
CCP35 Advice to AER – Non-disclosure Guideline

CCP35 Advice to the AER – Non-disclosure Guideline
Electricity Infrastructure Investment Act 2020 (NSW) DRAFT

Helen Bartley

20 March 2026

Acknowledgement of Country

I acknowledge the Traditional Custodians of the various lands over which the AER's Non-disclosure Guideline will apply. I honour the customs and traditions and special relationship of those Traditional Custodians with the land as well as those where this report is being prepared. I respect the elders of these nations, past and present.

Confidentiality

To the best of my knowledge this report does not present any confidential information.

Table of Contents

1	Summary.....	4
2	Context for this advice.....	7
2.1	Regulatory framework	7
2.2	The EII Act and confidentiality	7
2.3	Process for proposal development	7
2.4	Adverse impacts of non-disclosure on consumers	8
2.5	Non-disclosure Guideline.....	9
3	Feedback on the draft ND Guideline	11
3.1	Overall comment	11
3.2	Responses to AER questions	11
3.2.1	Changes to improve the AER’s approach to dealing with non-disclosure claims.....	11
3.2.2	Practical challenges in applying the proposed approach	12
3.2.3	Additional circumstances	13
3.2.4	Feedback on Attachment A of the ND Guideline	13
3.3	Other feedback: Attachment B of the ND Guideline	14

CCP35 Advice to AER – AER Non-disclosure Guideline

1 Summary

Overview

In November 2024, the Australian Energy Regulator (AER) established CCP35 to consider NSW REZ non-contestable revenue determinations under the EII framework. This advice relates to the AER's draft Non-disclosure Guideline (the ND Guideline) published on 20 February 2026 in relation to its role in making revenue determinations under the EII Act and EII Regulations.

Whilst some non-disclosure claims may be reasonable, they can also limit the extent consumers can effectively engage with a network operator in the development of a regulatory proposal.

Importantly, the AER expects network operators to develop their proposals in line with the *Better Resets Handbook*, and for a network operator to conduct “comprehensive pre-engagement”¹ with the AER and stakeholders on the content of the proposal before the network operator lodges its proposal.

In preparing this advice, I have drawn on my observations of Ausgrid's and Transgrid's respective customer and stakeholder engagement approaches that informed their non-contestable revenue proposals for the Hunter Central Coast RNI project and the Central West Orana REZ Enabling Works project and my associated advice to the AER.² I have also met with selected representatives from Ausgrid's and Transgrid's REZ project consumer panels to gain more detailed insights into the impacts of non-disclosure on their ability to effectively fulfil their roles.

Overall conclusion

I consider the ND Guideline delivers clear and tangible benefits for consumers by improving access to information, strengthening their influence over revenue proposals, and enabling earlier, more meaningful consumer engagement with network operators.

By making transparency the default and limiting network operators' non-disclosure claims through the ND Guideline, consumers engagement will be more *comprehensive*, and revenue proposals are more likely to be *high quality* and based on *genuine engagement*. Further, consumers are likely to have greater trust in the regulatory process and regulatory decisions should better reflect consumer interests and preferences.

¹ AER, June 2024, *Explanatory Statement, Final amendments to Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*

² Readers who are interested in the detail of my advice related to those projects are referred to my reports, which are published on the AER's website.

Summary of responses to questions

Question	Comments and suggestions
<p>What changes could be made to improve our approach to dealing with claims of non-disclosure under the EII regulatory framework?</p>	<ul style="list-style-type: none"> • Add clear, practical examples of disclosable vs non-disclosable information, drawing on EII precedents • Require explicit consideration of consumer impacts when assessing non-disclosure, with partial disclosure under confidentiality where needed • Clarify timing for non-disclosure claim reviews and whether they would occur automatically • Publish clear, consumer-focused reasons for accepting or rejecting non-disclosure claims • Strengthen expectations for clear justification of redactions, especially where consumer impacts are material
<p>What practical challenges might occur in applying the proposed approach in the ND Guideline, and how might they be addressed?</p>	<p>Practical challenges</p> <ul style="list-style-type: none"> • Consumers must trust the process leading to non-disclosure decisions • Consumers have no direct role in non-disclosure decisions • Operators can claim public-interest harm without evidence • Key terms are unclear or undefined <p>Suggested solutions</p> <ul style="list-style-type: none"> • Mandate proof of meaningful consumer engagement • Require network operators to provide evidence for public-interest harm claims • Add a clear, central glossary of key terms related to non-disclosure to the ND Guideline
<p>What additional circumstances might be considered alongside the non-exhaustive list of considerations that we may take into account when assessing:</p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Allowing confidential access for consumer panels (under confidentiality agreements) to improve transparency and the quality of consumer scrutiny and submissions. • Aggregating or partially aggregating information to increase transparency while protecting sensitive or confidential material and avoiding blanket non-disclosure

CCP35 Advice to AER – AER Non-disclosure Guideline

Question	Comments and suggestions
<p>What feedback do you have on the appropriateness of the Non-disclosure claim template at Attachment A of the ND Guideline?</p>	<ul style="list-style-type: none"> • Public interest assessments should sit with the regulator, not network operators, unless supported by clear, evidence-based consumer input (e.g. structured consumer panel engagement) • The template should explicitly address selective disclosure to consumer panels, including whether networks agree to it and why, to improve transparency and meaningful engagement while protecting confidentiality
<p>Other feedback (Attachment B – Draft Non-disclosure notice)</p>	<p>Concerns</p> <ul style="list-style-type: none"> • The draft template does not provide a sufficiently accurate or meaningful picture of the scale and impact of non-disclosure within network operator proposals • The proposed metrics fail to distinguish between the number, nature, and materiality of redacted information, which clouds the impact of withheld information on consumers <p>Suggestions to enable consumers and stakeholders to better assess the real implications of non-disclosure and strengthen trust in regulatory decision making:</p> <ul style="list-style-type: none"> • The non-disclosure metrics need to be based on a robust and transparent methodology • The notice should include both the volume and (defined) material significance of claims

2 Context for this advice

2.1 Regulatory framework

In 2021, the NSW Government under the NSW EII Act³ appointed the Energy Corporation of NSW (EnergyCo) as the infrastructure planner and AEMO Services as the Consumer Trustee to develop designated REZ projects in line with the NSW Electricity Infrastructure Roadmap⁴. EnergyCo, as the NSW infrastructure planner, recommends REZ projects for NSW. AEMO Services as the independent Consumer Trustee, is responsible for authorising projects and setting the maximum prudent, efficient and reasonable project costs.

The NSW Government also appointed the AER as the economic regulator of infrastructure projects within its REZ along with EnergyCo, under the EII Act 2020. The AER's role is to assess whether network operator's costs to deliver a REZ project are "prudent, efficient and reasonable".⁵ Consequently, AER scrutinises these project costs to assess their prudence, efficiency and reasonableness.

2.2 The EII Act and confidentiality

Under the EII Clause 53 of the EII Regulation 2021, the AER must not publish information related to a non-contestable revenue determination or non-contestable components of a revenue determination if it is satisfied the information is confidential or commercially sensitive. Additionally, the AER may choose not to publish information if it is not in the public interest to do so, or if it impacts on future competitive processes. The AER's overarching principle is that non-disclosure is an exception, and aspects of a revenue proposal and determination that are subject to non-disclosure must be clearly justified by the network operator, carefully assessed by the AER and be consistent with public interest and the NSW roadmap.

2.3 Process for proposal development

The AER expects network operators to develop their revenue proposals under the EII Act, in line with the *Better Resets Handbook*, and for a network operator to conduct "comprehensive pre-engagement"⁶ with the AER and stakeholders on the proposal content before the network operator lodges its proposal.

The *Better Resets Handbook* encourages networks to "develop high quality proposals through genuine engagement with consumers",⁷ which should lead to regulatory outcomes that better reflect the long-term interests of consumers. To this end the AER also encourages network operators to establish and engage with consumers as soon as possible after it has been made aware it will be undertaking a non-contestable project under the EII Act.

³ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2020-044>, viewed on 27 May 2025

⁴ <https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap>, viewed on 27 May 2025

⁵ Electricity Infrastructure Investment Amendment (Network Infrastructure) Regulation 2024, 19 January 2024, cl. 47E(4)

⁶ AER, June 2024, *Explanatory Statement, Final amendments to Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*

⁷ *Ibid*, p. 3

2.4 Adverse impacts of non-disclosure on consumers

For consumer engagement to be genuinely *comprehensive*, and for proposals to be *high quality* and based on *genuine engagement*, consumers (or consumer representatives) must have access to sufficient information to make an informed view of the long-term interests of consumers. Where material information is withheld, engagement risks being limited to merely “informing” consumers rather than genuinely involving them in proposal development.

The development of the Hunter Central Coast (Ausgrid) and Central West Orana Enabling Works (Transgrid) Renewable Energy Zone (REZ) non-contestable 2026–2031 revenue proposals illustrate how extensive confidentiality claims can materially undermine effective consumer engagement. In both cases, significant volumes of information central to understanding costs, risks, and trade-offs were subject to non-disclosure, constraining consumers’ ability to interrogate proposals, test assumptions, or meaningfully influence outcomes.⁸

Non-disclosure claims can have direct implications for consumer bills and consumer risk exposure. In relation to the Ausgrid and Transgrid projects, these include project cost structures, procurement outcomes, project deeds, risk allocation arrangements, adjustment mechanisms, and financing arrangements. Insight into these aspects is fundamental to consumer representative groups being able to genuinely assess whether a proposal is in the long-term interest of consumers. For example, whether risks are appropriately allocated between networks and consumers, and the triggers that could result in a network operator seeking revenue adjustment.

Ausgrid’s and Transgrid’s primary justification for non-disclosure was that information was commercially sensitive or strategically important, and that disclosure could harm network operators’ interests. Transgrid further argued that disclosure could lead to higher costs for consumers. However, it was not always evident network claims had been rigorously assessed or weighed against the harm to consumers arising from reduced transparency, diminished accountability, and constrained engagement.

Notably, following the TAC’s encouragement, the AER pressed Transgrid to remove a number of its non-disclosure claims. The AER’s Preliminary Position Paper lists the claims that Transgrid withdrew.⁹ While the TAC was pleased that Transgrid removed those claims,¹⁰ unfortunately the disclosure occurred too late for the TAC and only occurred because of the AER’s intervention. As a result, the TAC was unable to consider the information as part of its early engagement on Transgrid’s revenue proposal. This issue highlights the importance of early resolution of non-disclosure claims.

Confidentiality constraints were also exacerbated by factors outside network operators’ direct control. For example, Ausgrid indicated it could not finalise cost estimates until EnergyCo announced it as the recommended network operator for the HCC RNI Project. This delayed access to critical information and further compressed already limited engagement timeframes under the EII Act, reducing opportunities for meaningful community involvement.

⁸ Although some of these claims were subsequently removed, or relaxed a significant amount of information remained confidential, particularly information associated with the respective networks’ commitment deeds with EnergyCo.

⁹ AER, *Preliminary Position Paper, Enabling Central-West Orana REZ network infrastructure project (non-contestable)*, (1 July 2026 to 30 June 2031), October 2025, p.6

¹⁰ Gavin Dufty and Louise Benjamin, Submission to the AER Transgrid 2026-31 Revenue proposal enabling CWO REZ AER Preliminary Position paper, 17 November 2025

CCP35 Advice to AER – AER Non-disclosure Guideline

As the sole member of CCP35, I observed that confidentiality prevented consumer representatives from fully engaging the development of Ausgrid’s and Transgrid’s proposals. Engagement beyond being informed was limited to those aspects of proposals that were not subject to non-disclosure claims.

The adverse impacts on consumers were clear. Confidentiality claims narrowed the scope of consumer influence, over cost drivers, risk allocation, and adjustment mechanisms, being those aspects of the proposal with the greatest potential impact on and risk to consumers. Consumer panels were unable to independently test key assumptions and were required to rely on assurances from network operators, rather than consider verifiable evidence. This undermines the integrity and credibility of engagement processes.

Extensive non-disclosure also requires consumers to place an unreasonable level of trust in network operators and decision-makers. At a time of rising energy bills and given the complexities and significant capital investment required to facilitate the energy transition, it is neither reasonable nor appropriate to expect consumers or their representatives to accept material decisions without transparency. Trust cannot be assumed; it must be earned through openness and the ability to scrutinise decisions that materially affect consumers’ financial and other interests.

While Ausgrid’s HCC REZ Regulatory Panel acknowledged that the EII Act constrained its formal role and that some confidentiality may be appropriate, it emphasised that it is clearly in consumers’ interests to understand both the nature of those constraints and the risks they create. The Panel actively challenged Ausgrid and encouraged the AER to apply heightened scrutiny to transparency issues, including matters with indirect consumer impacts.

Importantly, the AER’s Preliminary Position Paper demonstrated that confidentiality claims are contestable. By interrogating and rejecting various non-disclosure claims, the AER materially improved transparency and the quality of the regulatory process. The subsequent withdrawal of several confidentiality claims by Ausgrid, EnergyCo, and Transgrid demonstrates that earlier scrutiny and clearer guidance could have avoided unnecessary constraints on engagement.

Overall, these proposals demonstrate that broad or insufficiently tested confidentiality claims do more than limit information sharing. They restrict consumer influence, weaken engagement quality, erode confidence in regulatory outcomes, and increase the risk that consumers bear costs and risks they have not had a genuine opportunity to understand or influence. Clearer expectations, stronger justification requirements, and earlier scrutiny of confidentiality claims are therefore essential to protecting consumers’ long-term interests and ensuring engagement under the EII Act is meaningful and effective.

2.5 Non-disclosure Guideline

On 20 February 2026, the AER published the draft Non-disclosure Guideline—Electricity Infrastructure Investment Act 2020 (NSW). The ND Guideline sets out a consistent framework for non-disclosure claims made by network operators and other entities involved in NSW roadmap projects.

The AER considers transparency and meaningful stakeholder consultation are essential to good regulatory decision-making and it recognises stakeholders should have access to sufficient information to understand and engage on issues that affect their interests.

CCP35 Advice to AER – AER Non-disclosure Guideline

The ND Guideline explains how network operators should make non-disclosure claims under the EII Act and Regulations. It sets out the AER’s approach to assessing those claims, including whether they are justified and its approach where the claims are not justified. The ND Guideline encourages network operators and other entities making non-disclosure claims to ensure they are specific, well-reasoned and fully justified.

The ND Guideline applies to non-contestable revenue determinations (including hybrid revenue determinations), contestable revenue determinations and contestable augmentation revenue, and revenue adjustments.

3 Feedback on the draft ND Guideline

3.1 Overall comment

I commend the AER for publishing the draft ND Guideline. It responds directly to consumer concerns identified during the Ausgrid and Transgrid non-contestable project proposals and strengthens transparency and accountability under the EII Act.

The ND Guideline supports more effective consumer engagement and more robust regulatory decision-making in the long-term interests of consumers by enabling:

- Better informed and earlier engagement between consumers and network operators
- Greater consumer influence over the development of revenue proposals
- Clearer boundaries around non-disclosed information
- Improved AER decision-making through a stronger understanding of consumer interests and preferences
- Enhanced scrutiny of regulatory proposals and decisions
- Increased consumer confidence and trust in regulatory processes and outcomes

Overall, I consider the AER's approach to non-disclosure supports better outcomes for consumers because it:

- Establishes transparency as the default position, requiring information relied upon in regulatory decisions to be publicly available wherever possible
- Encourages network operators to raise and resolve non-disclosure claims earlier in the regulatory process, reducing barriers to effective consumer engagement
- Clearly defines and narrows the scope for non-disclosure by requiring claims to be specific, well-reasoned, and evidence-based
- Allows for partial disclosure, supporting more meaningful and genuine consumer participation
- Introduces a standardised, published non-disclosure claim template, strengthening accountability and reducing reliance on trust
- Recognises that confidentiality may diminish over time, enabling increased transparency and more genuine consumer engagement

3.2 Responses to AER questions

3.2.1 Changes to improve the AER's approach to dealing with non-disclosure claims

Question: What changes could be made to improve our approach to dealing with claims of non-disclosure under the EII regulatory framework?

While the ND Guideline provides a solid framework for assessing non-disclosure claims, suggested refinements include:

- Providing clear, practical examples of information that is generally disclosable versus non-disclosable. Drawing on precedents from previous non-contestable project revenue determinations under the EII Act would improve claim quality and reduce disputes, while enhancing transparency for stakeholders and consumers.

CCP35 Advice to AER – AER Non-disclosure Guideline

- Encouraging more explicit requirements of network operators to assess whether non-disclosure limits consumer understanding or engagement, consistent with the AER's *Better Resets Handbook*, given experience with the Ausgrid and Transgrid non-contestable project proposals demonstrates that excessive non-disclosure materially undermines effective consumer engagement.
- Encouraging a practice of partial disclosure to consumer representatives under confidentiality arrangements should be encouraged, with appropriate redaction in public reports.
- Clarifying the review process for non-disclosure claims to improve transparency and accountability. Although the Guideline acknowledges that non-disclosure claims may evolve over time, it is unclear whether claims are subject to automatic review at key regulatory stages or only upon request.
- Publishing clear, consumer-focused explanations of AER decisions to accept or reject non-disclosure claims, including how the decisions balance network interests against consumer impacts.
- Place stronger expectations on both the AER and network operators to clearly justify the reasons for redactions in published documents, particularly where these may have material consequences for consumers, particularly given the extensive redactions in recent proposals, position papers, and determinations
- Encouraging third parties, such as EnergyCo to be more transparent in the interest of consumers.

3.2.2 Practical challenges in applying the proposed approach

What practical challenges might occur in applying the proposed approach in the ND Guideline, and how might they be addressed?

The accelerated timetable for REZ project proposals under the EII Act, combined with EnergyCo non-disclosure requirements already significantly curtails opportunities for genuine and effective early engagement.

From a **consumer perspective**:

- Consumers are expected to **trust the process**: decisions about disclosure and non-disclosure rest almost entirely with network operators and the AER. Until disputes over confidentiality claims are resolved, consumers are effectively asked to place their trust in a process over which they have little visibility or influence.
 - Non-disclosure claims need to be resolved as early as possible to maximise the opportunity for genuine and effective early engagement.
- Consumers have **no direct say** in determining what information should be disclosed in their interests. Instead, they are implicitly required to rely on the AER to determine the appropriate balance between consumer interests (the public interest) and network operators' confidentiality claims. This reliance underscores a significant power imbalance in the current framework.
 - Consumers should have an opportunity to influence the extent of non-disclosure, especially on those aspects that have a material impact on consumers.

CCP35 Advice to AER – AER Non-disclosure Guideline

- Network operators should not be permitted to make **unsubstantiated assertions of public-interest harm**, as implied by the ND Claim Template column titled “Reasons for non-disclosure related to public interest”.
 - The Guideline should require network operators to provide evidence of meaningful consumer engagement around the rationale for non-disclosure, which would materially strengthen confidence in the process and help ensure that claims are properly tested.
- Finally, the Guideline would benefit significantly from a **dedicated glossary of key terms**. Central concepts such as “transparency”, “confidential”, “commercially sensitive”, and “public interest” should be clearly defined in a single, accessible location. This would improve clarity, reduce ambiguity, and enhance the overall usability of the Guideline for all stakeholders, including consumers.

3.2.3 Additional circumstances

Question: What additional circumstances might be considered alongside the non-exhaustive list of considerations that we may take into account?

(a) When assessing public interest considerations for and against disclosure of information

Disclosure may be appropriate in the following additional circumstances where it demonstrably improves regulatory and consumer outcomes:

- **If consumer panels who are subject to confidentiality agreements could be granted access to otherwise non-disclosed information**, this would increase transparency and enable more meaningful scrutiny of proposals and result in more genuine, evidence-based consumer submissions on network proposals.
- **If information can be aggregated or partially aggregated** this would improve transparency while avoiding the risks associated with full disclosure. This approach balances the benefits of openness with the need to protect sensitive material and can reduce reliance on blanket non-disclosure.

(b) Whether the information is confidential or commercially sensitive

- No additional suggestions

(c) The effect of publishing the information on future competitive assessment processes

- No additional suggestions

3.2.4 Feedback on Attachment A of the ND Guideline

Question: What feedback do you have on the appropriateness of the non-disclosure claim template at Attachment A of the ND Guideline?

- **Public interest assessments should not be made by network operators unless they are supported by clear evidence of consumer views**, such as evidence obtained through structured engagement with a consumer panel. Determining the public interest should rest with the regulator, not with parties that have a direct commercial stake in the outcome.
- **The template should include a dedicated section for networks to state whether they agree to selective disclosure of information to consumer panels**, and on what basis. This would

CCP35 Advice to AER – AER Non-disclosure Guideline

promote more meaningful engagement, improve transparency, and enable consumer representatives to scrutinise proposals without undermining legitimate confidentiality concerns.

- **The template should also indicate the party that is driving the non-disclosure claims,** noting that network operators may be compelled to make non-disclosure claims as a result of EnergyCo requirements. This would improve accountability associated with non-disclosure claims.

3.3 Other feedback: Attachment B of the ND Guideline

While I appreciate the intent of Section 2.3.2 of the ND Guideline and the requirements of Attachment B – Non-disclosure Notice. I am concerned that the requirements are simplistic, not clearly defined and may be misleading, and thereby undermine trust in the regulatory process.

Figure 3-1: Draft Non-disclosure notice template

Attachment B – Non-disclosure notice

Proposal Title	Number of pages that contain information subject to a non-disclosure claim	Number of pages that do not contain information subject to a non-disclosure claim	Total number of pages of proposal	Percentage of proposal that contains information subject to a non-disclosure claim	Percentage of proposal that does not contain information subject to a non-disclosure claim

1. While the template offers a high-level indication of the overall transparency of a network operator’s proposal, it fails to capture the extent or materiality of non-disclosure claims. It does not distinguish between minor redactions and extensive claims that could be made within a single page of a proposal. For example, one page of a revenue proposal may contain multiple non-disclosed items, each with different implications—some may be financially material, others immaterial in dollar terms but highly significant to customers, and only in rare cases immaterial. Treating these scenarios equivalently risks materially understating the real impact of non-disclosure on transparency.
2. How will the percentage of the proposal subject to non-disclosure be calculated? Without a clear and robust methodology, this metric risks being misleading. For example, if the calculation is based simply on the proportion of pages containing at least one redaction, it would significantly understate the true extent of non-disclosure. A single page may contain multiple redacted items of varying materiality yet would be treated no differently from a page with a minor, immaterial redaction.

To improve meaning and trust in the regulatory process, the requirements of the non-disclosure notice need to be clearly defined and supported by practical examples that avoid misinterpretation.

The notice should also disclose the total number of non-disclosure claims and provide an objective indication of their materiality, so consumers and stakeholders can understand the real extent and significance of information being withheld.