



Australian Government



AUSTRALIAN
ENERGY
REGULATOR

Explanatory Statement

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

July 2026

© Commonwealth of Australia 2026

This work is copyright. In addition to any use permitted under the *Copyright Act 1968* all material contained within this work is provided under a [Creative Commons Attributions 4.0 International licence](#) with the exception of:

- the Commonwealth Coat of Arms
- the AER logo
- any illustration diagram, photograph or graphic over which the AER does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 4.0 licence.

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice. You should seek legal advice or other professional advice in relation to your particular circumstances.

The AER has made every reasonable effort to provide current and accurate information, but it does not warrant or make any guarantees about the accuracy, currency or completeness of information in this publication.

Parties who wish to re-publish or otherwise use the information in this publication should check the information for currency and accuracy prior to publication.

At the AER, we use artificial intelligence (AI) to enhance our internal productivity and data analysis. Our AI tools do not make decisions or take action on our behalf. We maintain high standards of security measures to safeguard personal information. The AER remains fully responsible for all work and oversight, including checking the quality of any AI outputs. We ensure our AI use complies with all legal and regulatory requirements. To learn more, see the [ACCC/AER AI transparency statement](#). If you have any questions about this statement or would like further information on our use of AI, please contact us.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Email: aer inquiry@aer.gov.au
Tel: 1300 585 165

Amendment record

Version	Date	Pages
1.0	02 July 2026	17

Contents

1	Introduction	1
2	Background	2
2.1	Consultation process.....	2
3	AER response to key issues raised in submissions.....	4
3.1	Disclosure and transparency as the default position.....	4
3.2	Stakeholder engagement	5
3.3	Strengthening threshold for non-disclosure claims	7
3.4	Application of the ND Guideline.....	8
3.5	Attachment A – non-disclosure template	9
3.6	Attachment B – non-disclosure notice	11
3.7	Other issues raised in submissions	12

1 Introduction

We published our draft Non-disclosure Guideline - *Electricity Infrastructure Investment Act 2020* (NSW) ([draft ND Guideline](#)) for public consultation on 20 February 2026. Submissions closed on 20 March 2026. This Explanatory Statement accompanies our final Non-disclosure Guideline - *Electricity Infrastructure Investment Act 2020* (NSW) (ND Guideline). It sets out our reasons for the amendments made to our draft ND Guideline in response to stakeholder submissions.

This Guideline does not address confidentiality claims relating to our function to make an annual contribution determination. 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.

2 Background

2.1 Consultation process

In response to the draft ND Guideline, we received submissions from Ausgrid,¹ the Consumer Challenge Panel (CCP),² the Justice and Equity Centre (JEC),³ and a joint submission from Ms Benjamin and Mr Grenning⁴ during the consultation period. We also received a late submission from Energy Corporation of NSW (EnergyCo)⁵ on 27 March 2026.

For the purposes of this Explanatory Statement, we have grouped stakeholder feedback into key issues. In finalising the ND Guideline, we have considered all submissions, and where appropriate, amended the draft ND Guideline to reflect that feedback. Overall, stakeholders were supportive of the ND Guideline and its objective of improving transparency while providing an appropriate framework for assessing non-disclosure claims. Ms Benjamin and Mr Grenning noted their support for the draft ND Guideline as it would provide significant benefits to NSW consumers. Ausgrid welcomed the development of the ND Guideline and considered it a timely opportunity to assess and improve approaches to non-disclosure and overall found it satisfactory in guiding non-disclosure claims. CCP supported the ND Guideline, noting it would deliver clear benefits for consumers by improving access to information and strengthening consumer influence. JEC also supported the ND Guideline, noting that it would promote transparency. EnergyCo also welcomed the intent of the ND Guideline and supported the approach that balances transparency and certainty, streamlines the assessment of non-disclosure claims and minimises the risk of inadvertent disclosure.

While there was broad support for the ND Guideline, stakeholders raised a range of issues and suggestions for improvement. The key issues raised in submissions, and our responses to those issues, are set out below.

2.1.1 Changes to the draft Guideline

In finalising the ND Guideline, we have carefully reviewed and considered the feedback received through the consultation process. Section 3 of this Explanatory Statement sets out the key issues raised in submissions, the changes we have made in response to stakeholder feedback, and our reasons where we have not made changes. We have amended the final ND Guideline where appropriate, including to reflect stakeholder views and to improve clarity and consistency in the drafting.

¹ Ausgrid – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026.

² Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026.

³ Justice and Equity Centre – [Submission on draft Non-disclosure Guideline](#) – 20 March 2026.

⁴ Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026.

⁵ EnergyCo – [Submission on draft Non-disclosure Guideline](#) – 27 March 2026.

The key changes made to the final ND Guideline are:

- Amending sections 2.4 and 2.6 to clarify that disclosure is the default position and non-disclosure is the exception.
- Reinforcing that non-disclosure claims must be specific, well-reasoned and justified and that incomplete claims will not be accepted.
- Amending section 2.2 to strengthen our expectations around stakeholder engagement, including consideration of whether non-disclosure may limit stakeholder understanding or engagement.
- Amending sections 2.2 and 4.3.2 to clarify that network operators must engage with third parties and cannot rely on third-party confidentiality claims to justify non-disclosure.
- Adding a new section 2.3.2 to provide additional guidance on how non-disclosure claims are to be made, including highlighting claimed information, providing public and non-public versions, and the format for submitting the non-disclosure template.
- Clarifying in section 2.3.2 that where the same information appears more than once across a revenue proposal or supporting documents, network operators must identify each instance subject to a non-disclosure claim and apply claims consistently.
- Adding additional guidance in sections 2.7 and 2.8 on non-disclosure claims for revenue adjustment proposals and hybrid revenue determinations, including publication and stakeholder engagement expectations.
- Amending Attachment A to:
 - require network operators to specify the period for which information is considered commercially sensitive,
 - combine the individual columns for each factor in clause 53(6) of the EII Regulation into a single column, to improve the readability and usability of Attachment A,
 - clarify that the relevant detriment to be identified and justified is detriment to the network operator,
 - make it clear that claims under clause 53(6)(b) of the EII Regulation may relate to confidential information, commercially sensitive information, or both.

3 AER response to key issues raised in submissions

The submissions on the draft ND Guideline raised a range of issues, including disclosure and transparency as the default position, stakeholder engagement and the establishment of a Consumer Reference Group, the evidentiary threshold for non-disclosure claims, the application of the ND Guideline and aspects of Attachment A and Attachment B.

Where relevant, we have amended the ND Guideline to reflect stakeholder feedback and improve clarity and consistency. This section sets out the key issues and our response, including any changes made to the ND Guideline. Our response to other issues raised in submissions is set out in section 3.7.

3.1 Disclosure and transparency as the default position

We have considered stakeholder feedback on whether the ND Guideline should more clearly articulate disclosure and transparency as the default position, and how non-disclosure claims and redactions are explained and justified.

3.1.1 Stakeholder submissions

Submissions received from JEC⁶ and Ms Benjamin and Mr Grenning recommended strengthening the ND Guideline to clearly state that disclosure is the default position and non-disclosure the exception.⁷ The CCP also submitted that by making transparency the default position and limiting network operators' non-disclosure claims, consumer engagement will be more comprehensive and the revenue proposals are more likely to be of a high quality.⁸

The CCP called for clear, consumer-focused explanations of AER decisions to accept or reject non-disclosure claims and sought stronger and clearer justification for redactions which may have a material impact for consumers.⁹ Ausgrid noted that disclosure of information is a key concern for stakeholders as reflected in feedback from the regulatory panel convened by Ausgrid for the Hunter Central Coast (HCC) REZ revenue determination process.¹⁰

3.1.2 AER response

We agree that disclosure and transparency should be the default position. However, we also acknowledge that in some circumstances, the publication of certain information may cause detriment to the network operator or potentially harm the long-term interests of energy consumers, for example, detriment to the network operator may arise where publication of the information could affect a future competitive assessment process or incentives for

⁶ Justice and Equity Centre – [Submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.2.

⁷ Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.6.

⁸ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.4.

⁹ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.12.

¹⁰ Ms Benjamin, Mr Grenning and Mr Swanston – [HCC REZ Regulatory Panel Report to the AER](#) – 30 May 2025.

investment. Our aim is to balance protecting such information while ensuring stakeholders have access to sufficient information to understand and assess revenue proposals and determinations that affect their interests. To clarify this position, we have made minor amendments to sections 2.4 and 2.6 of the final ND Guideline.

In response to the CCP's suggestion that we publish clear, consumer-focused explanations of our decisions to accept or reject non-disclosure claims, including explanations for redactions, we note that for non-contestable revenue determinations, network operators are required to make non-disclosure claims using our non-disclosure template. We publish the completed template on our website alongside the revenue proposal. The network operator is responsible for redactions made in a revenue proposal and reasons for those redactions must be provided by the network operator in its non-disclosure template.

Similarly, where we make redactions to information contained in our preliminary position paper or final decision, the redactions can be traced to the network operator's non-disclosure template. In addition, given the limited timeframe we have to make a non-contestable revenue determination (126 business days), it may not be practical or an efficient use of our assessment time to publish additional information explaining our decision to accept or reject non-disclosure claims or redactions. As such we have not made any amendments to the ND Guideline in response to this submission.

For a contestable revenue determination, where we have made redactions to our notice or reasons for decision, or decided not to publish part of the notice or reasons, we have clarified in section 3.3.2 of the final ND Guideline how we will address that information.

In those circumstances, we will either publish the network operator's completed non-disclosure template or provide a summary of the redacted information and our reasons for not publishing it.

3.2 Stakeholder engagement

We have considered stakeholder feedback on whether the ND Guideline should go further in requiring structured consumer engagement, including requiring network operators to establish a Consumer Reference Group (CRG) as part of their stakeholder engagement.

3.2.1 Stakeholder submissions

Ms Benjamin and Mr Grenning submitted that the ND Guideline should, to the extent possible, require network operators under the EII framework to establish a CRG. They proposed that the ND Guideline could require network operators to engage a CRG that is appointed and funded by the network operator and that the CRG could be bound by a confidentiality agreement.¹¹ They also submitted that consumer engagement expectations should align with the [AER's Better Resets Handbook – Towards consumer centric network proposals](#) (BRH).

Ms Benjamin and Mr Grenning also expressed concerns regarding the lack of consumer engagement in the revenue determination process for contestable projects. They submitted that after a preferred bidder is selected through a competitive assessment process, subsequent negotiations between the preferred bidder and EnergyCo may result in changes

¹¹ Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.4.

to risk allocation compared to the initial bid. Ms Benjamin and Mr Grenning submitted that consumers are not represented in those negotiations and therefore do not have an opportunity to provide input on changes to risk allocation outcomes. Ms Benjamin and Mr Grenning also recommended that we consider amending the ND Guideline to require (or at least create an expectation) that networks making a contestable revenue application also establish a CRG.¹²

The CCP submitted that the ND Guideline could be refined by encouraging more explicit requirements for network operators to assess whether non-disclosure will limit consumer understanding or engagement. The CCP also submitted that partial disclosure to consumer representatives under confidentiality arrangements should be encouraged, while still maintaining appropriate redactions in public materials.¹³

3.2.2 AER response

We recognise the importance of meaningful consumer engagement in promoting transparency, accountability and confidence in the regulatory decision-making process. We acknowledge stakeholder views that structured engagement models such as establishing CRGs or partial disclosure to consumer representatives under confidentiality agreements may improve engagement in some circumstances, and we encourage network operators to consider engagement models such as CRGs where they consider it appropriate. However, prescribing a particular form of consumer engagement is outside the scope of this guideline. Consistent with our BRH, we expect network operators to take ownership of their engagement and tailor it to the needs and circumstances of their consumers.¹⁴

We agree with the CCP that network operators should be encouraged to consider whether non-disclosure may limit stakeholder understanding or engagement and have amended section 2.2 of the draft ND Guideline to include a statement reflecting this. We have added a footnote in the non-disclosure template encouraging network operators, when providing reasons for a non-disclosure claim, to consider how the non-disclosure may affect stakeholders' ability to understand issues affecting their interests. We have also amended section 2.2 of the draft ND Guideline to emphasise the requirement in our Non-contestable Guideline that a network operator must include in their revenue proposal, how they engaged with electricity consumers, what feedback was provided and how that feedback has been taken into account.¹⁵

In response to Ms Benjamin and Mr Grenning's submission on the lack of consumer engagement in contestable projects, we observe that the policy intent of the contestable framework is that the competitive market is being relied upon to produce an outcome that reflects prudent, efficient and reasonable costs. As such, network operators are not expected to undertake pre-lodgement stakeholder consultation on their contestable revenue proposal. However, it may be appropriate for EnergyCo (as Infrastructure Planner) to consult with

¹² Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.7.

¹³ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.12.

¹⁴ AER – [Better Resets Handbook: Towards Consumer Centric Network Proposals](#) – December 2021.

¹⁵ EII Chapter 6A, cl. 6A.10.1(g)(3) and cl. S6A.1.3(19)(iii).

consumers on the scope and timing of contestable projects prior to the commencement of tender processes.

We do not agree with Ms Benjamin and Mr Grenning's submission that contestable components of a project may include changes to risk allocation agreed through negotiations between the preferred bidder and the Infrastructure Planner following the completion of the competitive process. We expect all material contractual issues to be resolved by the time the successful tenderer is selected. Any changes to the contractual arrangements at this stage of the process should be limited to reflecting the agreed outcome of the competitive process. As part of our assessment of a revenue proposal, we confirm that the costs and risk allocation presented as contestable components are consistent with the competitive assessment outcome at the time the successful tenderer is selected. To the extent any contractual arrangements differ from the competitive outcome, we would assess the costs and risk allocation on a non-contestable basis.

3.3 Strengthening threshold for non-disclosure claims

We have considered stakeholder feedback on strengthening the evidentiary threshold for non-disclosure claims.

3.3.1 Stakeholder submissions

JEC supports the use of the non-disclosure template to deter frivolous claims, but suggested we consider additional measures to prevent them, including measures to penalise claims found to be frivolous.¹⁶ The CCP submitted that the public interest assessments should sit with the regulator, not network operators, unless they can provide evidence of meaningful consumer engagement around the rationale for the non-disclosure claim.¹⁷ This would materially strengthen confidence in the process and help ensure that claims are properly tested.

Ms Benjamin and Mr Grenning recommended that we strengthen the ND Guideline to place greater emphasis on the public interest benefits of transparency and publication. They referred to the AER's Supplementary Appendix to the Preliminary Position Paper for the HCC REZ project,¹⁸ where the AER emphasised the importance of publishing information about adjustment mechanisms that affect the allocation of risks and costs between the network operator and consumers.¹⁹

3.3.2 AER response

In response to JEC comment, we note that we do not have the power to issue fines or penalties to network operators for submitting unsubstantiated or frivolous non-disclosure claims. As set out in the ND Guideline, our position is that non-disclosure claims that are poorly justified or not supported by sufficient evidence will not be accepted. We have also

¹⁶ Justice and Equity Centre – [Submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.4.

¹⁷ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.13.

¹⁸ AER – [Preliminary Position Paper, Hunter-Central Coast RNI Project \(non-contestable\), \(1 July 2026 to 30 June 2031\), Supplementary Appendix: Adjustment mechanisms](#) – August 2025.

¹⁹ Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.6.

stated in the ND Guideline that a revenue proposal containing a blanket non-disclosure claim, a poorly justified claim, or an incomplete non-disclosure template may be assessed as non-compliant. In these circumstances, the timeframe for making a non-contestable revenue determination will not commence until a compliant revenue proposal is received. This reflects our expectation that non-disclosure claims should be specific, evidence-based and fully justified.

In response to the CCP submission that network operators should not be permitted to make public interest claims unless supported by clear evidence of consumer engagement, we note that decisions regarding publication of information subject to a non-disclosure claim are made by the AER on a case-by-case basis having regard to the relevant circumstances. Public interest is one of the factors we are permitted to have regard to in deciding if it is or is not appropriate to publish information. As such, we may invite submissions from the network operator and the Infrastructure Planner addressing the factors in clause 53(6) of the EII Regulation, which includes public interest. Where a network operator makes a non-disclosure claim on public interest grounds, we will assess the claim and where necessary seek further information to understand and test the basis for the claim. As stated in sections 2.3 and 3.3.2 of the ND Guideline we will not accept claims that are poorly justified and/or poorly evidenced, as such it is in network operators' interest to ensure that their non-disclosure claims are fully substantiated which may include evidence of consumer engagement.

In response to comments from Ms Benjamin and Mr Grenning regarding the importance of transparency and how it supports the public interest, we have not amended the ND Guideline. We consider that section 1.1 clearly states our position on the importance of transparency and meaningful consultation with affected stakeholders. We also consider that the Table in section 4.1 makes clear that publication may be in the public interest where information relates to the allocation of risks and costs between the network operator and consumers.

3.4 Application of the ND Guideline

We have considered stakeholder feedback on how we can improve our approach to assessing non-disclosure claims.

3.4.1 Stakeholder submissions

Ausgrid submitted that the ND Guideline requires network operators to identify information claimed for non-disclosure, but does not provide sufficient guidance on how that information should be identified. Ausgrid recommended the ND Guideline include guidance on the manner in which claims should be submitted, similar to the AER's 2017 [Confidentiality Guideline](#) (NER Confidentiality Guideline).²⁰

JEC recommended that the ND Guideline provide further specificity and examples of when we will consider information to be confidential or commercially sensitive.²¹ The CCP also suggested including clear and practical examples of information that is generally disclosable

²⁰ Ausgrid – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.3.

²¹ Justice and Equity Centre – [Submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.3.

versus non-disclosable by drawing on precedents from previous non-contestable project revenue determinations under the EII Act.²²

3.4.2 AER response

We have addressed Ausgrid's comments regarding the lack of guidance on how network operators are to identify information over which a non-disclosure claim is made, by adding a new section 2.3.2. This new section provides additional guidance on how to make a non-disclosure claim, including highlighting information over which a non-disclosure claim has been made, providing public and non-public versions of documents and the format for submitting the non-disclosure template. This additional guidance aligns with the approach set out in our NER Confidentiality Guideline.

We have not provided examples regarding when we will consider information to be confidential or commercially sensitive. We consider that section 4 of the ND Guideline provides sufficient guidance on how we intend to interpret and apply the commercially sensitive and confidential factors. Similarly, we have not adopted the CCP's suggestion to include examples drawn from previous projects. We intend to assess non-disclosure claims on a case-by-case basis, having regard to the specific information at issue and the circumstances in which the claim is made. We consider that including examples from previous projects may risk creating an expectation that particular information will or will not be treated as confidential or commercially sensitive. Our intention is for the ND Guideline to provide practical guidance without being overly prescriptive. For this reason, the ND Guideline sets out non-exhaustive considerations that may be relevant to our assessment, rather than prescribing what information will or will not be treated as confidential or commercially sensitive.

However, in response to stakeholder feedback, we have made minor amendments to Tables 4.1, 4.2 and 4.3 of the ND Guideline to provide greater clarity on the types of considerations we may take into account when assessing the factors in clause 53(6) of the EII Regulation. We have also amended the final ND Guideline to move the examples relating to commercially sensitive considerations, which were previously contained in the footnotes to Table 4.2 of the draft ND Guideline, into the body of the Guideline to improve their visibility.

3.5 Attachment A – non-disclosure template

We have considered stakeholder feedback regarding the non-disclosure template (Attachment A). This template, amongst other things requires a network operator to include reasons supporting why the information should not be published, including addressing the factors in clause 53(6) of the EII Regulation.

3.5.1 Stakeholder submissions

The CCP suggested that Attachment A should include a section for network operators to indicate whether they agree to the selective disclosure of information to consumer representatives under confidentiality arrangements.²³ Ms Benjamin and Mr Grenning also suggested that Attachment A could include a column stating whether a third party has

²² Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.11.

²³ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.13.

imposed a confidentiality claim and encouraged the AER to engage directly with EnergyCo to minimise ‘pass through’ non-disclosure claims.²⁴

Ausgrid submitted that the term ‘information provider’ used in the final column of Attachment A is unclear and recommended that the ND Guideline include a definition, such as the definition used in the glossary of the 2017 NER Confidentiality Guideline.

Ausgrid also suggested that Attachment A should clarify that network operators are not required to identify every word or phrase subject to non-disclosure on distinct rows of Attachment A and may instead group information with the same reason for non-disclosure and list relevant document locations in a single row.²⁵

3.5.2 AER response

We have not adopted the suggestion by Ms Benjamin and Mr Grenning to add a column to Attachment A requiring network operators to state whether a non-disclosure claim is imposed by a third party. However, we have made minor amendments to sections 2.2 and 4.3.2 of the ND Guideline to clarify our expectations where a non-disclosure claim is attributable to a third party. Section 2.2 clarifies that network operators are expected to actively engage with third parties during pre-lodgement discussions and test whether non-disclosure claims are necessary and proportionate. Section 4.3.2 also clarifies that we are not bound by confidentiality agreements between a network operator and a third party. Accordingly, where a network operator seeks to ‘pass through’ a third-party non-disclosure claim, it must justify the claim on its own merits and cannot simply rely on the third party’s non-disclosure claim.

We have not adopted the CCP’s suggestion to add a section to the non-disclosure template to indicate whether network operators agree to selective disclosure to consumer representatives. As explained in section 3.2.2 above, we encourage network operators to consider how they can best engage consumers in preparing their revenue proposal. Requiring network operators to engage consumer representative groups as part of the non-disclosure process is outside the scope of this guideline.

In response to Ausgrid’s submission regarding clarification of the term ‘information provider’, our expectation is that any detriment arising from the publication of information subject to a non-disclosure claim is detriment to the network operator. As explained in section 4.3.2 of the ND Guideline, where a non-disclosure claim originates from a third party, for example, where the network operator has received information from another person who claims it is confidential, the network operator must still justify the claim on its own merits. It follows that any asserted detriment from disclosure must also be identified and justified by the network operator. To clarify this expectation, we have replaced the term ‘information provider’ with ‘network operator’ in column 4 of Attachment A.

We have not amended Attachment A to allow grouping of information by reason for non-disclosure. We consider it important that non-disclosure claims remain specific, clearly identifiable and narrowly framed to support transparent assessment of each claim. This

²⁴ Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.5.

²⁵ Ausgrid – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.4.

approach should also encourage network operators to limit non-disclosure claims to specific information that is sensitive.

3.6 Attachment B – non-disclosure notice

We have considered stakeholder feedback on the non-disclosure notice at Attachment B. This notice sets out the proportion of material in a revenue proposal that is subject to a non-disclosure claim compared to that which is not.

3.6.1 Stakeholder submissions

Ausgrid submitted that comparing the proportion of a revenue proposal subject to non-disclosure with that of other network operators' proposals may not provide a reliable basis for comparison and should be reconsidered. Ausgrid noted that the method used in Attachment B (i.e., page counting) requires pages with limited non-disclosure claims (e.g. a single figure) to be counted as a whole page for the purpose of Attachment B. Ausgrid stated this may unintentionally overstate the volume of non-disclosure claims and submitted that the focus should be on the merits of the non-disclosure claim, not the quantity of claims. Ausgrid also proposed an alternative approach to better distinguish between fully redacted pages and partially redacted pages. It submitted that Attachment B could be amended to add a new column for the number of pages proposed to be fully redacted and revise the existing column heading so it refers specifically to pages proposed to be partially redacted.²⁶

Ms Benjamin and Mr Grenning submitted that Attachment B is of limited use and may be misleading, because the number of pages subject to non-disclosure does not indicate the materiality or impact of the information withheld.²⁷ They submitted that the focus should instead be on whether the claim limits consumers' ability to engage meaningfully with the revenue proposal.

The CCP acknowledged the intent of section 2.3.2 of the draft ND Guideline, however it raised concerns that the requirements in Attachment B are simplistic, not clearly defined and may be misleading. Furthermore, Attachment B fails to capture the extent or materiality of non-disclosure claims as it does not distinguish between minor redactions and extensive claims that could be made within a single page of a proposal. The CCP suggested that Attachment B should be more clearly defined and disclose the number and significance of non-disclosure claims so consumers can better understand their impact on transparency.²⁸

3.6.2 AER response

We acknowledge stakeholders' concerns regarding Attachment B. However, Attachment B is not intended to assess the merits or significance of information that is subject to non-disclosure claims. Rather, its purpose is to provide stakeholders with a visual indication of the volume of material in a network operator's revenue proposal that is subject to non-disclosure claims.

²⁶ Ausgrid – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.4-5.

²⁷ Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.5.

²⁸ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.14.

Further, under the EII Regulation, we are required as far as is reasonably practicable, to make our Non-contestable Guideline consistent with NER Chapter 6A.²⁹ Attachment B gives effect to that requirement. It reflects the requirement in our Non-contestable Guideline, to publish a notice of the proportion of material in a revenue proposal that is subject to a non-disclosure claim.³⁰ We consider the current approach is the most appropriate way to maintain that consistency and as such we have not amended Attachment B. While our approach remains aligned with the current NER Chapter 6A framework, if that framework changes in the future, we will consider whether amendments to the Non-contestable Guideline are necessary to maintain consistency.

3.7 Other issues raised in submissions

Several other issues were raised by stakeholders in their submissions relating to various aspects of the ND Guideline. Table 1 below summarises our response to each of the other issues raised by stakeholders.

Table 1: AER response to other issues raised in submissions

AER response to other issues raised in submissions
<p>Issue: Including key terms in the glossary</p> <p>Submission: The CCP submitted that the ND Guideline would benefit from updating the glossary to include central concepts such as ‘transparency’, ‘confidential’, ‘commercially sensitive’, and ‘public interest’.³¹</p> <p>AER response: We have not amended the ND Guideline to include these terms in the glossary. We consider that section 4 of the ND Guideline provides sufficient guidance on how we will interpret the terms ‘public interest’, ‘confidential’ and ‘commercially sensitive’. Furthermore, we consider the ND Guideline sets out our expectations around the concept of transparency and as such does not require a formal definition.</p>
<p>Issue: Clarification of the term ‘imminent’ for the clause 53(6)(c) of the EII Regulation factor.</p> <p>Submission: Ms Benjamin and Mr Grenning sought clarification on the reference to ‘imminent’ in section 4.4 of the Guideline, where we state that considerations relating to the impact of publication on future competitive tender processes are likely to carry greater weight where those processes are imminent.³²</p> <p>AER response: Whether a future tender process is ‘imminent’ will be considered on a case-by-case basis. However, we have provided an example in section 4.4 of the ND Guideline that future tender processes may be ‘imminent’ when it will take place within a period of 12 months from the time we consider the non-disclosure claim.</p>
<p>Issue: Timing of publication of the AER’s notice summarising the revenue determination and NER-equivalent capital costs.</p> <p>Submission: Ausgrid requested clarification of the statement in section 3.3.2 of the Guideline: <i>We must also consult with the Infrastructure Planner before publishing a notice, reasons or schedule on</i></p>

²⁹ EII Regulation, cl. 47A(3).

³⁰ EII Chapter 6A, cl. 6A.11.2A(b) & (c).

³¹ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.13.

³² Ms Benjamin and Mr Grenning – [Joint submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.6.

AER response to other issues raised in submissions

our website, and we must not publish this information until the Infrastructure Planner has notified us that financial close of the project has been reached.

Ausgrid also requested clarification of this statement to account for situations where earlier disclosure may be required, including where the making of a revenue determination is a condition precedent to financial close.³³

AER response: The statement in section 3.3.2 of the ND Guideline reflects clause 53(4) of the EII Regulation. This clause provides that our revenue determination, notice, reasons or schedule must be published as soon as reasonably practicable, but not before the Infrastructure Planner has notified us that, in the Infrastructure Planner's opinion, the project financial close of the network infrastructure project has been reached. This means that the requirement for us to make a revenue determination is separate to the requirement for us to publish a revenue determination.³⁴

Our aim is to provide timely notification to stakeholders that we have made a revenue determination. Following this we will publish the revenue determination, notice reasons or schedule once the Infrastructure Planner has notified us that financial close has been reached.

Issue: Clarification regarding the review of non-disclosure claims at different stages of the revenue determination process.

Submission: The CCP submitted that the ND Guideline should clarify whether non-disclosure claims would be subject to automatic review at key regulatory stages or only upon request.³⁵

AER response: Non-disclosure claims are not subject to automatic review at key stages of the regulatory process or upon request. Section 2.4 of the ND Guideline provides that following a decision on whether information is confidential or commercially sensitive at the revenue proposal stage, non-disclosure claims that have been accepted at this stage may be reconsidered at future decision-making stages, such as the preliminary position paper stage or the revenue determination stage. Further, section 4.3.2 of the ND Guideline states that in the future if we are required to review and remake a revenue determination, we may revisit whether any redactions are still necessary.

Issue: Concerns that confidentiality and commercial sensitivity claims during early pre-lodgement stakeholder engagement limit transparency and effective stakeholder engagement.

Submission: JEC submitted that network operators often rely on unsubstantiated claims of confidentiality or commercial sensitivity during early consumer and stakeholder engagement processes, limiting transparency and restricting stakeholders' ability to meaningfully interrogate and inform decision-making.³⁶

AER response: We expect network operators to engage with stakeholders on the type of information they require to understand and assess issues affecting their interests. We have strengthened our expectations in section 2.2 of the ND Guideline regarding pre-lodgement engagement to reflect this.

Issue: Amend Attachment A to include a confidentiality category field.

Submission: Ausgrid recommended that Attachment A be amended to require network operators to identify the relevant confidentiality category for each non-disclosure claim, consistent with the

³³ Ausgrid – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.3.

³⁴ EII Act, s. 38; EII Regulation, cl. 53(1) and cl. 53(4).

³⁵ Consumer Challenge Panel – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.12.

³⁶ Justice and Equity Centre – [Submission on draft Non-disclosure Guideline](#) – 20 March 2026, p.4.

AER response to other issues raised in submissions

2017 Confidentiality Guideline, to promote a more structured and consistent approach and reduce unnecessary claims.³⁷

AER Response: The final version of Attachment A contains a column requesting the network operator to identify the topic the information over which a non-disclosure claim has been made relates to, for example capital expenditure, operating expenditure, service payments etc. In addition, the final version of Attachment A also contains a column requiring the network operator to provide a description of the information over which non-disclosure is being claimed. Network operators should include enough detail so that stakeholders can understand the nature of the information over which non-disclosure is being claimed. In doing so, we have sought to balance the readability and usability of Attachment A with the information required to understand and assess a network operator's non-disclosure claim. For this reason, we have not amended Attachment A to require identification of any recognised confidentiality category.

Issue: Amend Attachment A to recognise that not all documents have paragraph numbers.

Submission: Ausgrid submitted that, because not all documents include paragraph numbers, the first column of Attachment A should instead require the document name or identification number, page and, where applicable, paragraph number.

AER response: We have accepted Ausgrid's suggestion and added a footnote clarifying that paragraph numbers are only required where applicable.

Issue: Amend Attachment A to better distinguish confidential and commercially sensitive claims.

Submission: Ausgrid submitted that Attachment A should clearly specify that network operators must specify whether information is commercially sensitive or confidential, or both as required in section 4.3. of the ND Guideline. Ausgrid suggested splitting the fifth column into two columns or as an alternative that an 'and' be added to the heading *Reasons for non-disclosure relating to confidential and/or commercially sensitive information*.

AER response: We have accepted Ausgrid's suggestion and amended the column requiring reasons under clause 53(6)(b) of the EII Regulation to refer to confidential and/or commercially sensitive information. This makes clear that network operators may claim non-disclosure on the basis that information is confidential, commercially sensitive or both.

Issue: Amend Attachment A to include a time period for which information remains commercially sensitive.

Submission: Ausgrid submitted that Attachment A does not clearly reflect the ND Guideline's expectation that network operators specify the period for which information remains commercially sensitive. Ausgrid recommended adding a note to the fifth column requiring network operators to identify the relevant time period of commercial sensitivity.

AER response: We have accepted Ausgrid's suggestion and have amended Attachment A to include a new column requiring network operators to specify the period for which information is considered commercially sensitive.

³⁷ Ausgrid – [Submission on draft Non-disclosure Guideline](#) – 19 March 2026, p.5.