

Better Regulation: Draft confidentiality guideline

9 August 2013

The Australian Energy Regulator (AER) commenced the Better Regulation program in December 2012. Today we released our draft confidentiality guideline. This sets out how electricity network businesses must make confidentiality claims over information they submit to us as part of their regulatory proposals. Our aim is for stakeholders to have access to sufficient information on issues affecting their interests.

What is the Better Regulation program?

The AER initiated the Better Regulation program following changes to the electricity and gas rules in late 2012. The program brings together improvements to our regulatory approach with other important reforms announced by the Prime Minister in December 2012.

The Better Regulation program delivers an improved regulatory framework focused on the long term interests of electricity consumers.

The Better Regulation program involves:

- extensive consultation on seven new guidelines that outline our revised approach to determining electricity network revenues and prices
- establishing a consumer reference group for our guideline development work
- forming an ongoing Consumer Challenge Panel
- improving our internal technical expertise and systems.

Why should any information be confidential?

Network businesses plan the expenditure they will need to supply electricity for consumers over the next five year period. Businesses put these expenditure proposals to us for assessment during a regulatory determination. We establish the total amount of revenue a business may recover from consumers.

Businesses must submit extensive amounts of information on their expenditure plans to support their proposals. Publishing this information promotes a transparent regulatory process. However, some of this information must remain confidential. For example, a business may give us an estimate of how much it will cost to provide a service it plans to competitively tender for. If we published their cost expectations it could impact their ability to be competitive in the tender, and ultimately increase the costs to consumers.

We want to balance protecting confidential information with disclosing information to create an open and transparent regulatory decision making process. This balance involves all stakeholders having access to sufficient information to understand and assess the substance of issues affecting their interests.

What's in the draft confidentiality guideline?

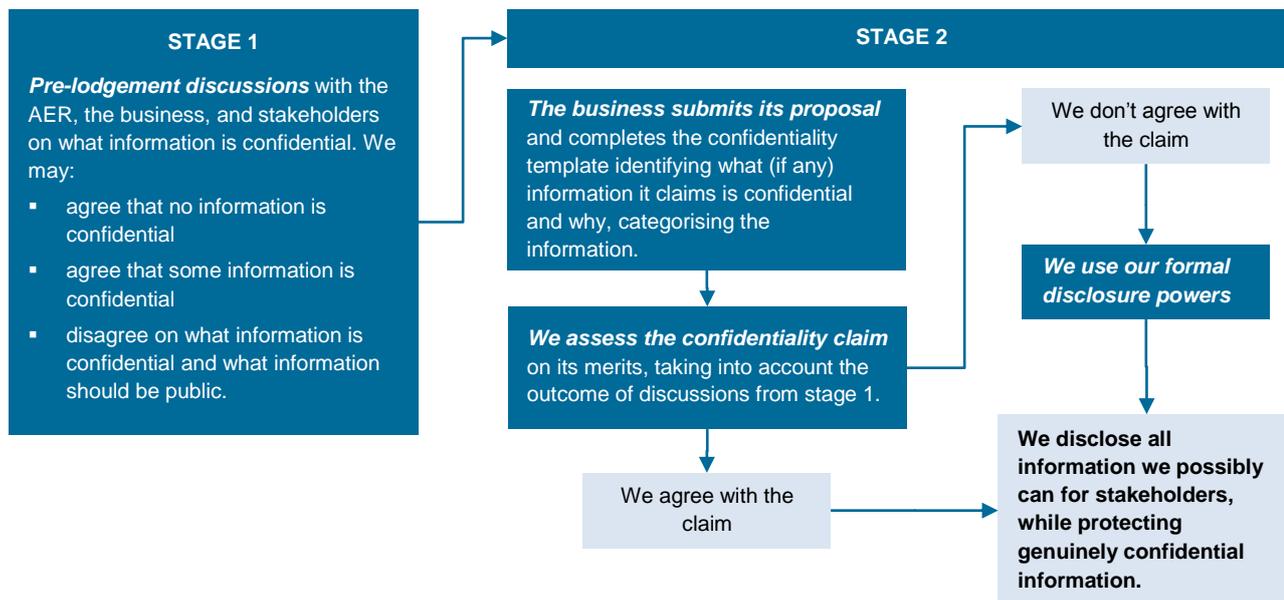
In the draft confidentiality guideline we propose a two stage process for managing businesses' confidentiality claims. The first stage occurs before we receive any proposal from a business. We'll encourage all stakeholders to discuss what information may be confidential. These discussions should focus on developing a shared practical understanding of the confidential information and the access necessary to strike the balance we seek.

Our aim in the first stage is to reach agreement with the business on what information is confidential. Discussions in the first stage may result in any mix of the following positive outcomes:

- narrower confidentiality claims
- fewer redactions in public versions of documents
- detailed information disclosed but adjusted to protect sensitive elements
- limited release of confidential information.

The second stage is when a business submits a proposal. The business must complete the confidentiality template published with the draft confidentiality guideline. The template requires the business to outline what information is confidential, explain why, and categorise the types of information.

Our process for dealing with confidentiality claims



What happens when we agree on confidential information?

In all cases, the business must complete the confidentiality template. If we reached an understanding in the first stage of our process and agree with the claims, we can proceed to disclose all the information we possibly can for stakeholders, while protecting genuinely confidential information.

What happens when we don't agree on confidential information?

We aim to resolve as many confidentiality issues as possible in the first stage of our process. Where agreement is not possible, we may decide to use our formal disclosure powers to publish the information.

For example, we can disclose information a business claims is confidential if we consider the public benefit outweighs any harm.

What are the categories of confidential information?

In the draft confidentiality guideline we propose the following categories businesses must use to classify confidential information:

- information affecting the security of the network—information that may jeopardise security of the network or its ability to operate effectively
- market sensitive cost inputs—such as supplier prices, internal labour costs, or information affecting the business' ability to obtain competitive prices

- market intelligence—information that may advantage the business' competitors for non-regulated or contestable services
- strategic information—such as the acquisition of land and easements, which might impact the business' ability to negotiate a fair market price for these items
- personal information—information about an individual or customer which raises privacy considerations
- other—information the business claims is confidential but doesn't fit into any other category.

We will assess each confidentiality claim on its merits. Classification into a category does not guarantee protection.

How can I provide a submission or comments?

We invite interested parties to make submissions or comments on our draft confidentiality guideline. If you would like to have your say prior to us publishing the final guideline, you have until close of business **20 September 2013** to get your submission or comments to us. You can find further details on how to provide your submission on our confidentiality web page www.aer.gov.au/node/18888, or you can email us at confidentiality@ aer.gov.au.

For more information

For more information or to get involved in the consultation processes for the Better Regulation program, please visit our website www.aer.gov.au/better-regulation-reform-program or email us at betterregulation@ aer.gov.au.