

Electricity Transmission Ring-fencing Guideline Explanatory statement – Version 3

April 2022

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AER Reference: 63302-

Enquiries

Enquiries about this paper or our guideline, should be directed to the Strategic Policy and Energy Systems Innovation branch of the AER on 1300 585 165 or AERringfencing@aer.gov.au.

Amendment Record

Version	Date	Pages
1	15 August 2002	9
2	August 2005	9
3	XX June 2022	12

Shortened forms

Shortened Form	Extended Form
ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
current guideline	Transmission Ring-Fencing Guideline – April 2005
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER, NERR or the rules	National Electricity Rules and National Energy Retail Rules
TNSP	Transmission Network Service Provider

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Request for submissions

Interested parties are invited to make written submissions to the Australian Energy Regulator (AER) regarding this explanatory statement and our Draft Ring-Fencing Guideline for electricity transmission (version 3) by **close of business, 31 May 2022**.

Submissions should be sent electronically to [AERringfencing@aer.gov.au](mailto:AERringfencing@ aer.gov.au).

Alternatively, submissions can be mailed to:

General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 520 Melbourne
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The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information are requested to:

- Clearly identify the information that is the subject of the confidentiality claim; and
- Provide a non-confidential version of the submission in a form suitable for publication. All non-confidential submissions will be placed on the AER's website at www.aer.gov.au.

For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014 available on the AER's [website](http://www.aer.gov.au).

Enquiries about this paper, our Draft Guideline, or about lodging submissions, should be directed to the Strategic Policy and Energy Systems Innovation branch of the AER on 1300 585 165 or [AERringfencing@aer.gov.au](mailto:AERringfencing@ aer.gov.au).

1. Background

The Australian Energy Regulator (AER) exists to ensure energy consumers are better off, now and in the future. Consumers are at the heart of our work, and we focus on ensuring a secure, reliable and affordable energy future for Australia. We recognise that energy is an essential service for Australian households and businesses and a critical contributor to the long-term success of the Australian economy.

We regulate electricity networks and covered gas pipelines in all jurisdictions except Western Australia. We are an independent statutory authority. Our powers and functions are set out in the National Electricity Law (NEL), National Electricity Rules (NER) and National Energy Retail Rules (NERR).

The current Electricity Transmission Ring-Fencing Guideline (the guideline) were first developed by the ACCC in August 2002 and were republished by the AER in August 2005 with minor updates.

1.1 What is ring-fencing?

Ring-fencing refers to the separation of regulated services provided by a TNSP (for example, installation/maintenance of poles and wires) from the provision of contestable services by a TNSP or an affiliated entity (for example, generation and retail services).

The objective of ring-fencing is to provide a regulatory framework that promotes competitive markets. It does this by providing a level playing field for providers in markets for contestable services. Effective ring-fencing arrangements are important for more competitive outcomes, better choice and prices for consumers.

The current guideline governs the extent to which TNSPs can provide contestable services. The guideline requires a TNSP to establish arrangements to segregate (ring-fence) its business of providing regulated transmission network services from other services. The aim is to prevent cross-subsidisation and discriminatory behaviour, by separating as far as possible the monopoly powers of TNSPs from the contestable activities of generation and retail supply.

2. Re-issuing the guideline

Our proposed guideline (**version 3**) should be read in conjunction with this explanatory statement.

The Transmission Ring-Fencing Guideline was initially released by the ACCC in 2002 (**version 1**). The guideline was republished by the AER in substantially the same form in 2005 (**version 2**) as a guideline made under Chapter 6 of the NER at that time.

The NER was subsequently amended in 2006 to introduce Chapter 6A of the NER, which provides for economic regulation of transmission services. Chapter 6A now includes updated provisions relating to transmission ring-fencing and outlines the AER's role in issuing a relevant guideline. Clause 6A.21.1 of the NER imposes an obligation to comply with transmission ring-fencing guideline.

However, it has recently come to the AER's attention that when the NER was amended to introduce a new Chapter 6A, those changes did not include provisions to transition the 2005 guideline from the old rules to the new NER. Further, no transitional provisions exist in the current version of the NER that deem version 2 of the guideline to have been made under clause 6A.21 of the NER. The likely consequence is Version 2 of the guideline does not currently have legal force.

To address this, the AER proposes to re-issue the Transmission Ring-Fencing Guideline under clause 6A.21 of the NER in substantively the same form as version 2. The proposed guideline contains minor changes made to reflect the current drafting of Chapter 6A of the NER and minor formatting changes to align the guideline with AER's current templates. These minor changes are set out in Appendix A.

Industry has been operating under the guideline in its current form. The AER proposes to re-issue the guideline in this form to ensure this status quo continues, allowing regulatory certainty in respect of transmission ring-fencing arrangements ahead of a full review of the guideline. We propose to recommence our full review of the guideline in May 2022. This is discussed further below.

A list of clauses that we have amended or deleted since version 2, together with new clauses, are listed in Appendix A. To assist stakeholders, we have also published the clean and marked-up copy of our guideline. The AER notes that the marked-up copy highlights the changes made comparing version 3 to version 2, for easy identification.

2.1 Waivers

Waivers were granted under version 1 and 2 of the guideline. The remaining active waivers are:

- **EnergyAustralia:** EnergyAustralia (the original NSW network business) was granted a waiver by the ACCC from compliance with various sections of the guideline. EnergyAustralia received a waiver from the requirement for legal separation of its transmission and distribution network businesses. The waiver also permanently waived the requirement for each of these businesses to retain separate marketing staff. The waiver related to NSW transmission and distribution services and assets and was granted in 2003.
- **TasNetworks:** This waiver relates to the merger of the Tasmanian transmission and distribution network businesses under 'TasNetworks'. Clause 7.1(a)(ii) of the guideline requires that a TNSP that provides ring-fenced services must not carry on a related business, including electricity distribution. Therefore, TasNetworks sought a waiver from this obligation. This waiver, granted in 2014 does not specify an expiry date which indicates that the waiver was intended to be a permanent waiver.

More information on the waivers can be found on our [website](#).

For any waivers published under the guideline during the period of 30 November 2006 to the current date¹, the AER is considering reissuing these waivers in the same form at the same time as it publishes the final version 3 of the guideline. **We are seeking stakeholder comments on this approach including whether the existing waivers satisfy the requirements of clause 11 of the draft guideline.**

2.2 Accounting standards

Version 2 of the guideline refers to several standards such as auditing standards. These instruments are out of date. To rectify this, we have amended the relevant clauses of the guideline to require a TNSP or auditor to comply with the appropriate 'current standard'.

2.3 Reporting guidelines and cost allocation

Clauses 7.3, 7.4 and 7.5 of version 2 of the version 2 of the guideline refer to preparing accounts and allocating costs in a way that complies with guidelines that apply under Clause 8. Clause 8 then refers to the accounting/reporting guidelines which then refer to the 'Information Requirements Guideline'. The Information Requirements Guideline is now out of date. Therefore, we have replaced the reference to accounting/reporting guidelines with references to the Cost Allocation Methodology and current 'Information Guidelines'.

2.3 Full review of the guideline

The AER will shortly re-commence its full review and update of the guideline. Submissions on substantive changes to the guideline will be invited and considered as part of the substantive review process.

Any submissions made to the initial Transmission Ring Fencing Guidelines Discussion paper released in November 2019 will be considered as part of an AER Issues Paper to be released in May 2022.

¹ AER, TasNetworks - Application for Waiver from Transmission Ring-fencing Guidelines – April 2014; ACCC - Application for Waiver of Ring-Fencing Arrangements by EnergyAustralia - December 2003

3. Next Steps

Following release of our draft guideline and this explanatory statement, we will undertake further consultation before releasing our final (interim) guideline. Indicative timing follows.

Indicative date	Project milestone/action
April 2022	AER publishes Draft Guideline and explanatory statement (interim)
May 2022	Submissions close
June 2022	AER publishes Final Guideline and explanatory statement (interim)

Appendix A – List of amendments, deletions or additions

Guideline section	Amend/Delete/Add	Clause
1. Contents	Add	contents page
2. Background:	Amend	Clause 1 Clause 2 Clause 3 Amend references to 'clause 6.20.2' and replace with 'clause 6A.21.1.'
	Amend	Clause 3 Amend 'These Guidelines were published by the ACCC on 15 August 2002 to 'This Guideline commences on XX and incorporates amendments made from time to time as indicated on page ii'.
3. Preliminary	Amend	Clause 4(a) Clause 4(b) Amend references to clause 4 with 'the Guideline'
	Amend	Clause 4 Amend 'italicised' to 'bolded'
	Add	Clause 4(b) Add 'National Electricity Law and'
	Delete	Clause 4 Delete note
4. Definitions	Insert	Insert 'in this Guideline'
	Amend	In the definition of associate: Amend 'were repealed' to 'did not form part of'
	Delete	In the definition of associate: Delete note
	Delete	In the definition of Corporations Act: Delete 'as in force from time to time'.
	Amend	In the definition of economic entity:

		Amend 'AASB 1024: Consolidated Accounts as in force from time to time' to 'and Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies).'
	Add	Definition for Information guidelines Add 'Information Guidelines means the Electricity Transmission Network Service Providers Information Guideline (Version 2) or any subsequent versions or succeeding documents.'
	Delete	Definition of marketing staff Delete note
	Amend	Definition of parent entity Amend 'AASB 1024: Consolidated Accounts as in force from time to time' to 'Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies).'
	Delete	Definition of relevant commencement date. Delete 'the latter of the following: 1 November 2002 or either the date on which the ACCC, under s. 44ZZA of the Trade Practices Act 1974 (Cth), accepts an access undertaking provided by the Transmission Network Service Provider in accordance with clause 2.5 of the National Electricity Code or, if a person is registered by NEMMCO as a Transmission Network Service Provider after 1 July 2005, the date on which the person is registered, and replace with 'means XX '

	Add	Definition of ring-fenced services Add 'prescribed'
5. Ring-fencing minimum obligations	Add	Clause 7.3(b) Clause 7.4 Clause 7.5(b) Add 'or instruments'
	Amend	Clause 7.7 note: Amend 'NER Participant' to 'Registered Participant'
	Amend	Clause 8(a) Amend 'if the AER decides to publish accounting guidelines for TNSPs that apply to the accounts being prepared, comply with those guidelines; or' to 'comply with the Information Guidelines and the TNSP's Cost Allocation Methodology'
	Amend	Clause 8(b) Amend 'if the AER has not published such guidelines, comply with any guidelines that are prepared by the TNSP and approved by the AER' to 'to the extent a matter is not dealt with in the Information Guidelines or TNSP's Cost Allocation Methodology comply with any guidelines in relation to that matter that are prepared by the TNSP and approved by the AER'
	Delete	Clause 8 Delete note.
6. Compliance procedures and compliance reporting	Amend	Clause 12 Clause 13 Clause 16 Amend references to 'clause 6.20.2' and replace with 'clause 6A.21.1.'
7. Consultation	Amend	Clause 17 Amend 'the AER will follow a consultation process that complies with clauses 6.20.2(a) and 6.20.2(e) of the

		<p>NER' to 'the AER will follow <i>Transmission Consultation Procedures</i> except for reissuing waivers in substantially the same form as the waivers issued under the transmission ring-fencing guideline published by the AER in August 2005.'</p>
	Delete	<p>Clause 17 Delete note</p>