

OFFICIAL



Electricity transmission company land access statement of expectations

Explanatory statement

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Summary

Landowners and electricity transmission companies are critical partners in the delivery of major energy projects and provision of essential transmission services.

The Electricity Transmission Company Land Access Statement of Expectations has been developed to promote effective engagement between landowners and electricity transmission companies. This applies when companies use their statutory powers under section 93 of the Electricity Industry Act 2000 (the Act) to access private land for greenfield transmission infrastructure projects. The statement of expectations is an interim measure, pending our development of a broader enforceable Code of Practice for land access. The development is expected to be completed in 2023

With very few major Victorian transmission projects in recent decades, there had been little demand for a Code of Practice for land access to establish parameters for the use of section 93 powers. However, this position has changed. Significant upgrades to Victoria's energy transmission grid are now necessary to facilitate the transition to net zero emissions by 2050.

Strong community concerns have been raised about the recent use of section 93 powers by AusNet Services¹ to access land for the Western Victorian Transmission Network Project. As an enforceable instrument, a Code of Practice will be subject to our charter of consultation and will take approximately six to 12 months to develop.

Given the number of concerns raised, the anticipated increasing use of section 93 powers for transmission investments to support renewables, and the time required to develop a Code of Practice, the commission began developing the statement of expectations in January 2022. It is a targeted, interim measure to address concerns quickly and efficiently during the intervening period until a Code of Practice can be made. The statement of expectations outcomes will be supported

¹ Throughout this document we refer to AusNet Services but note that it is the subsidiary within the AusNet Services Group, AusNet Transmission Group Pty Ltd, that holds a transmission licence. During the consultation, the commission were alerted to confusion from some stakeholders as to the contracted project company for the Western Victorian Transmission Network Project. AEMO confirmed to the commission that the party to the agreement to plan, design, construct, own, operate and maintain the contestable transmission augmentations for the Western Victorian Transmission Project is AusNet Transmission Group Pty Ltd. A copy of correspondence from AEMO with this confirmation has been published by the commission on its [website](#).

by reporting obligations under electricity transmission licences, and experiences and data gained through that reporting will inform our development of the Code of Practice.²

Our positive experience with past statements of expectations – notably, our statement of expectations regarding a moratorium of energy disconnections during the coronavirus pandemic – gives the commission confidence that electricity transmission companies will voluntarily comply with the principles in this statement of expectations while we develop a Code of Practice.

The statement of expectations will apply to all electricity transmission companies undertaking major greenfield projects, such as the Western Victoria Transmission Network Project.

Consultation

In developing our explanatory statements, we conducted a two-phase consultation with stakeholders from various groups who are impacted by major electricity transmission infrastructure projects.

Phase one of consultation occurred during the development of the draft statement of expectations and provided us with early insight into land access challenges a statement of expectations should address. This feedback was incorporated into the draft Electricity Transmission Company Land Access Statement of Expectations.

Phase two of consultation began after we released the draft Electricity Transmission Company Land Access Statement of Expectations. This phase of consultation was conducted through a public webinar, an industry forum, Engage Victoria, and various workshops and one-on-one meetings with stakeholders. The consultation helped us refine the principles and examples in the draft Electricity Transmission Company Land Access Statement of Expectations and informed the final version of the Electricity Transmission Company Land Access Statement of Expectations.

We thank stakeholders who have contributed their time and shared their experiences during and after the drafting of this statement of expectations. Their contributions have assisted in developing final principles in the statement of expectations that reflect the needs of communities who are impacted by electricity transmission infrastructure projects.

² We will require licensed electricity transmission companies to report on their compliance with the statement of expectations via an information request under clause 16.2 of its licence.

Summary

Essential Services Commission **Electricity transmission company land access
statement of expectations**

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Introduction

This section explains the current land access arrangements in Victoria, our role, and our approach to developing the draft statement of expectations. In the next chapter, we explain how feedback on the draft statement has informed the final statement of expectations that we will expect electricity transmission companies to adhere to.

Current land access framework for Victorian electricity companies

As licence holders, electricity transmission companies have powers under section 93 of the Electricity Industry Act 2000 (the Act) to access private land where necessary to provide their transmission services.³

In practice, land access often occurs through a voluntary agreement between a transmission company and a landholder. If a voluntary agreement is unable to be reached, transmission companies can exercise their powers under section 93 of the Act. If access to land is made pursuant to section 93 of the Act, there is an obligation on the transmission company under section 93(2) to do ‘as little damage as may be’, and to pay compensation for damage caused through access under that section.

The full requirements under section 93 of the Act can be found in [Appendix A](#). These powers and obligations apply to licensed distribution, transmission, and generation companies.⁴

The commission’s role

Section 93((5)(d) of the Act provides that the exercise of a power to access land is subject to any provision of a Code of Practice. The commission has the function of making codes of practice under Part 6 of the Essential Service Commission Act 2001 (ESC Act)⁵.

Codes of Practice may be made with respect to a regulated industry – this includes the distribution, transmission, and generation of electricity. A Code of Practice may also include obligations on regulated entities, such as licensees, that are specified as ‘civil penalty requirements’. These are enforced by the commission under Part 7 of the ESC Act.

³ The commission has powers to issue an electricity transmission company a licence under section 19 of the Electricity Industry Act 2000.

⁴ Section 93(5)(a) Electricity Industry Act 2000.

⁵ Section 10(da) Essential Services Commission Act 2001.

At present, the commission does not have a Code of Practice regulating land access. This will be developed and completed in 2023.

Our approach to developing the draft statement of expectations

The commission's objective during the development stage was to ensure that we addressed early stakeholder feedback, as well as consider best practice land access protocols in other jurisdictions.⁶

Early stakeholder input highlights areas of concern and a need to develop a statement of expectations

The commission has heard strong concerns from landowners and interested parties about how land has been accessed to undertake studies underpinning the environmental effects statement for the Western Victorian Transmission Network Project.⁷ Concerns we heard from stakeholders included:

- unclear and misleading communication by the transmission company
- lack of a complaint or dispute handling process
- contractors who access land not being adequately trained to do so
- lack of flexibility on when land is accessed
- lack of accountability in that AusNet Services do not appear answerable to anyone about their land access practices
- land access not being a collaborative process
- lack of sensitivity in communications.

We also heard from transmission company staff and their contractors, some of whom expressed concerns about their safety when accessing land.

Lastly, we heard of the increasing use of section 93 powers for transmission investments to support renewables.⁸

⁶ Essential Services Commission 2022, Electricity Transmission Company Land Access Draft Statement of Expectations, March 2022.

⁷ Considering the potential for significant environmental effects, on 4 August 2020 the Minister for Planning determined under the Environment Effects Act 1978 (EE Act) that an environment effects statement (EES) be prepared for the proposed Western Victoria Transmission Network Project. The purpose of the EES is to provide a detailed description of the project, assess its potential effects on the environment and investigate feasible alternative project designs, alignments, and other aspects to avoid and mitigate effects. Where environment includes physical, biological, heritage, cultural, social, health, safety, and economic aspects. Reference DELWP, Scoping Requirements for Western Victoria Transmission Network Project EES, December 2020.

⁸ <https://aemo.com.au/-/media/files/major-publications/isp/2022/draft-2022-integrated-system-plan.pdf>
<https://www.energynetworks.com.au/resources/fact-sheets/fact-sheet-what-is-transmission/>

These concerns raise the need for an enforceable Code of Practice regulating the statutory power of energy companies to access land. In the interim, the commission has developed a statement of expectations for land access that will help promote respectful, transparent, and equitable land access practices for both transmission companies and landowners.

These concerns were reiterated through further stakeholder forums and submissions on the draft statement of expectations. We expand on these concerns in the next chapter, describing how stakeholder submissions informed our explanatory statements on the statement of expectations.

Reviewed land access protocols in other jurisdictions

We also considered several other land access protocols and related instruments in operation in other jurisdictions and for other industries.⁹ We did this to gain an understanding of the content of land access protocols, and whether these examples would cover or could be modified to address the issues we were notified of. We were also keen to understand whether 'best practice' land access protocols are more prescriptive, or principles based. We found that:

- there is increased awareness and focus nationally on best practice landowner and community engagement to enable land access associated with renewable energy¹⁰
- land access protocols are generally based on principles rather than prescriptive rules
- land access protocols encourage energy businesses to interact with landowners in a respectful and collaborative way
- Powerlink's protocol contains guiding principles for access at all phases of the project lifecycle, with different principles applicable for different phases
- Powerlink and Transgrid (both signatories to The Energy Charter¹¹) apply several principles that relate to concerns we have heard from Victorian stakeholders.

A principles-based approach

After considering our earlier analysis, we decided the draft statement of expectations should take the form of principles and examples of how these principles could work in practice. The reasons for this approach are as follows:

⁹ Powerlink, Land Access Protocol, April 2020; Transgrid, Central-West Orana REZ Transmission, Fact sheet; Queensland Government Department of Natural Resources and Mines, Land Access Code, 2016; Victorian Farmers Federation, Managing Entry to Farms, 2021; The Energy Charter, Landholder & Community Better Practice Engagement Guide, 2021.

¹⁰ See for example the Energy Charter, Landholder and Community Engagement Guide, September 2021

¹¹ A national CEO-led collaboration supporting the energy sector toward a customer-centric future.

- **Wide range of circumstances** - The statement of expectations is designed to have broad application across a range of bespoke transmission projects that may require land access at different stages.
- **Limited testing** - The statement of expectations needed to be developed quickly, without time for the detailed analysis, consultation and testing expected to support more prescriptive obligations
- **Consistent with other jurisdictions** - Useful access precedents we considered – for example, Powerlink’s land access protocol and the Landholder & Community Better Practice Engagement Guide issued by the National Energy Charter – adopt this approach.¹²
- **Stakeholder support** - Early indications suggest stakeholder acceptance of principles and practical examples for a statement of expectations, though we acknowledge some stakeholders sought far more prescription.

Furthermore, a principles-based approach best fits the premise that these are expectations, not mandates.

Considered the effect of an interim statement of expectations

We acknowledge that a statement of expectations is an interim measure that is not binding on transmission companies. The commission will be able to enforce obligations in a Code of Practice in relation to the use of the power to access land, once that code is in place.¹³

However, we expect transmission companies will comply with the statement of expectations, and we will require them to report to the commission pursuant to their licence conditions on their performance against these expectations. We will report publicly on how the expectations are being adhered to, and the commission will consider that information in its development of a Code of Practice.

Overview of the draft statement of expectations

We drew on the aforementioned information above to develop a draft statement of expectations for consultation. Our objective was to establish the commission’s clear expectations of Victorian electricity transmission licence holders when a licensee accesses private land under its powers derived from section 93 of the Act.¹⁴

¹² The Energy Charter, Landholder & Community Better Practice Engagement Guide, 2021

¹³ Codes of practice made under Part 6 of the Essential Services Commission Act 2001 (ESC Act) may specify obligations as ‘civil penalty requirements’ that are able to be enforced through Part 7 of the ESC Act.

¹⁴ It is noted that the power under section 93 of the Act may be exercised by electricity corporations, which includes distribution companies, electricity transmission companies and generation companies. This statement of expectations

The draft statement of expectations sought to achieve a balance between the statutory right for electricity transmission companies to access private lands where necessary to provide their essential services, and the rights of those interested in the land affected by that exercise of power. It also promotes effective engagement between parties interested in land and electricity transmission companies as critical partners in the delivery of major energy projects, as well as provision of essential transmission services.¹⁵

To address stakeholders' concerns regarding a lack of accountability for the way AusNet Services accessed land, we included a clause in the draft statement of expectations stating we may request an electricity transmission company to report outcomes achieved in meeting the expectations. We intended to report publicly on the data and other information about how the expectations are being adhered to, and to consider compliance levels when we develop the Code of Practice.

Stakeholder engagement

From late 2021, we began engaging with stakeholders about their experiences in relation to land access, which helped inform the draft statement of expectations. We engaged with:

- landowners and their representatives
- licensed transmission companies, including AusNet Transmission Group Pty Ltd
- the Energy and Water Ombudsman of Victoria
- the Australian Energy Infrastructure Commissioner.

We subsequently published the draft statement of expectations on the [Engage Victoria](#) and [commission's website](#), and sought stakeholder feedback on it and other matters concerning their experiences with land access. In response, we received 25 written submissions through Engage Victoria and three late written submissions via email.

We held a public webinar on 4 April 2022, in which 36 people attended. We followed this with an industry forum which gave industry participants an opportunity to raise any concerns they may have about the draft statement of expectations. Finally, we met with eight landowners to further discuss how the draft statement of expectations may be improved.

We explain how stakeholder feedback on the draft statement of expectations informed our explanatory statements decision in the next chapter.

only applies to electricity transmission companies at this time, though a future Code of Practice may have a broader scope.

¹⁵ The term 'parties interested in land' appears in section 93(2) of the Act and may include a tenant with a leasehold interest.

Key steps and timings

Table 1. Key steps and timings

Key step	Timing
Begin early engagement with stakeholders	Late 2021- early 2022
Notify stakeholders of draft statement of expectations project on Engage Victoria platform	10 March 2022
Publish draft statement of expectations on Engage Victoria platform	24 March 2022
Public webinar	4 April 2022
Industry forum	5 April 2022
Submissions closed	19 April 2022
Statement of expectations comes into effect	1 June 2022

Explanatory Statements

In this chapter, we explain how we addressed stakeholder feedback in the electricity transmission company statement of expectations for land access (statement of expectations). We consider stakeholder feedback received at separate public and industry webinars, written feedback via our Engage Victoria page for the project, and through one-on-one virtual meetings.

Feedback can be classified under three main headings. These are concerns about:

- land access practices by AusNet Services in relation to the Western Victoria Transmission Network Project
- scope and accountability under the statement of expectations
- principles and examples used in the draft statement of expectations.

General concerns about land access under the Western Victoria Transmission Network Project

Many submissions and feedback from the forums reiterated serious concerns expressed earlier about the way land was and is being accessed for the Western Victoria Transmission Network Project.

Landowner's stated concerns with the project

The Moorabool Central Highlands Power Alliance (MCHPA), Energy Grid Alliance, and Barbara Ford wrote that problems with land access stem from AusNet Service's failure from the outset to gain social licence for the project.¹⁶ MCHPA explained that AusNet Services issued letters to landowners in May and June 2020, seeking to gain access to their land for a project many had not heard of.¹⁷ They added that the poor communication at the beginning of the project set the tone for the rest of the landowners interactions with AusNet.

¹⁶ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Barbara Ford, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

¹⁷ AusNet Services was appointed in December 2019 by the Australian Energy Market Operator (AEMO) to develop, design, construct, operate and maintain the western Victoria transmission line after a competitive tender process.

Stakeholder Nathan Lidgett wrote that landowners appeared not to be seen as stakeholders until the route of the transmission line is set.¹⁸ Finally, Stakeholder Steven Clark noted that the proposed route of the Western Victoria Transmission Network Project was poorly devised and has lost the support of the communities that are expected to host it.¹⁹

What has worked well in relation to land access

We asked forum participants what has worked well in relation to land access. Most who responded to this question stated that nothing has worked well, with many providing additional details and concerns. We describe these in the next section.

Stakeholder Barbara Ford submitted that landowners appreciated having an independent third party in the Australian Energy Infrastructure Commissioner, who took their concerns seriously and acknowledged problems with AusNet Service's land access protocols.²⁰

One stakeholder contrasted their poor electricity experience with the respectful approach of water companies in their access to land.

What key challenges have been found under the current land access arrangements

Stakeholders identified a series of challenges they faced under the current land access arrangements. Several stakeholders felt that they were not adequately informed on the ways land could be accessed, which is either under a voluntary agreement or through issue of a section 93 notice under the Act. MCHPA argued that there are inequities in processes to gain voluntary agreements which in some instances seem to lack detail. MCHPA were also concerned that if landowners are not confident or appropriately informed when entering a voluntary or negotiated agreement, they may be disadvantaged.

Beyond misunderstandings and inconsistencies in relation to the way landowners enter access arrangements, stakeholders have raised serious concerns about AusNet Services' behaviour. These include allegations of AusNet Services using intimidatory and bullying tactics to gain access, creating undue stress and anxiety for landowners, failing to provide timely responses to landowner questions, and not displaying respect and empathy toward landowners.

¹⁸ Nathan Lidgett, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

¹⁹ Steven Clark, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

²⁰ Barbara Ford, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

Our response and explanatory statement

We consider that obtaining 'social licence' is paramount to successfully working with communities to deliver major infrastructure projects. Failure to obtain social licence threatens the delivery of the project.

What is social licence?

The term social licence is the level of acceptance or approval that stakeholders and communities extend to a project, site, company, or industry.²¹

Stakeholder feedback revealed concerns and fears on both sides. We consider the statement of expectations to be an appropriate interim measure that can be put in place quickly to provide a framework for the use of the land access power, pending development of a Code of Practice. The statement of expectations will come into effect on 1 June 2022.

Explanatory statement 1

We will use the statement of expectations as an interim measure until the Code of Practice comes into force. The statement of expectations will come into effect on 1 June 2022.

Scope and accountability under the statement of expectations

Stakeholders sought clarity about the scope of the statement of expectations and how we would make electricity transmission companies accountable under the statement, and in relation to land access generally.

Scope of statement of expectations

In this section we put forward our analysis and explanatory statements in relation to:

- the access scenarios where the statement of expectations applies
- the relationship between voluntary agreements, access under section 93 and the statement of expectations
- a new section on refusal to engage or grant access to the land.

²¹ Governance institute of Australia [social licence](#)

Access scenarios where the statement of expectations applies

AusNet Services and Energy Networks Australia stated that the statement of expectations should be confined to greenfield electricity transmission projects.²² AusNet Services added that failure to define the types of projects (and project stages) that the statement of expectations would apply to creates uncertainty and could potentially affect a projects' viability. As well, given the extent of their network and the many thousands of access visits they make each year, extending the statement of expectations to other types of already agreed long-standing access arrangements for tower inspections, vegetation management and maintenance and repairs would result in significant increases in compliance costs.²³

Australian Energy Operations also noted that access for the purpose of vegetation management is reflected in the Energy Safety Act, the Electricity Safety (Electric Line Clearance) Regulations 2015, and the Code of Practice for Electric Line Clearance.²⁴ CitiPower/Powercor and United Energy added that distribution businesses are very different from electricity transmission companies, in that they have more assets and hence have a greater need to access land for maintenance. Having to comply with the statement of expectations would place a significant regulatory burden on the business.²⁵

Finally, AusNet Services and Energy Networks Australia noted that there were low numbers of complaints about business-as-usual activities requiring access to land.²⁶

Our response and explanatory statement

We agree with stakeholders that there must be clarity about what types of electricity transmission projects should be covered by the statement of expectations. By applying the statement of expectations to some activities that are carried out thousands of times each year with little or no complaint, costs of compliance may outweigh benefits.

²² AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Energy Networks Australia, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

²³ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

²⁴ Australian Energy Operations, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

²⁵ CitiPower/Powercor/United Energy, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

²⁶ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Energy Networks Australia, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

Though there are precedents with broader application we consider that, given the key access concerns we have heard relate to the Western Victoria Transmission Network Project, the statement of expectations should apply to greenfield sites relating to major transmission projects only. A greenfield site is a site not impacted by transmission assets. We have amended the draft statement of expectations at clause 1.3.3 to reflect this.²⁷ However, we may investigate complaint data about business-as-usual land access more deeply as we prepare the Code of Practice.

Explanatory statement 2

The statement of expectations applies to greenfield sites relating to major transmission projects.

The relationship between voluntary agreements, access under section 93 and the statement of expectations

Energy businesses, Energy Networks Australia and AEMO sought clarity about whether the statement of expectations would apply to land access under voluntary agreements and/or access under section 93 of the Act.²⁸ These businesses considered the statement of expectations should apply to access under section 93 only, and not to voluntary agreements.

Australian Energy Operations added that the statement of expectations should not apply where existing arrangements are in place.²⁹ AusNet Services stated that clarifying that the statement of expectations only applied to section 93 access arrangements lessened the risk of the statement encroaching on already agreed voluntary arrangements. AusNet Services then added:

Importantly, in practice the formal application of the SOE to the exercise of s.93 will necessarily shape how all private land access for greenfield projects is initiated and negotiated. This is because the process for negotiating access will begin the same way for all landowners and will only result in the use of s.93 if a voluntary land access agreement cannot be reached. Therefore, the SOE can provide a clear and consistent framework for all

²⁷ For example, the Powerlink Land Access Protocol

²⁸ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Australian Energy Operations, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Marinus, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. AEMO, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Energy Networks Australia, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

²⁹ Australian Energy Operations, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

landowner engagement and negotiations, meeting its objectives without unduly compromising land access agreements, while formally limiting its scope to the exercise of s.93 powers.³⁰

Finally, Energy Networks Australia noted that the statement of expectations should not affect access arrangements under easements.³¹

Our response and explanatory statements

We agree with stakeholders that clarity should be provided about the types of land access arrangements the statement of expectations applies to.

We note that protocol precedents from other jurisdictions are relevant, but that those precedents reflect their different statutory and regulatory framework for compulsory land access. Section 93 of the Act has less detail than, for example, some relevant New South Wales provisions.³²

We consider the statement of expectations should apply to land access pursuant to section 93 of the Act. We also agree with AusNet Services' view that the statement of expectations may inform voluntary land access arrangements, even if only applicable to access under section 93 of the Act.

The principles and topics covered in the statement of expectations are consistent with those in precedents we considered. These could be of assistance in all land access, whether by agreement or under section 93 powers.

We agree with Energy Network Australia's view that the statement of expectations should not apply to access arrangements negotiated when an easement is acquired under section 86 of the Act. Compulsorily acquiring an easement is a separate process that requires approval of the Governor in Council.³³

Therefore, our explanatory statement is:

- while a landowner and an electricity transmission company may reach agreement on the terms and conditions on which the electricity transmission company may access land, the statement of expectations applies to land access under section 93 of the Act

³⁰ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

³¹ Energy Networks Australia, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

³² For example, section 61 of the Electricity Supply Act 1995 (NSW)

³³ Section 86, Electricity Industry Act 2000

- where voluntary access is being negotiated, we encourage electricity transmission companies to consider and apply the principles in the statement of expectations
- if access goes beyond limits set out in a voluntary agreement, we expect the statement of expectations to apply.

Refer to statement of expectations clauses 1.3.2 and 1.3.5.

Explanatory statement 3

The statement of expectations applies to land access pursuant to section 93 of the Electricity Industry Act 2000.

Indemnity and insurances for land access under section 93

Barbara Ford wrote when land is entered without consent, the electricity transmission company should provide proof of indemnity to the landowner.³⁴

Our response and explanatory statement

We note that both landowners and electricity transmission companies have various statutory obligations in relation to occupational health and safety that apply, notwithstanding section 93.

We note that the precedents considered did not include a principle requiring indemnities and insurances. However, AusNet Services guidelines for the Western Victoria Transmission Network Project states that AusNet Services and its authorised persons will have appropriate public liability insurance in place that covers surveys and investigations conducted on a property.

Our explanatory statement will not include an expectation for electricity transmission companies to carry current, appropriate insurances that cover all aspects of the land access activities and personnel, as well as cover the landowner for all appropriate risks and liability. However, we may investigate this matter further when we develop the Code of Practice, including whether existing licence conditions in relation to insurance are adequate or require amendment.

³⁴ Barbara Ford, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

Explanatory statement 4

We will not include an expectation for electricity transmission companies to carry current, appropriate insurances that cover all aspects of the land access activities and personnel, as well as cover the landowner for all appropriate risks and liability.

Consequences of refusing to engage and grant access to land

AusNet Services submitted that, on occasion, engagement with landowners break down and progress toward negotiating an access arrangement stops. They also mentioned that at times it is extremely difficult to contact some landowners, increasing the likelihood of access being sought under section 93 of the Act. Related to this, during the public webinar held on 4 April 2022, some stakeholders asked for more clarity about what would happen in the event a landowner refused access to their land.³⁵

Our response and explanatory statement

Given stakeholders have sought clarity about what would happen in the event land access is refused, we will include a new section in the statement of expectations – Section 3 ‘Consequences of refusing engagement and access’.

This section will set out the electricity transmission company’s statutory right to access land and the statutory obligation to do as little harm as possible. It also notes a landowner’s statutory right to compensation in the event of any damages resulting from that access. For more information, refer to section 3 of the statement of expectations.

Explanatory statement 5

We have included the section ‘Consequences of refusing engagement and access’ in the statement of expectations. This sets out the electricity transmission company’s statutory right to access land and statutory obligations to do as little harm as possible. It also notes a landowner’s statutory right to compensation in the event of any damages resulting from that access.

³⁵ Essential Services Commission, Public webinar, ‘Electricity Transmission Company Land Access Draft Statement of Expectations’, 4 April 2022.

Accountability

Throughout our engagement with stakeholders, we have heard concerns about AusNet Services' apparent lack of accountability to any organisation or person about the way they access land under section 93.

Energy Grid Alliance wrote that without parallel development of a Code of Practice, the statement of expectations is a guideline only that does not have to be complied with. They added that without real accountability, electricity transmission companies will simply continue to access land as they are now.³⁶

Moorabool Central Highlands Power Alliance wrote that using the words '*the commission may request*' in clause 1.5 (Reporting outcomes) of the draft statement of expectations is problematic.³⁷ This is because there is no mandate to establish a reporting requirement over the life of the statement of expectations, and therefore no oversight of how electricity transmission companies are carrying out their land access activities.³⁸ Energy Grid Alliance wrote that the inclusion of the word '*may*' will result in loss of a 'feedback loop', as electricity transmission companies are under no obligation or expectation to report outcomes.³⁹

What information would be useful to measure electricity transmission company performance

Barbara Ford submitted that all section 93 notices and reports of outcomes should be sent to the commission.⁴⁰ Moorabool Central Highlands Power Alliance (MCHPA) argued that a summary report should be sent to the commission each fortnight, identifying what process/es have been followed to meet the requirements of the principles and achieve land access. This summary would include what interactions – such as letters, emails, and phone calls – have occurred with landowners, if or how voluntary access agreements have been sought in the first instance, why

³⁶ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

³⁷ The commission *may* request an electricity transmission company to report outcomes achieved in meeting the expectations set out in this statement. This data and other information about how the expectations are being adhered to will be reported publicly and compliance levels will be taken into account by the commission in its approach to a Code of Practice.

³⁸ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

³⁹ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁴⁰ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

access under section 93 has been required, and what information has been provided to the landowner at each interaction.

MCHPA stated that there should also be a mechanism by which a landowner can comment or report directly to the commission on their interactions with the electricity transmission company. This would help the commission assess the extent to which the electricity transmission company is meeting its expectations.⁴¹

Our response and explanatory statement

We consider that reporting on outcomes against the statement of expectations should be mandatory as it will create greater accountability and transparency in relation to land access activities of electricity transmission companies. Reporting will also provide background information to help inform content of any obligations placed in the Code of Practice.

Therefore, our explanatory statement is to amend clause 1.5 of the statement of expectations to:

[The commission will require an electricity transmission company to report outcomes achieved in meeting the expectations set out in this statement.](#)⁴²

We largely agree with MCHPA's suggested reporting measures, as they show the extent to which the principles have been adopted in negotiations of voluntary agreements, what interactions have occurred with landowners, and why access is being made as a last resort under section 93 of the Act.

We also consider that electricity transmission companies should report on how they have performed against the principles that relate to managing the impacts of access. We will require electricity transmission companies to provide this information pursuant to their transmission licences. This will provide additional detail of the extent to which the principles have been adopted in each incidence of compulsory access, from attempting to negotiate access through to completing physical site visits. In addition, we consider that fortnightly reporting may be difficult, and that monthly reporting may instead be an ideal compromise.

To balance electricity transmission company reporting, landowners who enter voluntary land access arrangements, or whose land is accessed under section 93 of the Act after the statement of

⁴¹ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁴² Transmission licenses are required to obtain and provide to the commission, documents and such information as the commission may require as a condition of its licence.

expectations comes into effect, can report their experiences in relation to access to the commission via the [contact us page](#) on the commission website.

Therefore, we will utilise existing licence conditions to require relevant transmission licensees to report monthly on their performance against the statement of expectations and activities in relation to voluntary access agreements.⁴³ We will require reporting on the following:

- The number of voluntary access agreement negotiations underway, and whether principles 2-14 are being applied.
- The number of voluntary access agreements entered, and whether principles 2-14 were applied.
- The number of notices issued regarding proposed access under section 93 of the Act, and how principles 2-14 were applied before issuing each notice.
- The number of times land was accessed pursuant to section 93 of the Act, and in each instance:
 - whether each access was pursuant to a notice issued
 - the time between issuing a notices and access occurring; and
 - how principles 15-20 were applied.
- The number and nature of complaints received (including those forwarded to the Energy and Water Ombudsman Victoria) in relation to section 93 access, the time to respond to each complaint, and actions taken – if any – in response to the complaint.

We acknowledge that for a particular property, reporting in relation to attempts to negotiate an access arrangement may be reported in one month, and later activities leading up to access and during access may be reported in later months.

⁴³ We are interested to know the extent that principles (2-14) are used to negotiate voluntary agreements for greenfield sites relating to major transmission projects.

Explanatory statement 6

Under the terms of their licences, we will require electricity transmission companies to report performance against the statement of expectations and activities in relation to voluntary access arrangements.

We will require electricity transmission companies to report to us monthly on performance against principles in the statement of expectations.

Dispute resolution

The Energy Grid Alliance and Moorabool Central Highlands Power Alliance submitted that reporting disputes to the Energy Water Ombudsman of Victoria was not working, as disputes in relation to the Western Victoria Transmission Network Project were not being resolved. Both stakeholders considered that the commission should be responsible for resolving disputes – at least in the short term – as it has both regulatory and advisory roles under the Essential Services Commission Act 2001. Furthermore, the commission could use the information gained from resolving disputes to develop the Code of Practice.⁴⁴

AusNet Services stated that it recognised third party dispute resolution may be required in some circumstances, and supported use of a process that allows for voluntary notifications of a dispute and facilitates timely resolutions. AusNet Services added that the process should not prevent interlocutory relief, that the body administering the dispute resolution process should be transparent with a clear charter and authority, and have established processes for dealing with all parties, including for addressing matters such as privacy and confidentiality. Considering these objectives, AusNet Services recommended that the Energy and Water Ombudsman of Victoria be responsible for resolving disputes in relation to electricity transmission company land access.⁴⁵

Our response and explanatory statement

We are concerned that stakeholders consider bringing disputes to the Energy Water Ombudsman of Victoria does not result in disputes being resolved. We consider that the statement of expectations should help any dispute resolution body assess cases and resolve disputes. We

⁴⁴ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022. Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁴⁵ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

consider the Energy and Water Ombudsman of Victoria is best placed to resolve disputes involving energy companies, as it has experience in customer dispute resolution involving energy companies and is a free service to the public. The commission will work with the Energy and Water Ombudsman to ensure there is appropriate support to resolve these disputes.

We acknowledge stakeholders' views that the commission could use the information gained resolving disputes to inform the Code of Practice. However, the commission could also obtain this information from the Energy and Water Ombudsman of Victoria.

Therefore, our explanatory statement is to confirm an electricity transmission company will provide landowners and parties interested in land affected by its land access with details of the Energy and Water Ombudsman Victoria scheme.

Explanatory statement 7

We expect electricity transmission companies will provide landowners with details of the Energy and Water Ombudsman Victoria scheme. We encourage electricity transmission companies to include provision for third party dispute resolution in voluntary access arrangements.

Principles and examples used in the draft statement of expectations

The following table outlines our response to feedback we received on specific principles and examples we used in the draft statement of expectations. Most stakeholders agreed with the principles contained in the draft, with feedback focused on elaborating on the wording of the principles and examples. We have included feedback which entailed material changes to principles and examples in this table and have not included minor feedback on drafting and wording. Where stakeholders have had differing views on a principle or example, we have attempted to provide greater clarity in the statement of expectations.

Table 1 Stakeholder feedback on principles and examples and our explanatory statements

Principle 2: Ensure staged, timely engagement and consultation

Feedback	Energy Grid Alliance and the Moorabool and Central Highland Power Alliance (MCHPA) argued that this principle is unclear about how communication should take place and submitted that the examples for
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this principle should state that all communication should be conducted by registered mail.^{46 47}

AusNet Services considered that to avoid any actual or perceived conflict of interest,⁴⁸ it was not best practice for an electricity transmission company to tell landowners what their rights are.

Explanatory statement
8 We have included an example in Principle 6 of communication via registered mail where other attempts at contact have failed.

We have decided to include registered mail as an example, rather than altering the principle as the method of communication may be agreed upon by the landowner and the electricity transmission company.

We believe that it is appropriate for an electricity transmission company to provide general information on landowners' rights associated with land access, and that the principle is sufficiently high level. We note that sound precedents exist for this and consider it to be best practice.⁴⁹

Principle 3: Be accessible and responsive

Feedback
AusNet Services submitted that the example under this principle should be amended to say a 24/7 contact number rather than a specific contact person. They stated that providing a specific contact person would require disproportionate resourcing, given it is very unlikely for emergencies to arise on land that does not yet have network built on it.⁵⁰

⁴⁶ Energy Networks Australia, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁴⁷ Moorabool and Central Highland Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁴⁸ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁴⁹ See for example TransGrid's published guide, 'Landowner consultation - Central-West Orana REZ Transmission' has a page 4 titled 'Accessing your land - Your rights'

⁵⁰ *ibid*

Explanatory statement 9 We have amended the second example under this principle to state ‘Provide a 24/7 contact number’.

Principle 4: Use accessible and readable communications

Feedback Feedback from the industry forum stated that this principle is unclear about whether it applies to verbal or written communications.⁵¹

The MCHPA stated that this principle should note information presented on an electricity transmission company’s website should be readily accessible for visually and hearing-impaired people. This may involve a webinar recording being published with a transcript.⁵²

Explanatory statement 10 We have amended this principle to be clear that it refers to written materials.

We note the suggestion by MCHPA but consider that this raises broader questions about accessibility of information for visually and hearing-impaired people that is beyond the scope of this statement of expectations.

Principle 5: Employ respectful two-way communication

Feedback The Energy Grid Alliance wrote the example used under this principle which states “On request from a landowner an electricity transmission company should share the outcomes of its investigations with the landowner where appropriate and where able to do so” is not strong

⁵¹ Essential Services Commission, Industry forum, ‘Electricity Transmission Company Land Access Draft Statement of Expectations’, 5 April 2022.

⁵² Moorabool and Central Highland Power Alliance, submission to the Essential Services Commission, ‘Electricity Transmission Company Land Access Draft Statement of Expectations’ April 2022.

enough. They suggested a minimum a summary report should be provided to landholders.⁵³

Explanatory statement
11 Given the complexity of information which could be provided to the landowner, we consider that the flexible approach currently detailed in the principle is appropriate.

Principle 6: Identify and contact those effected

Feedback AusNet Services and the Australian Energy Operations stated that the example under this principle, which suggests an electricity transmission company may make inquiries about the contact details of a landowner through asking their neighbour, could be inconsistent with privacy obligations.^{54,55}

Energy Grid Alliance, The Victorian Farmer's Federation, and the MCHPA suggested that the third example under this principle be edited to state that the electricity transmission company should contact local government to find the appropriate means of contacting the registered landowner.^{56,57,58}

Explanatory statement
12 We have amended an example under the principle to state that an electricity transmission company may implement reasonable fallback measures when contact is not achieved or acknowledged – for

⁵³ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁵⁴ Australian Energy Operations, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁵⁵ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁵⁶ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁵⁷ Victorian Farmers Federation, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations', April 2022.

⁵⁸ Moorabool and Central Highland Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

example, making enquiries with Local Government – in compliance with applicable privacy laws.

Principle 7: Provide identification on contact

Feedback

We received feedback from the industry forum and through AusNet Service's submission that to ensure the safety of electricity transmission company employees, a balanced approach should be used where first names and employee identification numbers are utilised only.^{59,60}

We also received feedback in landowner workshops and meetings that landowners were only being given the first name of an electricity transmission company employee without a means of verifying their authorisation to enter the property. This served to undermine trust in the process.

Explanatory statement We have amended this principle by adding:

13

- 'The electricity transmission company need not disclose the full names of individuals acting for or on its behalf, provided that the individual has identification or written authorisation that a landowner can readily verify with the electricity transmission company.'

We have added an example to this principle which states:

- 'An electricity transmission company may implement a system that allows easy verification of credentials for authorised officers, rather than providing individuals full details.'

Principle 8: Outline access rights and obligations

⁵⁹ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations, April 2022.

⁶⁰ Essential Services Commission, Industry forum, 'Electricity Transmission Company Land Access Draft Statement of Expectations', 5 April 2022.

Feedback

Energy Grid Alliance submitted that an electricity transmission company should include an explanation of their powers under section 93, and what rights the landowner has in terms of denying access or negotiating a suitable access period.⁶¹

The MCHPA submitted that an example under this principle and principle 10 should include providing hard copies of an information sheet – prepared by the ESC or the electricity transmission company – to affected landowners at initial contact. These information sheets should also be included on the electricity transmission company website.⁶²

AusNet Services stated that it is not considered best practice for an electricity transmission company to tell landowners what their rights are to avoid any actual or perceived conflict of interest.⁶³

Explanatory statement 14

We have included an example that an electricity transmission company includes a written explanation of the effect of section 93 and the landowner's rights, and this is to be available in an accessible language.

We note AusNet Services' feedback but maintain that an electricity transmission company should provide landowners with information about their rights, as we have seen it is best practice in other jurisdictions.

Principle 9: Make clear when and why access is required

⁶¹ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations, April 2022.

⁶² Moorabool and Central Highland Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁶³ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

Feedback

Stakeholders in the public forum said that access consent and any agreed arrangements should be time and purpose limited, rather than enduring.⁶⁴

AusNet Services stated that it is not always possible to provide a clear estimate of access duration beforehand, and that a conservative estimate risks unnecessary concern and interruption for landowners. Conversely, underestimating the time required risks undermining consent.

Explanatory statement**15**

We have amended the principle to include the following text:

- 'An electricity transmission company will provide its best estimate of the duration of access and will also explain variables that may affect that duration.

Agreed arrangements for access may be time and purpose limited. '

We have added the following in the example column:

- The planned dates and times when access is sought, and any variables that may affect proposed timing and how these will be communicated.

Feedback

A concern raised in the industry forum was that leaving equipment on the land, such as noise monitoring equipment, affects the duration of land access.⁶⁵

Explanatory statement**16**

The landowner should be notified of equipment that will remain and for how long it will remain.

⁶⁴ Essential Services Commission, Public forum, 'Electricity Transmission Company Land Access Draft Statement of Expectations', 4 April 2022.

⁶⁵ Essential Services Commission, Industry forum, 'Electricity Transmission Company Land Access Draft Statement of Expectations', 5 April 2022.

No change is required to the principles. If the landowner consents, the example in principle 15 covers retained equipment after access ends as an exception to restoration.

Principle 13: Keep records

Feedback

The Victorian Farmers Federation submitted that in the example section of this principle there should be a reference to maintaining biosecurity records. This should detail who accessed property, when, and what materials were used.⁶⁶

Energy Grid Alliance stated that if the electricity transmission company's staff or representatives are to record events using body cameras, the company should inform the landowner that a recording is taking place, what will happen with the recording, where it will be archived, and how it will be disposed of. A similar concern was also identified in the MCHPA submission.^{67,68}

Explanatory statement 17

We have included an example under principle 18 stating that where requested by the landowner, the electricity transmission company should provide a confirmation of compliance with the relevant biosecurity plan.

We note Energy Grid Alliance and MCHPA's concerns around body camera usage. This is a complex issue that may be considered further in developing the Code of Practice. In the meantime, we note that electricity transmission companies are required to comply with all relevant laws relating to privacy, data collection and usage.

⁶⁶ Victorian Farmers Federation, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁶⁷ Energy Grid Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁶⁸ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

Principle 14: Maintain confidentiality and respect privacy

Feedback The MCHPA stated that an electricity transmission company should prepare a privacy protocol information sheet for provision to all landowners. This should include informing landowners that electricity transmission company staff and/or representatives are wearing body cameras to record access events.⁶⁹

Explanatory statement 18 We note the MCHPA's suggestion, however we consider principle 14 already covers an electricity transmission company acting in accordance with privacy legislation. Therefore, we have not amended the principle. In relation to body cameras, refer to explanatory statement 17.

Principle 15: Minimise impact on land and landowners

Feedback The Victorian Farmers Federation stated that this principle should also cover minimising harm on things **living** on land, not just growing on it.⁷⁰

The MCHPA submitted that this principle should state that electricity transmission companies must clearly advise landowners about the compensation process if damage is caused by the company or its agents. This includes compensation for business disruption and biosecurity incidents as a direct result of an electricity transmission company accessing land.⁷¹

Explanatory statement 19 We have amended the first example under this principle to cover those living on the land.

⁶⁹ *ibid*

⁷⁰ Victorian Farmers Federation, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁷¹ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

We note MCHPA's comments and refer to section 93 (2) of the Act in relation to compensation for damages.

Principle 16: Meet expected work standards

Feedback

The Victorian Farmers Federation stated that this principle should specify biosecurity legislation, such as the Catchment and Land Protection Act.⁷²

The MCHPA submitted similar feedback, suggesting this principle should state electricity transmission companies need to ensure that field-based employees and contractors accessing land abide by legislation that affects the landowner.⁷³

Explanatory statement 20

Many Commonwealth, State and Local Government regulatory instruments are relevant to the activities carried out by transmission companies. These include the Victorian Catchment and Land Protection Act 1994. On balance, we prefer not to single out any one Act for specific mention, should it incorrectly imply that other laws are not as important.

Principle 18: Implement environmental and biosecurity controls

Feedback

Feedback from the public webinar and through the Victorian Farmers Federation submission stated that this principle should note that if there is a (registered) biosecurity plan in place for a property to be accessed,

⁷² Victorian Farmers Federation, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁷³ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

then the electricity transmission company should meet that plan, rather than its own.^{74,75}

AusNet Services stated that landowners may refuse communication, not provide details of their biosecurity requirements, or impose excessive biosecurity requirements as a deterrent for timely access. This would hinder the electricity transmission company's ability to follow the registered biosecurity plan.⁷⁶

The Victorian Farmers Federation added that during the period of land access, a weekly report should be provided to the landowner detailing personnel in attendance, locations accessed, materials or chemicals utilised, and any other information required under the landowner's biosecurity plan.⁷⁷

The MCHPA stated that this principle should ensure that water sources are protected by contamination/pollution by any activities conducted during land access.⁷⁸

Explanatory statement We have amended principle 18 text to state:

21

'An electricity transmission company will take all reasonable actions to ensure that in accessing land, it does not spread weeds, pests or pathogens.'

⁷⁴ Victorian Farmers Federation, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁷⁵ Essential Services Commission, Public webinar, 'Electricity Transmission Company Land Access Draft Statement of Expectations', 4 April 2022.

⁷⁶ AusNet Services, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁷⁷ Victorian Farmers Federation, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

⁷⁸ Moorabool Central Highlands Power Alliance, submission to the Essential Services Commission, 'Electricity Transmission Company Land Access Draft Statement of Expectations' April 2022.

They will consult with landowners to understand property-specific needs (including any relevant biosecurity plan) and will provide details of its own environmental and biosecurity policies and plans on request.’

We have also included the following in the examples:

- implement systems to check for active biosecurity incidents or outbreaks in an area prior to accessing a property, and comply with any statutory limitations on movements arising from such incidents or outbreaks
- adopt ‘come clean, leave clean’ practices
- observe biosecurity signage on properties.

Principle 19: Manage fire risks

Feedback

The MCHPA stated that the actions the transmission company proposed to take to manage fire risks should be detailed in the access agreement/protocol or in a separate overall risk management document. This document would be provided to the landowner.⁷⁹

Explanatory statement 22

We have added to the principle that an electricity transmission company will act in accordance with its own bushfire management plans. We note that electricity transmission companies publish Bushfire Mitigation and Management Plans on their websites. Voluntary agreements can draw out any particular concerns for individual landowners and their properties.

⁷⁹ ibid

Next steps

The Electricity Transmission Company Land Access Statement of Expectations will come into effect on 1 June 2022.

From this date, electricity transmission companies accessing greenfield sites in relation to major transmission projects will be expected to act in accordance with the principles under the statement of expectations. In addition:

- we will monitor electricity transmission companies' performance against the principles
- we will require electricity transmission companies to report their performance against the principles to us monthly⁸⁰
- we will use this information and other relevant information, such as information volunteered by landowners that have had their land accessed under section 93 of the Act, to inform the scope and level of flexibility of the Code of Practice.

Land Access Code of Practice

After the statement of expectations takes effect, we will progress developing a Code of Practice under section 47 of the Essential Services Commission Act 2001. Access pursuant to section 93 of the Act will be subject to requirements specified in that code of practice, as provided by section 93(5)(d).

We are mindful of the significant stakeholder interest in the development of the Code of Practice, and as such, we will develop a comprehensive engagement strategy that gives stakeholders ample time and multiple channels to contribute.

We expect the Code of Practice to be completed in 2023.

⁸⁰ For AusNet Transmission Group Pty Ltd, reporting against the statement of expectations, in relation to land access related to the Western Victorian Transmission Network Project, will commence in August 2022.

Appendix A

Section 93 Electricity Industry Act 2000

Extract from the Electricity Industry Act 2000

Taken from Version No. 093, Electricity Industry Act 2000

Version incorporating amendments as of 1 March 2022

93 Powers as to works etc.

- (1) For the purposes of this Act, an electricity corporation, subject to this Act—
 - (a) may enter upon any lands and sink bores and make surveys and do any other acts or things necessary for sinking bores or making surveys; and
 - (b) may, with any equipment or devices, receive, store, transmit, or supply electricity, water, brown coal or products of brown coal over, or under, any land and may enter on any land upon either side of such equipment and fell or remove any tree or part of a tree or any obstruction which in the opinion of the electricity corporation it is necessary to fell or remove; and
 - (c) subject to the **Water Act 1989**, may divert water from any waterway, lake, lagoon, swamp or marsh, or alter the bed, course or channel of any waterway; and
 - (d) subject to the **Road Management Act 2004**, may enter upon any public or private land or roads and construct any works or place on under or over any such land or road any structure or equipment and may repair, alter or remove any such structure or equipment or any works under its control; and
 - (e) may do all other things necessary or convenient for constructing, maintaining, altering, or using any works or undertakings of, or under the control of, the electricity corporation.
- (2) In the exercise of the powers under subsection (1), an electricity corporation must do as little damage as may be and, must, if required within 2 years from the exercise of the powers, 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.
- (3) Compensation under subsection (2) shall be either a gross sum or a yearly rent as may be agreed and, in default of agreement, shall be determined in the manner provided in the **Land Acquisition and Compensation Act 1986**.
- (4) An electricity corporation may exercise its powers under this section by its officers or employees or by any other person authorised in writing by it or by the officers or employees of any such person.
- (5) This section applies—

- (a) to a distribution company, transmission company and a generation company holding a licence under Part 2; and
- (b) to the holder of any other licence under Part 2 as if a reference in this section to an electricity corporation included a reference to the holder—

and so applies—

- (c) subject to the conditions of the licence in relation to the exercise of powers under this section; and
- (d) subject to any provision of a Code of Practice about the entry on land by a person referred to in paragraph (a) or (b).

(6) The entitlement to compensation under subsection (2) is not affected by—

- (a) anything to the contrary in the **Road Management Act 2004**; or
- (b) any right conferred by, or any obligation or duty imposed under, the **Road Management Act 2004**.

(7) A provision of a Code of Practice about the entry on land by a person referred to in subsection (5)(a) or (b) has no effect to the extent that it—

- (a) confers, or purports to confer, any right or power which is inconsistent with the **Road Management Act 2004**; or

(b) imposes, or purports to impose, any obligation or duty which is inconsistent with the

Road Management Act 2004

