



## WESTERN VICTORIA TRANSMISSION NETWORK PROJECT LAND ACCESS – YOUR RIGHTS AND OPTIONS

This document has been written for the **STOP AUSNET'S TOWERS** campaign by the Moorabool and Central Highlands Power Alliance (MCHPA) and is intended to provide information to you and other landowners who are affected by the Western Victorian Network Project (WVTNP) and are being contacted by AusNet, or one of their agents, to come onto your land for the purpose of doing any surveys, investigations or other activities related to the Environmental Effects Statement (EES).

It can also be used by you and other landowners to manage any other contact from AusNet, or one of their agents, such as them wanting to talk to you about accessing your land for other reasons, including acquiring an easement through it. An easement is a right to access and use land without owning it.

This document includes:

- Information on relevant legislation and the legal rights you and AusNet have
- Suggestions about how you can manage contact from AusNet if you are not sure whether to let AusNet onto your land but are thinking of saying NO
- Suggestions about how you can manage contact from AusNet if you do decide to let AusNet onto your land for their EES investigations but want a legal access agreement that protects you and your land

### LEGISLATION AND LEGAL RIGHTS FOR YOU AND AUSNET

What powers do AusNet have? Unfortunately (and this makes us as angry as you), according to formal legal advice obtained by the MCHPA, AusNet and its agents have powers under the *Electricity Industry Act* to undertake works on any private and public land in Victoria at any time, whether or not they intend to acquire an easement on that land or have already acquired one.

Under the *Electricity Industry Act*, AusNet is an authorised 'electricity corporation' and is also designated as an 'authority'. This Act gives AusNet the ability to go onto any land to conduct testing, take measurements and conduct surveys etc in anticipation of, or in preparation for, land acquisition (including easements), or rights to lease or occupy land for the purposes of constructing power lines and infrastructure. This includes coming onto your land for the EES related activities.

**BUT** this **DOES NOT** mean that they can just come onto your land – there are still processes and procedures they must follow and that includes providing you with all the information that you ask of them.

You have every right to take the time you need to protect yourself and your land from any detrimental impact and/or damage. If you feel pressured by AusNet to let them onto your land or sign an agreement that doesn't suit you, it is highly recommended that you seek legal advice before doing so.

Above all, however, rather than just say NO outright and potentially trigger some sort of action from AusNet (which they have legal powers to do – see information about that further on), it is suggested that you exercise **YOUR** legal rights and take your time to make sure you are fully informed and understand the complete 'Who, What, When and Why' of the whole process and the full reasons for them to want to come onto your land. This is all about you taking your time and doing due diligence to make sure your rights and land are protected from any actions by AusNet and their agents.

Read on for some suggestions about what to consider doing if AusNet, or one of their agents, contacts you. But please note we are not legally allowed to recommend what you should do – it is your choice.

Above all, don't let AusNet pressure you and say that you will be worse off later if you don't talk to them now. Talk to your lawyer, talk to your neighbours - maybe they can let you know what strategies the AusNet agents have been using on them and that can help you prepare - or talk to us.



# STOP AUSNET'S TOWERS

## WHAT HAPPENS IF YOU DON'T WANT TO LET AUSNET COME ONTO YOUR LAND?

If you are thinking about NOT allowing AusNet, or their agents, to come onto your land for any EES related activities or for them to discuss acquiring an easement through your land, here are some suggestions about what you could consider doing and asking before making a final decision:

- When anybody contacts you, get all their details in writing before you even commit to talking further with them – their name, exactly who they work for (e.g. are they a consultant employed by AusNet or do they directly work for AusNet?) and all their contact details – phone number and email.
- Take notes and keep a log of every discussion you have with anyone. Or ask if you can record the discussion.
- Ask these sorts of questions (and any others you can think of that matter to you) and tell them you want the answers in writing:
  - Why do they want access to your land? Is it being investigated for towers or an easement corridor?
  - When do they want access to your land - exact dates and times?
  - What is the purpose of their visit? Survey, physical investigation, photographs etc.
  - What are they investigating? Soil composition, groundwater, flora and fauna, indigenous sites etc.
  - What do they want to do or bring onto your land? Drills, cars, how many people etc.
  - How will they protect your crops or livestock? Will they stay off your land at critical times?
  - What biosecurity training do they have?
- Tell them that once you have the answers you will be seeking legal advice and may come back with other questions.

## WHAT HAPPENS IF AUSNET TELLS YOU THEY HAVE THE RIGHT TO COME ONTO YOUR LAND?

To undertake the Environmental Effects Statement (EES) required by the Victorian Government, AusNet, or one of their agents is now contacting landowners in the proposed transmission line corridors to come onto their land. AusNet advises that this is for the purpose of conducting investigations for a variety of matters, including (but not limited to) local vegetation and wildlife, indigenous heritage, historical heritage, land mapping surveys, and for soil testing. These investigations will be conducted for AusNet by several companies with relevant expertise.

Many of us were asked last year to sign a 'Consent to enter my property' agreement, along with 'Schedule A – Access Protocol'. Not many of us signed this agreement as it gave away a lot of our rights without having any ability to tightly manage who would be coming onto our land, when they would be coming onto our land, and whether they knew how to keep our land and animals safe.

As we said on p.1, AusNet and its agents do unfortunately have legal rights to access private land for their authorised activities. A complete refusal of access may result in AusNet or its agents, obtaining court orders and exercising these rights under the *Electricity Industry Act* and/or the *Land Access and Compensation (LAC) Act*. However, should that eventuate, AusNet would need to present those documents prior to entry.

None of this is good news for any of us. We fully understand how distressing it is to learn of the 'rights' that AusNet has to come onto our land. Ultimately though it is your choice about whether to say YES or NO to AusNet and their agents coming onto your land for their EES related activities, or to discuss acquisition of an easement through your land, and we recommend that you seek legal advice to help you make that choice.

It is worth considering that a complete refusal of access might not give you the opportunity, now or later, to negotiate access terms which will help you manage how and when they come onto your land and give you and your land, including crops and livestock, the appropriate protection.



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## WHAT CAN YOU DO IF YOU DECIDE YOU WILL ALLOW AUSNET TO COME ONTO YOUR LAND?

### Access Agreement

Before you consider entering into any agreement to allow people to access your land you may want to discuss this further with your lawyer, as well as AusNet, and look at drawing up a formal written **Limited Access Agreement** which would be for the purpose of these EES investigations **only**. Then you can ask for specific terms and conditions to be included which will give you more protection and, more importantly, rights to control the access to your land and rights to compensation if something goes wrong. You might also want to discuss the matter of AusNet reimbursing you for reasonable costs, both in drawing up this Agreement and for the time you might be required to spend managing requests to access your land.

Because AusNet has not provided an appropriate Access Agreement to landowners, we offer the following as some issues you might want to discuss with your lawyer and AusNet as part of drawing up your own Limited Access Agreement with them:

#### 1. Land Access:

- (i) Who will enter your land – the names of each person and the name(s) of the company or organisation they represent.
- (ii) All persons entering or accessing the land are to provide identification, if requested, on each entry.
- (iii) Notification of how they want to access your land, i.e. whether on foot or by vehicle.
- (iv) Notification of the date and time of access, and if more than one, the expected number of entries and the dates and times of each expected entry and the duration of each expected entry.
- (v) Description of the specific types of activities to be conducted on the land.
- (vi) The specified area, or areas, on your land which are requested to be accessed.
- (vii) The expected point, or points, of entry.

#### 2. Communication:

- (i) All communication to be conducted collaboratively and respectfully.
- (ii) A protocol to be established for providing you with adequate notice for requests for access or if they want to change access arrangements e.g. email, phone call, letter.
- (iii) Agreement on how much notice for access you will require depending on what is happening on the land they want to access e.g. stages of crop growth, stages of animal husbandry etc.

#### 3. Collection and Provision of Information:

- (i) Do you want them to give you access to information, including photographs, collated from the inspection and investigation and any tests conducted?
- (ii) Requirement that any data collected, including photographs, be subject to Privacy Legislation.

#### 4. Protection of Land Use:

- (i) Where access may involve entry into sensitive business and/or agricultural operation areas, stipulation as to protective clothing being worn.
- (ii) Agreement for required environmental and biosecurity controls and plans, including ensuring that vehicle tyres and the shoes of persons entering the land are appropriately cleaned (including in appropriate locations) to avoid contamination by weeds, mud, seeds, faeces, or other toxic risk agents.
- (iii) Where you provide information regarding risks to your land, business, production, equipment and agricultural operations, that AusNet agrees to abide by any limitations to access that you specify.
- (iv) Suitable measures are identified and adhered to by anyone accessing your land, to protect water sources from contamination/pollution by any activities conducted on the land during the access.
- (v) Maintenance of roads, tracks and access routes including safe use of same by vehicles entering the land, leaving gates, fences and grids as they were found.



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- (vi) Operate vehicles on the land so as to minimise noise and dust pollution.
- (vii) Managing testing and survey activities on the land to accommodate farming and agricultural activities and specifically not to interfere with livestock, farming and/or agricultural operations.
- (viii) Take all necessary steps to avoid or minimise damage to the land or cause disturbance of or interruption to business or domestic activities being conducted on the land.

## 5. Compensation and Remediation:

- (i) Provision for payment for access where it will actively interfere with business and/or agricultural operations.
- (ii) Provision for payment of compensation where damage to property occurs or interruption of business or agricultural operation occurs.
- (iii) That AusNet ensures it holds adequate insurance to cover itself and all its agents for a claim made for any damage occasioned during entry.
- (iv) Provision for remediation and/or rehabilitation of any damage occasioned during such entry.

## 6. Dispute Resolution:

- (i) That there be provision for dispute resolution between the parties in the event a dispute arises.
- (ii) That if the land holder wishes to obtain legal advice regarding any Deed of Agreement or authority which AusNet has requested the land holder to sign, that AusNet agrees to pay the cost of such advice.

## 7. AusNet Governance

- (i) Development of a COVID Safe protocol to cover all circumstances.
- (ii) The nominated legislative provision under which the AusNet or other authorised representative is seeking access.
- (iii) A visitor register be kept by AusNet detailing the identities of all persons who have entered the landowners' land, including the date and purpose of each entry.
- (iv) That AusNet prepare and keep an approved plan for testing or surveys to be conducted.
- (v) That AusNet ensure that its employees or agents authorised to enter the land holder's land have adequate training for all the activities they will undertake, particularly as outlined in '4. Protection of Land Use' above but also COVID Safe protocols.

We hope this helps give you some ideas about ways to gain more control of this situation.

## A BIT MORE LEGAL INFORMATION

*Please note that the information in this flyer is not legal advice and is general information not tailored to your specific situation. You are entitled to seek your own legal advice and if you are at all unsure about your rights, or what terms or conditions of entry best protect you and your land, or about the terms and conditions of entry being put to you by AusNet or its agents, you should seek your own legal advice.*

If you are not sure where to start with finding legal advice, and while you won't be at the compulsory acquisition stage for a while yet, you could still Google 'compulsory land acquisition lawyer' in Ballarat, Melbourne or Geelong to find the firms that have a great deal of experience in these types of property matters including access agreements.

Or you can get a free first half hour interview with a lawyer experienced in the Property and Compulsory Land Acquisition fields through the Referral Service run by the Law Institute of Victoria via this link: <https://www.liv.asn.au/Referral>. On this search page we suggest you click on the **Location** tab, enter the text 'Compulsory Land Acquisition' in the empty Legal Issue box and click on the location that suits you. Also click on the 'What is the Find Your Lawyer Referral Service?' to find out more about it.