



**FINAL Waiver  
Revocation and  
Explanatory Statement  
AusNet Services  
Electricity Transmission  
Ring-fencing Guideline**

December 2019

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Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Tel: 1300 585165

Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

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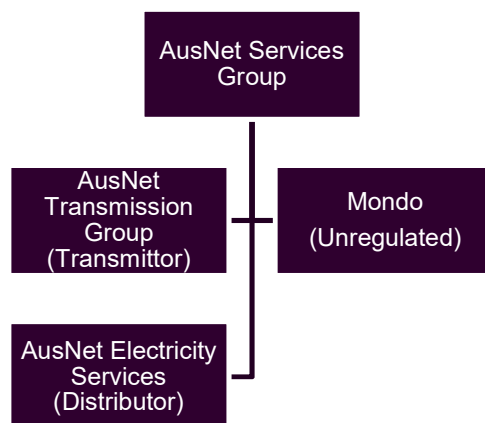
# 1 Final decision and reasons

Pursuant to clauses 5 and 11 of the Electricity Transmission Ring-fencing Guidelines, August 2005 (the Guidelines), the Australian Energy Regulator (AER) has decided to repeal a waiver issued to SPI PowerNet (now AusNet Transmission Group (AusNet Transmission)) on 2 March 2005.<sup>1</sup> AusNet Transmission is a Transmission Network Service Provider (TNSP) in Victoria.

This decision follows a request from AusNet Transmission to revoke a ring-fencing waiver granted in 2005. AusNet Transmission considers it no longer requires this waiver, as it does not operate a related business that earns more than 5% of its total annual revenue.

At the time the waiver was granted, SPI PowerNet operated a distribution business (which is now operated by the separate AusNet Electricity Services). AusNet Transmission submits that each of the elements of the Group now operate separately and, although they are associates, interact in such a way that AusNet Transmission is compliant with clause 7.1(a)(ii) of the Guidelines.<sup>2</sup>

**Figure 1 Outline of AusNet Services Group<sup>3</sup>**



Clause 11 of the Guidelines allows us to grant waivers to TNSPs if we are satisfied that the benefit, or any likely benefit, to the public of granting a waiver is outweighed by the administrative cost to the TNSP and its associates of complying with the obligation.

Clause 5 of the Guidelines allows us to repeal a ring-fencing waiver. This power is exercisable in the same way as the power to grant the waiver. That is, we should revoke the waiver if we consider that the waiver is no longer providing benefits that outweigh the administrative cost of compliance.

<sup>1</sup> ACCC, Decision: SPI PowerNet Pty Ltd Application for Waiver from Transmission Ring-Fencing Guidelines, 2 March 2005.

<sup>2</sup> AusNet Transmission Group, Waiver of Transmission Ring-fencing Guideline Obligation - Request to Revoke, 16 August 2019, p 1.

<sup>3</sup> Please note: This diagram is provided to clarify terminology used in this decision and is not a comprehensive list of entities that may sit within the AusNet Services Group.

As per the *Transmission Consultation Procedures*, on 2 September 2019 the AER published a draft decision and explanatory statement, and provided stakeholders with 30 business days to make submissions. We received no submissions in response to the draft decision.

As AusNet Transmission complies with the Guidelines, there are no longer any public benefits that are likely to accrue from the waiver continuing in force. Further, the waiver revocation will not require any significant action on the part of AusNet Transmission so any administrative costs on the business or its associates are negligible.

On this basis, we consider that the benefits of the waiver no longer outweigh the administrative costs to AusNet Transmission and its associates of complying with the obligation. The decision to repeal the waiver meets the requirements of clauses 5 and 11 of the Guidelines.

For completeness, we also note that there are now some small public benefits that are likely to accrue as a result of revoking the waiver—namely:

- improved transparency as stakeholders can be assured the Guidelines are applied as intended without need for the waiver, and
- greater simplicity in the application of the Guidelines throughout the NEM.

## 2 Background

The Transmission Ring-fencing Guidelines (Guidelines) provide for the accounting and functional separation of prescribed transmission services from the other services. The Guidelines require TNSPs to be a legal entity, maintain separate accounts for their prescribed services, not deal preferentially with itself or related businesses and stem the flow of information between parts of the business providing prescribed and other services.<sup>4</sup>

The Guidelines were first made by the ACCC on 2 August 2002, pursuant to clause 6.20 of the National Electricity Code. When the code was superseded by the National Electricity Rules (NER) in 2005, the AER assumed responsibility for the Guidelines and published a revised version in August 2005.<sup>5</sup>

The ACCC granted a waiver to SPI PowerNet on 2 March 2005. The waiver exempted AusNet Transmission from obligations imposed by clause 7.1(a)(ii) of the Guidelines. This clause requires TNSPs not to carry on a related business. A related business includes a distribution business. When SPI PowerNet acquired its Victorian transmission assets, it also operated a distribution business, now operated by AusNet Electricity Services. Originally, SPI PowerNet proposed to provide both transmission and distribution, this would not have been permitted by the Guidelines.

The ACCC considered that the administrative costs of complying with the Guideline outweighed the public benefits and so granted the waiver. The ACCC assessed that there were minimal public benefits that would accrue as a result of the TNSP complying with clause 7.1(a)(ii). This was in part due to the unique transmission planning arrangements in Victoria.<sup>6</sup> In most states a single TNSP is responsible for planning and operating the network. In Victoria, VENCORP (now AEMO) is responsible for planning the network, while AusNet Transmission construct and operate the shared network as per the arrangements set out in clause 6A.1.6 of the NER. This reduced the possibility for discrimination in favour of the distribution business. The waiver also imposed conditions that effectively required AusNet Transmission to comply with all other provisions of the Guideline.

On 16 August, AusNet Transmission submitted a request to the AER, asking that we revoke the waiver as it is no longer required due to the way AusNet Services Group has structured/structures its business. AusNet Transmission provides services in a way that satisfies the Guidelines' requirements. Other separate legal entities within the AusNet Service Group provide distribution services. The request stated that repealing the waiver would be helpful in advancing electricity sector framework developments, including the review of the Transmission Ring-fencing Guidelines by the AER, expected to commence later this year.<sup>7</sup>

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<sup>4</sup> ACCC, Transmission Ring-Fencing Guidelines, 15 August 2002, 2.

<sup>5</sup> AER, Compendium of Electricity Transmission Regulatory Guidelines, August 2005.

<sup>6</sup> For more information please see: <https://www.aemo.com.au/Electricity/National-Electricity-Market-NEM/Planning-and-forecasting/Victorian-transmission-network-service-provider-role>

<sup>7</sup> For more information please see: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-transmission-ring-fencing-guideline-review>

AusNet Transmission does provide some services which are considered a 'related business' under the Guidelines. Notably, AusNet Transmission owns the Ballarat Energy Storage System, which is operated by Energy Australia.<sup>8</sup> However, clause 7.1(b) of the Guidelines provides that clause 7.1(a)(ii) does not apply where the related business attracts 5% or less of the TNSP's total annual revenue. We are satisfied that AusNet Transmission does not exceed this threshold.

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<sup>8</sup> For more information please see: <https://www.ausnetservices.com.au/Misc-Pages/Links/About-Us/News-Room/News-Room-2018/AusNet-Services-to-Host-Victorias-Latest-Big-Battery-Project-in-Ballarat>