

6 August 2026

Australian Energy Regulator (AER)

Lodged electronically

Review of the Ring-fencing guideline (electricity distribution) v4 & Shared asset guideline v2

Dear AER,

Nexa Advisory welcomes the opportunity to respond to the Australian Energy Regulator's Call for Input on its review of the Ring-fencing guideline (electricity distribution) v4 & Shared asset guideline v2.

Nexa is an advisory firm with an unwavering focus on accelerating the clean energy transition, in a way that provides secure, reliable, and affordable power for consumers of all types. Nexa Advisory is a team of experienced specialists in the energy market, policy and regulation design, stakeholder engagement, and advocacy. We work with public and private clients including renewable energy developers, investors and climate impact philanthropists to help them get Australia's clean energy transition done.

Introductory remarks: consumer outcomes should guide this review

Nexa's recommendations in this submission are guided by a clear objective: the ring-fencing and shared-asset frameworks should promote the long-term interests of consumers. The relevant question is not whether the arrangements make it easier for a particular delivery model or service provider to proceed. It is whether they support efficient investment and service delivery, protect consumers when a regulated monopoly uses its position to advantage related commercial activities, and preserve the conditions for innovation, choice and lower long-run costs.

Competition is not an end in itself. In consumer energy markets, competitive delivery has helped reduce costs, accelerate innovation and expand choice in technologies and services including rooftop solar, batteries and electric vehicle (EV) charging. Protecting the competitive process is therefore a consumer-outcomes issue. Nexa's concern is not to protect any particular competitor or business model, but to ensure providers succeed on their merits and consumers receive the benefits of efficient investment and genuine rivalry. This reflects the consumer-focused approach taken in Nexa's previous submissions.

Ring-fencing matters because DNSPs are regulated monopolies with advantages that independent providers cannot readily replicate. These include access to regulated revenues, control of network assets and connection processes, access to network and customer information, and the standing associated with the network brand. If used to support related commercial activities, those advantages may reduce entry and investment, limit choice, slow innovation, increase long-run costs and transfer commercial risks to regulated customers. Ring-fencing is therefore not merely a matter of corporate organisation or compliance; it is an important safeguard for consumer interests and economic efficiency.

Nexa does not suggest that separation requirements should be imposed without regard to their costs or practical consequences. Efficient use of network assets and capabilities can benefit consumers, and a waiver may be appropriate where strict compliance would not promote their interests. However, departures from ordinary ring-fencing requirements should be supported by transparent evidence, consideration of alternatives, measurable consumer benefits and safeguards proportionate to the relevant risks.

The same consumer focus should guide the review of the Shared Asset Guideline. Where assets funded through regulated revenues are also used to provide other services, consumers should not continue to bear costs recovered elsewhere. Whether the framework achieves this depends not only on the shared-asset mechanism, but also on the transparency and integrity of the underlying cost-allocation arrangements.

Accordingly, Nexa's recommendations seek to make competitive neutrality more observable and enforceable; keep waivers evidence-based and limited to exceptional circumstances; improve accountability for affiliate dealings, information access and consumer-facing representations; and strengthen compliance, monitoring and reporting. They also recognise that both frameworks depend on a contemporary, consistent and transparent approach to cost allocation.

While the AEMC considers Nexa's rule-change proposal and the broader Electricity Network Regulation Review, the AER should use its existing powers to improve its guidelines and deliver more immediate protection and better outcomes for consumers.

Recommendations

- 1. Consumer outcomes should guide the review.** The guidelines should support efficient investment and service delivery, protect consumers from risks arising when a regulated monopoly advantages related commercial activities, and preserve the conditions for innovation, choice and lower long-term costs.
- 2. The AER should act while the AEMC considers broader reforms.** While the AEMC considers Nexa's rule-change request and related reforms, the AER should use this review to implement, within its existing powers, the reforms proposed in Nexa's rule change request that can be given effect through the Ring-fencing Guideline (Guideline). To protect consumers and competition, at a minimum, the AER should formalise the conditions specified in AER's recent decisions on the CitiPower, Powercor and United Energy (CPU) waiver for EV charging infrastructure¹ and Ausgrid Community Power Network trial waiver² to be able to draw on them consistently in future decision.

¹ AER, *Notice of decision: CPU distribution ring-fencing waiver application for electric vehicles charging infrastructure*, October 2025. <https://www.aer.gov.au/system/files/2025-10/AER%20-%20Notice%20of%20decision.pdf>.

² AER, *Ausgrid Community Power Network, Trial waiver decision*, December 2025. <https://www.aer.gov.au/system/files/2025-12/AER%20-%20EIT%20-%20Ausgrid%20CPN%20Decision%20December%202025.pdf>

- 3. The treatment of RESPs should be clearer and proportionate to the competition risk.** The Guideline should distinguish clearly between internal and affiliated RESPs. Legal and functional separation should reflect the risks to competition and economic efficiency created by the relevant arrangement. The AER should also replace, or clearly qualify, the defined term “contestable electricity services”.
- 4. Competitive neutrality must be observable and verifiable.** Broad non-discrimination obligations should be supported by transparent protocols, equal and timely access to information, auditable records, clear branding requirements and reporting that allows the AER and market participants to compare the treatment of affiliated and independent providers.
- 5. Waivers must remain evidence based and limited to exceptional circumstances.** The Guideline should require applicants to demonstrate why a waiver is necessary (by identifying the relevant market failure), what measurable long-term consumer benefits it will deliver and why less competition-distorting alternatives are insufficient. Network-controlled barriers should be addressed before being relied on to justify DNSP participation. Waivers should be narrowly scoped, time-limited, supported by published reasons and measurable conditions, and accompanied by an exit or transition plan.
- 6. Compliance and enforcement should be transparent.** DNSP compliance reports and external assessments should be published, subject to legitimate confidentiality protections. The AER should also strengthen assurance requirements and targeted auditing, publish an annual national ring-fencing compliance and enforcement report, and establish a clear and confidential complaints pathway.
- 7. Cost allocation should be reviewed alongside ring-fencing and shared assets.** The AER should expand the present review, or commence a parallel process, to review the Distribution Cost Allocation Guideline and its application. If that is not presently possible, substantive changes to the Shared Asset Guideline should be postponed until the cost-allocation framework can be reviewed.

The current ring-fencing framework is not working well enough

The economic rationale for ring-fencing in the Australian regulatory framework is established and well understood. It traces back to the Hilmer Review and the subsequent National Competition Policy reforms.³

An electricity distribution network controls monopoly infrastructure, information and processes that businesses in related markets often need. If the network or its affiliate also participates in those markets, it has both the ability and incentive to favour its own business.

That creates an inherent conflict of interest and risks of:

- affiliated businesses receiving preferential information, access or treatment;

³ Hilmer Report 1993, *National Competition Policy*, Report by Independent Committee of Inquiry, August 1993, Part II, chapters 10–11.

- independent entry and investment being deterred;
- network decisions being influenced by affiliate interests; and
- regulated customers funding competitive activities.

These are not merely theoretical concerns. In 2015, the then AER Chair explained that vertical integration creates risks of cross-subsidisation and restricted access and that even the possibility of preferential access may deter efficient entry. The same speech described ring-fencing as an important tool for maintaining a level playing field as new technologies and services emerge.⁴

The current AER Ring-fencing guideline (electricity distribution) (the Guideline) recognises these risks. It contains legal, accounting and functional separation obligations, non-discrimination requirements, information controls and a waiver regime.

However, the framework relies too heavily on broad behavioural obligations, information supplied by distribution network service providers (DNSPs) and discretionary AER decision-making. In many cases, competitors cannot observe whether equivalent treatment is occurring. Consumers cannot see how regulated assets, information and capabilities are being used. Waiver decisions are not always accompanied by sufficiently clear evidence, measurable conditions or reporting of actual outcomes.

The result is a framework that is formally comprehensive but difficult to test and enforce in practice.

The AER's recent workshop materials for the current review⁵ identify similar concerns. They note limited visibility of the unregulated distribution services provided within DNSPs, inconsistent use of internal related electricity service provider (RESP) structures, practical difficulties demonstrating and enforcing functional separation, and risks associated with shared staff, systems, incentives, information and decision-making. They also note stakeholder feedback identifying gaps in reporting on information access, transactions and revenue flows, and questioning the independence and credibility of current assurance arrangements.

This matters increasingly as DNSPs seek to participate in batteries, EV charging, telecommunications and other emerging services. Waivers are no longer confined to minor or transitional matters. They are becoming an important mechanism through which DNSPs enter and operate in potentially contestable markets. Examples of some recent waivers granted by the AER include CPU waiver for EV charging infrastructure (2025), Egerton Energy isolated networks waiver (2025), and a class waiver for DNSP-led projects funded under the Australian Government's Community Batteries for Household Solar Program (2023).

⁴ Paula Conboy, AER Chair, Energy market disruption – the implications for a regulator, speech to the 2015 Energy Networks Association Regulation Seminar in Brisbane.

⁵ AER - *Stakeholder workshop slide pack - Review of ring-fencing guideline and shared asset guidelines*, slides 14-19. <https://www.aer.gov.au/system/files/2026-08/AER%20-%20Stakeholder%20workshop%20slide%20pack%20-%20Review%20of%20ring-fencing%20guideline%20and%20shared%20asset%20guidelines.pdf>.

The Guideline must therefore do more than state that discrimination and cross-subsidisation are prohibited. It must make compliance observable and enforceable.

Relationship with Nexa's rule change request

In March 2026, Nexa submitted a rule change request proposing that the core purpose and scope of distribution ring-fencing, together with key waiver conditions and protections, be placed in the National Electricity Rules.⁶

The proposal seeks stronger requirements concerning:

- the circumstances in which DNSPs may participate in potentially contestable markets;
- affiliate dealings and access to information;
- branding and cross-promotion;
- waiver evidence, conditions and accountability;
- financial resilience;
- compliance reporting;
- complaints; and
- enforcement transparency.

Nexa maintains that the most important ring-fencing protections should be established in the National Electricity Rules (NER) rather than left entirely to an AER guideline and the exercise of broad administrative discretion. However, the Australian Energy Market Commission's (AEMC's) consideration of the rule change request may take some time. The AER should not defer improvements to the existing framework while that process continues.

The present review provides an opportunity for the AER to amend the Guideline in a manner that reflects *the spirit and policy intent* of Nexa's rule change proposal, to the extent permitted by the current NER. In particular, the AER can strengthen:

- the evidence and safeguards required for waivers;
- transparency concerning RESP and affiliate dealings and information access;
- the practical enforceability of non-discrimination obligations;
- branding and cross-promotion restrictions;
- compliance and complaints processes; and
- reporting on enforcement and waiver outcomes.

These changes would provide more immediate protection for consumers and competition while the AEMC considers whether stronger rule-level requirements are warranted.

⁶ Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026.

https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request_0.pdf.

If the AEMC ultimately makes a rule in response to Nexa’s proposal, the Guideline will need to be reviewed again to ensure that it gives full effect to the new NER requirements. That possibility is not a reason for the AER to preserve the status quo in the meantime.

Economic efficiency and market failure are not competing tests

In its recent submission to the AEMC’s Electricity Network Regulation Review (ENRR), while commenting on Nexa’s proposed rule change⁷, the AER argues that “efficient outcomes, not market failure, should be the test” and that market failure is merely one factor that may produce an inefficient outcome.⁸

Nexa notes these are not competing tests. Rather, economic efficiency is the objective, while market-failure analysis determines why relying on market processes may not achieve that objective and whether intervention is warranted.

Nexa’s rule change proposal was directed at preventing the waiver framework from treating the absence of current supply as sufficient justification for DNSP participation. The current submission expresses that principle in conventional economic terms. The relevant question is whether an identified, material and enduring market failure means that competition cannot reasonably be expected to deliver an efficient outcome - not simply whether an independent provider is operating in the market at the time of the application.

In economics, market failure describes circumstances in which market processes fail to produce an efficient allocation of resources. Natural monopoly, market power, externalities, information asymmetry, public goods and coordination problems are recognised sources or forms of market failure.⁹

That is, within the conventional economic framework, market failure is **the reason** market processes do not produce the efficient outcome. This is consistent with the two-stage process described by Nexa in its ENRR submission.¹⁰ A network service provider (NSP) should only provide a regulated service where BOTH of the following conditions hold:

⁷ Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026.

<https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request%200.pdf>.

⁸ Australian Energy Regulator, *Submission to the Electricity Network Regulation Review – Package 1 Consultation*, 23 July 2026, p.10. https://www.aemc.gov.au/sites/default/files/2026-07/aer_submission_to_electricity_network_regulation_review_package_1_consultation.pdf.

⁹ See, for example, Ledyard, J.O. (1991). Market Failure. In: Eatwell, J., Milgate, M., Newman, P. (eds) *The World of Economics*. The New Palgrave. Palgrave Macmillan, London. https://doi.org/10.1007/978-1-349-21315-3_53.

¹⁰ Nexa Advisory, *Electricity Network Regulation Review – Package 1; Clarifying distribution ring-fencing in emerging energy markets; Enabling DNSP-led electric vehicle charging infrastructure – Submission*,

- competition cannot reasonably be expected to deliver economically efficient outcomes because of an identified enduring and material market failure; and
- regulated NSP provision is expected to better promote the National Electricity Objective (the NEO) than the available alternatives.

The first question establishes whether intervention is needed. The second identifies the intervention that best promotes consumers' long-term interests.

Establishing a market failure is therefore **necessary but not sufficient** to justify regulated NSP provision.¹¹ The AER appears to interpret Nexa's first requirement as an alternative to the NEO.

Without first identifying why market processes cannot deliver an efficient outcome, almost any DNSP proposal could be justified by pointing to some claimed immediate benefit. Compliance costs are usually easier to quantify than the longer-term effects of a waiver on competition and consumers, but this should not be used to justify waivers in lieu of more thorough analysis.

In this context, the distinction between *contestability* and *existing competition* is important. A market may be contestable even if there is only one current provider, where credible entry or alternative provision constrains the incumbent. Ring-fencing is especially important while contestability is emerging because access to network assets, information and processes may determine whether entry occurs at all.

Accordingly, the absence of an existing provider at a particular location does not establish market failure. Nor do slow deployment, temporarily low demand, higher private financing costs or a DNSP's claimed low incremental cost. These may reflect early market development, incumbent advantages or barriers controlled by the DNSP itself.

Where a DNSP-controlled barrier – such as poor access to network information, connections, poles or technical approvals – is impeding entry, the appropriate first response is to address that barrier. The DNSP should not be permitted to rely on a problem it controls as evidence that the potentially contestable market has failed and that the DNSP should provide the downstream service itself.

The AER's current argument is also difficult to reconcile with the position expressed by its Chair in 2015, who said new services "should be provided through contestable markets unless there is likely market failure that means that consumers need to be protected through regulation".¹²

https://www.aemc.gov.au/sites/default/files/2026-07/nexa_advisory_submission_-_aemc_enrr_package_1_amended.pdf.

¹¹ This is standard regulatory logic: The Commonwealth Treasury has similarly stated that the potential for market failure is a necessary but not sufficient condition for government intervention, because the form and costs of intervention must also be assessed. See Financial System Inquiry, 1997, Final Report, *Chapter 5: Philosophy of Financial Regulation*, for example, p. 177.

¹² Paula Conboy, AER Chair, *Energy market disruption – the implications for a regulator*, speech to the 2015 Energy Networks Association Regulation Seminar in Brisbane.

The same speech said service-classification decisions should be informed by monopoly power, market failure and the potential for competition.

Nexa considers that earlier analysis to be economically sound and directly relevant. The energy transition has changed the services and technologies at issue. It has not removed the need to identify why market processes are unable to deliver an efficient outcome before permitting a regulated monopoly to enter a related market.

Nexa therefore rejects the suggestion that its proposed market-failure test is inconsistent with the NEO. The test provides **practical discipline** for applying the NEO:

The NEO identifies the *outcome to be pursued*. Market-failure analysis determines *whether intervention is warranted*. Comparison of the available remedies determines *which intervention*, if any, best promotes the NEO.

Removing the market-failure step would not strengthen the focus on efficiency. It would remove the requirement to explain why intervention in a potentially contestable market is needed in the first place.

Related electricity service providers (RESPs)

Clarify how the Guideline applies to internal and affiliated RESPs

The Guideline defines a related electricity service provider, or RESP, to include both an affiliated entity and the part of the DNSP that provides what the Guideline calls “contestable electricity services”.¹³

These are materially different arrangements. An affiliated RESP is legally separate from the DNSP. An internal RESP remains part of the DNSP, with greater scope for shared staff, systems, information, assets and management.

The AER’s workshop materials identify uncertainty about which services are provided through internal RESPs, how these arrangements differ across DNSPs, and how functional separation applies in practice, particularly to negotiated distribution services.¹⁴

The Guideline should explain clearly how its legal and functional separation requirements apply to each model. Those requirements should be informed by the risk that, without separation, the DNSP’s regulated position could distort competition and reduce economic efficiency.

¹³ Australian Energy Regulator, *Ring-fencing Guideline, Electricity Distribution*, Version 4 - February 2025, p. 4.

¹⁴ AER - *Stakeholder workshop slide pack - Review of ring-fencing guideline and shared asset guidelines*, slides 18-19. <https://www.aer.gov.au/system/files/2026-08/AER%20-%20Stakeholder%20workshop%20slide%20pack%20-%20Review%20of%20ring-fencing%20guideline%20and%20shared%20asset%20guidelines.pdf>.

For an affiliated RESP, legal separation already applies. Accounting, functional and information controls should ensure that dealings with the DNSP are documented, auditable and no more favourable than dealings with independent providers.

For an internal RESP, the Guideline should identify when and how sharing of staff, systems, information and assets is permitted. Where a negotiated distribution service necessarily uses DNSP network assets or specialist technical capability, the Guideline should not require inefficient duplication. However, this should not weaken the core non-discrimination, information-protection, cost-allocation, record-keeping and reporting obligations. Any tailored treatment should be narrow, justified and proportionate to the identified costs and competition risks.

Internal RESP services and shared arrangements should be transparent

The AER's workshop materials indicate that it is not always clear which unclassified distribution services DNSPs provide, whether those services are provided through an identifiable internal RESP, or what resources are shared with the direct-control business.¹⁵

Each DNSP should therefore identify:

- the services provided through an internal RESP;
- the assets used to provide those services;
- the staff, systems, information and corporate services shared with the direct-control business;
- the basis and terms of the shared arrangements, including cost allocation; and
- the controls used to prevent discrimination and inappropriate information access.

Each DNSP should publish this information in a concise RESP statement. The AER should use the information collected through the present review to establish a national baseline and identify unexplained differences across DNSPs.

The defined term “contestable electricity services” should be renamed

The defined term covers negotiated and unclassified distribution services and other electricity services. It is an administrative category and does not establish that every service within it is economically contestable. The terminology is therefore liable to confuse rather than assist.

The AER should replace the term with a neutral expression such as “services outside direct control regulation”, or at a minimum state expressly that the definition does not constitute a finding about economic contestability.

Functional separation and RESP neutrality

Functional separation should reflect the nature of the service and the risk being addressed

¹⁵ AER - *Stakeholder workshop slide pack - Review of ring-fencing guideline and shared asset guidelines*.
<https://www.aer.gov.au/system/files/2026-08/AER%20-%20Stakeholder%20workshop%20slide%20pack%20-%20Review%20of%20ring-fencing%20guideline%20and%20shared%20asset%20guidelines.pdf> .

Nexa agrees with the purpose of functional separation: a DNSP should not use its regulated position to favour an internal RESP or affiliate. The detailed separation requirements should focus on whether shared arrangements could confer an advantage through assets, information, staff, systems, customer relationships or network-controlled processes.

The Guidelines should prevent preferential access to:

- network and customer information;
- connections and access processes;
- network assets;
- staff and technical assistance;
- customer relationships and communications; and
- DNSP decision-makers.

For negotiated distribution services, the AER should not assume either that full operational separation is always necessary or that broad exemptions are warranted. Any adjustment should respond to the actual costs and competition risks of the arrangement, while the core protections remain in place.

Non-discrimination must be capable of being demonstrated

The current non-discrimination obligation in section 4.1 of the Guideline is broad and appropriately non-waivable. It requires the DNSP to treat a RESP as though it were unaffiliated and to provide substantially equivalent terms, service quality, reliability and timeliness in like circumstances.

As Nexa's rule change request explains, the problem is not the breadth of the principle but the absence of prescriptive, testable requirements for data-release timing, service interfaces, queue management, price transparency and access logs.¹⁶

As such, the non-discrimination obligation is difficult for outsiders to test.

An independent provider will rarely know:

- what information the RESP received;
- when it received it;
- whether it obtained informal assistance;
- how connection or access applications were prioritised;
- whether technical requirements were applied consistently; or
- why apparently comparable applications received different outcomes.

That is, the DNSP controls most of the evidence needed to establish a breach.

¹⁶Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026, p.33.

https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request_0.pdf.

Nexa's rule change proposal¹⁷ outlined the Affiliate Dealings and Data Access equal-access and non-discrimination obligations to be codified in the NER to address discrimination and information advantages as follows:

The Guidelines must prohibit preferential treatment to affiliates (information timing, terms, site access) and require DNSPs to publish standardised, public protocols for data access and service interfaces (hosting capacity maps, APIs). Independent audits and civil penalties apply.

Nexa envisaged that the Guideline could then be updated to specify the practical implementation requirements – including access protocols and processes, service levels and timeliness metrics, and reporting and audit arrangements needed to make compliance transparent and verifiable. Nexa noted that affirmative proof of operational neutrality could include:

- **independent verification** that affiliates and third parties receive simultaneous data releases (with public timestamps) and equivalent interface performance;
- **no harm to competition** demonstrated through parity metrics (latency, error rates, throughput, queue wait times, service level agreement (SLA) adherence) and comparative pricing analysis;
- **public transparency** via a **Data & Interface Register**: datasets, application programming interfaces (APIs), schemas, SLAs, price schedules, change logs, and incident reports; and
- **remedies** for breaches.

We consider the AER can implement the proposed changes now, ahead of the AEMC's decision on the Nexa rule change proposal. We recommend the AER, in consultation with stakeholders, considers what exact changes may best address the identified issues with the current framework and move it from broad assurance to measurable neutrality.

As an additional measure, the AER should review whether "ring-fenced information" is too narrowly limited to information acquired or generated in connection with direct control services. Commercially valuable information may also arise through connections, access and technical-approval processes relating to negotiated or unclassified distribution service. The concern is not to regulate information for its own sake, but to prevent preferential access from conferring a competitive advantage.

Separation should focus on decision-making, systems and incentives

The Guideline places considerable emphasis on staff and office separation. Those protections remain relevant, but modern risks increasingly arise through shared information systems, governance and incentives.

¹⁷Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026, pp. 32-35, p.3 of Attachment 1. https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request_0.pdf.

The Guideline should also require:

- role-based access to DNSP information systems;
- comprehensive and auditable access logs;
- documented responsibility for network access and approval decisions; and
- restrictions on remuneration linked to the performance of a related commercial business.

Staff making or influencing connections, access, capacity or technical decisions should not have remuneration linked to a RESP's revenue, profitability, customer acquisition, market share or success in obtaining network approvals.

The Guideline currently provides a broad exception from staff separation where a person is an officer of both the DNSP and a RESP. Common officers may be among the people best placed to influence strategy, information flows and operational decisions across both businesses.

That exception should be narrowed. A common officer should not participate in relevant network access decisions or RESP commercial decisions that depend materially on the DNSP's assets or information without express AER approval and appropriate safeguards.

The corporate-services carve-out requires clearer limits

The Guideline permits DNSPs to provide corporate services – including administration, accounting, payroll, human resources, legal, regulatory and information-technology support – to related entities.

Some sharing of corporate services may be efficient. However, the carve-out should not become a route through which competitively valuable information, influence or commercial support crosses the ring fence.

The AER's workshop materials¹⁸ identify the risk that shared support services may have visibility across, or influence over, both DNSP and RESP activities.

The Guideline should require DNSPs to identify:

- each material shared corporate service;
- the staff and systems involved;
- the information accessible through the arrangement;
- the basis on which costs are allocated;
- any involvement in the RESP's commercial decisions; and
- the controls used to prevent inappropriate access or influence.

¹⁸AER - Stakeholder workshop slide pack - Review of ring-fencing guideline and shared asset guidelines.
<https://www.aer.gov.au/system/files/2026-08/AER%20-%20Stakeholder%20workshop%20slide%20pack%20-%20Review%20of%20ring-fencing%20guideline%20and%20shared%20asset%20guidelines.pdf> .

Shared corporate staff should not participate in both DNSP access or approval decisions and RESP commercial decisions where this creates a conflict of interest.

Branding protections should be objective

Consumers should not be misled into thinking they are required to purchase EV charging, distributed energy resources (DER) solutions, or community batteries from a DNSP or its affiliate. Shared branding, similar logos, and unclear messaging can imply endorsement or necessity and confer an unfair advantage, whether or not confusion is intended.

The current Guideline requires separate branding but does not prescribe objective standards for names, logos, colour schemes, co-branding or disclaimers. This leaves too much room for inconsistent application. Branding neutrality should be observable at each consumer touchpoint.

Nexa's proposed rule change would remove waiver access to these obligations and require distinct branding and explicit disclaimers across websites, invoices, advertising and physical assets. This aims to ensure consumers understand their choice and competitive neutrality is preserved. Nexa proposed that the NER codify branding separation and disclaimer obligations as enforceable standards as follows:¹⁹

The Guidelines must prohibit branding or representations suggesting consumers must use DNSP affiliates for contestable services, require clear disclaimers, and enforce distinct branding across all consumer touchpoints. Breaches are civil penalty provisions.

As with Nexa's proposed changes in relation to affiliate dealings and data access, the AER can substantially implement Nexa's proposal in relation to branding and representation through the Guideline now.

The key measures are:

- 1. Ban misleading marketing:** Prohibit any advertising or communication that implies obligation, exclusivity, or preferential access to DNSP-affiliated services.
- 2. Require distinct branding and disclaimers:** Mandate clear visual separation and disclaimers on all consumer facing materials - digital, print, and physical assets. This includes separated logos, colour schemes, and naming conventions for affiliates, as well as prominent statements on all consumer touchpoints that affiliate services are optional and contestable.
- 3. Ensure transparency and accountability:** Require DNSPs to publish branding compliance statements and undergo independent audits to verify adherence (such as reviews of websites, invoices, advertising, and physical assets to confirm neutrality).

¹⁹Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026, pp. 36-38, p. 3 of Attachment 1. https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request_0.pdf.

4. Apply case-by-case enforcement: Targeting of high-risk areas such as EV charging, DER aggregation, and community batteries where consumer confusion is most likely.

Waivers must remain a mechanism for exceptional circumstance

The AER's recent workshop materials describe waivers as "exceptional, not business as usual".²⁰ Nexa agrees. A waiver should address an exceptional case without undermining the core aims of preventing cross-subsidisation, discrimination and competitive distortion.

A ring-fencing waiver should be a targeted response to an identified problem. It should not become a parallel mechanism through which the AER selects its preferred delivery model without first establishing why reliance on contestable provision is insufficient.

Nexa agrees that the NEO remains the ultimate statutory criterion. Applying it properly requires the AER to identify why intervention is needed, construct a competitively neutral counterfactual and compare the available responses.²¹ As discussed above, Nexa's proposed market-failure test performs that diagnostic role and provides practical discipline for applying the NEO.

The ring-fencing waiver assessment framework should be strengthened

The current waiver criteria (clause 5.3.2 of the Guideline) require the AER to consider the NEO, the potential for cross-subsidisation and discrimination, and whether the consumer benefit of DNSP complying with the obligation (including benefits from increased competition) would be outweighed by the cost of the DNSP complying with that obligation.

Nexa have previously observed that the wording implies a waiver that harms consumers could be granted as long as the DNSP can demonstrate its compliance costs are greater than the harm.²² What is more concerning, however, is that the Guideline does not provide sufficient guidance to support rigorous and consistent assessment. It also does not require the waiver application to establish clearly why a waiver is necessary, rather than merely advantageous to the DNSP or administratively convenient.

The present wording does not clearly identify which costs count, how dynamic competition benefits and uncertainty should be treated, whether alternative responses must be considered,

²⁰ AER - *Stakeholder workshop slide pack - Review of ring-fencing guideline and shared asset guidelines*, slide 23. <https://www.aer.gov.au/system/files/2026-08/AER%20-%20Stakeholder%20workshop%20slide%20pack%20-%20Review%20of%20ring-fencing%20guideline%20and%20shared%20asset%20guidelines.pdf>.

²¹ Nexa Advisory, *Electricity Network Regulation Review – Package 1; Clarifying distribution ring-fencing in emerging energy markets; Enabling DNSP-led electric vehicle charging infrastructure – Submission*, pp. 5-6, https://www.aemc.gov.au/sites/default/files/2026-07/nexa_advisory_submission_-_aemc_enrr_package_1_amended.pdf.

²² Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026, p. 22. https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request_0.pdf.

or who bears the evidentiary burden. These omissions matter because DNSP compliance costs are generally easier to quantify than the longer-term effects of a waiver on entry, investment and market development. Unless the AER addresses that imbalance directly, waiver decisions will tend to give too much weight to DNSP costs and too little weight to longer-term competition effects.

Recent AER decisions, including the CPU kerbside EV charging waiver²³, recognise competition risks but do not always show clearly how evidence, counterfactuals, longer-term market effects and uncertainty were weighed.²⁴ The Guideline should require that reasoning to be explicit and reviewable.

While introducing assessment criteria can help give practical content to the application of the NEO to individual waiver decisions, the current waiver assessment framework, arguably, has not been very effective. Consistent with the intent of Nexa's rule change request, the Guideline should be amended to require both a market failure test and consumer benefit test. All evidence and assessments should then be published by the AER in the public waiver register.²⁵

The market failure test would assess whether there is a specific problem – a market failure – that the waiver is intended to solve. The consumer benefit test would consider whether the DNSP's involvement would deliver clear, measurable long-term consumer benefits, such as lower long-run costs, better service quality or greater reliability, relative to the feasible alternatives.

The AER does not need to wait for the AEMC's decision on whether to make any changes to the ring-fencing provisions in the NER and can implement this more disciplined waiver framework in the Guideline now.

At a minimum, the AER should formalise the conditions specified in AER's recent decisions on the CitiPower, Powercor and United Energy (CPU) waiver for EV charging infrastructure²⁶ and

²³ AER - *Reasons for decision paper, Ring-fencing waiver for an electric vehicle charging infrastructure trial from CitiPower, Powercor, and United Energy*, October 2025, p.3. <https://www.aer.gov.au/system/files/2025-10/AER%20-%20Reasons%20for%20decision%20paper.pdf>.

²⁴ Nexa's rule change proposal also provides other examples. Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026, p. 23. <https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request%200.pdf>.

²⁵ *Ibid.*, p. 3 of Attachment 1.

²⁶ AER, *Notice of decision: CPU distribution ring-fencing waiver application for electric vehicles charging infrastructure*, October 2025. <https://www.aer.gov.au/system/files/2025-10/AER%20-%20Notice%20of%20decision.pdf>.

Ausgrid Community Power Network trial waiver²⁷ to be able to draw on them consistently in future decision.

Network-controlled barriers must be addressed first

Essential Energy's EV-charging waiver application²⁸ illustrates a sequencing problem. The application proposed both:

- a market-enablement model under which the DNSP would provide information and access to support independently owned chargers (Stream 1); and
- a DNSP-ownership model (Stream 2).

As Nexa noted, many of the identified barriers can be addressed without DNSP ownership: through network data transparency, pole suitability information, site enablement, faster connections, standardised access terms, efficient make-ready works and suitable tariffs. The market-enablement model (Stream 1) should therefore be tested before any decision is made on DNSP ownership (Stream 2).²⁹

More broadly, if transparent site information, standardised access and improved connection processes allow independent providers to enter, DNSP ownership is unnecessary. A DNSP should not be permitted to rely on barriers it controls as evidence that a potentially contestable market has failed.

The Guideline should therefore require network-controlled barriers to be addressed before the AER accepts that DNSP participation is necessary.

Compliance, monitoring and reporting

Ring-fencing only works if market participants can see that it is being applied and enforced consistently. As ring-fencing waivers and contestable market overlaps grow, the risk is not just breaches themselves, but the perception of insufficient oversight - where market participants cannot readily gauge whether the regulator is actively and consistently pursuing non-compliance.

²⁷ AER, Ausgrid Community Power Network, Trial waiver decision, December 2025.

<https://www.aer.gov.au/system/files/2025-12/AER%20-%20EIT%20-%20Ausgrid%20CPN%20Decision%20December%202025.pdf>

²⁸ Essential Energy Plug and Play ARENA Funding trial – Ring-fencing waiver application, April 2026.

<https://www.aer.gov.au/system/files/2026-05/Essential%20Energy%20Plug%20and%20Play%20ARENA%20Funding%20trial%20-%20Ring-fencing%20waiver%20application%20-%20April%202026.pdf>.

²⁹ Nexa Advisory, Submission – AER Essential Energy Ring-fencing waiver application, 14 July 2026. [Nexa Advisory Submission - AER Essential Energy Ring-fencing Waiver application - Nexa Advisory](#).

One recent example illustrating the importance of timely and transparent reporting comes from the AER's call for input into the current review.³⁰

In the call for input, the AER provided statistics on individual and class waivers for DNSP-owned batteries and DNSP-led battery projects approved between December 2020 and October 2025. The AER noted that data from 2024 indicates that, only around 15 per cent of approved battery capacity has been energised, with reported usage data indicating that only around 1 per cent, of battery usage has been for DNSP network support services and the rest – by leasing partners. These numbers were a topic of stakeholder interest at the AER workshop for this review, with some stakeholders noting they raise questions about whether the battery projects are being developed primarily for consumer benefit.³¹

While this example illustrates the value of performance reporting, the presented information could be of more value if it were more readily available to public. While the AER has recently published 2025 annual ring-fencing compliance reports for DNSPs, they do not provide this information in a systematic and easily accessible format.

The AER's workshop materials identify several broader stakeholder concerns:³²

- registers and reporting may not capture access to customer or network information;
- there is limited visibility of financial transactions and revenue flows between DNSPs and related entities;
- the independence and credibility of current assurance arrangements are uncertain;
- reliance on self-reporting and complaints may delay detection;
- public reporting provides insufficient visibility of compliance and enforcement; and
- some requirements may be duplicative or disproportionate.

These concerns are consistent with those we raised in the Nexa's rule change proposal.

The current Guideline requires annual compliance reports and an assessment by a suitably qualified independent authority, but publication of the reports remains discretionary. The complaints provision merely permits the AER to require a written response from a DNSP.

³⁰ AER, Call for input - Review of the Ring-fencing guideline (electricity distribution) v4 and Shared Asset Guideline v2, June 2026, p.10. <https://www.aer.gov.au/system/files/2026-06/Call%20for%20Input%20-%20ring-fencing%20and%20shared%20asset%20guideline%20review%20%283%29.pdf>.

³¹ AER workshop, *Summary of stakeholder feedback - Review of ring-fencing and shared asset guidelines – Government and Consumers*, p. 4, <https://www.aer.gov.au/system/files/2026-08/AER%20-%20Workshop%20summary%20of%20stakeholder%20feedback%20%20%E2%80%93%20Government%20and%20consumers.pdf>.

³² AER - Stakeholder workshop slide pack - Review of ring-fencing guideline and shared asset guidelines, slide 33. <https://www.aer.gov.au/system/files/2026-08/AER%20-%20Stakeholder%20workshop%20slide%20pack%20-%20Review%20of%20ring-fencing%20guideline%20and%20shared%20asset%20guidelines.pdf>.

Nexa's proposed rule change would complement the existing Nexa proposals (financial resilience triggers, stronger waiver tests, non-discrimination/affiliate dealings controls, and branding separation) by ensuring those reforms are supported by credible monitoring, complaint intake and transparent reporting. The proposal would amend the NER to elevate the minimum ring-fencing transparency, reporting and assurance architecture into explicit, enforceable rule-level obligations as follows:³³

- (a) The Guidelines must include provisions that require the AER to publish an annual ringfencing compliance and enforcement report for distribution DNSPs (for each reporting year), which must, at a minimum, disclose ring-fencing compliance and enforcement actions.*
- (b) The Guidelines must establish and maintain a ring-fencing complaints mechanism that is accessible to any person, including an anonymous reporting option, for allegations of non-compliance with the Distribution Ring-fencing Guidelines or waiver conditions.*
- (c) The Guidelines publish a clear process to be followed in handling ring-fencing complaints.*

As with other changes proposed by Nexa, the AER can implement Nexa's proposal now.

Consistent with that, the Guideline would introduce annual AER ring-fencing compliance and enforcement reporting for distribution, building on what the AER already publishes, but would make it mandatory and standardised. The report could be a strengthened version of (or companion to) the AER's existing annual compliance reporting approach. This could include:

- number of breach notifications received and published;
- number of investigations / compliance enquiries initiated and completed;
- number and type of enforcement actions;
- number of waiver applications received, approved, rejected, varied, revoked.

The compliance and enforcement reporting framework should not rely almost entirely on an assessment commissioned by the DNSP and breaches identified by the DNSP itself. The AER should prescribe a minimum assurance scope and retain the ability to conduct targeted audits. External assurance assessments should test actual transactions, information access and network decisions, rather than relying principally on reviews of documented policies and controls.

Further, the Guideline should set out a clear and confidential complaints mechanism. This would also create a formal channel for stakeholders (including employees/contractors and competitors) to raise ring-fencing concerns safely, without fear of reprisal. There is clear

³³ Nexa Advisory, *AEMC Rule Change Proposal: Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM*, 2 March 2026, pp. 39-41, p. 3 of Attachment 1. https://www.aemc.gov.au/sites/default/files/2026-03/Nexa%20Advisory%20-%20Rule%20change%20request_0.pdf.

Australian precedent for this: the ACCC's Gas Market Code includes an anonymous reporting option using a secure third-party platform that protects identity.

Finally, the Guideline would set out a clear process for handling ringfencing complaints, including how matters are addressed, what information can be requested from DNSPs, and what responses/outcomes are available. This aligns with the Guideline's existing concept that the AER may require a DNSP to respond to a complaint/concern but makes the existence and transparency of the mechanism explicit and auditable.

Reporting should be targeted, not weakened

Nexa recognises that reporting has a cost and should not be duplicated without purpose. The answer is not to remove information needed to determine whether the Guideline is working.

The AER should instead:

- standardise reporting formats across DNSPs;
- consolidate overlapping registers where this preserves the necessary information;
- apply reasonable materiality thresholds to financial reporting;
- automate reporting where information is already held electronically;
- distinguish enduring organisational information from annual transactional reporting; and
- collect information once and use it across multiple functions.

The test should be whether the information assists the AER or market participants to identify discrimination, cross-subsidisation or non-compliance – not whether it is convenient for the DNSP to provide.

Shared assets and cost allocation

Cost allocation is the elephant in the room

While Nexa does not presently take a firm position on the changes required to the AER Shared Asset Guideline, we note that the Shared Asset provisions in the NER are directed at overlapping cost recovery. NER clause 6.4.4 allows the AER to reduce a DNSP's annual revenue requirement by an amount it considers reasonable to reflect the part of the costs of a shared asset that the DNSP is recovering through charges for other services.

As such, the appropriate size of any cost-recovery adjustment depends fundamentally on:

- which costs were allocated to standard control services;
- how shared and common costs were attributed;
- whether the other service bears the costs it causes; and
- whether those allocations remain appropriate as asset use changes.

It then follows that the Shared Asset Guideline cannot reliably correct these matters if the underlying cost allocation is weak, inconsistent or outdated.

Further, cost allocation is equally important to ring-fencing. The Ring-fencing Guideline applies the Cost Allocation Principles and each DNSP's approved Cost Allocation Method across the

boundary between distribution and non-distribution services. The Shared Asset Guideline must also remain compatible with the Cost Allocation Principles and Cost Allocation Method.

The two guidelines therefore rest on the same cost-allocation foundation.

The cost-allocation framework is overdue for review

The AER's Distribution Cost Allocation Guideline was made in June 2008. Each DNSP then develops its own Cost Allocation Method, subject to AER approval.

The NER requires costs to be allocated on a causation basis where practicable, but permits other well-accepted methods where costs are immaterial or causation cannot be established without undue cost and effort.

The present AER framework gives DNSPs considerable discretion over:

- the definition of cost pools;
- the selection of drivers and allocators;
- judgements about causation and materiality;
- the treatment of shared staff, systems and corporate services; and
- the treatment of assets used to provide multiple services.

Without contemporary common guidance, benchmarking and transparent comparative reporting, there is a real risk that economically similar costs are treated differently:

- by different DNSPs;
- by the same DNSP over time (e.g., different capitalisation approaches); or
- depending on whether a particular allocation benefits regulated or other services.

The 2008 Guideline predates widespread adoption of CER and the associated questions around community batteries, CER orchestration, digital network platforms, pole-mounted EV charging and many of the multi-use arrangements now driving the present review. Reviewing the downstream ring-fencing and shared-asset mechanisms without reviewing their common cost-allocation foundation would be incomplete.

The AER should undertake an integrated review

Nexa recommends that the AER expand the present process, or commence a parallel process, to review the Distribution Cost Allocation Guideline and its application.

That review should consider:

- whether common cost pools and allocators can be more standardised across DNSPs³⁴;
- whether greater comparability is possible given that the AER already undertakes economic benchmarking;
- the treatment of different cost categories;

³⁴ AER's experience with economic benchmarking demonstrates that cost drivers, including the most material of them, such as energy, circuit length, number of customers, can and should be standardised.

- the treatment of shared staff, systems, data and corporate services;
- how material changes in asset use would affect cost allocation;
- consistency of Cost Allocation Methods over time;
- public disclosure of material allocation methodologies; and
- independent audit, benchmarking and enforcement arrangements.

The aim should not be to prescribe one allocator for every cost. It should be to reduce avoidable discretion, improve consistency and make material allocation choices visible and testable.

If the AER cannot review cost allocation within or alongside the present process, Nexa recommends that it:

- proceed with the immediate ring-fencing improvements identified in this submission;
- postpone substantive changes to the Shared Asset Guideline – including changes to its materiality threshold and adjustment percentage – until the cost-allocation framework can be reviewed;
- commence a dedicated review of the Distribution Cost Allocation Guideline as soon as practicable; and
- reopen the Ring-fencing Guideline at the conclusion of that review to ensure its accounting-separation, cost-allocation and reporting provisions align with the revised framework.

There is little value in refining the percentage applied at the end of the shared-asset calculation if the allocation of costs at the beginning remains uncertain.

Financial resilience

Nexa's rule change request also proposes financial-resilience protections intended to prevent financial distress elsewhere in a corporate group from undermining the regulated DNSP or exposing consumers to the risks of unrelated commercial activities.

The AER may not be able to implement the central elements of that proposal – such as automatic restrictions on dividends, intra-group transfers or financial support – through the Guideline under the current NER.

However, the AER should consider whether the Guideline can require greater disclosure of:

- material intra-group loans and guarantees;
- asset and cash transfers;
- financial support provided to related businesses; and
- risks assumed by the DNSP in connection with RESP or affiliate activities.

This would not replace Nexa's proposed rule change, but it would improve visibility of relevant corporate-group arrangements while the AEMC process continues.

Conclusion

This review is taking place within a crowded and evolving reform landscape, including the AEMC's ongoing ENRR, its consideration of Nexa's and the ENA's rule change proposals, and other related processes progressing in parallel. Careful coordination will therefore be important. At the same time, the review provides the AER with a valuable opportunity to

respond to stakeholder concerns and improve the effectiveness, transparency and enforceability of its Ring-fencing and Shared Asset Guidelines.

For the Ring-fencing Guideline, Nexa recommends that the AER implement, to the extent permitted by the current NER and the scope of the Guideline, the reforms proposed in Nexa's rule change request. In particular, the Guideline should move beyond broad behavioural obligations by making competitive neutrality observable and verifiable, and by ensuring that waivers remain limited to exceptional circumstances, evidence-based and subject to measurable conditions and transparent review. This would provide more immediate protection for consumers and competition while the AEMC considers whether stronger and more durable rule-level requirements are warranted.

Nexa has not formed a settled view on the specific amendments that should be made to the Shared Asset Guideline. However, the effectiveness of both guidelines depends on the underlying cost-allocation framework. Nexa therefore recommends that the AER expand the present review, or commence a parallel process, to review the Distribution Cost Allocation Guideline and its application. This would help ensure that future ring-fencing and shared-asset arrangements are supported by a contemporary, consistent and transparent approach to cost allocation.

Thank you for the opportunity to provide input into the review. We welcome the opportunity to further discuss any aspect of our submission – please contact either myself on

[REDACTED] or Dr Yuliya Moore, Director – Regulation and Policy Strategy, [REDACTED].

Yours Sincerely

[REDACTED]

Stephanie Bashir

CEO and Principal

Nexa Advisory