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**Submission responding to the Directions Paper:
Social licence for electricity transmission projects**

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Introduction

The Australian Energy Regulator (AER) recently released a directions paper titled, *Social licence for electricity transmission projects*. It is, perhaps, the regulator’s most unusual response so far to the many challenges posed by the energy transition. The directions paper attempts to reconcile two concepts: network providers’ attainment of social licence and the application of network regulation. In doing so, the paper simply presumes these two concepts are compatible. It provides no explanation or justification for doing so.

It seems the paper is primarily focussed on asserting a “foundation for establishing the case for expenditure” under a new line-item in networks’ regulatory accounts called “social licence”. Nothing highlights this singular objective more than the paper’s repeated insistence that such expenditures must be prudent and efficient. Indeed, readers are reminded of the primacy of this regulatory requirement 13 times in the short paper.

The purpose of this submission is to highlight two prior questions that must be considered before any attempt is made to treat social licence as something that can be reduced to a regulated expenditure – namely, what is social licence and who pays for what?

What is social licence?

A definition of social licence appears in a one-line text box in the directions paper, which states:

Social licence refers to level of acceptance of an organisation and its activities by a community. (p.2)

The paper then goes on to state:

This will rely on:

- *Trust: which takes time and effort to establish*
- *Credibility: providing true and clear information and fulfilling commitments*
- *Legitimacy: clearly following all rules and obligations to meet community expectations.*

No references are cited in support of these statements. They appear, however, to be drawn from a short paper published by The Ethics Centre which observes [emphases added]:¹

***At its simplest**, it refers to the acceptance granted to a company or organisation by the community.*

The Ethics Centre proceeds to explain that social licence consists of three components.

The social license to operate is made up of three components: legitimacy, credibility, and trust.

- *Legitimacy: this is the extent to which an individual or organisation plays by the 'rules of the game'. That is, the **norms of the community, be they legal, social, cultural, formal or informal in nature.***
- *Credibility: this is the individual or company's **capacity to provide** true and clear information to the community and fulfil any commitments made.*
- *Trust: this is **the willingness to be vulnerable to the actions of another. It is a very high quality of relationship** and takes time and effort to create.*

Despite the apparent similarities between the two documents, the bolded text in the extracts drawn from The Ethics Centre paper do not appear in the descriptions provided in the AER's directions paper. Why might this be? Presumably, because these highlighted elements of social licence are either open-ended or intangible, making them inconvenient and awkward to capture within an economic regulator's drab accounting rules.

Denuding social licence of these intangible and aspirational elements, leaves the concept stripped of its core value to society (or community). It is unfortunate the directions paper does not explore the consequences of what it has done; or whether what is left is sufficiently unique to make it worth pursuing within a regulatory context.

¹ The Ethics Centre (23 January 2018) *Ethics Explainer: Social license to operate*. Available at: <https://ethics.org.au/ethics-explainer-social-license-to-operate/>

The centrality of trust and intangibility to the notion of social licence is emphasised widely. For example:²

An important characteristic of social licence is that there is no written agreement or formal licence as it's built on trust. It can be withdrawn at any time.

This observation invites (or should invite) an obvious question. If social licence does not involve a “written agreement” – in other words, if social licence does not manifest in an observable form – then how can it possibly lend itself to treatment as an object of regulation?

There are too many questions not answered by the directions paper.

Who benefits? Who pays?

Setting aside for a moment the concerns outlined above, it is worth considering who benefits from social licence and therefore, who should bear its costs. The following commentary sheds some light on these questions.³

The central idea is that companies should not only consider the dynamics of the market and the interests of shareholders, but they should also consider community concerns – and deal with these factors accordingly – in order to retain legitimacy and continue their enterprise.

In a nutshell, the social license to operate challenges the dogma of shareholder value maximisation, by emphasising stakeholder concerns in addition to shareholder returns.

These comments make clear that attaining social licence creates benefits for businesses (shareholders) *and* the community (stakeholders⁴) but the pursuit of social licence is not secondary to the maximisation of shareholder value. That is, costs associated with the pursuit of social licence fall within the exercise of maximising shareholder value. They are costs borne by the business as part of its efforts to maximise its financial value.

Within a regulatory environment of the sort administered by the AER, this observation implies most (if not all) of the costs associated with attaining social licence should not be recovered from consumers. These are costs that come off the business’ bottom line. They reflect the benefit accruing to the business from attaining social licence.⁵ Any alternative treatment of these costs would be nonsensical. It would be equivalent to arguing that consumers should be paying more for network services just so they (consumers) can trust the network operator. For reasons the direction paper does not explain, this is precisely the conclusion it asserts.

² Available at: <https://www.sustainability.vic.gov.au/recycling-and-reducing-waste/for-councils-and-other-waste-recycling-operators/kerbside-recycling/educating/engaging-communities-on-waste#:~:text=The%20social%20licence%20is%20the,be%20withdrawn%20at%20any%20time.>

³ Dr Boersma, Martijn (11 September 2020) *Paradox of the social license to operate*. Available at:

<https://www.smh.com.au/business/workplace/paradox-of-the-social-license-to-operate-20200907-p55tb6.html>

⁴ Where “stakeholders” may refer to the community-at-large or specific sub-groups such as consumers, employees and future generations.

⁵ Perhaps regulatory treatment of marketing costs provides the nearest point of comparison insofar as regulators may provide a small allowance for marketing activity, but any additional marketing expenditure must come off a business’s bottom-line (shareholder funds).

Conclusion

This submission was made necessary by the directions paper's efforts to force-fit the creative notion of social licence into the drab confines of the regulatory framework. The directions paper is seeking to fit an intangible peg into a seemingly non-existent hole. In its attempt to do so, the paper struggles to express its purpose. As a result, it tortures the term 'social licence' – effectively treating it as an adjective which can simply be attached to numerous regulatory concepts (see Appendix A).

It is not clear what the directions paper is seeking to achieve over-and-above the AER's *Better Resets Handbook* (and other regulatory instruments) which outlines its expectations regarding allowable costs associated with community engagement and improved service outcomes.

It would seem the AER has two options for meaningfully moving forward. It can either properly explore whether the chasm between social licence and economic regulation can be breached, or, more simply, it can abandon its (mis)use of this abstract concept. In either case, if the AER considers there are costs over-and-above those already addressed in its various regulatory instruments, then it should clearly and methodically articulate why those additional costs ought to be borne by consumers.

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Belabouring the term ‘social licence’

Because the directions paper has not properly outlined the additional benefit it is seeking to achieve by introducing the concept of ‘social licence’ into the regulatory framework, it cannot refer to those purposes and benefits. Instead, the paper relies on repeatedly using the term ‘social licence’ as though its repeated use confers obvious meaning upon it. This leaves the paper suffering from a heavily belaboured taxonomy in which the term ‘social licence’ is treated as an adjective which can simply be attached to a suite of regulatory-sounding nouns. For example, the directions paper variously refers to:

- social licence actions
- social licence activities
- social licence activity costs
- social licence activity plan
- social licence building activities
- social licence building costs
- social licence concerns
- social licence consideration
- social licence elements
- social licence engagement
- social licence engagement actions
- social licence engagement activities
- social licence engagement plan
- social licence expenditures
- social licence related expenditure
- social licence issues
- social licence outcomes

Indeed, the term ‘social licence’ appears over 130 times in just over 20 pages – evincing the paper’s lack of clarity about its objectives when seeking to introduce this concept into the regulatory framework.