

Explanatory Statement

Non-disclosure Guideline — *Electricity
Infrastructure Investment Act 2020 (NSW)*
DRAFT

February 2026

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1 Introduction

This explanatory statement accompanies the Australian Energy Regulator's (AER) draft Non-disclosure Guideline — *Electricity Infrastructure Investment Act 2020* (NSW) (ND Guideline).

The ND Guideline aims to set out a clear and consistent approach for how network operators and other entities assisting with the delivery of the [NSW Electricity Infrastructure Roadmap](#) are to make a claim of non-disclosure over information provided to the AER in connection with our functions under the *Electricity Infrastructure Investment Act 2020* (NSW) (EII Act) and *Electricity Infrastructure Regulation 2021* (NSW) (EII Regulation). It sets out our approach to assessing non-disclosure claims having regard to the non-disclosure framework set out in the EII Act and EII Regulation, and our approach to consulting entities where we consider their claim is not substantiated.

As an independent regulator, we are committed to making well-informed and accountable decisions that are in the long-term interests of energy consumers. We consider transparency and meaningful consultation with affected stakeholders essential to achieving good regulatory decisions. Stakeholders should have access to sufficient information to be able to understand and assess the substance of issues affecting their interests. We acknowledge that there are some circumstances where it is appropriate for information provided to us to not be disclosed publicly, especially where publishing the information is likely to harm the long-term interests of consumers. However, we seek to foster an open and transparent decision-making process that allows consumers to be informed of the costs and benefits of the projects they ultimately pay for. For these reasons, the ND Guideline aims to provide greater transparency around non-disclosure claims, act as an incentive for network operators to only make claims that are specific, well-reasoned and fully justified and minimise the risk of inadvertent disclosure.

This ND Guideline also aims to provide network operators and NSW Roadmap entities assisting with the delivery of the NSW Electricity Infrastructure Roadmap, with clear guidance that aligns with the current regulatory settings. By improving the clarity around how we assess claims for non-disclosure, we intend to reduce blanket or unjustified non-disclosure claims and streamline the assessment process for all.

2 Background

In August 2023, we published our draft [Confidentiality Guideline – Electricity Infrastructure Investment Act](#) (2023 draft Guideline) alongside other AER supporting guidelines.

Since the release of our 2023 draft Guideline, we have assessed non-disclosure claims for several contestable and non-contestable revenue determinations. As a result of these assessments, we have gained practical insights and developed a clearer understanding of what information our guideline should include to enhance its effectiveness and how we can improve the efficiency of our processes in assessing claims for non-disclosure. There have also been changes to the legislative framework governing what information we must publish in a revenue determination and when.

Given these learnings and the recent legislative amendments, we have decided to replace our 2023 draft Guideline with this new ND Guideline. The ND Guideline is currently in draft form, and we are now seeking stakeholder feedback on it.

Once the ND Guideline has been finalised, all references to the 2023 draft Guideline in other Guidelines we have published under the EII Act and EII Regulation should be read as a reference to the ND Guideline. Once we have published our final ND Guideline, we will review all other guidelines (including guidance notes) and update references to the 2023 draft Guideline to instead refer to our ND Guideline.

2.1 Scope of the Non-disclosure guideline

The purpose of the ND Guideline is to provide guidance to network operators and NSW Roadmap entities about:

- our expectations around the making of non-disclosure claims over information provided to us in connection with our functions under the EII Act and EII Regulation.
- how we will assess non-disclosure claims having regard to the non-disclosure framework set out in the EII Act and EII Regulation.

The ND Guideline focuses primarily on information provided to us in relation to the making of:

- non-contestable revenue determinations,
- contestable and contestable augmentation revenue determinations, and
- revenue adjustment decisions.

However, it is intended that the ND Guideline remains flexible and applicable to other functions we perform under the EII Act and EII Regulations, such as approving risk management frameworks, or consultation by the Consumer Trustee on tender rules for long-term energy service agreements. This is to promote consistency between our assessments and transparency in our approach to assessing claims for non-disclosure for our functions under the EII Act and EII Regulations.

The Contribution Determination Guideline is scheduled for review in 2026, and that review will address how confidentiality claims are assessed in relation to our function to make annual contribution determinations. As such, the ND Guideline does not address confidentiality claims relating to annual contribution determinations.

2.2 Getting involved

We are asking stakeholders to provide submissions on the draft ND Guideline, which we will consider before we finalise it. We aim to review submissions received, make any necessary amendments arising out of those submissions, and finalise our ND Guideline by the end of May 2026.

We encourage engagement from all stakeholders. Our decisions affect a wide range of individuals, businesses, and organisations. Hearing from those affected by our work helps us make better decisions, provides greater transparency and predictability, and builds trust and confidence in the regulatory regime. Table 1 sets out the key milestones planned for the completion of this review.

Table 1 Key milestones for review of the ND Guideline

Indicative dates	Key milestone
20 February 2026	Publish the draft ND Guideline on the AER website, with an accompanying Explanatory Statement
20 business days from date of publication	Consultation period
20 March 2026	Submissions close
May 2026	Publish the final ND Guideline on the AER website

2.3 Invitation for submissions

We invite stakeholders to make submissions on the draft ND Guideline by 20 March 2026.

Submissions should be emailed to: REZ@aer.gov.au with an email title of 'AER Non-disclosure guideline 2026 – submission'.

Alternatively, submissions may be sent to:

Mr Scott Haig
 Acting General Manager,
 Renewable Energy Zones Branch
 Australian Energy Regulator
 GPO Box 3131
 CANBERRA ACT 2601

We prefer all submissions be publicly available to facilitate an informed and transparent consultative process. We will treat submissions as public documents unless otherwise requested. We will publish all non-confidential submissions on the [AER's website](#). For further information on the AER's use and disclosure of information provided to it, see the [ACCC/AER Information Policy](#).

We request parties wishing to submit confidential information to:

- clearly identify the information that is the subject of the confidentiality claim

- provide a non-confidential version of the submission in a form suitable for publication on the AER's website.

3 Non-disclosure claims: non-contestable revenue determination

3.1 Pre-lodgement discussions

Section 2.2 of our ND Guideline sets out our expectation that network operators engage in pre-lodgement discussions with us regarding any anticipated non-disclosure claims in their revenue proposal. These discussions will assist us to streamline our assessment and processing of non-disclosure claims.

Pre-lodgement discussions should focus on what information the network operator is proposing to claim non-disclosure over and the reasons why. We also expect that during this pre-lodgement stage, the network operator will consider how it can limit non-disclosure claims.

Pre-lodgement discussions are considered a key part of the revenue determination process and are important in providing us with an early understanding of what information is intended to be the subject of a non-disclosure claim and the reasons why. We would therefore expect there to be no surprises in relation to a non-disclosure claim once submitted to the AER for assessment as part of a revenue proposal.

3.2 Submission of revenue proposal

When submitting a revenue proposal, all information that the network operator does not want disclosed must be clearly identified. Section 2.3.1 of the ND Guideline sets out how network operators can make a non-disclosure claim with a revenue proposal. Specifically, network operators must complete the non-disclosure template at Attachment A of the ND Guideline.

The non-disclosure template requires network operators to specify, in respect of each claim of non-disclosure, the following:

- the document name or identification number, page and paragraph number;
- the topic the information relates to (for example capex, incentive scheme, adjustment mechanisms etc);
- a description of the information;
- reasons supporting why the information should not be published and addressing the factors in clause 53(6) of the EII Regulation; and
- the identification of any detriment that might be incurred from disclosure of the information.

We consider this approach:

- improves transparency as to what information the network operator claims non-disclosure over and reasons why it considers the information should not be published.
- incentivises parties to make genuine non-disclosure claims. The requirements to provide reasons for non-disclosure claims and specify any detriment that the network operator

may incur from disclosure will require the network operator to focus on how it will justify its claim and provides an incentive to only make necessary claims.

- streamlines our consideration of non-disclosure claims. Requiring network operators to address the factors in clause 53(6) of the EII Regulation when submitting their revenue proposal allows us to streamline our processes by being able to have regard to non-disclosure claims at later stages of the process, such as the revenue determination stage.
- minimises the risk of inadvertent disclosure. Requiring network operators to clearly identify content that is proposed not to be disclosed provides clarity on that information and minimises the risk of inadvertent disclosure.

Network operators must also complete the template in Attachment B of the ND Guideline, which sets out the proportion of information over which non-disclosure is claimed. In doing so, they must specify the number of pages in their revenue proposal that contain a non-disclosure claim and the number of pages which do not. Where applicable, we will also compare the proportion of the revenue proposal that is subject to non-disclosure with the level of non-disclosure claimed by other network operators in their revenue proposals and publish this comparison on our website alongside attachments A and B.

3.3 Publication of information provided during the revenue determination process

Subject to the EII Act and EII Regulation, we must publish a revenue proposal, as soon as practicable, after we determine the revenue proposal complies with the requirements of any information notice we issue to the network operator.¹ We will also publish a preliminary position paper approximately 55 business days after receiving the network operator's revenue proposal.²

Under the EII Regulation, we must not publish information contained in a revenue proposal or our preliminary position paper if we are satisfied that the information is confidential or commercially sensitive. If we are not satisfied that the information is confidential or commercially sensitive, it is open to us to publish the information. In these circumstances, we may consider other relevant factors when deciding whether it is appropriate to publish the information, such as the factors in clause 53(6) of the EII Regulation. Section 4 of the ND Guideline provides guidance on how we will apply the factors in clause 53(6).

The ND Guideline states that where we are satisfied that the information is confidential or commercially sensitive during a stage of the revenue determination process (e.g., revenue proposal or preliminary position paper) this assessment may be reconsidered at the time of publication of future documents (i.e., at the time of publication of a revenue determination). In circumstances where our decision on confidentiality or commercial sensitivity has changed from a previous stage, we will consult with relevant parties using the approach set out in section 5 of the ND Guideline.

¹ EII Chapter 6A, cl. 6A.11.3(a).

² AER – [Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects](#) – December 2025, section 4.2.

4 Non-disclosure claims: contestable revenue determination

Section 3 of the ND Guideline clarifies the process for making non-disclosure claims in a contestable revenue determination process.

The section includes the following:

- Clarification that we expect to publish only limited information regarding a network operator's proposal for a contestable revenue determination or revenue adjustment, and we do not require non-disclosure claims to be made for those components of proposals that we do not intend to publish.
- Text setting out the amended clause 53 of the EII Regulation, requiring us to publish a notice with a summary of the revenue determination, the NER-equivalent capital cost of the project, and the reasons for our revenue determination.
- Text setting out our process of providing the network operator and the Infrastructure Planner with a draft notice and reasons for making the revenue determination and inviting both parties to make any non-disclosure claims over the information.
- Guidance on how the network operator and the Infrastructure Planner are to make non-disclosure claims for information contained in the draft notice and/or reasons for our revenue determination, or for the updated schedule of payments for an adjustment decision that did not require the determination to be reviewed and remade.
- Text setting out the approach we will take to publish a notice and reasons for our revenue determination, or updated schedule of payments for an adjustment decision.

We expect network operators to contact us prior to submitting their revenue proposals to clarify expectations around material that we intend to publish.

The approach of publishing only limited information on contestable revenue or adjustment proposals reflects that, under the contestable framework, the competitive market is being relied upon to produce an outcome that reflects prudent, efficient and reasonable costs rather than a detailed assessment of costs.

5 Consideration of non-disclosure claims

Section 4 of the ND Guideline includes additional guidance on how we will assess claims for non-disclosure. Detail is provided about how we interpret the factors listed in clauses 53(6) of the EII Regulation,³ and how we assess whether information is confidential or commercially sensitive for purposes of clause 53(8) of the EII Regulation. This guidance is intended to promote consistent and transparent non-disclosure assessment outcomes across the information we publish under the EII Act and EII Regulation.

Section 4 of the ND Guideline includes the following:

- Clarification that in assessing the factors under clause 53(6) of the EII Regulation, we will be guided by the objects of the EII Act, and the principles set out in section 37(1) of the EII Act, and clause 46 of the EII Regulation.
- How we will interpret the factors in clause 53(6) of the EII Regulation (including the linkage with clause 53(8) of the EII Regulation).

We note that the guidance provided on clause 53(6)(b) of the EII Regulation is applicable to our assessment on whether information is confidential or commercially sensitive for the purposes of clause 53(8) of the EII Regulation.

Where a network operator provides a non-disclosure claim based on commercial sensitivity or confidentiality, we expect the application to clearly distinguish between information that is 'confidential' and information that is 'commercially sensitive', and to provide reasons.

As discussed in section 4.3.1 the ND Guideline, where we decide to review and remake a revenue determination, we may review any existing redacted information in the revenue determination, notice, reasons or schedule, and may make a decision to remove these redactions once this information is no longer confidential or commercially sensitive.

The ND Guideline also clarifies that confidentiality agreements that form part of contractual arrangements between the network operator and a third party do not automatically prevent us from publishing information. We acknowledge that parties may include confidentiality provisions that prevent the parties from disclosing any part of the contractual agreement. Whilst these types of agreements may be relevant to our consideration of whether information may be confidential, they are not determinative of whether we will be satisfied that information is confidential.

³ These factors include public interest; information that is confidential or commercially sensitive, and the effect of publishing the information on future competitive assessment processes.

6 Summary of questions

We provide the below set of questions to assist in shaping your submission to the draft ND Guideline. However, stakeholders are welcome to comment on any aspect of the draft.

1. What changes could be made to improve our approach to dealing with claims of non-disclosure under the EII regulatory framework?
2. What practical challenges might occur in applying the proposed approach in the ND Guideline, and how might they be addressed?
3. What additional circumstances might be considered alongside the non-exhaustive list of considerations that we may take into account when assessing:
 - public interest considerations for and against disclosure of information
 - whether the information is confidential or commercially sensitive
 - the effect of publishing the information on future competitive assessment processes.
4. What feedback do you have on the appropriateness of the Non-disclosure claim template at Attachment A of the ND Guideline?