CONFIDENTIAL

Victorian Farmers Federation

White Paper

Compensation and payments for landholders affected by new transmission lines in Victoria

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Contents

I. Introduction

This paper explores options to improve the current compensation framework when landowners are affected by the construction and operation of new electrical transmission lines. The focus is on the impacts that transmission lines have on farm production and operations.

The paper explores the current framework for compensating landowners, identifies issues and shortcomings and suggests possible reforms.

II. The current compensation framework

The construction of transmission lines on farming land can restrict the use to which the land can be put and disrupt farming practices. The construction of the transmission lines usually involves the acquisition of an easement on the land upon which the lines are constructed.

Transmission companies have published guides which outline the process for assessing compensation in the case of acquisition of easements for the construction and operation of transmission lines.

Compensation
The *Land Acquisition and Compensation Act 1986* (LACA) provides the legislative basis for providing compensation when land is acquired. This could typically be for the construction of a road, pipeline, transmission line or any other project requiring the acquisition of land. It is important to note that the LACA puts in place a generic compensation framework that is not specific to the construction of transmission lines or the acquisition of farming land.

The LACA sets out the general principles on which compensation is to be based:

- (a) the market value of the interest on the date of acquisition;
- (b) any special value to the claimant on the date of acquisition;
- (c) any loss attributable to severance;
- (d) any loss attributable to disturbance;
- (e) the enhancement or depreciation in value of the interest of the claimant, at the date of acquisition, in other land adjoining or severed from the acquired land by reason of the implementation of the purpose for which the land was acquired; and
- (f) any legal, valuation and other professional expenses necessarily incurred by the claimant by reason of the acquisition of the interest.

Compulsory acquisition
When agreement cannot be reached with the landowner the transmission company can seek to compulsorily acquire the easement to permit construction. This requires approval from the Governor-in-Council (in practice provided on the advice of the Minister)

Compensation is based on the valuation carried out by the Valuer General or qualified valuer – based on the general principles set out in the LACA.

The implication of this is to reduce the bargaining power of the farmer in determining compensation – it becomes a no option but to 'take it' situation.

III. Gaps in the compensation framework and process

In principle, a negotiated settlement is best

The primary issue is that compensation is determined based on the change in land value before and after the creation of the easement. There is no negotiated outcome between the landowner and the transmission company.

In the case of renewable energy such as wind and solar farms the energy company negotiates with the landowner over the payment to be provided to host the renewable energy infrastructure. These are commercial agreements between the two parties. If the landholder is asking for too high a price the energy company can locate its infrastructure elsewhere. Similarly, if the energy company is offering too low a price the landowner may refuse to host the infrastructure.

Ultimately, the landowner can choose whether to host the infrastructure or not.

The factors considered during a commercial negotiation are much broader than just changes in land values. The landowner can consider the full impact of hosting the infrastructure on their farm business and its development. For example, if a section of land can no longer be farmed as it had been, and the farmer is unable or unwilling to use it for alternative production – this 'lost' land can be factored into price asked to host infrastructure.

Under the compensation scheme established under the LACA this land would be valued based on its next best productive use even if the farmer is unable or unwilling to use the land in that way. Compensation would be substantially less than the farmer would receive under a negotiated payment.

Other factors such as the impact of the infrastructure on the farmer's lifestyle or amenity can be considered by the farmer when considering the payment, they would receive for hosting the infrastructure. These factors are not considered under the compensation scheme created by the LACA.

In principle, the VFF believes that a negotiated compensation outcome will lead to the fairest compensation outcome for farmers and landowners affected by transmission infrastructure.

Issues with moving to a negotiated settlement

The VFF acknowledges that there may be difficulties in moving to a commercially negotiated compensation settlement between landowners and infrastructure proponents. For example,

- Some landowners may hold out agreeing to maximise their compensation – delaying finalisation of the project.
- Negotiations may take place with no intention of coming to agreement.
- At the end of the day, transmission companies still have the option of using compulsory acquisition powers and so may not enter negotiations in good faith.

If moving to a negotiated outcome is not feasible, the VFF sees value in considering gaps and issues in the existing regulatory framework and considering how these can be overcome to make the existing system fairer for farmers and landowners.

Issues and gaps in the existing legislative framework

This section outlines issues and gaps in the current framework relating to:

- Valuation
- Estimating the financial impact on farmers and calculating compensation
- Severance and disturbance
- Dispute resolution
- Taxation.

Issues with valuation

In the absence of a negotiated agreement to host transmission lines, compensation is currently being progressed under the provisions of the LACA. Compensation is therefore to be provided on the basis of an assessment of the change in market value of the land due to restriction on the use of the land following the establishment of an easement and construction of transmission assets.

The determination of the impact of transmission lines on the 'market value' of the property can be difficult to estimate. The amount of compensation payable is meant to reflect the reduction in value of the farm based on the impact of the transmission line on the farm's productive capacity.

However, there are practical problems with the calculation of market value:

- Market value will be difficult to assess because of a lack of recent examples of this form of valuation.
- It can be difficult to determine all possible impacts to agricultural production at a point in time, for example, the ability to use future technology or production methods may not be possible.
- The value of the farm and farm business is impacted – not only the land subject to the easement. This may not be reflected in a per hectare assessments.
- Impacts may be ongoing over the life of the farm – once-off compensation may not recompense the landowner.

Of particular concern is the estimation of loss attributable to severance and disturbance. Severance is meant to reflect the reduction in market value of the land which is caused by land being severed from other land because of the easement. Disturbance refers to financial loss caused by disruption to the landholder and their business arising from the creation of the easement.

In practice, severance should be reflected in the calculation of market value impacts – as the severance impacts on the productivity of the land. However, it is not clear the extent to which valuers are able to take account of farm-wide impacts of severance. For example, there may be financial impacts resulting from loss of economies of scale or increased costs due to the need to move around severed parcels of land.

The extent to which these impacts can be taken into account when estimating compensation will depend on the guidance and information provided to the valuer to ensure they are aware of all impacts.

Disturbance reflects losses incurred by the landowner during construction or creation of the easement. It is generally considered to be a time limited impact. However, there can be ongoing disturbance impacts which may not be taken into consideration in the calculation of compensation. For example:

- Impacts from ongoing need to access the infrastructure once it had been built, such as for maintenance purposes.
- There may be ongoing impacts of construction, for example, soil compaction from the construction process or future changes.
- Future changes to regulations which may affect production methods allowed to be used around transmission infrastructure.

The issues with the calculation of market value, severance and disturbance appear to stem from the lack of specific guidance for valuers on how to estimate the impact of transmission lines on farmland. In particular:

- The valuer needs to understand farm types and production methods to understand the impact of transmission lines.
- Other experts may need to be consulted to obtain a full understanding of the impact of the easement and transmission infrastructure, for example, a business analyst with farming experience or an agronomist.
- Specific guidance and information are needed on how severance and disturbance impact farm production. This will vary from farm to farm – both in terms of location and type of farm.

Improving land valuation is only part of the problem under the existing LACA. One of the principles for determining compensation in the Act relates to 'the enhancement or depreciation in value of the interest of the claimant'. This goes beyond just changes in the value of the land, a farmer's interest in the farm relates to its value as an ongoing business. Compensation needs to reflect the change in the business value not just changes in land value. The VFF believes that a land valuer is not best placed to assess the f ongoing business impact as part of determining the value of the interest of the claimant.

The absence of processes relating to the need to consider going business impacts from the codification of the calculation of compensation in the Regulations leads to processes that fail to consider whether the principles of the Act have been achieved. The VFF believes there should be guidance as to when to consider ongoing business impacts; and how to determine who has the appropriate skill set to calculate this amount is required.

The VFF believes that where the LACA is applying to farmland then an agricultural business advisor is required to calculate the impact on the valuation of the farm business as a whole and the acquiring body must ensure the letter of offer includes details of how business impacts are proposed to be compensated for.

Estimating the financial impact on famers – determining compensation

The creation of the easement and the subsequent impacts on production and farming methods can have a significant financial impact on the farm business. These impacts are ongoing over the life of

the transmission asset – possibly over 50 to 60 years or more. Farmers should be fairly compensated for these impacts.

It is also important to note that each farm business is unique and the impact of building transmission assets on farmland need to be assessed on a farm-by-farm basis - a generic 'formulaic approach' will not properly capture individual farm impacts, the impact on the value of the business as going concern, and is therefore unlikely to result in appropriate compensation. Farm business impacts will vary widely across farms.

Direct impacts

The direct impacts of the easement are the possible fencing off of the easement, and/or change in production (for example it may not be possible to grow crops on the easement, but it may be possible to graze livestock) - (if the farmer is willing and able to do this, for example, they may not have the skills or equipment necessary to change production on a section of their farm).

Ideally, these direct financial impacts should be reflected in the market value of the easement and the farmer should receive compensation for these losses. However, as noted above there are difficulties in determining the market value of the easement land.

These direct financial impacts on famers are likely to be significantly underestimated because they do not include the cost of:

- erecting and maintaining exclusion fencing to keep in livestock.
- the provision of other infrastructure necessary for grazing, for example water troughs, facilities to load livestock onto trucks etc.
- changes to existing farm infrastructure still used for the original production (for example, modifying irrigation equipment or access points).
- loss of economies of scale which could impact overall returns on the land.
- not undertaking the highest value activity permitted with the transmission infrastructure – the farmer may not want to farm alternative products. For example, a vegetable farmer may not want to farm livestock. Hence the impact on their income and business is much greater than allowed for by the current regulatory regime.

A technical calculation vs a personal valuation

The calculation of compensation under the LACA is a technical calculation of the change in land values because of the creation of an easement and construction of transmission infrastructure.

It does not consider any special value that the landowner may assign to the land. For example, the farm may have been in the same family for generations – this generates a special value for the current owners that would not be reflected in the calculated compensation based on changed land values resulting from changes in allowed farming practices.

If compensation were based on a commercially negotiated outcome, it would take into account any special value attributed to the land by the current owner as they would not agree to the easement unless they were fully compensated – for both the direct business impact and the loss of any special value.

The VFF considers that the additional cost to the transmission company in compensating for special value will be small in the context of the total infrastructure cost. This cost would be passed on to energy users and so the additional cost per energy user would be minimal.

While the cost per user would be minimal, the benefits to the State in encouraging a wider, and quicker roll out of renewable energy sources would be significant. This would permit the State Government's objectives of moving to a greater proportion of electricity being generated by renewables and reducing greenhouse gas emissions to be achieved much more quickly.

A relatively small increase in compensation to reflect special value would lead to greater landowner willingness to host renewable energy projects and transmission infrastructure.

Landowner willingness to host infrastructure is likely to be high if fair compensation is paid because farm profitability is not particularly high and is very variable. For example. Forecasting by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) indicates that cropping farm businesses are forecast to have profits of $286,000 in 2024-25, compared with a loss of $4000 for beef farm businesses and a loss of $93,000 for sheep farms.[1]

Taking account of severance and disturbance

The impact of the easement is more than just the land covered by the actual easement itself. The quarantining of a section of land on the farm can have significant impacts on the farm business.

These impacts will vary from farm to farm and so an onsite farm specific assessment and evaluation is required to fully understand the impact of the easement on the ongoing operation of the farm.

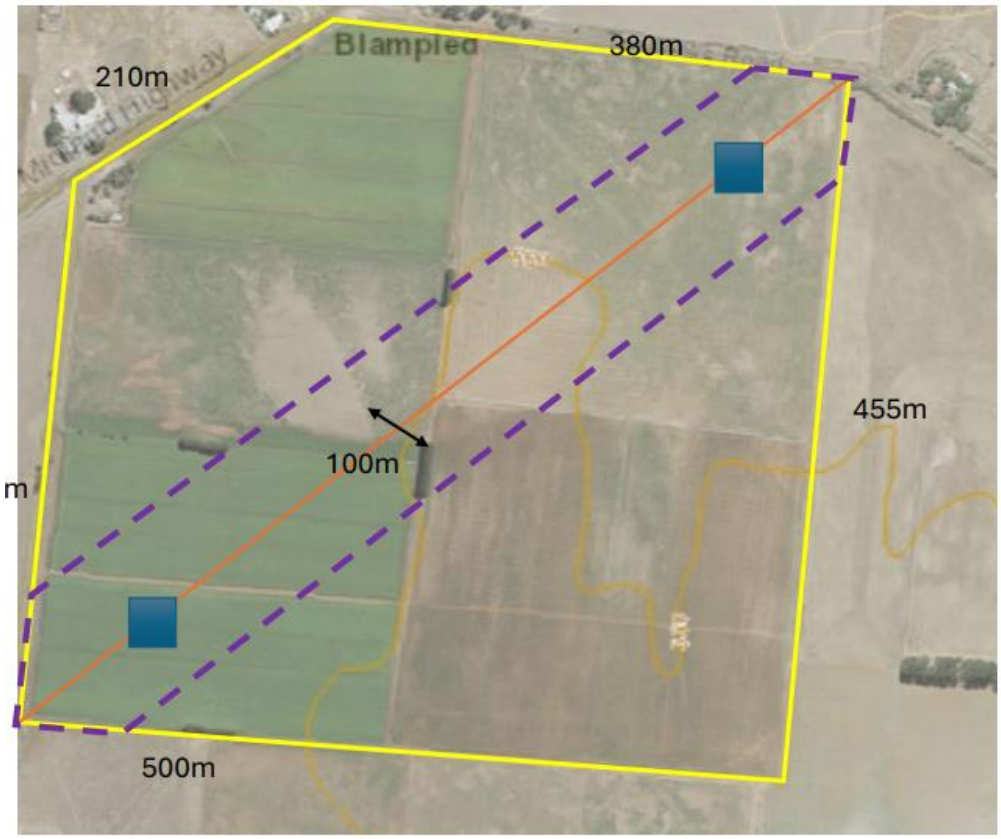
The location of the easement on the property can impact production beyond the area of the actual easement.

[1] https://www.agriculture.gov.au/abares/research-topics/agricultural-outlook/farm-performance-forecasts#cropping-remains-profitable-but-livestock-farms-face-challenges, accessed 11/10/2024.

Figure 1 – Easement parallel to boundary

In this case, as long as the remainder of the land can be accessed and farmed, is no severance or disturbance impact included in the estimated impact. The area of the easement may be lost of current production and suitable for another use, but the remainder of the land can still be farmed.

Figure 2 – Easement diagonal to boundary



However, the dissection of the paddock may mean that other areas of the paddock can no longer be farmed even though they are not part of the easement. For example, it may not be possible to drive machinery under the transmission line to get to the other side of the paddock or restrictions on irrigation mean that part of the land can no longer be used for horticulture. These impacts will affect the farming business for the life of the easement and transmission infrastructure.

These examples assume that there is an alternative product which can be farmed on the area of the easement. If no farming is possible, for example, the land cannot be accessed or there is no water source available the costs in terms of forgone income imposed on the farmer is even higher. In fact, the farmer may incur direct costs if they need to manage weeds or pest animals on the now unfarmed land.

Dispute resolution

Fairness relates not only to the size of the compensation payment but also the perception that there is redress if the offered payment is not considered adequate or there are other procedural disputes. Under the current LACA framework, there is scope to address disputes through the court system. However, the court system can be slow, costly and adversarial. This is unlikely to engender a belief among landholders that they are being treated fairly.

An alternative would be for the State Government to establish and independent, impartial dispute resolution mechanism, for example through a compensation ombudsman. An ombudsman, supported by an independent staff, would be able to mediate and arbitrate disputes between landowners and transmission companies.

Such a process is more likely than the court system to be perceived as fairer by landowners and hence they would be more accepting of the outcomes. In turn, leading to a quicker and less costly resolution.

Taxation issues
There is concern over how compensation payments may be treated for taxation. It is likely that compensation payments are taxable and depending upon individual circumstances taxation could significantly reduce the value of compensation to the landowner.

Lump sum compensation could be taxed at the landowner marginal tax rate or push them into a higher tax bracket.

IV. Recommendations to improve compensation

The VFF's preferred position would be to move to a system of commercial negotiation between the landowner and transmission company – consistent with the approach which exists for decisions about locating renewable energy projects.

However, if moving to a more commercially negotiated outcome is not feasible, the VFF suggests further options to improve the current LACA compensation framework to make it fairer and more acceptable to landowners.

In addition, the reform options outlined below would result in a greater landowner acceptance of hosting transmission infrastructure on their land – thereby assisting the State Government achieve its renewable energy and greenhouse gas reduction targets, and to do so more quickly.

Improving the LACA compensation framework

<u>'Quick wins'</u>
The quick wins in this section attempt to address some of the issues identified in the current compensation process without the need for legislative change – they can be implemented within the current framework.

<u>Improving guidance</u>
The key to ensuring fair and reasonable compensation is for the impact on farming to be well understood and for all the potential impacts being included in the assessment of compensation.

Valuers are trained and are members of the Australian Property Institute it is unclear how much specific instruction and experience they have on understanding and valuing farm impacts. Each farm is different, and impacts will vary from farm to farm, both in terms of farm location and type of farm. For example, the impact of transmission lines and easement is likely to be greater for a horticultural farm than one based on grazing livestock.

Critically, valuation of the 'interest' being affected, being the impact on business valuation, must be considered with clear direction that this must be considered, and clear guidance on how it should be considered.

The make a comprehensive assessment of the impact on the farm business the valuer needs to understand farm types, production methods and the impact of transmission lines on the farm and its productive capacity both now and into the future.

- **Recommendation 1: Engage with the Australian Property Institute to ensure there is adequate guidance on farm specific valuation for transmission lines in Victoria.**

The impact of severance and disturbance is particularly difficult to estimate. To do so accurately requires a thorough knowledge of the farm business and plans for development. Although issues such as disturbance should be considered as part of the market value assessment its importance, along with issues associated with severance require specific guidance for valuers.

It is important that all relevant experts, such as business analysts, agronomists etc are engaged to ensure the full impact of the easement is taken into account in all operations on the farm.

- **Recommendation 2: Produce guidelines on how to value severance and disturbance in the Victorian farm context – especially to ensure that ongoing impacts are recognised.**

Finally, as more and more projects are completed expertise and knowledge will develop and grow over time. It is important that these learnings are collected and disseminated to those involved in assessing and valuing the impact of transmission lines on farmland.

A community of practice, where valuers come together to share their insights and learnings would be an effective way to disseminate information and ensure consistency between valuers.

- **Recommendation 3: The Victorian Government to establish a community of practice for valuers involved in assessing compensation for transmission projects affecting farm businesses.**

Support farmers provide information

Given the need for valuers to have all possible information on the impact of the transmission line on the farm business it is important that landowners can best represent their interests.

To enable farmers to put the best case forward for compensation they need to know what information is required and have enough time to collect that information. Landowners are unlikely to have gone through this process before and so it is possible that they may be underprepared when visited by a valuer. Information provided by the landowner is critical to the valuer's estimate of compensation, hence landowners need to be well prepared.

A check list of points to raise and information required can help landholders prepare fully in advance of the valuer's visit and act as an 'aide memoir' during the meeting to make sure that all relevant points are discussed and taken into consideration.

- **Recommendation 4: Prepare a check list for farmers to discuss with valuer during an assessment – need to ensure the valuer has the right information.**

Address taxation issues

Taxation reduces the value of compensation to the farmer, noting that if the land had been sold as part of an ongoing farm business it would not have been subject to capital gains tax.

There is a process by which the Department of Treasury and Finance can approach the Commonwealth Government to have specific payments exempt from taxation. This process was used to provide tax exemptions for grants received by some businesses as support payments during 'shutdowns' because of the COVID pandemic.

- **Recommendation 5: The State Government to engage with the Commonwealth Government to ensure that compensation payments are tax free.**

Longer-term reforms

Longer-term reforms may also improve the compensation process – but they may require legislative change.

The LACA currently allows payment of a solatium of up to 10% of the compensation payment to allow for factors which are difficult to assess as part of the compensation package. However, given the uncertainties inherent in assessing the impact of transmission lines on agricultural land and the long life of the transmission asset the solatium should be increased. This can be considered a form of 'uncertainty compensation' for potential future impacts.

In addition, the solatium could also be used to compensate famers for the special value that they may have in the land that is not reflected in technical changes in land value.

This change would require amendment to the LACA.

- **Long-term Recommendation 1: Provide solatium of 20 percent to allow for uncertainty in estimating impacts on future farm operations and potentially to take account of special value.**

An independent and impartial dispute resolution mechanism would also encourage landholder acceptance of transmission infrastructure on their land. This would be better than the current system of recourse through the courts if compensation is disputed as this process and be costly and adversarial.

- **Long-term Recommendation 2: The State Government to establish an independent and impartial dispute resolution mechanism to arbitrate disputes relating to compensation payments and conditions.**

Conditions around the use of land around transmission lines and easements may change over time – generally becoming more restrictive. These future regulatory changes cannot be considered at the time compensation is offered at the beginning of the asset life. However, future regulatory changes could have a significant impact on farming practices, productivity, and farmer income.

A process to revisit compensation in the case of changed land use conditions and restrictions is required.

- **Long-term Recommendation 3: Put in place (e.g. in contracts, written agreements) provisions allowing compensation to be revisited if conditions change or additional restrictions are put on farm operation.**