

4 August 2023

Essential Services Commission  
Level 8/ 570 Bourke St  
Melbourne VIC 3000

*Lodged by email*

Dear Sir/Madam,

### **Response to Land Access Code of Practice – Draft for Consultation 15 June 2023**

The Australian Energy Market Operator (**AEMO**) welcomes the opportunity to provide feedback on the Land Access Code of Practice draft for consultation dated 15 June 2023. AEMO has previously provided feedback on the Land Access Code Consultation Paper in March 2023.

As noted to the Essential Services Commission previously, AEMO supports the development of a Land Access Code of Practice (**CoP**) that promotes respectful, safe, considerate, and efficient consultation and engagement between landholders and licensed electricity transmission companies (**Transmission Companies**).

The development of the CoP is an important opportunity to provide certainty and clarity to landholders, Traditional Owners, project developers, Federal and State Governments, VicGrid, AEMO and other interested stakeholders in respect of land access rights for future transmission projects.

AEMO acknowledges and supports a CoP that has as its core objectives the need to:

- improve communications between all parties;
- protect landholders;
- improve the sharing of information between parties both before accessing land and during periods of land access; and
- ensure a robust and efficient dispute resolution process is well resourced and effective.

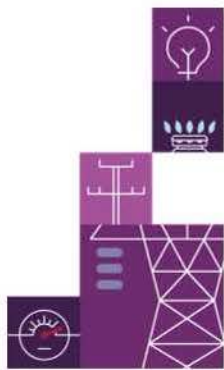
### **Who is AEMO?**

AEMO is an independent organisation responsible for managing the operation and planning of Australia's energy markets. AEMO operates the National Electricity Market, which spans the eastern and south-eastern states of Australia and the Australian Capital Territory. This involves forecasting energy demand, managing the dispatch of electricity and coordinating the connection of new generators and customers to the grid.

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In addition to this operational role, AEMO plays a key role in shaping the future of Australia's energy system. It provides advice and analysis to governments, industry and consumers on issues such as renewable energy integration, grid stability and security and energy market reform.

AEMO plays a unique role in Victoria where it is responsible for planning and directing augmentation on the Victorian electricity transmission Declared Shared Network. AEMO Victorian Planning (**AVP**) works closely with stakeholders, including other network service providers, industry stakeholders, Victorian Government, consumer representatives and other interested parties to develop the power system in the most efficient way for Victorian power consumers.

### **AEMO acknowledges the importance of landholder engagement.**

AEMO acknowledges that landholders are key stakeholders in delivering transmission projects that are critical to the renewable energy transition in Victoria. It is key that Transmission Companies treat all landholders with respect and decency to ensure they are fairly recognised and to build social licence.

Further, AEMO supports the implementation of the CoP if it assists in providing certainty and clarity for both landholders and Transmission Companies in relation to the process of accessing land in accordance with section 93 or the *Electricity Industry Act 2000*.

### **Why is the CoP important for Victoria?**

AEMO acknowledges the importance of the CoP as it is instrumental to the success of the renewable energy transition in Victoria. The Victorian energy landscape continues to transform, driven by continued development of large-scale renewable generation in regional areas, ongoing strong uptake by consumers of distributed energy resources, and the withdrawal of synchronous generation.

It is well known that electricity transmission will be key to unlocking carbon neutral, efficient energy into the future. Targeted and timely investment in transmission infrastructure is required to provide consumers with the most efficient energy outcomes that leverage the geographic diversity of renewable resources, while adapting to the newly emerging technical characteristics of the power system.

As a result, the timely and safe delivery of vital electricity transmission projects by Transmission Companies is critical to targeting key thermal, stability, voltage control, system strength and Renewable Energy Zone (REZ) expansion across Victoria.

It is vital that the CoP both protects landholders and ensures the processes within the CoP enable clear outcomes within a reasonable timeframe. This will help to ensure the timely and safe delivery of the renewable energy transition for Victorians.

### **AEMO's feedback on the CoP**

AEMO has concerns that the CoP, as currently drafted, may not achieve the desired outcomes listed above. In both Appendix A and B to this letter, AEMO has outlined our specific responses to the Summary of

Questions raised by the ESC in Draft Decision Paper, as well as some specific responses and drafting notes on certain clauses within the CoP.

Again, we thank you for the opportunity to provide feedback on the CoP, and we welcome any further opportunity to discuss AEMO's submission with you.

If you have any questions about this document, please direct them to Merryn York at AEMO via email at

Yours faithfully,



Merryn York  
**Executive General Manager – System Design**

#### Attachments

- Appendix A – Response to Questions
- Appendix B – Specific CoP clause observations

## Appendix A – Response to questions raised in the Draft Decision Paper

Question	AEMO's response
<p><b>1. Do you consider that the current proposed obligations in the code of practice provide enough clarity on what is expected from transmission companies when accessing land? Do the proposed obligations provide sufficient flexibility to develop new transmission projects and undertake significant upgrades?</b></p>	<p>AEMO has proposed some amendments to improve clarity in the drafting of the CoP Appendix B.</p> <p>AEMO understands the broader concepts that are being proposed, however there are several drafting efficiencies that could be made to provide certainty and clarity to the processes.</p> <p>AEMO is concerned that the processes, as currently drafted, will reduce flexibility and create cost and time impacts to both projects and other related activities.</p>
<p><b>2. Do you identify any issues with the proposed scope of the code of practice – that it would apply to all new transmission projects and significant upgrades on existing transmission projects?</b></p>	<p>AEMO agrees that the CoP should apply to all new transmission projects (as defined in the CoP).</p> <p>As stated in our March 2023 submission, activities undertaken by Transmission Companies for operations and maintenance or brownfields upgrades (such as tower upgrades where no alteration to the footprint is made) should not be included in the CoP. In many cases, these activities are already covered by existing easement arrangements.</p>
<p><b>3. Do you agree to the code of practice applying to all stages of a new transmission project in which section 93 access may be required?</b></p>	<p>As outlined in question 2, we do not agree that the CoP should apply to 'all stages' of a new transmission project.</p> <p>Activities undertaken by Transmission Companies for operations and maintenance or brownfields upgrades (such as tower upgrades where no alteration to the footprint is made) should not be included in the CoP. In many cases, these activities are already covered by existing easement arrangements.</p>
<p><b>4. Do you have any comments on the proposed general communication and engagement obligations on transmission companies before accessing land?</b></p>	<p>AEMO has outlined some of our drafting queries and suggested improvements in Appendix B.</p>
<p><b>5. Do you have any comments on the proposed information and notices that should be provided by transmission companies to affected landowners and occupiers before accessing land under section 93 of the Act or entering into a voluntary access agreement? Should any information be added, removed or amended?</b></p>	<p>AEMO has outlined some of our drafting queries and suggested improvements in Appendix B.</p> <p>AEMO would strongly encourage the creation by the ESC of relevant pro forma notices and a plain English version of the CoP for Transmission Companies to provide to landholders. This will help promote consistency across Transmission Companies in applying the CoP and reduce the likelihood of non-compliance and issues arising.</p>

Question	AEMO's response
<p><b>6. Do you consider that the proposed timing of 10 business days is sufficient period for a Notice of Access?</b></p>	<p>The requirement in clause 7.1.1 requires 'at least' 10 Business Days' notice. AEMO suggests this be reduced to 5 Business Days as there has already been a 20 Business Day notice that provides detailed information under clause 6.2.1.</p>
<p><b>7. Do you have any comments on the proposed maximum access period?</b></p>	<p>During planning of a new transmission project, a Transmission Company might be required to access land to conduct relevant surveys, investigations, and inspections of the land. For instance, certain surveys may cover more than a 9-month period, or during the Environment Effects Statement assessment process, access to land may be required over a 12-month period to conduct ongoing investigations to respond to certain RFI's.</p> <p>We suggest amending the maximum period to allow for longer access period planning, construction, and commissioning phases.</p> <p>As an alternative, the ESC should consider a longer maximum period of access, but ensuring the Transmission Companies keep the landholder informed of planned investigations on an ongoing basis.</p>
<p><b>8. Do you have any comments on the proposed risk mitigation obligations in the draft code of practice?</b></p>	<p>No.</p>
<p><b>9. Do you have any comments on the proposed specific risk mitigation obligations in the draft code of practice related to biosecurity protocols, fire risk management and health management?</b></p>	<p>No.</p>
<p><b>10. Do you have any comments on the proposed complaints handling and dispute resolution obligations in the draft code of practice?</b></p>	<p>Any dispute resolution procedure needs to be efficient, well-resourced to handle complaints and should be effective.</p> <p>There is currently no mapped process within the draft Code for resolution in the event that a landholder that has received a Section 93 notification refuses access.</p>
<p><b>11. Do you have any comments on the Energy and Water Ombudsman Victoria (EWOV) being the proposed dispute resolution scheme? Are there other dispute resolution bodies we should consider? What would be the costs and benefits of those options?</b></p>	<p>As noted in our March 2023 submission, we proposed that the Australian Energy Infrastructure Commissioner (<b>AEIC</b>) or an independent body should also be considered as an appropriate dispute resolution alternative.</p>

Question	AEMO's response
<p><b>12. For what period of time should transmission companies be required to retain records related to land access?</b></p>	<p>7 years is consistent with standard commercial practices and with clause 1.9 of the National Electricity Rules.</p>
<p><b>13. What scope of records should transmission companies be required to retain?</b></p>	<p>AEMO recommends that the scope of records should include details of access, complaints made and resolutions achieved, documentation issued (e.g. notices), payments, and any photo evidence showing the condition of the land before and after.</p> <p>Expanding the scope of records required will increase project expenditure through expanded compliance obligations.</p>
<p><b>14. Are the proposed reporting requirements appropriate to monitor compliance with this draft code of practice? If no, what reporting should be required? Do you have any comments on whether the monthly reports should be used for additional purposes?</b></p>	<p>Yes. AEMO would also welcome the creation of a standard template by ESC that could be used to help ensure compliance with these requirements.</p>
<p><b>15. Is there any additional information we should consider on the expected costs and benefits of the draft code of practice?</b></p>	<p>We have not undertaken a detailed assessment of the costs that could be incurred by the introduction of the CoP. It is apparent though that the CoP (as currently drafted) will result in large costs being incurred, predominantly in the areas of compliance and in project delays. This cost will ultimately be borne by the Victorian energy consumer.</p> <p>As noted above, there are clear benefits in having better processes to protect landholders and set clear expectations for Transmission Companies. It provides clarity and certainty in how outcomes can be delivered. The current drafting of the CoP requires further clarity in key areas such as the provision of notices, when and how often notices are needed to be provided, and the manner in which the dispute resolution process will be handled in order to achieve this.</p>
<p><b>16. Are there any other issues with implementing the code of practice we should consider?</b></p>	<p>AEMO strongly suggests the creation of pro forma notices and reporting templates to assist in a consistent approach to implementation of the code.</p> <p>The safety and privacy of a Transmission Company's personnel should also be considered and factored into certain obligations under the CoP.</p>

## Appendix B – Specific CoP clause observations

Clause	Description	AEMO's observation
2.1.1	Definitions of ' <b>affected parties</b> ' and ' <b>occupier</b> '	<p>The inclusion of occupier in the definition of affected parties increases the notice requirements throughout the document significantly.</p> <p>Consideration should be given to whether notices are required to certain classes of occupiers (such as Telecommunications operators, or occupiers that are clearly not affected by the works proposed or subsequent amendments to those works) after initial notices have been provided.</p>
2.1.1	Definition of ' <b>significant upgrade</b> '.	The proposed definition of significant upgrade is broad. There is no threshold for what constitutes 'significant' in the proposed definition.
2.1.1	Consistency with the use of ' <b>notice</b> ' in the CoP.	<p>The concept of notice is addressed in a variety of ways in the CoP. Primarily, all notices should be in accordance with 2.2.1.</p> <p>The CoP deviates in parts as to what constitutes valid notice (see cl 7.3.1(b)). It would assist if a consistent approach to notice is adopted.</p>
2.2.1(a)(iv) and (b)(iii)	Concept of requiring consent to send a <b>notice electronically</b> .	If a person or body corporate provides their email address, it is reasonable for a Transmission Company to use that address to correspond with that person or body corporate. AEMO submits that the requirement for consent to receive documents electronically should be deleted.
5.1.1 and 5.1.2	Obligation to consult and inform	<p>It isn't clear how many times the obligation to consult or inform is required prior to accessing land.</p> <p>Some clarity needs to be provided as to whether this applies to each land access or whether it applies once at the beginning of the initial process.</p>
5.2.1	Provision of information	AEMO strongly suggests the ESC create the required pro forma notices, a plain English version of the CoP and reporting templates to assist in a consistent approach to implementation of the code. This is similar in approach to the <i>Land Acquisition and Compensation Regulations 2001</i> .
6.1.1 and 6.2.1	Regularity of information to be provided	<ol style="list-style-type: none"> <li>1. It is not clear if the information required under 6.1.1 and 6.2.1 needs to be reissued for every land access notice under clause 7.1.1. AEMO propose that this issue be clarified to state "Prior to giving the <i>first</i> notice of access...".</li> <li>2. AEMO supports parties being encouraged to enter into land access arrangements by consent. AEMO acknowledges that the information should be provided to landholders about section 93, but this may send the wrong message to landholders that a Transmission Company's preference is to use section 93 instead of entering into consent arrangements. The use of standard documentation issued by the ESC could assist with this approach.</li> </ol>

Clause	Description	AEMO's observation
7.1.2(a)	Timing of notices	<p>The timeframes for the provision of the notice will result in at least a 32 Business Day cycle before land access can occur under section 93 from the provision of information under 6.2.1.</p> <p>This will result in project delays and cost implications. Can the ESC consider shorter timeframes? Further, the requirement to re issue information under clauses 6.1.1 and 6.2.1 under the current drafting could add further time implications if not clarified.</p>
7.1.3	Provision of reminder notices	<ol style="list-style-type: none"> <li>1. Do all parties need to be contacted every time? Other interest holders such as utilities might only need to be contacted once.</li> <li>2. Can this timeframe be shortened to assist with some surveys that are dependent on weather conditions for instance?</li> <li>3. Can what compliance looks like with the notice requirements be clarified?</li> </ol>
7.2.2	Maximum Access Period	<p>During planning of a new transmission project, a Transmission Company might be required to access land to conduct relevant surveys, investigations and inspections of the land. For instance, certain surveys may cover more than a 9-month period, or during the Environment Effects Statement assessment process, access to land may be required over a 12-month period to conduct ongoing investigations to respond to certain RFI's.</p> <p>We suggest amending the maximum period to allow for longer access period planning, construction and commissioning phases.</p> <p>As an alternative, the ESC should consider a longer maximum period of access but ensure the Transmission Companies keep the landholder informed of planned investigations on an ongoing basis.</p>
7.3.1	Changes to notified access	<ol style="list-style-type: none"> <li>1. Could this clause be redrafted to make this a 'reasonable steps' obligation? What if the landholder or party with interests in the land are not home or not contactable by phone? Especially given this is a civil penalty provision.</li> <li>2. See our comments above about consistency with notice obligations in the document.</li> </ol>
9.1.1	Training obligations	Could you provide further information on what training is required?
General	Application of civil penalty provisions to access agreements entered into before or after the commencement of the Code of Practice.	It should be further clarified that the civil penalty provisions should not apply to arrangements under an access agreement.