

# Electricity Transmission Ring-fencing Guideline Explanatory statement – Version 3

July 2022

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## Amendment Record

Version	Date	Pages
1	15 August 2002	9
2	August 2005	9
3	6 July 2022	8

## 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

# Contents

<b>Shortened forms</b> .....	<b>iii</b>
<b>1. Background</b> .....	<b>5</b>
1.1 What is ring-fencing?.....	5
<b>2. Re-issuing the guideline</b> .....	<b>6</b>
2.1 Waivers.....	6
2.2 Accounting standards.....	7
2.3 Reporting guidelines and cost allocation .....	8

# 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 relevantly in the National Electricity Law (NEL) and National Electricity Rules (NER).

The current Electricity Transmission Ring-Fencing Guideline (the guideline) was first developed by the ACCC in August 2002 and was republished by the AER in August 2005 with minor updates. This version of the guideline (published in July 2022) is Version 3.

## 1.1 What is ring-fencing?

Ring-fencing refers to the separation of regulated services provided by a transmission network service provider (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 (comprising “prescribed transmission services” under the NER) from other services. The aim is to prevent cross-subsidisation and discriminatory behaviour, by preventing TNSPs from using their monopoly position in regulated markets to the disadvantage of competition in other markets (such as generation and retail supply).

## 2. Re-issuing the guideline

Our 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.

It came 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 did not have legal force.

To address this, the AER has re-issued 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.

Industry has been operating under the guideline in its current form. The AER has re-issued 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 received a submission from Energy Networks Australia (ENA) who was supportive of our approach. We received a submission from Iberdrola which related to issues of a substantive policy nature. These will be considered as part of the full review of the guideline and Iberdrola has been informed of this approach. The remaining submissions from Ausgrid and TasNetworks related to their respective waivers discussed below.

To assist stakeholders, we have published a clean and marked-up copy of our guideline.

### 2.1 Waivers

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

- **EnergyAustralia:** EnergyAustralia (the original NSW network business) was granted a waiver by the ACCC in 2003 from compliance with various sections of the guideline pertaining to its NSW transmission and distribution businesses. 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. Following the restructure of EnergyAustralia, Ausgrid was established as the distribution network business in NSW. Its assets include dual function assets. These are assets which are owned, operated or controlled by a distribution network business which operates between 66 kV and 220 kV (transmission voltage) and which operate in parallel, and provides support, to the higher voltage transmission network.<sup>1</sup>

<sup>1</sup> National Electricity Rules, cl 6.24.2.

- **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.

For any waivers published under the guideline during the period of 30 November 2006 to the current date<sup>2</sup>, the AER consulted at the draft stage of the guideline review about reissuing these waivers in the same form and at the same time as it publishes the final version 3 of the guideline. We asked stakeholders whether the existing waivers satisfy the requirements of clause 11 of the guideline.

### **EnergyAustralia/Ausgrid waiver**

In their submission to the draft guideline, Ausgrid as the distribution business successor to Energy Australia was concerned that they may be caught by the guideline because of their dual function assets. Ausgrid noted that these assets provide shared transmission services to consumers directly connected to the transmission network and connected network service providers. According to Ausgrid, the definitions section in the draft guideline introduces ambiguity as to regulatory treatment of dual function assets for the purposes of transmission ring-fencing. They have sought clarity on the scope and application of the definition of ring-fenced services.

Currently the definition states that *ring-fenced services means prescribed transmission services*. Ausgrid expressed the view that services provided by means of dual function assets may be captured under the definition of ‘prescribed transmission services’ as defined in the NER, because the definition in Chapter 10 does not refer to clause 6.24.2.<sup>3</sup> Clause 6.24.2 makes clear that, for the purposes of Chapter 6 and 6A, services provided by means of, or in connection with dual function assets, are not to be treated as prescribed transmission services.

For the avoidance of doubt, and having regard to clause 6.24.2, we have amended the definition of ‘ring-fenced services’ to explicitly exclude services provided by means of or in connection with dual function assets. This change is a clarification and does not affect the way in which the guideline has and continues to operate.

### **TasNetworks waiver**

On 27 April 2022 TasNetworks wrote to the AER and requested that their waiver be re-issued. TasNetworks remains both a TNSP and a DNSP, therefore the reasons for the waiver given by the AER in 2014 remain valid. In addition the circumstances surrounding the waiver including the potential benefits and harms to consumers and the market remain unchanged from 2014. Therefore our reasons for granting the waiver remain in line with those provided in 2014. As such along with the release of Version 3 of the guideline we have also published [our decision](#) to grant a waiver to TasNetworks of ring-fencing obligations in respect of clause 7.1(a)(ii) of the Guideline.<sup>4</sup>

## **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 amended the relevant clauses of version 2 of the guideline to require a TNSP or auditor to comply with the appropriate ‘current standard’. No

<sup>2</sup> AER, TasNetworks - Application for Waiver from Transmission Ring-fencing Guidelines – April 2014; ACCC - Application for Waiver of Ring-fencing Arrangements by EnergyAustralia - December 2003

<sup>3</sup> Chapter 10, National Electricity Rules.

<sup>4</sup> AER, Transmission ring-fencing waiver - TasNetworks –July 2022

submissions were made in relation to this issue and so we have maintained the proposed wording set out in the draft guideline.

## **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 and so in the draft guideline we replaced the reference to accounting/reporting guidelines with references to the Cost Allocation Methodology and current 'Information Guidelines'. No submissions were made in relation to this issue and so we have maintained the proposed wording set out in the draft guideline.