

Ring-fencing Guideline Electricity Transmission Issues Paper

Attachment 1 Stakeholder feedback template

The template below has been developed to enable stakeholders to provide their feedback on the questions posed in the Ring-fencing Guideline Electricity Transmission Issues Paper and any other issues that they would like to provide feedback on. The AER encourages stakeholders to use this template and to provide reasons for stakeholders' views to assist the AER in considering the views expressed by stakeholders on each issue. Stakeholders should not feel obliged to answer each question, but rather address those issues of particular interest or concern. Further context for the questions can be found in the issues paper.

Submitter details

ORGANISATION: National Electrical & Communications Association

CONTACT NAME: Paul Brownlee

EMAIL: Paul.brownlee@neca.asn.au

PHONE: 0419 294 033

Section 2.1 – Preventing cross-subsidies – Activities versus services

AER Question	Stakeholder feedback
1. What are the potential harms and benefits of the guideline referring to services, rather than activities?	NECA has no concern with the change of wording to services. As ring-fencing guidelines, pricing determinations and other AER material has evolved over time, the word "services" is well understood and accepted throughout the industry.

Section 2.2.2 – Legal separation – Scope of services

AER Question	Stakeholder feedback
2. What are the potential harms and benefits for consumers, the market and TNSPs of requiring TNSPs to legally separate transmission and non-transmission services?	<p>We agree with the AER's draft position of "<i>preventing TNSPs from providing other services</i>" (clause 2.2.2)</p> <p>It is NECA's firm view that legal separation of the services TNSPs can provide is a vital pillar in establishing a robust framework that allows a fair and competitive market for these services.</p> <p>Where DNSPs have wanted to actively compete in the Contestable market, private enterprise has struggled to compete on all facets of the work. The TNSP guideline must learn from this and enact appropriate measures to ensure the same is not repeated.</p>

<p>3. How would the definitions for transmission services set out in Chapter 10 of the NER cover these new and emerging electricity services?</p>	<p>As written it is NECA's belief that the current definitions would cover any new and emerging technologies that form part of the transmission system. The move away from traditional electricity generation should not be hampered by definitions and if the AER need to amend this, then NECA would support it, providing any change does not give an unfair advantage to TNSPs over private enterprise.</p> <p><u>Definitions from Chapter 10</u></p> <p><i>transmission service</i></p> <p>The services provided by means of, or in connection with, a <i>transmission system</i></p> <p><i>transmission system</i></p> <p>A <i>transmission network</i>, together with the <i>connection assets</i> associated with the <i>transmission network</i>, which is <i>connected</i> to another <i>transmission system</i> or <i>distribution system</i></p>
<p>4. What is the appropriate range of services TNSPs should be able to provide without legal separation? For example:</p> <ul style="list-style-type: none"> a) Distribution services; b) Contestable electricity services; and c) Non-electricity services. <p>What are the possible harms and benefits to consumers and the market from TNSPs offering these services?</p>	<p>Competing private enterprise do not and cannot utilise a shared legal business when quoting and competing with TNSP's, therefore anything less than full separation would reduce the trust of private enterprise in any ring-fencing guideline or enforcement.</p> <p>From our experience in DNSP Ring-Fencing, subsidised activities are accepted and there is little private enterprise can do to either report or prove it.</p> <p>For contestable electricity services, to establish trust and full transparency, there must be no financial or other benefit to a TNSP that is competing with private enterprise. Allowing any form of legal exemption would be a negative experience for private enterprise competing for the same services.</p>
<p>5. In the case of TNSP-owned batteries, should TNSPs be able to lease excess capacity to third parties? What are the potential harms and benefits to consumers, the market and TNSPs of this?</p>	<p>No comment</p>

Section 2.2.4 – Legal separation – Exceptions to legal separation

AER Question	Stakeholder feedback
<p>6. In relation to non-transmission services, what would be the harms and benefits to consumers, the market and TNSPs of moving to a waiver approach rather than a revenue cap?</p>	<p>NECA does not see any harm if TNSPs are required to move to a waiver arrangement similar to DNSPs.</p> <p>If there must be an arrangement to allow TNSPs to carry our certain works., we support a robust, fully transparent waiver system over a revenue cap.</p>

<p>7. If a revenue cap approach was maintained, what would be the appropriate form and magnitude of that cap?</p>	<p>There are benefits and concerns whether a revenue cap or waiver arrangement is used.</p> <p>The concern of NECA in relation to revenue cap is that in real terms this equates to a substantial monetary amount and the AER has expressed concern over their ability to monitor compliance under this arrangement, which concerns NECA and our members.</p> <p>A robust waiver arrangement is NECA's preferred way for any TNSP or DNSP to apply to carry out work for which they normally cannot do. The key to this and its success is:</p> <ul style="list-style-type: none"> i) Clear guidelines on what the TNSP can and cannot compete on ii) A robust waiver process that does not provide a path of least resistance for a TNSP to carry out work iii) Reporting and follow up by the TNSP to the AER to confirm that the agreed waiver conditions have been met iv) Detailed public disclosure of all agreed waivers to provide transparency to the industry <p>Based on the above and in NECA's opinion, the relevant cap would be \$nil.</p>
---	---

Section 2.2.5 – Legal separation – Grandfathering arrangements

AER Question	Stakeholder feedback
<p>8. If legal separation is applied, how should existing services be treated?</p>	<p>A suitable transition period would be the most practical way to allow a TNSP to transfer the legal functions across to a separate suitably ring-fenced entity.</p>

Section 3.1 – Preventing discrimination – Obligation not to discriminate

AER Question	Stakeholder feedback
<p>9. What are the key potential harms and risks that an obligation not to discriminate should target?</p>	<p>Firstly, NECA agrees with the AERs position that the current measures to prevent discrimination need to be strengthened.</p> <p>Any obligations not to discriminate must be focused on ensuring that private enterprise have a fair and equitable playing field to compete alongside a TNSP's affiliated business. Anything less is unacceptable.</p> <p>The DNSP experience by NECA and our members has shown that there are gaps in the current DNSP guidelines that are allowing subsidised staff and materials to be obtained by affiliated businesses and subsequently provide an unfair playing field in the market and the possibility of a perceived market inequality.</p> <p>These gaps in the DNSP guidelines need to be closed in the new TNSP guideline and NECA is happy to work with the AER to ensure all affiliates and private enterprise are seen as equal in the contestable market.</p>
<p>10. What are the potential harms and benefits to consumers, the market and TNSPs of strengthening the obligation not to discriminate?</p>	<p>See question 9 above</p>

Section 3.2 – Preventing discrimination – Functional separation

AER Question	Stakeholder feedback
<p>11. What are the potential harms and benefits to consumers, the market and TNSPs of introducing additional functional separation obligations for:</p> <ul style="list-style-type: none"> a) staff sharing; b) office sharing; and c) branding and cross-promotion? 	<p>NECA firmly believes that the DNSP arrangements must be applied as a minimum and further can be done to avoid any discrimination across businesses.</p> <ul style="list-style-type: none"> A) Staff sharing – It is NECA preferred model for affiliated businesses to have their own workforce similar to that of their competitors. Private business do not have a luxury of swapping or subsidising staff across affiliated businesses based on workflow demands. if this must occur, there must be a minimum secondment model of 6 months (minimum) adopted so that the affiliated business takes on full HR and financial responsibility for these employees. B) Nothing less than full physical office separation is acceptable. There is almost no possible way that offices can co-exist and not have a transfer of information that does not breach these guidelines. Affiliated employees will co-exist with TNSP employees, and will transfer information (either knowingly or otherwise). C) In NECA’s DNSP experience branding and co-promotion is a major concern for members and the public. There can be no cross-promotion between TNSPs and their affiliates. A TNSP would not provide these services for a private enterprise so it cannot do so for their own. Furthermore, the branding of staff and equipment on site must be clearly separated. Using items like magnetic stickers for vehicles and Velcro patches for staff are not acceptable and only cause friction and frustration between private enterprise and the AER and TNSP’s D) The harm caused will be the subsidy of a in efficient business at the cost of the taxpayer undercutting an efficient small business, causing financial harm to the small business that risks the stability of their workers employment.
<p>12. Should any new functional separation obligations apply to all contestable services? Should any exceptions apply, and if so, why?</p>	<p>Simply put YES. NECA sees fully separating as the only way to ensure there is a level playing field in this space.</p>

Section 3.3 – Preventing discrimination – Information access and disclosure

AER Question	Stakeholder feedback
<p>13. What are the potential harms and benefits to consumers, the market and TNSPs of aligning the transmission and distribution guidelines in relation to information access and disclosure?</p>	<p>As there are currently very lenient rules for TNSP’s, aligning the new guideline to the current DNSP rules is a logical first step.</p> <p>NECA agrees with the view of the AER in Table 1.6, but would urge the AER to look at stronger measures to improve from the experience of the DNSP guidelines. This would effectively see a TNSPs related business fully separated and operating as a private enterprise and only having exactly the same access to information that private enterprise does.</p> <p>In the interests of full disclosure, a TNSP cannot be allowed to apply for any form of waiver.</p>

<p>14. Are there any potential inconsistencies with the Transmission Connections and Planning Arrangements rule change we need to consider?</p>	<p>NECA has no experience in the Transmission Connection and Planning Arrangements rule change so we cannot comment in this consultation.</p> <p>If the AER would like NECA's view on this we can provide it at a later date.</p>
---	---

Section 3.4 – Preventing discrimination – Requirement for service providers to comply

AER Question	Stakeholder feedback
<p>15. What are the potential harms and benefits to consumers, the market and TNSPs of aligning the transmission and distribution guidelines in relation to obligations on third party service providers that support the provision of prescribed transmission services?</p>	<p>It is NECA's view that the DNSP guidelines are significantly lacking in this area and there is an opportunity to tighten the TNSPs guidelines to reflect best practice in this area. There is a gap in the supply of materials to related businesses that needs to be closed. TNSP (and DNSP) businesses cannot apply their exorbitant discounted prices to their related businesses to benefit from when purchasing materials.</p> <p>The actions of the public entities or service providers could be compared to the uncompetitive behaviour of cartels to resist true competition entering the market. This impediment to competition will slow the delivery of infrastructure and innovation within the industry.</p>

Section 4 – Compliance

AER Question	Stakeholder feedback
<p>16. What are the potential harms and benefits to consumers, the market and TNSPs of expanding the scope of compliance reporting?</p>	<p>The current DNSP compliance model should be the minimum accepted level of compliance going forward.</p> <p>NECA has found that responses to official reports of non-compliance have been too weak in their findings. Simply put, the response is too often, that the AER asked the DNSP if they complied and the answer was yes.</p> <p>NECA strongly urge the AER to look at ways to increase their search and investigation powers to include the ability to forensically examine a TNSP business to ensure compliance is met when investigation reports of non-compliance.</p> <p>NECA would recommend the AER strength and widen its investigative and regulatory functions to provide a disincentive to uncompetitive practices and misuse of corporate size.</p> <p>Another form of compliance that must be considered is around the annual reporting. NECA believes the AER should appoint and manage independent auditors to carry out the annual compliance reporting/auditing, removing the TNSP appointed auditor from the process. This will again provide better transparency for private enterprise and also show that the AER is listening to the concerns of both our members and private enterprise.</p>
<p>17. Should the timeframe for reporting all breaches be extended to 15 days?</p>	<p>Taking a similar approach to DNSP reporting is sensible, and a logical approach.</p>

Section 5.1 – Other issues - Waivers

AER Question	Stakeholder feedback
<p>18. Would there be benefit in the AER providing more clarity on the</p>	<p>Yes. The waivers were introduced to explain to industry why the AER approved a non-standard arrangement.</p>

application and assessment process for waivers?	<p>Waivers should be onerous to obtain, and the information provided be extensive so the public can clearly see:</p> <ul style="list-style-type: none"> • the issue that private enterprise couldn't solve • why the current guidelines do not meet the need • how the TNSP will address compliance and • what the benefit to the community will be from the TNSP completing the work over a private enterprise • An independent review of the request prior to approval • An independent review of the works undertaken to assess if the waiver was appropriate and as per the original request.
19. Do you agree with the AER's initial views that certain clauses should not be subject to waivers (e.g. the obligation not to discriminate and information access and sharing)? Please explain your reasons.	<p>No, any deviation from the TNSP Ring-Fencing guideline should require a waiver.</p> <p>It is NECA and our members experience that the items listed as examples are what matters to the employees and those at the coal face of competing private enterprises, and what drives complaints to us.</p>
20. Which elements of the assessment criteria used to assess waiver applications by DNSPs would be appropriate for transmission?	
21. What factors should we take into account in considering the duration of waivers?	<p>If a flat set date is not considered appropriate for all waivers, then the AER would need to consider issues such as</p> <ul style="list-style-type: none"> - Community expectation - Risk supply - The time the accepted waiver restricts private enterprise. <p>To ensure this is captured more accurately NECA suggests the duration be set through separate consultation once the waivers considerations have been set.</p>
22. Are there any circumstances where class waivers may be appropriate for transmission?	Not that NECA can identify

Section 5.3 – Other issues – Additional ring-fencing obligations

AER Question	Stakeholder feedback
23. What are the potential harms and benefits to consumers, the market and TNSPs of removing the ability of the AER to impose additional obligations on a TNSP (clauses 9 and 10 of the guideline)?	<p>If the AER establishes a robust, transparent and rigorous TNSP Ring-Fencing guideline that focuses on ensuring private enterprise is given the same access to all aspects of the contestable services that the TNSP's related business has, then as suggested in table 1.11 these obligations will not be required.</p>
24. Are there any other issues in relation to this review that you would like the AER to consider?	<p>The AER should consider having either industry association representation or private enterprise representation on their Ring-Fencing committees as well as other aspects of their operations that affect or involve private enterprise.</p> <p>This is an avenue that NECA would be keen to explore more formally.</p>