



## **Better Regulation**

# **Draft Confidentiality Guideline**

August 2013

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Inquiries about this document should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001  
Tel: (03) 9290 1444  
Fax: (03) 9290 1457  
Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

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# 1 Nature and authority

## 1.1 Introduction

Consistent with clauses 6.14A and 6A.16A of the National Electricity Rules (the Rules) this publication sets out the Australian Energy Regulator's (AER) Transmission Confidentiality Guidelines and Distribution Confidentiality Guidelines. We have decided to deal with both guidelines together in a single set of guidelines (the Confidentiality Guideline).

The Confidentiality Guideline must specify the manner in which transmission network service providers and distribution network service providers (NSPs) may make confidentiality claims.<sup>1</sup> It may also include categories of confidential information by which a NSP must classify any claims of confidentiality.<sup>2</sup> The Confidentiality Guideline applies to a NSP's initial and revised regulatory proposal, initial and revised revenue proposal, proposed and revised proposed negotiating framework and, proposed and revised proposed pricing methodology (collectively referred to as Regulatory Proposals).<sup>3</sup> We are required to make and publish the Confidentiality Guideline by 29 November 2013.<sup>4</sup>

## 1.2 Role of the Confidentiality Guideline

Clauses 6A.14A and 6.16A of the Rules provide that we must, in accordance with the transmission and distribution consultation procedures (consultation procedures) make and publish the Confidentiality Guideline. Also, the Confidentiality Guideline must specify the manner in which NSPs may make confidentiality claims in Regulatory Proposals, which may include categories of confidential information by reference to which NSPs must classify any claims of confidentiality in their Regulatory Proposals.

Also, under these clauses there must be a Confidentiality Guideline in force at all times after the date on which we first publish the Confidentiality Guideline and that the Confidentiality Guideline is binding on the AER and NSPs.

## 1.3 Definitions and interpretation

In this guideline, the words and phrases in italics have the meaning given to them in:

- the glossary, or
- if not defined in the glossary, the Rules.

## 1.4 Process for revision

The AER may amend or replace this guideline from time to time in accordance with the consultation procedures and clauses 6.2.8(e) and 6A.2.3(e) of the Rules.

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<sup>1</sup> NER, cl.6.14A(b) & cl.6A.16A(b)

<sup>2</sup> NER, cl.6.14A(b) & cl.6A.16A(b)

<sup>3</sup> NER, cl.6.14A(d) & cl.6A.16A(d).

<sup>4</sup> NER, cl.6.4.5(a) and cl.6A.5.6(a) require that we publish the confidentiality guideline. Transitional NER provisions, cl.11.53.4 and cl.11.54.4 set the date for their publication.

## 1.5 Version history and effective date

A version number and an effective date of issue will identify every version of the Confidentiality Guideline.

## **2 Overview of the Confidentiality Guideline**

### **2.1 Purpose of the proposed Confidentiality Guideline**

The purpose of the proposed Confidentiality Guideline is to assist in delivering better regulatory decisions. The proposed Confidentiality Guideline aims to assist the AER to ensure all stakeholders have access to sufficient information to enable them to understand and assess the substance of all issues affecting their interests.

The Confidentiality Guideline also aims to make the process for claiming confidentiality clear and consistent for all stakeholders. The Confidentiality Guideline will also provide greater certainty to NSPs on how we will assess their confidentiality claims.

## 3 Manner in which an NSP must make confidentiality claims

### 3.1 Confidentiality template

For each piece of information a NSP claims is confidential, it must make a separate confidentiality claim in accordance with the confidentiality template at Attachment 1. A NSP must ensure that the confidentiality template does not contain confidential information. The requirements for each of the columns of the confidentiality template are set out below.

#### ***Document containing confidential information***

A NSP must list the title, name or identification number of the document which contains the information claimed to be confidential (the information).

#### ***Page and paragraph number of the document which contains the confidential information***

A NSP must clearly identify the page and paragraph numbers of the sections of documents which contain the information.

#### ***Description of the confidential information***

A NSP must provide a description of the information which includes enough detail for stakeholders to fully understand the nature of the information.

#### ***Topic the confidential information relates to***

A NSP must specify the topic that the information relates to. For example, capital expenditure, operating expenditure or rate of return.

#### ***Confidentiality category***

A NSP must categorise the information into one of the following confidentiality categories:

1. *Information affecting the security of the network* - information which, if made public, may jeopardise security of the network or a NSP's ability to effectively plan and operate its network.
2. *Market sensitive cost inputs* - information such as supplier prices, internal labour costs, and information which would affect the NSP's ability to obtain competitive prices in future infrastructure transactions, such as tender processes.
3. *Market intelligence* - information which may provide an advantage to a NSP's competitors for non-regulated or contestable activities.
4. *Strategic information* – information such as the acquisition of land and easements, where the release of this information might adversely impact the NSP's ability to negotiate a fair market price for these items.
5. *Personal information* - information about an individual or customer whose identity is apparent, or can reasonably be ascertained from the information which raises privacy considerations.

6. *Other* - information which the NSP claims is confidential but does not fit into one of the above categories.

***Reasons supporting why the information falls within the specified confidentiality category***

A NSP must provide an explanation supporting why the information falls within the selected confidentiality category. If the information falls within the category 'Other' the NSP must explain in this column why the information should be treated as confidential.

***Reasons supporting how and why disclosure would cause detriment***

A NSP must provide reasons supporting how and why disclosure of the information would cause detriment to the NSP.

***Reasons supporting why detriment outweighs the public benefit in disclosure***

A NSP may provide reasons as to why it considers the identified detriment is not outweighed by the public benefit in disclosing the information. Addressing whether the identified detriment is outweighed by the public benefit is optional.

## **3.2 Other matters relating to manner in which NSP must make confidentiality claims**

In addition to completing the confidentiality template, a NSP must also make confidentiality claims in the following manner:

- in confidential versions of documents, highlight the information in yellow shading.
- provide a public version of the documents which contain the information. The public version must clearly identify the information the NSP wants to protect by redacting or 'blacking out' that information. Public versions must retain the same formatting and page numbers as the confidential version.
- submit the confidentiality template in Microsoft Word format.
- specify on electronic documents' filenames whether the document is "public" or "confidential."



## Shortened forms

This confidentiality guideline uses the following shortened forms

Shortened term	Full title
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Confidentiality Guideline	Distribution Confidentiality Guidelines and Transmission Confidentiality Guidelines
Consultation Procedures	Distribution Consultation Procedures and Transmission Consultation Procedures
DNSP	Distribution Network Service Provider
NEL	National Electricity Law
NSP	Network Service Provider
Regulatory Proposals	Includes the following: Initial Regulatory Proposal, revised Regulatory Proposal, initial revenue proposal, revised revenue proposal, proposed negotiating framework, revised proposed negotiating framework, proposed pricing methodology and revised proposed pricing methodology.
the information	the information claimed to be confidential
stakeholders	Includes the following: NSPs, consumer/customer groups and other persons who interests may be adversely affected by an AER decision.
the Rules	National Electricity Rules
TNSP	Transmission Network Service Provider

## Attachment 1 - Confidentiality template

Title, page and paragraph number of document containing confidential information.	Description of the confidential information.	Topic the confidential information relates to (e.g. capex, opex, WACC etc.)	Identify the recognised confidentiality category that the information falls within.	Provide a brief explanation of why the information falls into the selected category.  If information falls within 'other' please provide further details on why the information should be treated as confidential.	Specify reasons supporting how and why detriment may be caused from disclosing the identified information.	Provide any reasons supporting why the identified detriment is not outweighed by the public benefit (especially public benefits such as the effect on the long term interests of consumers).