

Review of community engagement practices

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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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Public Interest Advocacy Centre



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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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Introduction

PIAC welcomes the opportunity to respond to the Australian Energy Infrastructure Commissioner's (AEIC) review of community engagement practices (the review).

Failure to acquire social licence from communities for energy generation, storage and transmission projects has the potential to substantially increase the cost and time associated with the transition. It is vitally important to get the regulatory settings right to ensure that local communities feel their perspectives and preferences are considered in, and impact, planning processes and decisions.

Currently, the work being done on improving social licence for transmission, generation and storage projects includes:

- The Australian Energy Market Commission's (AEMC) rule change on enhancing community engagement in transmission building, which aims to implement recommendations made in stage 2 of the Transmission Planning and Investment Review (TPIR);
- An update to the guideline from the Australian Energy Regulator (AER) to accompany this rule change;
- The First Nations Clean Energy Strategy being developed under the Transformation Partnerships; and
- The ongoing work of the Energy Charter.

There is consensus on the fact that social licence for energy projects outcomes have been poor. However, there is not a well-established or -accepted narrative on why this is. This makes coordination between these different interventions difficult.

We provide here our understanding of the main dynamics preventing effective acquisition of social licence for energy projects based on our experience and discussions with landholders, community and energy advocates, transmission network service providers (TNSP), distribution network service providers (DNSP), energy retailers, energy consumers and regulators.

In the second section, we outline the interventions needed to alleviate these impositions. These include a set of changes to the regulatory settings concerning the stakeholder engagement activities of network service providers (NSP) and the introduction of a new authority coordinating and championing the direction of benefits of the energy transition to regional communities.

In the third section we outline our list of criteria for effective stakeholder engagement. This functions to illuminate the aim of the regulatory recommendations in section two. It is also proposed as a foundation for the more rigorous minimum standard that NSPs must demonstrate to have fulfilled in both the RIT-T and revenue determinations, which we recommend being introduced in section two.

1. What has prevented acquisition of social licence for transmission projects?

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

1. TNSPs consider 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 influence 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 needed 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. There are important differences between the planning bodies and operations in different states – NSW's EnergyCo has undertaken substantial consultation in its planning operations, for example. However, stakeholder engagement practices are not standardised across the NEM, even to the level of a coherent minimum standard.
4. The enforcement mechanism for TNSPs conducting baseline community engagement concludes with the regulatory investment test for transmission (RIT-T), 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 is likely to be in part driven by the absence of meaningful ongoing community engagement through earlier stages.
5. Regional communities who host transmission lines (and other energy projects) do not believe that the benefits of these projects accrue to them. There are entrenched narratives that regions start from a position of disadvantage relative to urban communities, in terms of health and education outcomes and economic opportunities. The

energy transition not only fails to redress this, it is believed, but actually embeds it further by imposing costs on regions and benefits on cities.

6. The promised benefits of cheap energy and increased job opportunities have failed to appear. As each month passes, the credibility of what is perceived as an elite and urban set of actors comprising regulators, policymakers, and private actors, such as TNSPs and DNSPs, erodes as the promised benefits fail to materialise.

This list primarily relates to transmission infrastructure and the regulatory structures governing it. Some of the dynamics are different or less pronounced when it comes to generation and storage projects, or to the roles of state- or NEM- planning agencies. We have focused the list on issues facing transmission projects in particular because the failure to acquire social licence for these stands as the most important threat to a smooth and swift transition.

To summarise the position: communities, often rightly, do not feel that they are included in decisions that affect them. They feel increasingly disempowered and mistrustful of the private and public actors governing the transition. The regulatory system takes an erroneous view that transmission companies will pursue best practice stakeholder engagement practices voluntarily out of their own interest.

2. What must be done to address these impediments?

Our understanding of this review is that it aims to take a high-level survey of the issue of social licence to operate in the energy sector. In keeping with this, our recommendations here are high-level and speak to the aims rather than the specific changes that we feel need to be made.

There are two broad areas of intervention required. The first is regulatory; the second relates to benefits accruing to host communities.

Regulatory changes

An intervention in the regulatory settings governing energy planning and project approval should aim to bring about a cultural change in TNSPs and to continue the positive trajectory of commitment to effective stakeholder engagement by DNSPs.

Community stakeholders and consumers must be reframed as stakeholders whose social licence must be acquired for projects to go ahead, rather than affected stakeholders who must be informed of decisions and who must be managed in order to allow business operations to proceed.

Networks are rightly expected to ensure their regulatory proposals reflect and are shaped by consumer preferences, and to demonstrate how they promote the long-term interests of their consumers. Local communities affected by generation, transmission, and storage projects, and identified stakeholder groups within these, should be elevated to be included in this expectation also.

Network businesses' commitments to cultures of good engagement should be dynamic. There should be an expectation that an organisation's understanding of best practice will evolve and

develop continually over time. Businesses need to commit to learning lessons from their experiences, identify and honestly address issues and weaknesses, and build on strengths. The alternative, which we see from the worst offenders, is an over-eagerness to self-congratulate on progress made, even as previous poor practice and outcomes are acknowledged.

Network businesses' commitments to cultures of good engagement should occur through all levels of the organisation. The commitment must be a top-down process entailing board and executive staff members pushing for good consumer engagement practices to be embedded in the day-to-day operation of a business. It should be expected that cultural change takes time and that the commitment to improve should be consistent and persistent.

In terms of how to effect these organisation-cultural changes, it is likely that enforcement and incentive settings will need to be changed. Up until now, it has largely been assumed that NSPs would see effective stakeholder engagement as being in their own self-interest as the necessary means to manage the threat of community opposition leading to costly project delays or disruptions. This has proved not to be a valid assumption.

It will be difficult to incentivise NSPs to pursue best practice without providing a positive inducement. This is problematic for two reasons. First, it pays an actor to do something it should already be doing, and so necessitates the payers – in this case energy consumers – paying for the privilege of avoiding a poor outcome. Second, the only path to ongoing effective stakeholder engagement is commitment to good engagement culture. Deep and lasting cultural change is unlikely to be effected if changes to practice are driven by external incentives, rather than internal commitments.

As positive incentives are not optimal and relying on network businesses' own self-interest to pursue better stakeholder engagement practices is insufficient, we are left with negative incentives. Our prescription is to set a mandatory minimum standard for NSPs' stakeholder engagement practices that is as high as possible. Expectations should not be expressed in terms of high-level principles, as the AEMC and AER have expressed a preference for, but rather in terms of tangible, practical, and measurable criteria. As a starting point for this high minimum standard, we provide our own criteria for effective stakeholder engagement below.

Benefits accruing to host communities

The narrative that regional communities start from a position of relative disadvantage and that this disadvantage is being compounded by the energy transition should be combatted with an aggressive program of benefits targeted to regional actors. Benefit programs should be designed in conjunction with the communities themselves, but should also start with an explicit aim of accelerating the accrual of the specific benefits associated with the energy transition to these communities.

On a consumption level, this could include rebates for electrification, electric vehicles, or home batteries; targeted infrastructure investment in things like electric vehicle charging stations or community batteries. It could include targeted measures aimed at enhancing regional energy resilience and preparedness for extreme weather events.

On an industrial level, the program could include skills and training programs, or public-private partnership investments in new industries replenishing demand for skilled workers as fossil fuel industries retreat.

Above the level of the actual benefits, a new coherent structure of authority for delivering and narrating these benefits should be defined. While different NEM governments offer many of these types of rebates and industry and skills policy ambitions, these are currently piecemeal, from the perspective of the regional community member. Some are delivered by governments and funded by taxpayers; some are delivered by TNSPs and DNSPs and funded by energy consumers. Inevitably, in a rollout without a governing authority, there are gaps and inconsistencies, and benefits are distributed on a seemingly arbitrary basis.

A new authority is needed to coordinate and champion the delivery of benefits from the energy transition to regional communities specifically.

3. Evaluation criteria for effective stakeholder engagement

We offer the following thirteen criteria as a starting point for defining a rigorous minimum standard prescribed above that NSPs would have to fulfil as part of their RITs and revenue determinations. They also serve to describe what we believe the aims of the regulatory settings relating to NSPs' stakeholder engagement should be.

Criterion	Description
Genuine commitment to engagement process	NSPs have a top-down commitment to embedding good consumer engagement into business as usual business practice.
Willingness to compromise	NSPs are willing to compromise when they have a different view to consumers.
Open-mindedness	NSPs are open to new ideas and information presented by consumers.
Deliberative engagement	NSPs use deliberative engagement processes to reach negotiated outcomes with consumers.
Ongoing engagement	NSPs integrate consumer engagement into their business as usual work, rather than limiting it to the months before a regulatory proposal is submitted.
Strategy-driven processes	NSPs design engagement programs that facilitate good consumer outcomes, not use 'process-driven strategies' to shape outcomes through a pre-determined engagement process.
Start talking early	NSPs begin engagement early enough to ensure that consumers can materially influence particular business decisions.
Flexible planning	NSPs adapt their plans as circumstances change.
Clarity of purpose	NSPs clearly articulate the purpose of consultation when they engage with consumers.
Fair and balance information	NSPs provide balanced information that does not lead consumers to a particular answer.
Providing the appropriate amount of information	NSPs provide the right amount of information to consumers, pitched at the right level; not so much that it is overwhelming, not so little that it is not useful.

Producing accessible communications	NSPs provide required information in a manner in which consumers can easily access it.
Effective inquiry	NSPs actively seek responses and do not just assume that no response means agreement.
Proactivity	NSPs are proactive in their consumer engagement.
Openness	NSPs are willing to share ideas and information without excessive confidentiality.
Information by request	NSPs provide the information requested of them by consumers.
Stakeholder identification	NSPs identify the consumers with whom they need to engage and share relevant information with them.
Consumers influence business planning	NSPs demonstrate that consumers have had input into the business planning process.
Consumers preferences are reflected in regulatory proposals.	NSPs demonstrate how revealed consumer priorities are reflected in their final regulatory proposals to the AER. In some ways, this the desired output of the criterion above.

4. Continued engagement

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