

# Distribution and transmission confidentiality guidelines–Workshop No. 1

## Summary of meeting–4 April 2013

### *Distribution and transmission confidentiality guidelines–issues paper*

Held via video link between the AER's Adelaide, Brisbane, Canberra, Melbourne, Perth, and Sydney offices.

On 4 April 2013, the AER, as part of its *Better Regulation* package, hosted a workshop on the distribution and transmission confidentiality guidelines (the Guidelines) issues paper. The forum was chaired by AER Commissioner, Ed Willett. A full attendee list can be found in Attachment A. This summary outlines the key topics discussed at the workshop, including views expressed at the workshop, without ascribing particular comments to any one individual or organisation.

### **1** *Introductions*

The AER highlighted its objective in the issues paper as our first step in consulting on the Guidelines. It is based on our experience in dealing with confidentiality claims and using our information disclosure powers.

Attendees agreed to publish the forum discussion at summary level on the AER's website.

### **2** *General matters raised*

- a) *Manner in which network service providers may make confidentiality claims, including, blanket claims, third party documents and compliance costs.*

Clearly identifying confidential information and providing reasons why disclosure would cause detriment and this does not outweigh the public benefit – using attachment 1 in the issues paper.

Consumer representatives were generally supportive of attachment 1 in the issues paper. However, consumer representatives suggested inserting an additional column to attachment 1 requiring network service providers (NSPs) to address whether consumers were engaged on the materiality of the confidential information. The suggested extra column would also provide consumers with a better understanding of the nature of the information. Consumer representatives also suggested that the Guidelines should include key milestones or a timeline for assessing confidentiality claims.

Industry representatives were generally supportive of attachment 1. They commented that the attachment enables confidentiality claims to be more predictable and understood by stakeholders. Industry representatives also suggested that the requirement to identify detriment (third column in attachment 1) should only apply if it is reasonably practical.

While NSPs were generally supportive of attachment 1, there was some concern that attachment 1 may impose conditions on NSPs when making confidentiality claims. Also, if the template was not completed as set out in the issues paper, this may result in the NSPs proposal being non compliant. NSPs also commented that they considered assessment of whether detriment is outweighed by public benefit should be the role of the AER.

Finally, NSPs agreed that issuing disclosure notices is cumbersome and that Guidelines will minimise the AER's use of this process.

The approach to 'blanket confidentiality claims'.

Consumer representatives and NSPs were supportive of our approach to blanket confidentiality claims. Consumer representatives suggested that stakeholders should be made aware of the significance of documents which are subject to blanket confidentiality claims. NSPs commented that blanket confidentiality claims were not intelligent and noted that in limited cases, a whole document may in fact be confidential.

Responsibility for verifying third party confidentiality guidelines.

NSPs and consumer representatives were supportive of our approach in verifying third party confidentiality claims. Industry representatives commented that the focus of this approach should be on the nature of the information.

Administrative costs of compliance with the confidentiality guidelines.

Industry representatives generally agreed that administrative costs of complying with the Guidelines would not present much of an additional burden. They were happy to assist the AER in streamlining the process. However, NSPs are concerned that the public benefit test may increase the burden of compliance and further noted that they do not consider performing the public benefit test as being a role for the NSP.

*b) Categories or lists of confidential information*

Should the confidentiality guideline specify categories?

All participants generally favour the Guidelines in listing categories of confidential information. NSPs noted that categories would direct focus on the content of documents and assist them in streamlining the administrative process associated with claiming confidentiality. NSPs also commented that the use of categories would provide guidance to stakeholders on the type of information that are considered confidential.

Types of confidentiality categories.

NSPs suggested adding additional categories to section 4.2.1 of the issues paper. Further, NSPs also asked to add the categories the Energy Networks Association proposed to the AEMC's final rule determination. ERA representatives considered that some categories were too broad and may need to be broken down into sub categories.

What should be protected and disclosed?

Consumer representatives considered that information explaining the underlying assumptions to financial models should be disclosed. NSPs commented that the nature of the information contained in a document, rather than the document itself, should determine whether the AER protects or discloses it. ERA sought clarification on the meaning of 'financial statements' and 'market sensitive information'.

c) *Limited release of information*

The disclosure of confidential information to certain stakeholders with the signing of a confidentiality undertaking.

All participants generally agreed with the using confidentiality undertakings to allow disclosure or partial disclosure of confidential information to certain stakeholders. Consumer representatives also proposed the Guidelines to set out a timeline for when this disclosure would occur.

d) *Other issues*

Website notice setting out the proportion of material that is subject to a claim of confidentiality – using attachment 2 in the issues paper.

Consumer representatives also suggested inserting an additional column to attachment 2 requiring NSPs to address whether consumers were engaged on the materiality of the confidential information. NSPs raised concerns that a page count of confidential information may not accurately reflect how much of a NSP's proposal is confidential. NSP's also considered the AER should undertake this task.

Extending the confidentiality guideline to regulatory information notices and gas service providers.

Consumer representatives support applying the Guidelines to regulatory information notices and broader AER processes. NSPs also agreed with the Guidelines applying broadly, provided it is fair and reasonable.

NSPs also sought clarification on the meaning of 'all information' in section 4.6 of the issues paper.  
Assessing public benefit

NSPs considered that the AER is best placed to make a judgement on whether a claim of detriment is outweighed by the public benefit test in disclosure. Further, NSPs were concern that if they do not address the public benefit test when claiming detriment, their proposal could be invalid.

ERA representatives commented that while it is the regulator's role to make a judgement of the public interest aspect of disclosing confidential information, any comments NSPs have to assist the regulator in making this assessment more than relevant.

## Attachment A: Attendee list

### Adelaide office

<i>Name</i>	<i>Organisation</i>
Geoff Barton	Envestra Limited
Mark Henley	Uniting Communities
Trevor Guslin	SA Power Networks
Adam Petersen	AER

### Brisbane office

<i>Name</i>	<i>Organisation</i>
Trudy Fraser	Ergon Energy
Leigh Henderson	ENERGEX Limited

### Canberra office

<i>Name</i>	<i>Organisation</i>
Irina Kiparskaya	Energy Networks Association
Kabita Prasad	AER

### Melbourne office

<i>Name</i>	<i>Organisation</i>
Charlotte Coster	SP AusNet
Kirstan Wilding	Transend Networks Pty Ltd
Deanna Foong	Consumer Utilities Advocacy Centre
Nathan Zhivov	AER
Chris Pattas	AER

## Perth Office

<b>Name</b>	<b>Organisation</b>
Robert Pullella	Economic Regulatory Authority (ERA)
Adrian Dunne	Economic Regulatory Authority (ERA)

## Sydney office

<b>Name</b>	<b>Organisation</b>
Jane Smith	Ausgrid
Felicity Walton	Ausgrid
Michelle Trinh	Transgrid
Chris Stewart	Jemena
Graham Mawer	Southern Sydney regional Organisation of Councils
Shalini Prasad	AER
Ed Willett	AER