

Response to:**AER Call for input**

Review of the Ring-fencing guideline (electricity distribution) v4 and Shared Asset Guideline v2

Reference:

<https://www.aer.gov.au/industry/networks/ring-fencing/review-ring-fencing-guideline-electricity-distribution-and-shared-asset-guideline>

Response By:

– August 2026

Preamble:

This response addresses questions 2 and 3 of the call for input:

Question 2)

Have we accurately reflected the concerns raised by stakeholders regarding the guidelines? Are there additional issues that we should consider when determining the scope of this review?

Question 3)

Are there relevant experiences, case studies, examples or evidence that would help illustrate these issues or inform this review?

I have submitted a longer form treatment of the broader issues to the AEMC's ENRR Package 1 consultation, inclusive of substantial evidence relating to the performance of DNSPs in situations where ringfencing has become a contested matter.

This should be available from the AEMC website, but if not I'm happy to furnish the AER with a copy.

Response:

The waiver framework within the ringfencing guideline has, in recent times, become a preferred mechanism for DNSPs to seek to expand into functional, competitive spaces. We've seen this in batteries, behind the meter solar, and public EV charging.

That the AER has formed that view that *“New business models technologies such as EV charging infrastructure, community batteries, and flexibility services are challenging traditional definitions of distribution services, making it difficult to distinguish between regulated monopoly functions and activities more appropriately delivered by, or in conjunction with, parties unaffiliated with the DNSP”*¹ is highly concerning.

In point of fact, it is not at all difficult to distinguish, in terms of asset ownership today across thousands of active EV charging installations that are serving the Australian public, between:

- an 11kV or 22kV feeder and associated poles owned by the DNSP,
- a transformer to step 11kV or 22kV down to low voltage, that may be owned by a DNSP, or may be owned by a separate commercial business, and
- Public EV charging equipment and associated low voltage electrical switchgear that is owned by a commercial business

It is **not** the technology or the business model associated with the delivery of public EV charging services that is challenging the traditional definitions of distribution services.

It is **the DNSPs** challenging the traditional definitions – through media, advocacy, and government relations efforts - because it would suit them to be allowed to enter these spaces at the level of hardware ownership, against the competitive businesses that ringfencing provisions have existed to protect since they were first instituted.

What the competitive businesses have seen here is a steady encroachment by DNSPs into the competitive domain, encouraged by a permissive and expanding waiver process run by the AER, with no upper commercial limit as to the scale of what can be asked for under the auspices of a waiver.

The competitive businesses see that even when the weight of evidence presented in public consultation, up to and including evidence provided in submissions into parliamentary inquiries, would indicate that a waiver request should logically be refused, because the project proposed represents a needless encroachment by a monopoly into a competitive space – it is instead granted.

The competitive businesses also see that when, with AER issued waivers in hand, the DNSPs perform poorly at tasks that the competitive businesses are demonstrably far more competent at – there is no negative consequence to the DNSP from the AER.

There is simply further encouragement from the AER, to the DNSPs, to apply for more waivers – and commentary from the AER along the lines of ‘policy led sandboxing’, as a rationale for the permissive treatment of waiver requests that enable the DNSPs to further intrude into functional, competitive spaces.

I note that the scope of this review explicitly asks the question:

¹ <https://www.aer.gov.au/system/files/2026-06/Call%20for%20Input%20-%20ring-fencing%20and%20shared%20asset%20guideline%20review%20%283%29.pdf> – page 11

“Whether the current decision-making framework for assessing ring-fencing waiver applications allows the AER to adequately consider the benefits and risks of granting or not granting a waiver.”

There does not appear to be anything in the current guideline preventing the AER from adequately considering risks and benefits. Indeed, the AER has wide latitude as to what it may consider. However, as I understand it, no formal waiver request by a DNSP has ever been rejected, and the question of what DNSPs should be allowed to own has – in the last two years - become a topic of two state level parliamentary inquiries, frontpage news in major mastheads, and the subject of repeated public commentary by energy ministers and premiers.

This may be in part because in assessing a waiver under 5.3.2 of the guideline, the AER is not required to explicitly consider whether granting a waiver will have the potential to lead to harm to a functional competitive market. The ringfencing concept exists to preserve functional competition in the presence of adjacent monopolies – and yet the AER’s process for granting waivers in this domain does not require the regulator to take this into specific account when making the decision.

When this issue has been tested via the parliamentary inquiry process in both NSW² and Victoria³, the landing point with regard to the importance of protecting competitive businesses (and hence consumers) from monopoly over-reach has been quite clear – reinforced in the case of Victoria by a regulatory statement that has effectively put the AER on notice⁴.... but the AER waiver process has nevertheless been used with increasing frequency by DNSPs to pursue and achieve outcomes antithetical to those landing points.

Given the above, I have recommendations for the ringfencing review, **specifically applicable** in situations where a waiver is requested that would permit a DNSP to own a type of asset that would otherwise be owned by competitive businesses:

- 1) That an upper commercial limit on the size of project that can be executed under an AER ringfencing waiver be set.

This upper limit should be quite a small commercial value – at most several hundred thousand dollars - because in cases where the DNSP is seeking to enter a competitive space against incumbent businesses at scale larger than this (for example, owning hundreds of public facing pieces of EV charging equipment, or millions of dollars worth of batteries), it would be far more appropriate for the DNSP to invest the effort involved in seeking a rule change via the AEMC, with all the rigour required by that process, rather than seek an exemption from established rules through a lower stringency process.

- 2) That when the AER is assessing a waiver application, in circumstances where a DNSP is seeking permission to own classes of equipment that are currently owned and operated by competitive businesses, the default answer should be “no”, unless there is an exceptionally good reason for the answer to be “yes”.

² <https://www.parliament.nsw.gov.au/parliamentary-business/committees/inquiry-details?committeeInquiryId=3095>

³ <https://www.parliament.vic.gov.au/electricvehicleinquiry>

⁴ https://www.energy.vic.gov.au/_data/assets/pdf_file/0024/785031/ev-charging-regulatory-statement.pdf

For the avoidance of doubt, ambit claims in the press by DNSPs of ‘market failure’ that are entirely unsupported by robust evidence – and which in fact fail to stand up under scrutiny when evidence is considered – should not be treated as ‘exceptionally good reason’.

This recommendation could be given effect by explicitly requiring the AER to treat the potential for harm to the competitive market as grounds for refusal of such a waiver request – in keeping with the whole reason that ringfencing provisions exist in the first place.

- 3) That before a waiver is granted in these circumstances, the AER be required to determine if the core objectives of the waiver request which have the potential to bring clear benefit to consumers could be met via an alternative approach, that does not require a waiver at all.

For example, in the case of batteries used for grid services, there is no clear need for a DNSP to own the battery in order to procure services from it – the battery could be owned by a competitive business, and the DNSP could procure services as needed, leaving the ringfence intact.

Similarly, in the case of public EV charging, there is no need for the DNSP to own public facing EV charging hardware in order to test the treatment of public EV charging hardware as a flexible load. The DNSP can simply engage with CPOs to request specific performance outcomes, via a wide range of methods that are already well established, and which have indeed been thoroughly tested through ARENA funded trials involving Australian DNSPs.

The determination as to which objectives are genuinely likely to bring benefit to consumers would require better critical assessment by the AER of the claims being made by DNSPs in their waiver requests, because it is abundantly clear at this point that DNSPs are putting forward waiver requests based on assumptions and modelling that are questionable at best.

- 4) That if a waiver is to be granted for a specific project, the scale of the project permitted under the waiver should be as small as is practicable, with the AER having the responsibility to reduce, when feasible, the scale of the proposed project under the waiver – in much the same way that the AER has the responsibility to reduce, where feasible, DNSP expenditure plans in the regulatory reset process.

For example, in the case of the CPU EV charging trial, there was never any need for the waiver to be granted – it was publicly opposed at the time for reasons entirely in keeping with the reasons that the ringfencing provisions exist in the first place. What we’ve learned is that CPU is objectively bad at rolling out useful public EV charging equipment in their patch⁵. To the point of the scale of the trial, however, we could have learned this with a trial of 10 units over 12 months – there was never any need for a 5 year trial of 100 units.

Similarly, the waiver granted to PlusES for metering arrangements on their EV chargers was for 500 installations and was then expanded to 1000... the learnings as to the commercial merit of

⁵ https://www.linkedin.com/posts/ross-de-rango-29a88013_two-months-ago-i-posted-about-citipowers-ugcPost-7460786256914919427-Uhyv/

taking this approach to metering could have been achieved with a deployment of 5 or 10 under a waiver, with the learnings then used to justify an AEMC rule change request, the benefit of which would be available to all players in the market. Indeed, the alternative metering arrangement could simply have been tested by Plus ES in a non-public environment preparatory to an AEMC rule change request, without any need for a waiver at all.

Similarly, the Essential Energy plan is to deploy 300 x 7kW AC EV chargers in regional NSW – a technology choice which is a woeful fit for the actual needs of drivers in those regions⁶. As with the CPU trial, there is not actually a need for DNSP ownership of assets of this type – with support from the NSW state government, there's already a robust market in existence offering public EV charging in regional NSW that Essential Energy will be entering the field against, if this waiver is granted. Again, assuming the AER grants this anti-competitive waiver request - a deployment of 300 units within the RAB is entirely unnecessary in order to learn any of the things that are likely to be learned by this project – 10 or 15 would be ample.

⁶ https://www.linkedin.com/posts/ross-de-rango-29a88013_the-latest-in-the-ongoing-saga-of-australian-activity-7468106412733222912-mlfS