian Energy Infrastructure Commissioner (AEIC)
- Australian Energy Market Operator (AEMO)
- AusNet
- Clean Energy Council (CEC)
- City of Melton
- Energy Networks Australia (ENA)

[Better Practice Social Licence Guideline](#) and the First Nations Clean Energy Network's [Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects](#).

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- Energy and Water Ombudsman of Victoria (EWOV)
- Law Institute of Victoria (LIV)
- Moorabool and Central Highlands Power Alliance (MCHPA)
- RE-Alliance
- Transgrid

On 17 July 2023, we held an online public forum where we presented the proposed scope and content of the draft code of practice. Stakeholders provided feedback on the draft Land Access Code of Practice and shared their experiences regarding land access. A recording of this public forum is available on the commission's project webpage here: [Developing a Land Access Code of Practice](#).

All public submissions to our draft decision and draft Land Access Code of Practice are also available on our [Developing a Land Access Code of Practice](#) webpage.

Structure of this document

The next chapter presents the [scope of the code of practice](#), including the activities that it will regulate.

The following chapters then explain the content of the code of practice, including the obligations that will apply [before](#), [during](#) and [after](#) a transmission company accesses land under section 93.

The final [implementation](#) chapter presents how we will implement the new code of practice.

Accompanying this decision are the following annexes:

- **Annex A** is the new Land Access Code of Practice.
- **Annex B** is a reporting template for monthly performance reports.
- **Annex C** provides the commission's reporting template for the report of breaches.

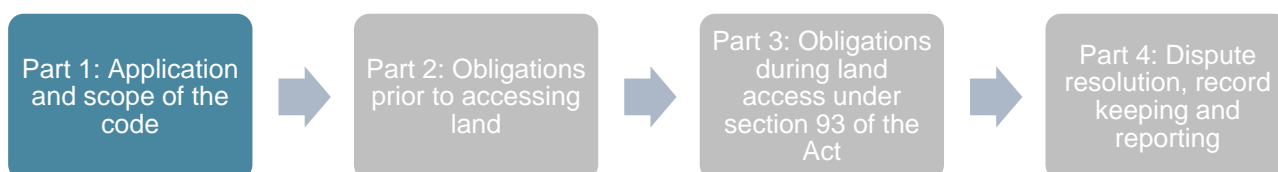
2. Scope of the Land Access Code of Practice

The code of practice applies to a transmission company:

- where it proposes to access private land in the absence of an existing access agreement (noting the code of practice does not apply to land access under an access agreement)
- where it accesses or propose to access any private land under section 93 of the Act
- in relation to the dispute resolution, record-keeping and reporting obligations set out in the code of practice.

The code of practice applies to all stages of new transmission projects and to upgrades, replacement and decommissioning of existing assets, with the exception of operation and maintenance of existing lines.

The code of practice does not apply where land is accessed in accordance with an access agreement (other than in the case of reporting obligations); where land is accessed in accordance with an easement; or to land that is not private land.



This chapter outlines the scope of the code of practice, setting out what types of activities it regulates. Our final decision is based on stakeholder feedback following our draft decision and our own further analysis.

The code of practice will apply to a licenced electricity transmission company for new projects or upgrades

The code of practice applies to any Victorian electricity transmission company licensed by the commission. It applies in all situations of access for new transmission projects, and to upgrades, replacements and decommissioning of existing transmission lines. This is similar to what was proposed in our draft decision.

Our draft decision

In our draft decision, we proposed that the code of practice would regulate land access under section 93 of the Act for new transmission projects and for significant upgrades on existing transmission assets.

For new projects, we proposed that the code of practice apply to the use of statutory powers at any stage of a new transmission project – planning, investigation, construction, operation (maintenance), replacement and decommissioning. However, for significant upgrades to existing transmission lines, we proposed that the code of practice would only apply to preliminary and construction activities.

We also proposed that the code of practice would apply to all transmission companies that are licenced by the commission.

Stakeholder feedback

Most stakeholders supported the code of practice applying to all new transmission projects and upgrades to existing lines.⁵ However, AusNet were concerned about the proposed definition of a ‘significant upgrade’, as it could result in the code of practice applying to emergency works or when significant repairs were needed to restore the transmission network. AusNet suggested that the definition could apply to projects that require an expansion to an easement, and for emergency works or significant repairs to be excluded from the code of practice.⁶

Stakeholders had different views on whether the code of practice should also apply to all activities relating to existing transmission lines. The AEIC, MCHPA and VFF suggested that the code of practice also apply to operation and maintenance activities of existing transmission lines. The AEIC suggested a uniform approach to land access across all transmission infrastructure. It had concerns about the potential for confusion in the community if there were two sets of regulations for existing transmission and new projects or upgrades.⁷ MCHPA and VFF noted that some landowners have already experienced difficulties in relation to land access for existing transmission lines.⁸

⁵ AEMO, AusNet, MCHPA, AEIC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

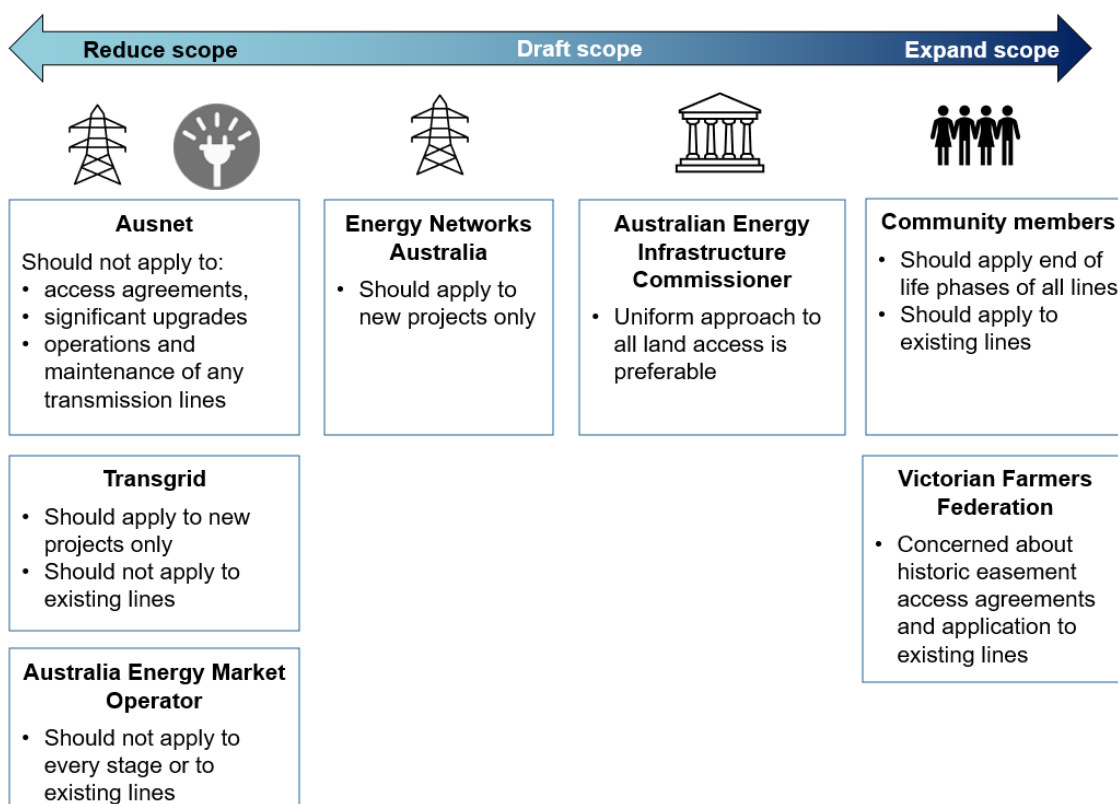
⁷ AEIC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Alternatively, AEMO, AusNet and Transgrid did not support the code of practice applying to operation and maintenance activities for either new or existing lines, citing that these activities are largely covered by existing easement arrangements,⁹ or that access usually involves existing access tracks within an easement.¹⁰

Several stakeholders also suggested that the code of practice should apply to other entities who may not hold a licence. Transgrid suggested the code of practice should apply to any company competing for transmission projects, while AusNet, Energy Networks Australia and MCHPA suggested it apply to those who play a role in the delivery of new and significant updates to existing transmission projects, such as Transmission Company Victoria (TCV), a subsidiary of AEMO.¹¹

Figure 3: Stakeholder feedback on the proposed scope of the draft Land access Code of Practice



⁹ AEMO, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹⁰ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023. Transgrid, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹¹ AusNet, ENA, MCHPA, Transgrid, submissions to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Our final decision

The code of practice applies to all activities for new transmission projects and the upgrading, replacement and decommissioning of existing transmission assets

Our final decision is for the code of practice to apply to all situations where there is proposed access to private land under section 93 of the Act, except where this access is in relation to operating and maintaining existing electricity transmission assets.

The definition of operating and maintaining existing electricity transmission assets does not include activities that are related to upgrading all or a substantial part of those assets, replacing all or a substantial part of those assets or decommissioning all or a substantial part of those assets. The code of practice therefore applies in all these instances. The code of practice defines existing electricity transmission assets as assets that existed at the commencement date of the code of practice (1 March 2024).

We note that the term 'significant upgrades' created confusion for stakeholders and we now adopt the term 'new transmission project or upgrade', as defined in the code of practice, to emphasise the similarity in process and potential impacts of both project types.

We have also clarified that Part 2 of the code of practice, which regulates obligations before accessing land, does not apply in an emergency. In addition, we have maintained the obligation proposed in our draft decision that mandates a transmission company provide an affected party with details of the access as soon as practicable after an emergency, if it required to gain immediate access to land without prior notice in order to meet its safety or other legal and regulatory obligations. This must include information on the time, duration and purpose of access and the rights of the affected party under section 93 of the Act.

The code of practice does not apply to operation and maintenance activities for existing transmission assets

The code of practice does not apply to the operation and maintenance of existing transmission assets, where historical agreements and easements have been established with landowners for many decades.

Our decision not to apply the code of practice to these activities follows information we received from all Victorian transmission companies with existing transmission assets, which we collected using our information gathering powers. In Victoria, existing transmission lines have been operating for several decades based on historical agreements, easements and established processes. We have only received evidence of a few reported complaints. Given these established agreements and processes, we consider it likely that extending the code of practice to the operation and maintenance of existing transmission assets, even in a limited way, would introduce

a high degree of complexity and regulatory burden in circumstances where the need for further regulation may not be warranted.

We also note that, in other jurisdictions, obligations related to operating and maintaining existing assets are not prescribed in similar codes of practice and are typically only accounted for at the legislative level by exception.

Despite the above, we understand that land access in these circumstances could still be improved.¹² While we have received evidence of few reported complaints about these accesses, we recognise a potentially growing need to update previous processes in line with community expectations.

Recognising these potential concerns, we are engaging separately with AusNet on its current practices and processes to understand the improvements that can be made. This may involve focussed communication and information to landowners hosting existing lines on upcoming land accesses, rights to compensation and damages, and clear information to landowners for reporting complaints.

We also note AusNet is investigating further options to regularly contact landowners and occupiers. This would be additional to landowners who have already opted-in to notifications in advance of land accesses.

We expect this work to occur as soon as possible in 2024.

We will also be requiring AusNet to report numbers and details of complaints to the commission. Over time, we will review AusNet's performance to consider whether the scope of the code of practice should be expanded further.

We expect transmission companies, particularly AusNet, to continually review its engagement practices and improve where possible. This recognises the importance of transmission companies' partnership with landowners who host Victoria's electricity transmission assets.

While the code of practice will not apply to operation and maintenance activities for existing transmission assets, it will be reviewed as needed to respond to emerging issues. If we identify a need to regulate those activities, we can commence a review and consult with stakeholders on potentially expanding the scope of the code of practice.

In summary, the following table sets out which stages and activities the code will apply to.

¹² For instance, we note the [VFF's concerns](#) in relation to AusNet entering farms to erect signs in August 2023.

Table 1: Application of the code of practice to new transmission projects and existing assets

Stages/activities	New transmission projects (construction begins after the commencement of the code of practice)	Existing transmission assets (operational prior to the commencement of the code of practice)
Preliminary activities (initial planning, consultation, approvals)	✓	✓ for upgrades
Construction	✓	✓ for upgrades
Operation (maintenance)	✓	✗
Replacement or augmentation	✓	✓
Decommissioning	✓	✓

The code of practice only applies to an electricity transmission company licensed by the commission

Any Victorian electricity transmission company licensed by the commission must comply with the code of practice. We note that the statutory powers to access land under section 93 of the Act are only for ‘electricity corporations’, which includes generation, transmission and distribution companies licenced by the commission.

We also note queries from stakeholders on whether the code of practice would apply to a company conducting early planning or development work for transmission, such as TCV (a subsidiary of AEMO). At the time of publishing, TCV does not hold a transmission licence and does not have statutory powers to access land under section 93 of the Act. In the event TCV is granted a licence, it would need to comply with the code of practice.

Application to access agreements

Our draft decision

The code of practice aims to ensure a landowner is provided with early and relevant information, to support their decisions about entering an access agreement (as an alternative to a transmission company exercising its statutory powers to access their land).

We proposed obligations be imposed on a transmission company to identify, engage and consult with all affected parties, providing them with information on proposed land access prior to access. This also included several steps a transmission company would be required to follow before accessing private land.

Scope of the Land Access Code of Practice

The code of practice does not regulate the content of access agreements.

Stakeholder feedback

Some stakeholders suggested that we should regulate the contents of access agreements.

The MCHPA considered that all land access, whether by using statutory powers or via access agreement, should be done in full accordance with the code of practice.¹³ Similarly, the City of Melton considered that the principles and general obligations within the code of practice should also be applied to private landowner access agreements, unless mutually agreed otherwise.¹⁴

EWOV also proposed that the majority of obligations in the code should apply as minimum standards for access agreements. EWOV was also concerned that under the draft code of practice, it would not be able to provide dispute resolution services for issues that occur under an access agreement, stating that:¹⁵

'These limitations would be significant for community and sector outcomes, and the effectiveness of the Final Code, as the vast majority of electricity transmission companies' access to private land is now being achieved via voluntary agreements rather than electricity transmission companies invoking their powers under section 93 of the Act.'

However, AusNet noted that it would always 'endeavour to enter into voluntary arrangements first' before the use of section 93, and that statutory powers are reserved as a last resort option for land access.¹⁶

Transgrid was concerned about the code applying to access arrangements and that such a requirement may have an adverse effect of discouraging these more preferable agreements.¹⁷ Re-alliance reiterated a similar point about ensuring that the incentives for entering into access agreements are not diminished by additional obligations in the code.¹⁸

¹³ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹⁴ City of Melton, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹⁵ EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹⁶ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹⁷ Transgrid, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

¹⁸ Re-alliance, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Scope of the Land Access Code of Practice

Our final decision

The code of practice requires a transmission company to provide detailed information to landowners to help them make informed decisions about whether or not to enter an access agreement.

Consistent with our draft decision, the final version of the code of practice does not regulate the content of access agreements. Access agreements are not an exercise of power under section 93 of the Act and a transmission company and landowner may negotiate the terms of the agreement.

We expect a transmission company to endeavour to enter into an access agreement and the exercise of statutory powers to enter land to be used where attempts to enter into an access agreement have been unsuccessful.

While the code of practice does not regulate the content of access agreements, it does set minimum standards for the use of statutory powers to access private land. This can support a landowner when negotiating access agreements, as it provides a basis on the essential matters that should be considered in an access agreement. We also note that the code of practice will require a transmission company to provide detailed information to a landowner to help them make informed decisions when deciding to enter into such an agreement.

Additional matters beyond the scope of the code of practice

While developing the code of practice, several stakeholders suggested additional matters to be included within its scope, such as imposing obligations on landowners and regulating compensation and acquisition of easements.

These issues are outside of our powers or regulated under different legislation that is not directly administered by the commission. They have therefore not been included in the code of practice.

Obligations on a landowner

AusNet outlined how the conduct of some individuals can impact on the ability of a transmission company to comply with its obligations under the code of practice.¹⁹ AusNet suggested a transmission company could be exempted from certain requirements of the code of practice, when the landowner or affected party has ignored attempts at contact, or assaults or threatens transmission company representatives. The CEC suggested we expressly reference expectations of a landowner, including expectation to engage in good faith on projects that have significant

¹⁹ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

public benefits.²⁰ The code of practice can only regulate the actions of a licenced transmission company. It cannot impose obligations on persons who are not entities regulated under the Act, such as a landowner, occupier or other party.²¹

While the code of practice does not impose legal obligations on an affected party, we understand the importance of respectful two-way engagement.

The code of practice places a high standard on a transmission company to engage in an honest and respectful manner. We expect the imposition of such standards to reduce instances of less than desirable behaviour from landowners and affected parties when discussing land access matters with a transmission company. We do not support inappropriate behaviour from a landowner and/or other affected party. We have zero tolerance for inappropriate behaviour, including violence, intimidation or other similar conduct. This extends to all parties, including landowners, occupiers and other parties interested in land.

We also expect a transmission company to carefully consider ways to engage with a landowner to help de-escalate tensions and increase the chances for productive dialogue.

Compensation

Two stakeholders suggested that landowner compensation should include when a transmission company is late to an appointment, and the time taken to provide input to a transmission company's procedures and dispute resolution issues (legal counsel costs and any damages claims).²²

EWOV also suggested that the code of practice should address complaints regarding non-payment of agreed amounts, compensation for rectification for any damage resulting from access to land, and/or non-financial loss. This would allow EWOV to resolve compensation-related complaints, as per its current jurisdiction in other sectors.²³

The code of practice does not cover compensation issues. Compensation amounts and processes are regulated under legislation that is not administered by the commission, notably the *Land*

²⁰ CEC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

²¹ Under the 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'.

²² Anonymous submission response #3 & #4, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

²³ EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

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 1986*.

Acquisition of easements

The code of practice does not cover the acquisition of easements over land as this is not within the scope of section 93 land access.

Easements may, however, be voluntarily agreed between the transmission company and a landowner. Where an agreement cannot be reached, a transmission company 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 1986* and the *Valuation of Land Act 1960* governs compensation for easements.

3. Obligations before accessing land (Part 2 of the code of practice)

The code of practice obligates a transmission company to take a number of steps prior to accessing land under section 93 of the Act or via an access agreement. These include:

- identifying all affected parties and other parties interested in land, and making contact with all parties, and
- providing each party with specific information, including information about:
 - the proposed transmission project
 - the rights of a party and the transmission company's rights and obligations, and
 - the intended date ranges when land access is expected to occur, either under section 93 of the Act or an access agreement.

If an affected party does not enter into an access agreement, a transmission company may decide to use its statutory powers to access land under section 93 of the Act. Prior to doing so, a transmission company must issue a 'Notice of Access' (as defined in the code of practice) to an affected party. The Notice of Access must:

- provide further specific information on the proposed access to the affected party, including providing planned dates and times of access, and
- be sent at least 20 business days after providing earlier information on the proposed access, and at least 10 business days prior to accessing the land for the first time.

A notice of access is valid for the access period set out in the notice of access. The access period cannot exceed 6 months.

Our final decision is largely consistent with our draft decision in respect to obligations before accessing land, apart from some clarifications about obligations and a change to the rescheduling provisions to facilitate early engagement, which is detailed below.



Obligations before accessing land

This chapter presents the content of Part 2 of the code of practice, which places obligations on a transmission company to do certain things prior to accessing private land. These obligations aim to address current concerns about relevant information and notice for land access not always being adequately shared with the relevant party (landowners, occupiers and other parties interested in land). It is also intended to help a landowner decide whether to enter into an access agreement.

Part 2 introduces obligations on a transmission company relating to:

- General communication and engagement obligations (Division 5)
- Information required to be provided prior to accessing land (Division 6)
- Notice of Access required to be provided prior to accessing land (Division 7)
- Exemptions to the Notice of Access (also Division 7).

General communication and engagement obligations (Division 5)

Division 5 of the code of practice includes obligations to provide broad information about upcoming transmission projects at the earliest opportunity, and general obligations relating to consultation and engagement.

We received stakeholder feedback on the following key areas:

- Attempts to contact people interested in land
- Engagement on cultural heritage issues
- Identifying staff of a transmission company
- Methods of communication
- Providing copies of surveys
- Implications of training requirements.

The following sections set out the main changes from our draft decision, informed by stakeholder feedback and our own analysis.

Attempts to contact affected parties and other parties interested in land

Our draft decision proposed that a transmission company must contact all affected parties and other parties interested in land before accessing land.

AusNet noted the difficulty in identifying all parties interested in land – for example, where information is out of date or information on non-registered interests is not publicly available – and that complying with these obligations is likely to affect project timelines. It also considered that the proposed draft obligations would give parties the opportunity to delay land access, potentially increasing the costs of a project.

AusNet also noted that municipalities (local councils) are not permitted to provide information about a landowner or affected party due to privacy laws. It suggested removing this reference from the

Obligations before accessing land

code or provide for exceptions if a company can demonstrate reasonable attempts to identify and contact all affected parties and other parties interested in land.²⁴

In contrast, LIV supported expanding the list of parties interested in land to include a reference to mortgagee, receiver, or liquidator in possession of the private land.²⁵ EWOV supported expanding the list of parties that a transmission company is required to contact to include neighbouring properties.²⁶ It considered that notifying affected neighbouring properties would help to ensure that land access activities occur at the most appropriate times and in the most appropriate forms. MCHPA was of the view that access must not be allowed if the licensee cannot make contact with the landowner.²⁷

Our final decision

Our final decision is to largely retain the obligations (and definitions) we proposed in our draft decision.

We consider that the definitions of ‘affected parties’ and ‘other parties interested in land’ appropriately capture the breadth of stakeholders who can be contactable in practice to be consulted with in a meaningful way. In particular, ‘other parties interested in land’ is limited to parties with a registered or recorded interest and should be readily identifiable. We have made a minor change to the definition of an ‘occupier’ to mean a person who is lawfully in possession or occupation of the land, and is in apparent control of the premises to clarify that a transmission company should liaise and engage with those that reside on the land (such as renters and lessees).

We note AusNet’s comment on local governments not being able to provide information about landowners and occupiers under applicable privacy laws. We have removed this example in relation to the steps a transmission company can take to identify affected parties.

²⁴ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

²⁵ LIV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

²⁶ EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

²⁷ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

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Engagement on cultural heritage issues

New transmission projects often require preparation and approval of a Cultural Heritage Management Plan in accordance with the *Aboriginal Heritage Act 2006*, prior to planning approval construction. This often requires archaeological assessments to be carried out on private land.

In our draft decision, we proposed that in a case where a Cultural Heritage Management Plan was not mandatory for a transmission project, a transmission company would be required to consult with the relevant Registered Aboriginal Party to help assess potential cultural heritage impacts on the land it was proposing to access. We initially proposed this to ensure that engagement with the Registered Aboriginal Party would be undertaken in all circumstances.

However, after further analysis and engagement with stakeholders, we recognise that our proposed draft obligation could unintentionally create additional burden on a Registered Aboriginal Party and the transmission company, particularly where mandatory cultural heritage management plans are not required. We understand that Registered Aboriginal Parties may not be well resourced to undertake the level of consultation the proposal would have required. However, we note that in many cases, a major transmission project is likely to require cultural heritage management plans, and that consultation with a Registered Aboriginal Party will be required and undertaken in those cases.

Our final decision

Our final decision is to remove the proposed obligation to consult with a Registered Aboriginal Party in cases where a Cultural Heritage Management Plan is not mandatory. Instead, we have included an obligation requiring a transmission company to consult with an affected party to understand any property-specific needs, which should also include those related to cultural heritage protection. This approach also prevents any duplication with other regulation and legislation as Aboriginal cultural heritage protection is regulated under the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*.

Identifying staff of a transmission company

In our draft decision, we proposed that a transmission company should disclose the full name of a point of contact to an affected party.

AusNet recommended removing the reference to a transmission company's point of contact's full name, to protect their physical and psychological safety.²⁸ Energy Networks Australia shared this concern, noting that the requirement to provide the full names of employees should not be

²⁸ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

mandatory for staff safety.²⁹ In contrast, a community member suggested that the exemption to provide full names of individuals entering land should be removed.³⁰

Our final decision

Our final decision is to only require a transmission company to provide the first name (rather than the full name) of the point of contact to affected parties and other parties interested in land. We recognise the potential safety concerns and consider the requirement to also provide details of a representative's role, business phone number and email address to be sufficient information to enable a landowner to make contact.

Methods of communication

In our draft decision, we prescribed the specific ways a transmission company must communicate with stakeholders, depending on the type of information being provided.

AusNet submitted that delays would be caused if a transmission company was only allowed to use electronic communication where the affected party agrees. AusNet considered it should be permitted to use electronic communications without further consent.³¹

EWOV noted that some stakeholders mentioned that a landowner may have different communication preferences, and these should be accommodated and supported by the code of practice where possible.³²

Our final decision

We have made changes from the draft code of practice to clarify the method of communication in the following instances:

- We have clarified the permitted forms of communication where a transmission company wishes to postpone or change the dates/times of access set out in a Notice of Access. In this instance, a transmission company must use the form of communication for such changes set out in the Notice of Access, or via telephone, email or text message.
- We have also adjusted the general communication and notice clause (clause 2.2.1) to require that a notice, information or any other document be provided in writing and may be provided by

²⁹ ENA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

³⁰ Anonymous Submission #4. Submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

³¹ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

³² EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

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one of the methods specified below, unless a provision of the code of practice expressly requires or permits other methods:

- delivering it to the person personally
 - sending it by post
 - sending it electronically if the person has given consent to receive the documents electronically.
- A transmission company may deliver the 48 hour reminder or change of date or time of access notice (which is explained below in the [Notice required to be provided prior to accessing land](#) section of this chapter) in person or by contacting the affected party by phone, email or text message provided this has been informed to the affected party in the Notice of Access. We recognise that a written notice sent by post would not be effective, as the information is unlikely to be received by the landowner within 48 hours.
 - For other notices which have a longer notice period, including the Notice of Access, electronic communication is only permitted if the person has given consent.

When delivering a written notice, information or any other document in person, we expect a transmission company to be sensitive, respectful and considerate in the way it provides the information. We particularly recognise that delivering such information in person may inadvertently constitute accessing land using section 93 powers if the affected party has not allowed the transmission company to access its land for the purpose of receiving the information.

Providing copies of surveys

In our draft decision, we proposed that, on written request, a transmission company must provide an affected party the outcomes of surveys and other relevant investigations in relation to the land owned by the landowner, where appropriate and reasonable to do so. We also proposed that if an occupier requested the information, the landowner must provide written consent.

AusNet recommended removing the proposed requirement to provide copies of surveys and investigations to affected parties.³³ It considered that this would require disclosure of confidential survey results, staff safety security investigations and proprietary Light Detection and Ranging (LIDAR) results.

In contrast, a community member expressed the view that a transmission company must provide all reports and not withhold information requested by an affected party.³⁴ MCHPA also supported

³³Ibid.

³⁴ Anonymous Submission #3. submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

all written reports being provided in full to a landowner on request, suggesting the ‘where appropriate and reasonable’ wording in this clause should be clarified or deleted.³⁵

We recognise that it may not be appropriate for personal, confidential or commercially-sensitive information to be provided. We also recognise that our original drafting lacked clarity for both a transmission company and landowner.

Our final decision

Our final decision is to require the information to be provided upon request ‘other than personal information, confidential information or commercially-sensitive information’ (as opposed to where it is determined by a transmission company ‘where appropriate and reasonable to do so’).

We have maintained the requirement that when a request is made by an occupier, the transmission company is only required to provide information if the request provides evidence of the written consent of the landowner to the provision of that information to the occupier.

Training and process changes

In our draft decision, our proposed approach was to require a transmission company to ensure that its employees have relevant skills, training and qualifications to undertake their allocated tasks in accordance with the code of practice.

AusNet noted that the proposed training requirements would cause a material step change in the outsourced operation and maintenance activities post-construction.³⁶ It noted that it would require months to develop processes to comply with new training requirements, breach reporting processes and associated contractual requirements for external contractors. If these obligations were to be applied immediately, it would need to halt projects to undertake training and implement process changes.

Our final decision

In its submission to our draft decision, AusNet stated that its staff and contractors have already been trained in stakeholder engagement, and to conduct the work it needs to carry out its activities. Therefore, we consider the obligations related to training staff and contractors, as presented in the final version of the code of practice, a minimum expectation and reflective of current business practices.

³⁵ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

³⁶ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

However, we recognise that the introduction of regulatory obligations under an enforceable code of practice, requires a licensee to establish systems and processes for compliance. A key objective of the code of practice is to increase the level of accountability a transmission company has in conducting land access, which includes appropriately training staff and contractors. We note also that the three-month transitional period before the code of practice comes into effect should support this upfront training for existing licensees.

Our final decision maintains that a transmission company must ensure that anyone contacting affected parties or other parties interested in land has undertaken training in appropriate and effective stakeholder engagement, engagement with Traditional Owners and on the requirements of the code of practice. This is also a requirement of a transmission company's contractors, should the transmission company choose to outsource its activities.

Information required to be provided prior to accessing land (Division 6)

Division 6 of the code of practice sets out important information that a landowner must receive prior to a transmission company accessing their land.

This division of the code of practice requires that a transmission company send two key pieces of information to a landowner, at least 30 business days before the first day of access to private land using section 93 powers.

These are:

- **Information on access options, rights and obligations**, setting out the obligations and processes the transmission company must follow, if private land is to be accessed. This could be in the form of a landowner guide. This is set out in clause 6.1 of the code of practice.
- **Detailed information** for a landowner whose land is proposed to be accessed, provided 30 business days before the first day of access. This must be in writing, such as in the format of a letter. This is set out in clause 6.2 of the code of practice.
 - This detailed information must contain specific information on the proposed access, including:
 - why the proposed access is required
 - intended dates for when access is required
 - the point of access and the areas of land requested to be accessed, and
 - the types of activities, equipment or chemicals that will be conducted or used during the access.

This is a critical point in the land access process for a landowner, as shown in figure 4 below.

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Figure 4: Key milestones before land access for all pathways



If a landowner decides not to enter into an access agreement, a transmission company may consider using its statutory powers under section 93 of the Act. However, a transmission company can only use its statutory powers to access land once this information is provided to a landowner (and a Notice of Access is provided in accordance with Division 7 of the code of practice, as explained below).

We have introduced these information provision requirements so a landowner can make informed decisions. We expect a transmission company to put in genuine efforts to engage and consult with community members in good faith when negotiating access agreements or arranging access using its statutory powers.

In response to our draft decision, stakeholders provided specific feedback on the following key areas:

- Timeframes for provision of information
- Content of the information on access rights, obligations and proposed access
- Obligations to consider landowner feedback and requested changes on proposed access dates

The following sections set out the key changes from our draft decision.

Timeframes for provision of information

Our draft decision proposed that the information on proposed access described above should be provided at least 20 business days before a transmission company sends a Notice for Access to use its statutory powers. This was proposed to provide sufficient time for a landowner to consider entering into an access agreement.

AusNet expressed concerns that the proposed timings could double the length of land access processes (which currently take a minimum of three weeks). It recommended changing the proposed 20 business day period to 10 days. In further discussions with AusNet, we understand

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that its main concern was the requirement to provide precise dates of access at least 30 business days before access were to occur.³⁷ We understand that forecasting for precise dates that early in the process is problematic in that it reduces ‘flexibility in adapting to ecological changes, resourcing challenges, and rapid changes in weather’.³⁸

AEMO considered that the combined notice period of at least 32 business days was too long and likely to result in delays and cost implications.³⁹ However, one community stakeholder proposed extending the gap between notices to 30 business days.⁴⁰ In contrast, the AEIC expressed support for notice periods set out in the draft code.⁴¹

Our final decision

We have not reduced the 20 business day minimum gap between providing the information on proposed access and issuing the Notice of Access, as proposed in our draft decision. This is a critical period which is intended to facilitate engagement on the terms of access between a transmission company and an affected party.

We consider this period should provide sufficient time for an affected party to review the information they have received, ask questions, provide feedback and decide if they wish to enter into an access agreement. During this period, an affected party can also request changes to the proposed dates and details of access that the transmission company will consider and respond to before finalising the access details.

We recognise the difficulties of providing specific dates of access too early in the process. Our final decision is for the information on proposed access under clause 6.2.1 to include either:

- the intended specific dates of access (specific days a transmission company estimates would need to access the land)
- options for dates when access to land is proposed (specific alternative days of access so a landowner can choose a date that suits them), or

³⁷ 30 business days consisting of a 20 business day period between notices, and an additional 10 business days prior to access if a formal notice of s93 access is sent to a landowner.

³⁸ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

³⁹ AEMO, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁴⁰ Anonymous Submission #5, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁴¹ AEIC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

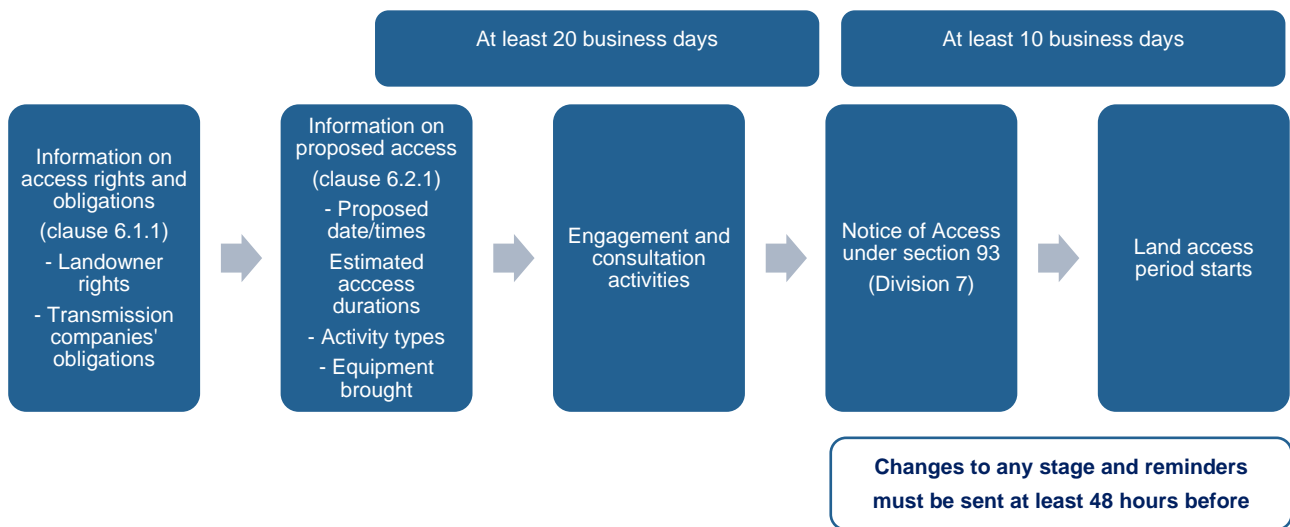
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- a range of intended dates, which must not be more than seven calendar days apart (a range of possible days when land access would be required within seven calendar days).

We believe this achieves a balance by providing useful information to an affected party (with sufficient time) and support the necessary activities for new transmission projects. If a landowner provides feedback on their preferred dates for land access, we expect a transmission company to take this feedback into consideration (particularly when issuing a Notice of Access, if it is not possible to enter into an access agreement).

The key timings for notice periods are set out in the following figure.

Figure 5: Notice periods for key information required under division 6



Content of the information on access rights, obligations and proposed access

In our draft decision, we proposed that prior to issuing a Notice of Access, a transmission company would inform an affected party of their rights under section 93 of the Act and the code of practice. We also proposed that a transmission company would inform an affected party of how these rights and obligations would differ under section 93 of the Act and under the terms of an access agreement. This could take the form of a landowner guide, which is a practice several transmission companies currently use.

AusNet considered that a transmission company should not be required to explain 'rights and obligations' to an affected party, as this may be considered legal advice and is inappropriate.⁴²

⁴² AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

We also proposed that a transmission company should provide detailed information to a specific landowner on its proposed access, before issuing a Notice of Access.

AusNet expressed concern that obligations that require dates, times, duration and number of people more than six weeks ahead of land access would result in suboptimal outcomes between a landowner and a transmission company.⁴³ It suggested removing these information provision obligations.

In contrast, several community members suggested the inclusion of stricter restrictions on access dates and hours – for example, only between 8 am – 6 pm and/or restricted to certain times of the year based on farm activities.⁴⁴

One community member also suggested the inclusion of additional information related to the proposed access – for example, on use of drones or aircraft and the occupations of people who would attend the site.⁴⁵

Our final decision

We have maintained the provision of information obligations proposed in our draft decision. The code of practice does not require a transmission company to provide legal advice. The requirement of the code of practice is that a transmission company provides a general explanation about the rights and obligations of different parties under the code of practice.

Further, a transmission company is currently expected to provide this information under the statement of expectations. Principle 8 of the statement of expectations requires a transmission company to outline access rights and obligations, providing information on the rights of a landowner and parties interested in land in relation to its land access. The statement of expectations states that Principle 8 can be met by providing a simple description of:

- the transmission company's right to access land even without a landowner's consent, and its obligation to do as little harm as possible, and
- the entitlement to compensation if the transmission company causes damage when exercising its rights to access land.

⁴³ For example: licensees may need to overestimate dates, times, duration and number of people to establish contingency; and a landowner may benefit by more accurate and specific information with fewer planned access days.

⁴⁴ Anonymous Submissions #3, 4, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁴⁵ John Feeny, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

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Providing a description of the rights of an affected party and the rights and obligations of a transmission company is only intended to inform an affected party about the code of practice and the Act and does not constitute legal advice.

Further, we consider that the information to be provided to an affected party is appropriate and critical to inform landowner decisions on entering into an access agreement with a transmission company. Details such as dates, time and duration of the proposed access, are critical pieces of information for a landowner, and the Notice of Access would be of limited value without it.

The final version of the code of practice makes it clear that the information on proposed access only needs to contain 'estimated' information on these matters and can be updated in the Notice of Access, which occurs later in the process. We also expect that a transmission company will take into consideration any feedback received when issuing a Notice of Access to a landowner.

We have also included an obligation to provide information in relation to the right of affected parties to refer a complaint related to access under section 93 of the Act or to compliance with the Code of Practice to EWOV, so parties can negotiate their preferred dispute resolution scheme if they decide to enter into an access agreement.

In relation to the use of drones and aircrafts to access property by air, we consider that these activities are beyond the scope of the code of practice and regulated by other regulatory agencies, such as the Civil Aviation Safety Authority (CASA).⁴⁶ However, prior to issuing a Notice of Access or entering into an access agreement, a transmission company will have to provide an affected party with information on the proposed access, which includes information about the purpose of access and the types of activities to be conducted on the land during access. If drones or aircraft are expected to be used, a transmission company will need to provide this information to an affected party.

Considering landowner feedback and requested changes on proposed access dates

We proposed that a transmission company establish a process to answer questions from an affected party on the information provided before accessing land, and to have regard to their feedback.

AusNet considered that this obligation should only apply to the extent that addressing feedback does not result in delays to the project.⁴⁷ On the other hand, MCHPA suggested that this

⁴⁶ For instance, see [Drone safety rules | Civil Aviation Safety Authority \(casa.gov.au\)](https://www.casa.gov.au/drone-safety-rules).

⁴⁷ Ibid.

requirement should be strengthened and clarified, to address current concerns that feedback lodged by a landowner have not been considered.⁴⁸

We also proposed that a landowner or an occupier should be allowed to request changes to planned dates or times of access.⁴⁹ However, these obligations were emphasised in the next step of the land access process, after a Notice of Access is issued (under Division 7 of the code).

Most stakeholders provided feedback on our proposed obligations for a transmission company to consider feedback and requests for changes to proposed access dates. AusNet and Energy Networks Australia were particularly concerned that the proposed obligations could lead to material delays and increased costs for projects. In contrast, MCHPA suggested removing a transmission company's ability to refuse changing access dates, suggesting it could easily use the reasoning that it would lead to material cost or delays.

AusNet suggested an alternative obligation:

...we recommend amending this clause to only require the licensee "to negotiate in good faith" with the affected party...

AusNet suggested that our original drafting misses the opportunity for dates and times of access to be negotiated, and that the section 93 process should only occur after other opportunities for voluntary access have been exhausted.⁵⁰

Our final decision

We consider that the code of practice should incentivise earlier and better engagement between a landowner and a transmission company. This will increase the likelihood that negotiation of dates and times of proposed access will occur in good faith. We also consider it is more effective to consult and seek agreement on dates of access at an earlier stage, rather than at the last minute after a formal Notice of Access has been issued.

Our final decision makes it clear that a landowner has the right to provide feedback on, and request changes to intended dates of proposed access.

⁴⁸ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁴⁹ We also proposed under Division 7 of the draft code of practice, that 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 transmission project. This is discussed in further detail in the next chapter.

⁵⁰ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

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Specifically, the code of practice provides that:

- The information on proposed access must include an explanation about how an affected party can provide comments on this information and request changes to the proposed dates or details of access.
- If an affected party provides feedback or requests changes in relation to the proposed dates or any other matters set out in this information, the transmission company must consider the feedback or requested changes in good faith and promptly provide a response to the feedback or requested changes in writing.

This differs from the draft code of practice which only required a transmission company to provide an affected party with the planned dates and times when access to land is sought and 'have regard to' any feedback.

Notice required to be provided prior to accessing land (Division 7)

Division 7 of the code of practice establishes requirements a transmission company will have to follow if statutory powers will be used to access land.

In the event an access agreement is not able to be reached, a transmission company must provide a Notice of Access, at least 20 business days after providing information on the proposed access, and at least 10 business days before the land is accessed. The Notice of Access will inform an affected party about the purpose, duration and specific details of the access.

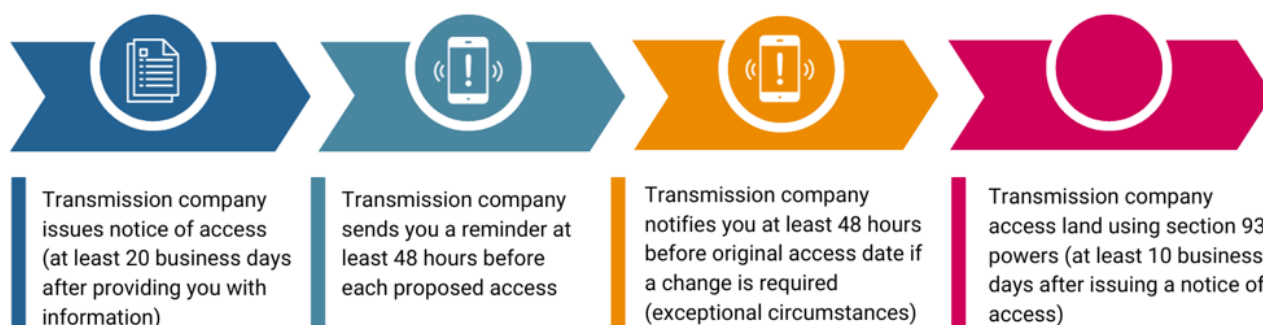
A transmission company must comply with the following when issuing a Notice of Access:

- **A Notice of Access will only remain valid for the access period set out in the notice**, which must not exceed six months. After that time, a new notice would be required to be issued if continued access was required.
- **A transmission company will be required to send a reminder** before each proposed instance of access during the access period, which must be given by at least 48 hours before each proposed access.
- **A transmission company will have to consider a rescheduling request in good faith** and advise an affected party of the amended date and times. If a transmission company does not agree with the request, it must promptly provide reasons why it does not agree to the affected party.
 - The draft code of practice also included an ability for a landowner to request that a transmission company reschedule access on three occasions. Under our proposed draft code of practice, a transmission company would have been required to agree to the change unless the request would be likely to have a demonstrable material cost impact or cause a demonstrable material delay to a project or significant disruption to the network.

Obligations before accessing land

The key milestones before accessing land under section 93 powers are set out below.

Figure 6: Key milestones before land access under section 93 of the Act



Stakeholders were broadly supportive of the proposed Notice of Access and provided feedback on the following key matters in relation to the Notice of Access:

- Notice periods
- Six-month access period
- Reminders
- Rescheduling requests

The following sections set out the key feedback to our draft decision on those matters.

Notice periods

AusNet expressed concern that the proposed notice obligations would lead to a doubling of the end-to-end land access process that currently takes a minimum of three weeks, which will impact 'current work programs of surveys and reduce flexibility in adapting to ecological changes, resourcing challenges, and rapid changes in weather'.⁵¹

AusNet and AEMO both proposed changing the proposed 10 business day period for the Notice of Access to 5 business days.⁵²

Four community members considered that 10 business days for a Notice of Access was too short.⁵³ One subsequently proposed extending the gap between notices to 30 business days, and

⁵¹ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁵² AEMO, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁵³ Anonymous Submissions #1, 2, 4, 5, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Obligations before accessing land

the Notice of Access period to 15 business days.⁵⁴ Another proposed extending the 48 hour reminder period to 5 business days.⁵⁵ MCHPA also suggested that the 48 hour final notice period be changed to 2 business days (that is, exclude weekends).⁵⁶

In contrast, the AEIC expressed support for all the proposed notice timeframes in the draft code.⁵⁷

Our final decision

We have carefully considered the concerns raised by stakeholders regarding the notice periods set out in the draft code of practice.

There appears to have been confusion regarding how notice periods are calculated, with some stakeholders adding an additional four to five business days to the stated notice periods to allow for postage time. This was not the commission's intention, with notice periods intended to commence when the notice is sent (rather than when it has been received).⁵⁸

This confusion may have been created by clause 2.2 of the draft code of practice, which has been removed from the final version of the code of practice. The references to notice periods have also been amended to specify that they commence when the notice is sent.

Six-month access period

In its submission, AusNet noted that the concept of a maximum access period was new and not part of its current process.⁵⁹ It considered that the six-month period would be overly restrictive for construction phases and new transmission line projects. It suggested amending this maximum period to allow for longer access periods during construction and commissioning phases.

⁵⁴ Anonymous Submission #5, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁵⁵ Gerald Feeny Submission, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁵⁶ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁵⁷ AEIC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁵⁸ We note that in developing the proposed notice periods in the draft code, an estimated time for postage was already factored into this time.

⁵⁹ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

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AEMO also suggested extending the access period, but require a transmission company to keep a landowner informed on an ongoing basis.⁶⁰

In contrast, MCHPA suggested reducing the maximum access period to two months.⁶¹

Our final decision

We note AusNet's concern that it considers a maximum access period of six months to be overly restrictive for construction phases and new transmission line projects. However, we note that if access is required for a longer period, a transmission company only needs to provide a new Notice of Access with updated details. We also expect that land access for construction activities will usually occur under an easement and will not be subject to the code of practice.

Therefore, we have not made any changes to the six-month access period for the final version of the code of practice.

Reminders

In our draft decision, we proposed that a transmission company must send a reminder to an affected party at least 48 hours before each access, during the six-month period.

This 48 hour reminder was consistent with the [Victorian Farmers Federation's Managing Entry to Farms Policy Statement](#), which also requires a minimum 48 hour notice prior to accessing land.

AusNet considered that a 48 hour notice period prior to access would be impractical, particularly if a landowner refuses to answer the door or phone or reply to SMS messages.

AusNet proposed that a transmission company should only need to send an SMS, or attempt to knock or call a landowner, prior to access. Ausnet also proposed changing this reminder period to 24 hours.⁶²

Our final decision

Consistent with our draft decision, our final decision confirms that a transmission company must send a reminder to an affected party 48 hours before proposed access and notify an affected party of changes to access dates or details.

⁶⁰ AEMO, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶¹ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶² AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Given the short timeframe for this reminder, a transmission company should use one of the permitted methods of communication, including contacting an affected party by telephone, email or text message if this has been previously informed to the affected party in the Notice of Access.

We note AusNet's concerns if a landowner refuses to receive a reminder. However, a transmission company only has an obligation to send a reminder by one of the communication methods established in the code of practice. A transmission company is not responsible for the recipient's behaviour. Provided the transmission company has sent a reminder to an affected party, a transmission company will not be prevented from accessing land if an affected party does not answer the door or phone or reply to calls, emails or text messages.

Rescheduling requests

The draft code of practice proposed that an affected party would be able to request rescheduling access on three occasions after receiving a Notice of Access. Under our proposed draft code of practice, a transmission company would be required to agree to the change unless the request would be likely to have a demonstrable material cost impact or cause a demonstrable material delay to a project or significant disruption to the electricity network.

Stakeholders did not support this proposed provision for very different reasons.

AusNet was concerned that providing an affected party a right to reschedule on three occasions would have a material impact on project delivery timeframes and costs. It estimated that the requirement could add months to the delivery timeframe of its current project, at an additional cost of millions of dollars per month.⁶³

In contrast, a community member suggested removing the limit of three requests for rescheduling.⁶⁴ MCHPA was also concerned that a transmission company could misuse its ability to reject requests for rescheduling and queried how a transmission company would demonstrate material costs or delays.⁶⁵

AusNet also noted limitations with rescheduling certain activities. For example, a Registered Aboriginal Party is normally scheduled four to six months in advance and cannot be rescheduled on such short notice without major delays and that booked contracts cannot be reallocated to another land access.

⁶³AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023

⁶⁴ Gerald Feeny Submission, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶⁵ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Obligations before accessing land

Our final decision

Following stakeholders' feedback, we have amended requirements to consider rescheduling requests after a Notice of Access has been issued.

The main objective of these changes is to encourage an affected party to share their preferred dates for access and have a conversation with a transmission company much earlier in the process. This should increase the likelihood of land being accessed at a time that is more suitable for a landowner, an occupier and a transmission company.

Specifically, we have removed the proposed rule that would have allowed a transmission company to reject a reschedule request if an affected party had made three or more requests or if the request would have caused significant costs or delays to the project, or disruptions to the network.

Instead, the code of practice requires a transmission company to consider all affected parties' rescheduling requests in good faith and advise all affected parties of the amended date and times. If a transmission company does not agree to the request, it must promptly provide reasons why it does not agree to all affected parties.

We recognise that there will be practical limits to allowing for rescheduling after a Notice of Access has been issued where it is close to the day of access. Therefore, as discussed earlier, we have also made similar changes requiring a transmission company to consider requests for changes in proposed access dates in good faith much earlier in the process (following the provision of information on proposed access, which occurs 20 business days before a Notice of Access is issued). EWOV is the relevant dispute resolution body for any disputes relating to rescheduling access under section 93 of the Act.

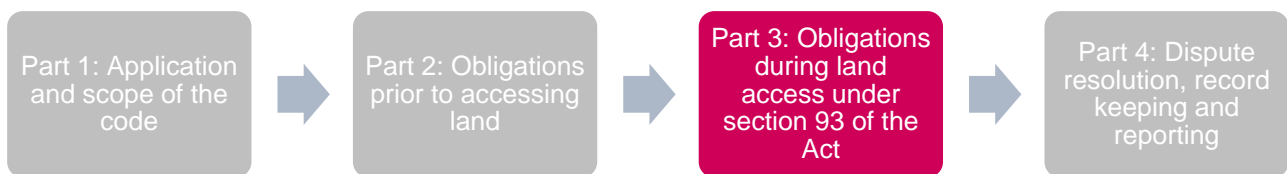
We consider these changes will encourage earlier negotiation between a landowner and a transmission company and improve the likelihood of land being accessed at a time suitable for all parties.

4. Obligations during land access (Part 3 of the code of practice)

This chapter presents the content of Part 3 of the Land Access Code of Practice. Part 3 of the code of practice regulates the minimum requirements that will apply when a transmission company uses section 93 powers.

If a transmission company needs to use their statutory powers to access land, they will have to comply with general risk minimisation obligations and specific environmental, fire and health risk management obligations.

This part of the code of practice seeks to address concerns raised by landowners in relation to the conduct, policies and procedures that a transmission company follows when accessing land using their statutory powers.



This chapter outlines the obligations that a transmission company must comply with while accessing land using their statutory powers.

When accessing land using their statutory powers, the code of practice requires a transmission company to minimise biosecurity risks, fire risks and health risks associated with land access, including developing policies and procedures.

These obligations are set out in Part 3 of the code of practice as follows:

- General obligations during access (clause 9.1.1)
- Risk minimisation during access (clause 9.2.1)
- Biosecurity controls (clause 9.3.1)
- Fire risk management (clause 9.4.1)
- Health risk management (clauses 9.5.1 and 9.5.2)
- Provision of reports and information to affected parties (clauses 9.6.1, 9.6.2 and 9.6.3)

Obligations during land access

Importantly, any transmission project must be undertaken safely. This includes having biosecurity, fire and health risk procedures in place that are specific to the land being accessed, which must be shared with an affected party on request.

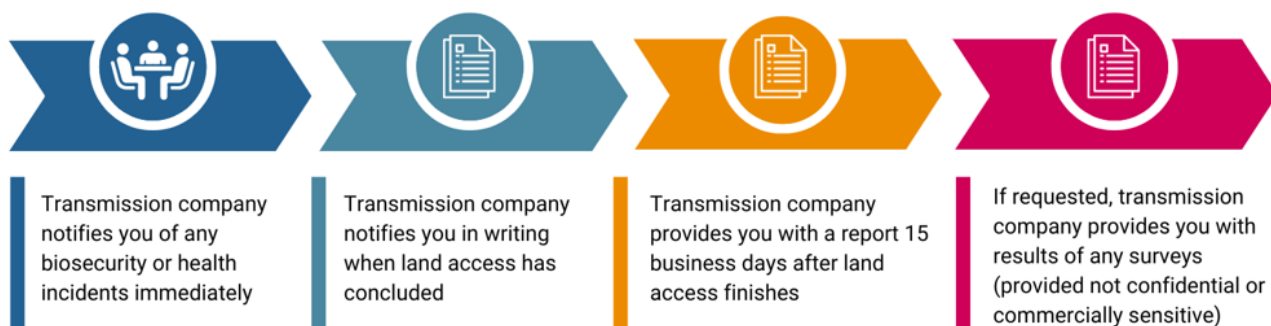
A transmission company will also have to consult with an affected party to understand property-specific needs. An affected party will have an opportunity to present relevant information related to their land that a transmission company will have to take into consideration before accessing those parcels of land.

These obligations are consistent with section 93(2) of the Act, to 'do as little damage as may be' in the exercise of statutory powers for land access.

These obligations do not apply to access under an access agreement or an easement. If a transmission company is accessing land in accordance with an access agreement, it is governed by the terms of that agreement.

The following figure presents the key milestones during land access if section 93 powers are being used.

Figure7: Key milestones during land access under section 93 of the Act



Following our draft decision, stakeholders provided feedback on the following key issues:

- Biosecurity obligations
- Fire and risk management
- Copies of policies and procedures

Our final decision is largely consistent with the draft decision, with several minor changes to address the issues raised by stakeholders. The following sections set out our responses and final decisions.

Obligations during land access

Biosecurity obligations

In its submission to the draft code of practice, AusNet expressed concern that the proposed biosecurity obligations were overly cumbersome and constraining.⁶⁶ It considered these provisions would not allow flexibility for operational changes that may arise at late notice. It was concerned that this could result in a transmission company using templated biosecurity controls, which may not accommodate the needs of an affected party and lead to future disputes.

AusNet also suggested that a biosecurity report should only be provided to an affected party 15 business days after land access, upon request.

In contrast, several community members proposed strengthened biosecurity provisions, such as:

- a transmission company must demonstrate compliance with biosecurity processes
- follow a farm's biosecurity plan
- carry biosecurity equipment
- provide a biosecurity report within 24 hours instead of 15 business days, and
- not access land if there are biosecurity concerns.⁶⁷

MCHPA considered that a landowner should be allowed to reject a transmission company's biosecurity policies if they do not accord with a landowner's biosecurity obligations.⁶⁸ It also suggested that the biosecurity report be provided within seven days.

Our final decision

We consider the proposed biosecurity obligations complement existing obligations in line with Victoria's biosecurity legislation, policies and permits.⁶⁹ Our assessment has been informed by our own analysis and in consultation with Agriculture Victoria.

We note that an industry assurance biosecurity management plan together with section 50A of the *Livestock Management Act 2010* is not designed to be used to restrict access to people who have a legal right to enter a property, such as essential service ic.⁷⁰ Importantly, consistent with the draft

⁶⁶ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶⁷ Anonymous Submissions #1, 3, 4, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶⁸ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁶⁹ For more information, see [Legislation, policy and permits | Protecting Victoria | Biosecurity | Agriculture Victoria](#).

⁷⁰ Under section 50A(1) of the *Livestock Management Act 2010*, a person must not contravene a prescribed biosecurity measure that applies to a premises if a biosecurity management plan is in force. However, section 50A(3) clarifies that a person does not commit an offence if the person is at the premises pursuant to a power conferred upon the person under a provision of the *Livestock Management Act 2010* Act or another law.

Obligations during land access

code of practice, the final version of the code of practice requires a transmission company to consult with an affected party on their specific biosecurity needs for land access, develop biosecurity policies and procedures, provide relevant information to an affected party before and after accessing land and document and communicate incidents that may occur when accessing land immediately.

We have retained the proposed 15 business day deadline for providing reports after land access has concluded. In addition, we have added a new clause requiring that, if an environmental, biosecurity, fire or health incident occurs on land that was accessed by a transmission company, and an affected party reasonably requests information related to a transmission company's land access to assist it to respond to the incident, the transmission company must provide the requested information as soon as is reasonably practicable. This will enable a landowner to obtain information more rapidly where needed to help respond to an incident.

While compensation will not be regulated under the code of practice, the broader requirements of the Act should be considered at this juncture. If there is an incident when using section 93 powers, section 93 (2) of the Act requires a transmission company within two years from the exercise of the powers, to make full compensation to the owner of and all parties interested in any land for any damage sustained by them in consequence of the exercise of the powers.

We have not adopted AusNet's suggestion that reports be provided to an affected party only 'upon request'. This is because of the strong interest from community stakeholders in receiving these reports. We have clarified that the reports must include information in relation to the activities undertaken on the land in relation to biosecurity control, fire risk management and health risk management.

We have made changes to the draft definition of 'biosecurity plan' in the final version of the code of practice to recognise that a landowner may have biosecurity plans to protect their farms from non-livestock related biosecurity risks such as plant biosecurity risks.

Fire and health risk management

Since the release of the statement of expectations, stakeholders provided views on how best to manage and mitigate potential fire and health risks associated with land access. In response to the draft decision, community members unanimously agreed that a transmission company should have appropriate fire and health risk mitigation procedures in place and have consideration for any property-specific needs.

Our final decision

Consistent with our draft decision, a transmission company must also follow fire and health risk management procedures whilst accessing private land. Underpinning these procedures is the requirement to consult with an affected party so that any fire or health specific risks are

Obligations during land access

communicated before any land access activities begin. An affected party must also be issued any bushfire mitigation plan or relevant procedures upon request.

We have clarified in the final version of the code of practice that, consistent with biosecurity obligations, a transmission company must:

- develop and implement procedures to identify and mitigate fire risks (in a manner consistent with a bushfire mitigation plan) and health risks
- provide an affected party with access to any applicable fire risk management and health risk management policies and procedures on request, and
- document fire related incidents and health incidents and communicate the incident and how they have managed them to an affected party immediately.

Copies of policies and procedures

In its submission, AusNet noted that many of its biosecurity and fire risk management policies are confidential. To this end, it considered that the draft code of practice should be amended to only require provision of public facing versions of policies and procedures.⁷¹

Our final decision

We have considered the views received from stakeholders on the draft code of practice in relation to obligations placed on a transmission company during land access under section 93 of the Act. Our final decision is largely consistent with our draft decision, with several minor changes to address issues raised by stakeholders.

We consider that AusNet's suggestion that a transmission company provide an affected party with access to its bushfire mitigation plan and any other relevant policies and procedures on request, rather than a copy of these plans, policies and procedures, is reasonable. We have made a minor change to the final version of the code of practice to this effect.

In relation to the content of these policies and procedures, we expect transmission companies to prepare public versions of these documents removing any personal information, confidential information or commercially-sensitive information. A transmission company must have public versions of these documents available if an affected party requests access.

Consistent with our draft decision, a transmission company must also follow fire and health risk management procedures whilst accessing private land. Underpinning these procedures is the requirement to consult with an affected party so that any fire or health specific risks are

⁷¹ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

communicated before any land access activities begin. An affected party must also be issued any bushfire mitigation plan (if one is required under the Electricity Safety Act 1998) or relevant procedures upon request.

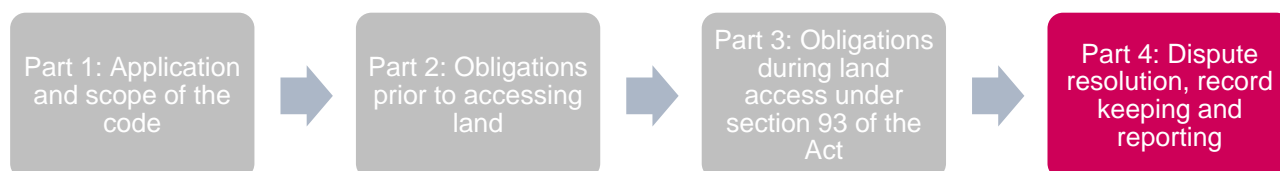
5. Ongoing obligations if land access powers are used (Part 4 of the code of practice)

Part 4 of the code of practice establishes the ongoing obligations that a transmission company must comply with if they access private land. Dispute resolution, record-keeping and reporting obligations are included within this part of the code.

A transmission company must implement respectful and responsive complaints-handling and dispute resolution processes in relation to issues raised by an affected party. If an affected party is not satisfied with the response to their complaint, they will be able to make a complaint to the Energy and Water Ombudsman of Victoria (EWOV). We have nominated EWOV as the independent dispute resolution scheme relating to all of the obligations in the Land Access Code of Practice.

A transmission company must keep records of all land access related information and provide monthly performance reports to the commission. A transmission company must also report to the commission if they have breached any of the obligations in the code of practice.

These obligations have been designed to keep a transmission company accountable for their land access activities, and to monitor compliance with the code of practice.



The code of practice imposes several ongoing obligations that apply where a transmission company has or intends to access land using section 93 powers. These obligations are set out in the code of practice as follows:

- Complaint handling and dispute resolution (Division 11)
- Record-keeping (Division 12)
- Reporting (Division 13)

The code of practice requires a transmission company to implement effective complaint handling and dispute resolution processes. It also provides an affected party with the right to escalate disputes related to land access to a third-party dispute resolution scheme.

Ongoing obligations if land access powers are used

We require transmission companies to enter into a dispute resolution scheme with EWOV because it 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
- an established membership base (almost all current electricity transmission licensees are already members of EWOV, and EWOV can hear disputes related to land access by those companies).

In respect of record-keeping, the code of practice contains obligations that require a transmission company to retain all land access related information for seven years. This information is defined as any information related to land access, including:

- records of all contact with an affected party related to land access
- any photographs or videos taken while accessing private land, and
- copies of all access agreements.

The period of seven years is longer than standard under our other codes of practice. However, 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 seven years period is also consistent with Principle 13 (Keep records) of the statement of expectations.

The code of practice also requires a transmission company to provide the commission with monthly performance reports about land access and to report actual or potential breaches to the commission. Type 1 breaches must be reported within 2 business days and Type 2 breaches must be reported within 30 calendar days. To provide an overview of breaches over a longer period, a transmission company must send the commission an annual summary report of all identified breaches.

Only a transmission company developing new transmission projects or undertaking activities on existing assets regulated by the code of practice (upgrades, replacements or decommissioning activities that are not part of operation and maintenance activities) must provide reports for the period they are conducting those activities.

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

Following our draft decision, stakeholders provided feedback on the following matters:

- Dispute resolution
- Record-keeping obligations

Ongoing obligations if land access powers are used

- Reporting frequency, breach reporting and confidential information

The following sections present the key feedback we received from stakeholders and our final decision on those matters.

Dispute resolution

In our draft decision, we indicated a preference for EWOV to be the dispute resolution scheme. We considered EWOV the most appropriate dispute resolution body to resolve complaints related to obligations prior to accessing land, land access under section 93 and compliance with the code of practice.

AusNet noted that it had previously raised concerns regarding EWOV's dispute resolution performance and long times to resolve complaints, but also expressed a commitment to working with EWOV to achieve better outcomes going forward.⁷²

AusNet also suggested that the code of practice should include a requirement that disputes be referred to a transmission company to resolve in the first instance, before being escalated to EWOV.⁷³ This view was shared by Transgrid and the CEC.⁷⁴ AusNet noted that, only after a transmission company is unable to resolve a dispute to the satisfaction of the complainant, should the dispute be raised to the dispute resolution organisation.⁷⁵ EWOV held a similar view, suggesting that if complaints were brought to EWOV prior to a landowner engaging with the transmission company, then EWOV would refer the complaints to the transmission company to resolve in the first instance before EWOV considered the complaint.⁷⁶

EWOV also considered there were opportunities to improve access to and delivery of dispute resolution services by including an avenue for dispute resolution services as a stated objective in the final version of the code of practice.⁷⁷ EWOV also suggested requiring a transmission company to inform an affected party of their right to access dispute resolution services, and to provide

⁷² AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁷³ Ibid.

⁷⁴ Transgrid and CEC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁷⁵ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁷⁶ EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁷⁷ Ibid.

Ongoing obligations if land access powers are used

contact details of dispute resolution services, when they consult with, provide information on proposed access, and/or provide a Notice of Access to an affected party.

Community members expressed that EWOV needs to be independent and consider opinions of advocacy bodies⁷⁸ and offer person-centred support.⁷⁹ A community member shared their experience dealing with EWOV and stated it was very thorough and provided an important service.⁸⁰ MCHPA stated that if EWOV is approved as the dispute resolution scheme for the code of practice, it would need to be readily able to deal with a variety of issues.⁸¹

Our final decision

We have considered the views received from stakeholders on the draft code of practice in relation to dispute resolution obligations. Our final decision is largely consistent with our draft decision, and minimal changes have been made to the obligations set out in the final version of the code of practice.

The final version of the code of practice requires a transmission company to implement effective complaint handling and dispute resolution processes and provide an affected party with the right to escalate disputes related to land access to a dispute resolution scheme approved by the commission. The dispute resolution scheme for the code of practice will be EWOV once the code of practice comes into effect.

We agree with AusNet and EWOV that disputes regarding land access should be referred to a transmission company in the first instance, before a dispute is escalated for external dispute resolution. However, we do not consider that an additional change is needed compared to the draft code of practice to give effect to this. We note that the draft code of practice proposed that complaints received by a transmission company be escalated within the transmission company licensee, and that an affected party has the right to make a complaint to a dispute resolution scheme if an affected party is not satisfied with the transmission company's response to the complaint. The draft code of practice also required transmission companies to provide timely responses to complaints. All these obligations have been maintained in the final version of the code of practice.

⁷⁸ Anonymous submission response #1, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁷⁹ Anonymous submission response #3, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸⁰ Anonymous submission response #5, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸¹ MCHPA, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Ongoing obligations if land access powers are used

In addition, EWOV's existing processes require referral of a complaint to the transmission company in the first instance.

At different stages of the land access process, a transmission company must communicate to an affected party their right to make a complaint to EWOV (if they are not satisfied with a transmission company's response to their complaints).

A transmission company must remain a member of EWOV until such time that it is not intending to engage in any activity which would be subject to the code of practice and any complaint received by a transmission company, including any complaint made to EWOV, has been resolved.

Record-keeping

In our draft decision, we proposed to require a transmission company to retain all land access related information for a period of seven years. The AEIC suggested that a transmission company be required to keep records of contact with an affected party, including records of contact attempts (for example, telephone messages), records of telephone, video and in person communications and records of written communications (including text messaging and other messaging services).⁸²

EWOV requested clarification on when the seven year period would commence.⁸³ It suggested 'when conclusion of access agreement or when land access is complete.'

In addition, some community members suggested the retention of records by a transmission company for periods longer than seven years.⁸⁴ Suggestions included retention for the life of a transmission line, a period of 20 or 25 years and for a period equivalent to tenure of land ownership.

Our final decision

After assessing the feedback we received from stakeholders, we have made minor changes to the record-keeping obligations in the final version of the code of practice.

In response to the AEIC's suggestion that a transmission company should keep records of contact with affected parties, including telephone messages, telephone, video, in person and written communications, we note that the definition of land access related information is comprehensive and covers all of these communication channels. We note the requirement under the *Privacy and*

⁸² AEIC, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸³ EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸⁴ Anonymous Submissions #1, 2, 3, 4, 5, 6, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Ongoing obligations if land access powers are used

Data Protection Act 2014 to take reasonable steps ensuring the information an organisation collects, uses or discloses is accurate, complete and up to date.

In response to EWOV's request for clarification on when the seven year period would commence, we note that it is seven years from when the record was created, which is standard for record-keeping obligations. Further, in response to suggestions that the seven year period should be longer, we note that seven years is already more onerous than equivalent provisions in other codes. For example, the Energy Retail Code of Practice and Electricity Distribution Code of Practice only require relevant records to be retained for two years.

Reporting

In our draft decision, we proposed that a transmission company would have to provide monthly performance reports to the commission, similar to the current obligation under the statement of expectations, and also report any breach or potential breach of the obligations established in the code of practice.

AusNet considered that we should review the requirement for a transmission company to report monthly and consider changing this to quarterly, to minimise the ongoing administration effort by a transmission company.⁸⁵

In relation to the reporting of breaches, AusNet did not consider a transmission company should be required to report 'any' breach.⁸⁶ Rather, it considered that the code of practice should specify which breaches must be reported, like the approach taken in the Electricity Distribution Code of Practice. AusNet also considered that the code of practice should clarify how breaches should be reported to the commission.

EWOV suggest that the draft code of practice's reporting obligations could be expanded to require reports to provide details of whether complaints relate to access agreements or access under section 93, as well as the outcomes of complaints.⁸⁷

A community member requested that the code of practice include a definition of 'confidential information' as applied to the reporting obligations information that would not be published by the commission.⁸⁸

⁸⁵ AusNet, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸⁶ Ibid.

⁸⁷ EWOV, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

⁸⁸ John Feeny, submission to the Essential Services Commission draft decision document *Making a Land Access Code of Practice: Draft Decision*, June 2023.

Ongoing obligations if land access powers are used

Our final decision

The final version of the code of practice maintains the proposed record-keeping obligations, including requiring a transmission company to retain all land access related information for seven years.

We have made changes to the reporting obligations between the draft and final versions of the code of practice to reflect the amended scope of the final version of the code of practice and the information that a transmission company will need to report on monthly. The removal of the references to new transmission projects or significant upgrades means that any transmission company that has an obligation under the code of practice is required to provide a monthly performance report, although we expect many of them will be able to provide nil reports. This means that a transmission company developing new transmission projects must provide monthly performance reports throughout the lifecycle of a project.

In relation to existing assets, if a transmission company expects to use section 93 powers for activities regulated under the code of practice (upgrades, replacements and decommissioning, excluding operation and maintenance activities), it must provide monthly performance reports until that activity has concluded.

We require a transmission company to report on its performance to the commission on a monthly basis. This will provide us with timely data, to help us monitor whether a transmission company is 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 reports on our website to promote both transparency around land access negotiations and effective engagement between a landowner and a transmission company.

The template for monthly performance reports is available at Annex B.

We require a transmission company to report potential breaches of the code of practice to the commission, as per the timings set out in Schedule 2 of the Land Access Code of Practice. To classify which breaches are reportable, we have applied the same methodology we used in remaking the Electricity Distribution Code of Practice. The methodology notes that any substantive obligation in the code of practice should be reported to the commission, and the timing for when these are to be reported depend on the potential harm the breach could cause. Failure to self report a breach or to provide a monthly report where one is required by the code of practice is a civil penalty requirement and can be enforced.

Therefore, most obligations in the code of practice are reportable, and are also civil penalty requirements (meaning the commission can use its full range of enforcement tools for compliance purposes). Reporting obligations are further outlined in the next chapter [Implementation](#).

The template for the reporting of breaches is available at Annex C.

Ongoing obligations if land access powers are used

A transmission company will be required to use the commission's Retailer Distributor Portal to submit data and breach reports.⁸⁹

⁸⁹ The [Retailer Distributor Portal](#) is maintained by the commission and is the information gateway between licensees and the commission.

Ongoing obligations if land access powers are used

6. Implementation

The new Land Access Code of Practice will take effect on 1 March 2024.

A transmission company is required to comply with the Land Access Code of Practice reporting obligations.

A transmission company is required to provide monthly performance reports in accordance with Annex B.

A transmission company is required to report breaches in accordance with Annex C.

Transitional period

The Land Access Code of Practice commences on Friday, 1 March 2024.

On its submission to our draft decision, AusNet stated that from an implementation perspective, it would need months to develop process breach reporting, training and contractual requirements. Given the code of practice introduces new obligations and processes, we understand a transmission company requires a transitional period to recalibrate existing and/or implement new processes, systems and protocols. This gives a transmission company time to embed code requirements into business-as-usual activities and enable ongoing compliance with the code of practice. We consider a three-month transitional period sufficient time for industry to undertake these activities.

We will provide an industry information session in early 2024 to support preparedness, answer any questions and provide additional education on the enforceable requirements.

Specific obligations for monthly performance reporting once in effect

A transmission company must provide monthly performance reports on or before the tenth business day of the following month. The first monthly performance report is due on 12 April 2024.

Clause 13.5.1 of the code of practice contains the information in relation to land access activities undertaken during the relevant month that must be reported to the commission. A transmission company will have to provide the following information:

Table 2: Information to be provided in monthly performance reports

#	Indicator
1	The number of access agreement negotiations underway as at the end of the month
2	The number of access agreements entered into during the month
3	The number of documents with information on proposed access issued during the month
4	The number of Notices of Access issued during the month
5	The total number of private land parcels that were accessed during the month, including access under an access agreement and under section 93 of the Act
6	The number of private land parcels that were accessed during the month under an access agreement
7	The number of private land parcels that were accessed during the month under section 93 of the Act, and in each instance the days between issuing a Notice of Access and access occurring
8	The number of affected parties that had private land accessed and: <ul style="list-style-type: none"> the total number of affected parties that had private land accessed in accordance with an access agreement, and the total number of affected parties that had private land accessed under section 93 of the Act
9	The number of times each affected party was contacted in relation to postponing or changing the dates or times of access from the planned dates and times already notified and set out in the Notice of Access, or change any details of access that were set out in the Notice of Access
10	In relation to each time access was postponed or changed: <ul style="list-style-type: none"> the number of hours in advance each affected party was contacted the number of additional days or hours each private land parcel was accessed; and a description of the reasons why access was rescheduled
11	In relation to any complaints by affected parties in relation to land access during the month: <ul style="list-style-type: none"> the number of complaints received by the electricity transmission company;

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- the number of complaints received by EWOV or other applicable external dispute resolution body in relation to the electricity transmission company that have been notified to the electricity transmission company;
- the number of days to respond to each complaint;
- any actions taken in response to the complaint;
- the number of days to resolve each complaint; and
- a summary of the nature of the complaints received during the period

We have added three new performance metrics (indicators #8, #9 and #10) that require a transmission company to report on the number of affected parties whose land was accessed each month and on changes to the information provided in the Notice of Access, including changes to the proposed access dates.

A transmission company must provide monthly reports in accordance with the Monthly Reporting template at Annex B.

Specific obligations for breach reporting once in effect

Once in effect, a transmission company will be required to report breaches of provisions, as set out in Schedule 2 to the Land Access Code of Practice. The reporting approach will depend on whether the provision in question poses a 'type 1' or 'type 2' obligation.

A transmission company will have to report breaches in accordance with the Breach Reporting Template at Annex C.

Type 1 obligations

For a transmission company, type 1 reporting obligations are those where:

- Non-compliance may have or could potentially have a critical impact on customers.
- The impact of that non-compliance potentially increases over time if it is not rectified quickly.

As an example, type 1 obligations would include matters related to risk minimisation during access, biosecurity controls and fire risk management.

We require that a transmission company report potential or actual type 1 breaches within two business days of detecting the issue to provide the commission with immediate visibility of the matter, including any remediation actions.

Where an incomplete type 1 report is submitted because the matter is still under investigation, a transmission company must submit an updated report within 20 business days of its initial report.

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Type 2 obligations

For a transmission company, type 2 reporting obligations are those where:

- Non-compliance may have or could potentially have a significant or moderate impact on customers.
- The impact of that non-compliance potentially increases over time.

Type 2 breaches must be reported within 30 calendar days of the incident being detected. We note these are maximum reporting requirements.

Schedule 2 of the Land Access Code of Practice also introduces reporting obligations for material adverse breaches and the annual report, which are described as follows.

Material adverse breaches

Our expectation is that if a breach of an obligation gives rise to a material adverse impact on customers or the Victorian energy market, this information is reported as soon as practicable. We consider that a breach is 'detected' where a transmission company has reasonable grounds to believe that a potential breach may have occurred and may have a material adverse impact on customers or the market. That is, a transmission company knows of facts or has sufficient information to consider that a breach may have occurred.

Annual reporting

A transmission company must submit an annual summary of all type 1 and 2 breaches, and any other breaches identified during the period. These annual reports must be signed by the CEO or managing director of the distributor.

Table 3: Summary of transmission company timings for breach reporting obligations under Schedule 2

Breach reporting obligation	Frequency	Timing
Type 1 breaches	As required	Within two business days of detection
Type 2 breaches	As required	Within 30 calendar days of detection
Material breaches	As required	As soon as practicable

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Annual report

Annually

For the period 1 July – 30 June – on or before 31 August

Enforcement of the code of practice once in effect

The commission can take a range of enforcement actions consistent with the risk-based approach set out in our [Compliance and Enforcement Policy](#).

In all sectors the commission regulates, the compliance or enforcement pathway that the commission may take in respect of a matter depends on our assessment against several compliance and enforcement factors including:

- strategic significance
- conduct in issue
- whether the breach was self-identified and reported in a timely manner
- any remediation or rectification undertaken
- compliance culture
- history and cooperation of the licensee.

Early notification of a breach and a cooperative approach to an investigation will often be relevant to our consideration of which enforcement pathway or action is taken by the commission.

Part 7 of the Essential Services Commission Act provides for enforcement activities specific to breaches of the code of practice. Among other potential orders for a breach of a code of practice, the commission can issue a penalty notice and a court may impose civil penalties for the contravention of a civil penalty requirement.

Schedule 1 of the code of practice designates provisions that are civil penalty requirements. Consistent with the draft code of practice, we have specified almost all obligations on transmission companies undertaking land access activities regulated by the code of practice as civil penalty requirements.

Reviewing the code of practice

We recognise that the code of practice will need to respond to changes in the energy landscape. We will review and amend it as needed to respond to emerging issues, including expanding the scope of the code of practice to regulate operation and maintenance activities for existing transmission assets, in accordance with our stakeholder engagement framework. Amendments may be identified through monthly reporting analytics, stakeholder feedback, breach reporting and/or compliance and enforcement activities.

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For further information

For further information, refer to our [Developing a Land Access Code of Practice | Essential Services Commission](#) Engage Victoria page.

Appendix A: Consideration of costs and benefits

We have considered the costs and benefits of making a code of practice. We also considered submissions to our consultation paper and draft decision, discussions with stakeholders, AusNet Transmission Group's reporting under the statement of expectations and the commission's own analysis.

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.⁹⁰

To achieve our objective, the *Essential Services Commission Act 2001* 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.⁹¹

We have considered the costs and benefits of making the code of practice. To inform our considerations, we have applied Better Regulation Victoria's *Victorian Guide to Regulation*⁹² to the extent possible when developing its cost-benefit assessment.

Consistent with the guide, we have 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

⁹⁰ Section 8 of the *Essential Services Commission Act 2001*.

⁹¹ 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.

⁹² 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>

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.

We identified other regulatory options and have considered the relative costs and benefits of those options. These options are described in the next section.

Options considered

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

Other instruments we employ, 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 licence. This is not as accessible 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 4.

Table 4: Summary of options considered

Issue	Base case ⁹³	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 a transmission company 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 a transmission company 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

⁹³ Continuation of the statement of expectations and associated licence condition reporting obligations, without any enforceable code of practice.

Issue	Base case ⁹³	Code of practice	Alternative options considered
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
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

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

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 code of practice for the purposes of a cost-benefit assessment, is that the code of practice imposes enforceable obligations on transmission companies. The code of practice has 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.⁹⁴ The code of practice applies to upgrades to existing transmission assets, including augmentations, replacement and decommissioning of assets. The code of practice does not apply to operation and maintenance activities on existing transmission assets. Most if not all these projects would also be covered by the statement of expectations under the base case.

We have assessed the benefits and costs of making a 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 our consultation paper and our draft decision, discussions with stakeholders, AusNet Transmission Group's reporting under the statement of expectations and the commission's own analysis.

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 and our draft decision supported an enforceable code of practice. In particular, in response to our consultation paper, the Victorian Farmers Federation, the Australian Energy Infrastructure Commissioner, RE-Alliance,

⁹⁴ 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.

Melton City Council, Law Institute of Victoria and AusNet Transmission Group considered that implementing an enforceable code would provide significant benefits.

For example, the Victorian Farmers Federation stated:⁹⁵

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.

The Australian Energy Infrastructure Commissioner stated:⁹⁶

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:⁹⁷

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 consider that the 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

⁹⁵ Victorian Farmers Federation, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁹⁶ Australian Energy Infrastructure Commissioner, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

⁹⁷ AusNet Services, submission to the Essential Services Commission consultation paper *Making a Land Access Code of Practice: Consultation paper*, March 2023.

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 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, in the absence of a code of practice or statement of expectations, transmission companies would still need to develop internal protocols and processes for land access. This is evident by the processes and policies already established by current transmission licensees and similar organisations, which are publicly available.⁹⁸

⁹⁸ 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.

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

In comparison with no enforceable obligations (or a statement of expectations), we expect that transmission electricity companies' costs related to the 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 5 new transmission projects and licensees implemented sequentially over the next 10 years.⁹⁹

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

⁹⁹ 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 5: Breakdown of indicative cost estimates and assumptions to implement a Land Access Code of Practice ¹⁰⁰

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 one 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

¹⁰⁰ Costs are rounded to the nearest thousandth dollar and are based on industry-standard salaries, once-off and annual costs.

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. Costs to commission are recoverable through licence fees.

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. In addition, we expect dispute resolution bodies to have cost recovery policies in place. As the customer dispute resolution scheme for land access matters regulated in the code of practice, EWOV has existing fee structures that recover its costs from licensees.