

9 January 2023

Mr. Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 520 Melbourne
VIC 3001

By email to: AERringfencing@aer.gov.au

Dear Mr. Feather,

Initiation notice - Ring-fencing class waiver Community batteries funded under the Commonwealth Government's Community Batteries for Household Solar Program

Nexa Advisory welcomes the opportunity to provide a submission with input from the Yarra Energy Foundation, to the AER's Initiation notice - Ring-fencing class waiver Community batteries funded under the Commonwealth Government's Community Batteries for Household Solar Program ("the Program").

The AER, in its explanatory statement to the November 2021 Ringfencing Guideline extensively discuss their concerns with the DNSPs owning and operating batteries. The AER state:

*"Battery technology is still relatively new and emerging. There are a number of potential deployment models, one of which involves DNSP ownership. **Relative to other models, DNSP ownership of batteries presents risks to competition that needs to be carefully considered. As a result, we do not think that the research provides a conclusive position on this. DNSPs are only one of many potential providers of community-scale batteries. It is therefore important that the regulatory framework supports a range of deployment models.**"¹*

*"We are concerned that allowing DNSPs to actively engage in this market, without appropriate controls, **risks the foreclosure of other players. This would not be in the long-term interest of consumers**" and "It could mean that the benefits from batteries **might not materialise to the same extent and may hinder innovation and competition from what is currently an emerging technology and market.**"²*

The AER are concerned that they will not have sufficient resources to assess the volume of waiver applications from DNSPs for the 400 batteries that need to be delivered before 2026, which seems to imply that DNSPs and/or the AER anticipate the majority of community batteries being DNSP-led.

While the AER initiation notice targets waiving the ringfencing requirement on the leasing of spare capacity and the operation of the battery by separate business entities to support the Commonwealth Community Batteries for Household Solar program (the Program), a class waiver of the ring-fencing guidelines will set the wrong precedent and result in unintended consequences. Our main concerns and recommendations are outlined further in this submission.

¹ [AER - Ring-fencing Guideline Explanatory Statement \(Electricity distribution\) Version 3 - November 2021.pdf](#)
page 29

² [AER - Ring-fencing Guideline Explanatory Statement \(Electricity distribution\) Version 3 - November 2021.pdf](#),
page 30

The electricity distribution Ring-fencing guideline is critical to protect consumers, innovation and competition

The objective of the Ring-fencing guideline (electricity distribution) (the Guideline) is to:

- *promote the National Electricity Objective by providing for the accounting and functional separation of the provision of direct control services by Distribution Network Service Provider's (DNSPs) from the provision of other services by them, or by their affiliated entities.*
- *promote competition in the provision of electricity services³.*

Further, the Guideline operates to ensure that the regulated electricity DNSPs do not exercise their monopoly powers by separating regulated activities from competitive business activities, to support competitive markets. As a result, the Guideline provisions currently prevent a DNSP from:

- discriminating in favour of their related unregulated businesses to disadvantage competitive third parties operating in the same markets
- using revenue earned from electricity customers from regulated services to fund contestable services

Batteries present a range of benefits to consumers subject to the business model delivery. We agree with the AER that the full value stack of batteries can be realised through a third-party provider installed the battery scenario and that DNSP ownership and operation of batteries may diminish competition and innovation in this evolving market. DNSP-owned and operated batteries are an activity that are likely to breach the Ringfencing Guideline since competitive third parties can also deliver network connected batteries and sell a service to the DNSP without any ringfencing issues.

The AER, in the development of the current version of the Ringfencing Guideline, identified a concern that allowing DNSPs to actively engage in the battery market, without appropriate controls, risked the foreclosure of other players and would not be in the long-term interest of consumers:

"We are concerned that allowing DNSPs to actively engage in this market, without appropriate controls, risks the foreclosure of other players. This would not be in the long-term interest of consumers"⁴

Further the AER in the consultation paper also expressed the concern that DNSPs leasing battery capacity provides access to an additional revenue stream and that this revenue will not flow back to consumers.⁵

Given the fact that the development of distribution network connected batteries is relatively new, the AER previously decided to provide a specific streamlined waiver process for DNSP-owned and operated batteries and this process has been successfully used by a number of DNSPs for close to 80 "community" battery projects. The existing streamlined waiver for DNSP-owned and operated community batteries is operating well and is a proportionate response to both the need to support innovation, the rapid delivery of storage onto the system and the need to ensure that DNSPs exercise their monopoly powers appropriately.

³ <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/ring-fencing-guideline-electricity-distribution>

⁴ <https://www.aer.gov.au/system/files/AER%20-%20Ring-fencing%20Guideline%20Explanatory%20Statement%20%28Electricity%20distribution%29%20Version%203%20-%20November%202021.pdf>, page 30

⁵ [PowerPoint Presentation \(aer.gov.au\) or ibid page 36](#)

We strongly encourage the AER to protect the benefits of the ringfencing guidelines and maintain these arrangements.

Network data transparency is needed to maximise benefits to ensure competitive neutrality

Third parties, including community groups, do not have access to the network data that would support a robust business case for a third party-owned community battery.

Only the DNSPs have the data that indicates where there are constraints on the network either to installing more local generation, adding electric vehicle charging, or accessing the transmission system. The Distribution Annual Planning Report (DAPR) and the Energy Networks Australia “Network Opportunity Maps” (based on the DAPR) do not provide sufficient, publicly-available, up-to-date data to underpin the development of a third-party community battery.

This places third parties and communities at a disadvantage in comparison to DNSPs as they are dependent on the DNSP sharing its network data. This reliance on the DNSP providing relevant and timely data enhances the likelihood that the DNSP may discriminate against third parties, because the limited access to network data essentially ensures that only a DNSP can currently develop viable battery project⁶. Even with regulatory safeguards, this may remain a risk due to market structures and broader network regulatory arrangements.

The AER, under “Scenario 1” indicate that the full value stack of a community battery can only be accessed by third parties:

“The first scenario would see a third-party provider install the battery. Under this scenario, the full value stack can be realised. The third party is not subject to ring-fencing requirements.”⁷

This is why caution is needed when considering the granting of the waiver to the ringfencing requirements that would give a DNSP further advantages than it already enjoys through its monopoly access to network data.

Discrimination is notoriously difficult to demonstrate under the Guideline given the broad nature of the obligation, but if the AER and the Commonwealth Government are genuinely interested in community-led batteries, then this information asymmetry needs to be urgently resolved, with DNSPs sharing publicly the locations that maximise the opportunities for third-party and community-led batteries.

Terms of the proposed class waiver are insufficient and require more rigour to meet the policy goals intended by the Federal Government

The Commonwealth Government’s Community Batteries for Household Solar Program targets funding at delivering community batteries that meet the policy goals of lowering customer bills, cutting emissions by facilitating further deployment of rooftop solar PV and reducing the need for customers to invest in new network or their own batteries by allowing them to store and use the excess power they produce in a community battery.

DNSP-owned and operated “community” batteries are still small in number and capacity and it is not yet clear whether the streamlined waiver and the DNSP-led model for batteries is delivering benefits to the wider community and customers.

⁶ <https://www.aer.gov.au/system/files/AER%20-%20Ring-fencing%20Guideline%20Explanatory%20Statement%20%28Electricity%20distribution%29%20Version%203%20-%20November%202021.pdf>, page 33

⁷ Ibid, page 31.

It is not clear how the class waiver and the currently proposed terms will ensure the policy intent of the Program is met or that the AER's concerns with DNSP-led community batteries, extensively laid out in the explanatory note to the November 2021 Guideline, are mitigated⁸.

Further, terms of the proposed class waiver related to cost allocation and cost subsidisation do not provide the certainty needed to ensure DNSPs do not use public funds, such as the Demand Management Innovation Fund, to subsidise the community battery assets and associated services.

Proposed approach and recommendations

We agree that the DNSPs have a critical and practical role to play in community batteries. Below, we outline 3 key recommendations we believe would address the AER resourcing concerns as well as ensure that the Program's policy intent is met while protecting the competitive market and innovation in battery markets.

Recommendation 1

DNSPs as "Battery Provider of Last Resort" under the Program - The AER should place an obligation on the DNSPs to require them to publish locations with capacity constraints or map of opportunities and other network issues that benefit from the batteries. ARENA would solicit proposals from other parties to undertake projects in those locations within a specified timeframe. Only then locations that have not been subject to alternative proposals could be granted a waiver. DNSPs will be required to submit a streamlined waiver through the existing arrangements. Over the last 12 months, the AER has granted waivers to three DNSPs for over 80 battery projects through the streamlined waiver application process. This demonstrates that workload can be managed through this existing process.

Benefits of this approach

- Provides transparency on the network data and information needed and avoid the data discrimination that currently exists.
- Maintains the robustness of the ringfencing guidelines and original intent to protect consumers.
- Ensures innovation and competition is not hindered while battery markets continue to evolve.
- Enable consumers to realise the full benefits of community batteries not just benefits related to DNSPs and network services.
- Reduces the number of waiver applications through the streamlined application waiver process which minimises workload on the AER and DNSPs.

Recommendation 2

The proposed class waiver terms to deliver community batteries under the Program DNSPs must demonstrate the ability to meet the criteria of that program, which include:

1. putting downward pressure on household electricity costs
2. contribute to lower emissions
3. provide a net benefit to the electricity network
4. store solar energy for later use or sharing and support further solar installations
5. allow households that cannot install solar panels to enjoy the benefits of renewable energy through shared community storage.

⁸ Ibid, Chapter 3

In addition to the Program criteria, we recommend the waiver criteria also ensures DNSPs do not use public funds such as the Demand Management Innovation Allowance to subsidise community batteries costs and associated services under this program.

Benefits of this approach

- Ensure that the criteria of the government funding programs are met and consumers directly benefit from these public funds and projects.
- Establishes a precedent for DNSPs to partner with 3rd party providers and retailers providing healthy competition.
- Avoid cross subsidisation of the use of public funds by regulated monopoly organisations.

Recommendation 3

A formal review every 12 months is set in place to ensure the projects and grants are delivering on the Community Batteries for Household Solar program’s policy intent. The concerns related to the provision of the class waiver could put prospective providers at a competitive disadvantage to the extent that it results in no demand for such a service. This is because the proposal would allow DNSPs to earn unregulated revenue from regulated electricity supply assets as suggested by the AER⁹. Given the above, if the AER ultimately grants the class waiver, we recommend it is only applied for a short period (e.g., 1-2 years).

Benefits of this approach

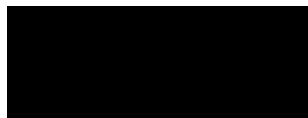
- Ensures there is a review process in place for any learnings, risks and issues identified that need to be addressed.
- Any breaches are picked up and addressed early in the program cycle.

In Conclusion

We recognise DNSPs have a critical role to play as a facilitator of distribution connected batteries and will necessarily need to be involved in any community battery project. However, we agree with the AER’s previous decision on a specific streamlined waiver process for DNSP-owned and operated batteries which process has been successfully used by a number of DNSP for their own battery projects to date. Further we encourage the AER to consider our recommendations with careful thought as the community battery market is in its infancy and applying a class waiver will set the wrong precedent and have unintended consequences.

Thank you for the opportunity to comment. If you would like to discuss any of the issues raised in this submission, please contact me on [REDACTED]

Yours Sincerely,



Stephanie Bashir

CEO & Principal

Nexa Advisory

⁹ [PowerPoint Presentation \(aer.gov.au\)](#)

About Nexa Advisory

Nexa is a full-service advisory firm. We work with public and private clients including renewable energy developers, investors and climate impact philanthropists to help accelerate efforts towards a clean energy transition. We've been shaping the energy industry for over 20 years. With a proven track record across policy creation, advocacy, political risk assessment and project delivery, we're holistic in our approach and deliver solutions with commercial intent.

The Nexa Advisory team is a collaboration of passionate energy specialists, all committed to the successful transformation of Australia's energy markets. The team is focused on helping clients grasp the unpredicted opportunities the energy transformation will bring. The decentralisation of energy promises, for the first time, to enable a truly democratised ecosystem with people and communities at the centre. We believe in an energy industry where people are at the centre of every recommendation we make. This belief guides our approach to the challenges we solve, and the outcomes we create.