

# Enhancing community engagement in transmission building draft rule determination

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## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

## Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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# 1. Introduction

PIAC welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft rule determination on enhancing community engagement in transmission building (the draft determination).

We support the requirement for transmission network service providers (TNSP) to engage more meaningfully with stakeholders and the community as part of preparatory activities for actionable Integrated System Plan (ISP) projects and projects within a Renewable Energy Zone (REZ). The existing practice is not fit for purpose and provides inadequate scope for the community and their stakeholders to shape projects and ensure they are acceptable. Substantial improvements are required.

The proposals in the draft determination are not adequate and are unlikely to meaningfully improve the poor practice and outcomes in community engagement currently experienced. We are concerned communities impacted by transmission infrastructure will continue to feel disempowered in decisions impacting them.

The draft determination provides information about what good engagement looks like, in terms of which stakeholders should be included and when and how information should be provided to stakeholders. This is important, but represents a step well below current accepted practice in meaningful community engagement. In any case, increased information regarding what constitutes good engagement is unlikely to have substantial impact on the practices of TNSPs, where detail regarding current expectations of good practice have been well known for many years. Indeed, TNSPs already have clear and authoritative advice already on what constitutes best practice for stakeholder engagement in the *Better Resets* handbook, with opportunities to see how this can be implemented by observing Distribution Network engagements.

PIAC has observed that more effective and meaningful community and stakeholder is currently impeded or disincentivised by the following dynamics:

1. TNSPs interpret governments and the economic regulators, who impact their revenue streams, as the key stakeholders who determine and maintain their licence to operate. Communities impacted by transmission infrastructure, along with consumers, are stakeholders who are impacted by TNSPs actions, but who do not have clear channels to immediately impact investment decisions or revenue streams. As a result, they are understood by TNSPs as stakeholders who need to be informed and managed. They are not viewed as actors whose licence needs to be acquired to proceed with projects.
2. TNSPs do not have any incentive to go beyond the minimum standards in order to pass the requirements in the national electricity rules (NER) and the Australian Energy Regulator's (AER) cost benefit analysis (CBA) test guidelines. Assessment of their associated engagement is essentially binary, in that it can either be demonstrated to have occurred or not.

3. The planning process for large-scale transmission projects (particularly those related to the ISP), including REZs, locks in the substantive decisions impacting local stakeholders before engagement occurs. That is, the decisions that something will be built, what it is, and where it is, are largely determined before communities are involved. These decisions are also made between the NEM-wide planner and the TNSP, giving further weight to them. By the time local community engagement does occur, the stakeholders in this group start in a perceived position of disempowerment; the scope for substantive changes to projects are limited and those which are possible – such as route alterations – are often presented as costly to both the TNSP and the NEM as a whole.
4. The enforcement mechanism for TNSPs conducting baseline community engagement concludes with the regulatory investment test (RIT), except for separate (if related) processes related to environmental and planning approval. Best practice engagement would continue throughout the project, but there is no way to compel or incentivise TNSPs to do this. It is worth noting that current experience of significant community pushback through planning and environmental approval stages of projects are likely to be in part driven by the absence of meaningful ongoing community engagement through earlier stages.

The draft determination does make some marginal potential impacts on one of these dynamics – the third – but in large part leaves the others unaddressed.

The draft determination also embeds the existing tiered expectations structure for stakeholder engagement. While the AEMC “encourage[s] TNSPs to undertake community engagement beyond the ‘consistent minimum standard’ in the proposed rule,” there is nothing in the draft determination to require or meaningfully incentivise them to do this.

There are two more preferable approaches available.

1. The AEMC could leave the definition of community engagement expectations to the AER guideline *in toto*, and allow the requirements outlined there to be the unambiguous baseline. This should include provisions to make an AER guideline enforceable to ensure it is enacted consistently.
2. The expectations in the rules and the expectations in the guidelines could be functionally differentiated; the rules would stipulate only the necessary (and testable) outcomes of effective community engagement and the AER guideline would provide advice on how these outcomes are best achieved. This would also require some provision for the AER to assess the outcomes contained in the rules and make enforceable decisions where they are not met.

The following sections respond to the task of defining minimum standards for TNSPs with regard to community engagement. The task is relevant to either approach. In either case we recommend that the requirements on TNSPs need to be geared towards substantive engagement and ensure robust requirement to go beyond any stipulated minimum.

## 2. Comments on the proposed community engagement expectations

The eight community engagement expectations on page 14 of the draft determination do not go far enough. The poor community engagement practices we have seen from TNSPs on large scale transmission projects in the recent past would likely still occur under these expectations.

The guidelines do not provide a requirement for the engagement to be either robust or substantive. A TNSP could commence an engagement process with no scope for community stakeholders to impact any decision made in relation to the project, and still adhere to each of the eight expectations.

It is also not clear how the AER's guideline could differ from the expectations in the draft determination on a functional basis. Some of the expectations in the guideline detail the outcomes of effective community engagement – (a), (b), and (c) – while the others describe processes. If all of the expectations in the rules were framed in relation to outcomes, the functional differentiation between the expectations that appear in the rules and the AER guideline would be clear: the rules specify the outcomes that must be reached, and on which the TNSP will be judged, and the guideline provides advice on how best to achieve these outcomes.

If there is no functional differentiation between the expectations in the rules and the guideline, there is a risk they will be interpreted by TNSPs and the regulator as differentiated in terms of importance. The expectations in the rules may be treated as requirements while the expectations in the guideline are treated as voluntary extras. If there is no meaningful distinction between the two sets of guidance and they play the same role in terms of their regulatory function, they should be merged to reduce any ambiguity. The preferable location for the single definitive set of mandatory expectations is the AER guideline, which can be updated more easily to respond to issues as they emerge.

## 3. The substantive aims of the expectations

The aims of the regulatory settings in the rules and guideline together should be to push TNSPs to:

- Have a culture of genuine engagement throughout their organisations;
- Aim for best practice, and continually reflect on and update their community engagement processes to be moving towards updated understandings of best practice;
- State the purposes of projects clearly and transparently;
- Be open to negotiated and substantively altered outcomes;
- Use deliberative processes;
- Analyse the impacts of projects on community subsections, particularly disadvantaged and vulnerable groups, and take steps to ameliorate the negative impacts on these groups through measures shaped by engagement with those groups;
- Engage in planning able to be adapted on the basis of information and preferences from engagement with community stakeholders;
- Provide high quality information (accessible, available by request, not overwhelming in volume, tailored to meet the needs of different stakeholders, and timely);

- Include engagement activities that go beyond the loudest and most well-resourced voices, and actively seeks out harder to reach stakeholder groups to gain breadth of input and proof viewpoints expressed in community-wide engagement activities.

## 4. Enforcement

The rules should use the stronger term 'requirement' rather than 'expectation'. An expectation is inadequate as it can be broken without consequence; this is not the case for a requirement.

The draft determination does not touch on the enforcement mechanism for the community engagement expectations. It seems that if the AER determines the expectations have not been met, the project will not pass the CBA test component of the RIT-T. That is, the expectations are effectively a pass/fail test. This is not likely to be effective. The validity of community engagement can be a highly subjective and fraught issue. Where a TNSP fails on or is deemed to be marginal on one or two requirements, there will be great pressure on the AER not to fail them. This is particularly the case given that the projects in question have already been deemed critical to the NEM's transition. It is likely that the standard required for failure would have to be much lower than what should be set for acceptable engagement.

Given all of the above, the AEMC should consider the question of enforcement explicitly in the rule change. The aim should be to produce as robust a set of baseline requirements as possible. As much as possible, the requirements in the rules should be written to be objectively assessable.

Elements in this set of requirements should be amenable to meaningful judgement, and framed with the mode of evaluation written into them. Where applicable, this judgement should relate to the substance of the requirement, rather than its superficial characteristics.

For example, the expectation that 'stakeholder feedback, including potential ways to deliver community benefits, are considered' is not sufficient. From the perspective of the AER, a TNSP that engages with this requirement in bad faith is indistinguishable from one that engages in good faith. This could be rewritten as 'a majority of independently assessed stakeholders are satisfied that the feedback they provided, including potential ways to deliver community benefits, was meaningfully considered and responded to by the transmission service provider'. Where there is scope, a further requirement could be for the TNSP to demonstrate how it has responded to community stakeholder inputs and requests.

As there will inevitably be areas in which judgement is required, the AER should draw on the advice of the stakeholders themselves and expert witnesses to the engagement process, as well as the testimony of the TNSP.

## 5. Continued engagement

We welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at [mlynch@piac.asn.au](mailto:mlynch@piac.asn.au) regarding any further follow up.