



Final Decision

**TasNetworks**  
**Application for Waiver from Transmission**  
**Ring-fencing Guidelines**

May 2014

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## Shortened forms

Shortened form	Extended form
ACCC	Australian Competition and Consumer Commission
Aurora	Aurora Energy Pty Ltd
AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider
Guidelines	Australian Competition and Consumer Commission, <i>Transmission Ring-Fencing Guidelines</i> , August 2002
NEL	National Electricity Law
NER	National Electricity Rules
TasNetworks	Tasmanian Networks Pty Ltd
TNSP	Transmission Network Service Provider
Transend	Transend Networks Pty Ltd

## Summary

On 5 February 2014, TasNetworks applied to the AER for a waiver from the ring-fencing obligations set out in clause 7.1(a)(ii) of the Guidelines.<sup>1</sup> Clause 7.1(a)(ii) of the Guidelines provides that a TNSP must not carry on a *related business*, which is defined as the activities of generation, distribution and electricity retail supply.

TasNetworks sought a waiver of clause 7.1(a)(ii) of the Guidelines to allow it to own and operate both the transmission business currently operated by Transend and the distribution business operated by Aurora. The integration of the two Tasmanian network businesses is one of a number of reforms to the Tasmanian electricity supply industry announced by the Tasmanian Government on 15 May 2012.<sup>2</sup>

Under clause 11 of the Guidelines, the AER may waive any of the obligations under clause 7 provided that it is satisfied that the benefit, or any likely benefit, to the public is outweighed by the administrative cost of complying with the obligation. Having considered TasNetworks' application, we released a draft decision on 21 March 2014.<sup>3</sup> The draft decision indicated our intention to issue a notice to waive TasNetworks' requirement to comply with clause 7.1(a)(ii) of the Guidelines. We concluded that the administrative costs of complying with the obligation outweigh the public benefits of compliance.

This final decision confirms our position as set out in the draft decision. We consider that the benefit, or likely benefit, to the public of compliance is outweighed by the administrative cost to TasNetworks of complying with the ring-fencing obligation. The ring-fencing obligation will impose administrative costs on TasNetworks in the form of duplicate functions, assets and staff. The public benefits lost as a result of waiving clause 7.1(a)(ii) are minimal, as other key regulatory obligations in the Guidelines and the NER will continue to apply.

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<sup>1</sup> TasNetworks, *Transmission Ring Fencing Guidelines Waiver Application*, 5 February 2014.

<sup>2</sup> Tasmanian Minister for Energy and Resources, Ministerial Statement, *Energy for the Future*, 15 May 2012, p. 6.

<sup>3</sup> AER, Draft decision, *TasNetworks - Application for waiver from transmission ring-fencing guidelines*, March 2014.

# 1 Transmission Ring-fencing Guidelines

The ACCC published the Guidelines in August 2002.<sup>4</sup> The Guidelines separate the accounting and functional aspects of ring-fenced services from other services provided by TNSPs. The objective of the Guidelines is to separate as far as possible the monopoly powers of TNSPs from the contestable activities of generation and retail supply.<sup>5</sup> In establishing the Guidelines, the ACCC retained flexibility to waive elements of the arrangements where the costs of compliance outweigh the benefits.

The AER assumed the ACCC's responsibilities for the economic regulation of TNSPs in the NEM from 1 July 2005. Clause 6A.21.1 of the NER obliges TNSPs to comply with the Guidelines. Ring-fencing obligations under the Guidelines include the requirement that a TNSP:

- not carry on a related business
- not act in a manner that discriminates in favour of an associate
- maintain a separate set of accounts for its ring-fenced services and consolidated accounts for its entire business
- allocate any shared costs between ring-fenced services and any other activity in accordance with any guidelines published or approved by the ACCC.

## 1.1 Procedure for waiving ring-fencing obligations

Clause 7 of the Guidelines sets out the minimum ring-fencing obligations imposed on TNSPs. TNSPs may seek a waiver from these obligations under section 11 of the Guidelines. Section 11 states:

The ACCC may, by notice to the TNSP, waive any of the TNSP's obligations under clause 7 provided that the ACCC is satisfied that the benefit, or any likely benefit, to the public is outweighed by the administrative cost to the TNSP and its associates of complying with the obligation.

Where a TNSP applies for a waiver from requirements of the Guidelines, we must follow the consultation procedure set out in section 17 of the Guidelines in assessing the application. The table below sets out this procedure.

**Table 1: Timetable for assessing TasNetworks' waiver application**

Event	Date
Waiver application received from TasNetworks	5 February 2014
Notice of application released	7 February 2014
Submissions on application due	3 March 2014
AER's draft decision released	21 March 2014
Submissions on the draft decision due	9 April 2014
AER's final decision released	12 May 2014

<sup>4</sup> ACCC, *Statement of Principles for the Regulation of Transmission Revenues: Transmission Ring-Fencing Guidelines*, 15 August 2002.

<sup>5</sup> ACCC, *Statement of Principles for the Regulation of Transmission Revenues: Transmission Ring-Fencing Guidelines*, 15 August 2002, pp. 1-2.

## 2 TasNetworks' waiver application

On 5 February 2014, TasNetworks applied to the AER for a waiver from the ring-fencing Guidelines requirement that a TNSP not carry on a related business. A 'related business' is defined in section 4 of the Guidelines as the activities of generation, distribution and electricity retail supply. TasNetworks sought a waiver of these obligations in relation to the integration of Transend's transmission business and Aurora's distribution business under TasNetworks.

TasNetworks submitted that the cost of complying with the obligations imposed by clause 7.1(a)(ii) of the Guideline, which would require the maintenance of two separate businesses, far outweighs the negligible public benefit, or likely benefit, of compliance in the Tasmanian jurisdiction.<sup>6</sup>

### 2.1 Public benefit of ring-fencing obligations

TasNetworks addressed the potential benefits of full separation of transmission and distribution businesses previously identified by the ACCC.<sup>7</sup> These benefits relate to reducing a TNSP's ability to:

- discriminate in favour of, or give preferential treatment to, a related business
- share confidential information with a related business
- shift costs within the integrated businesses.

TasNetworks submitted that in respect to the provision of contestable services, there is little scope for competition between Transend's transmission business and Aurora's distribution business. The clearly defined electrical functions and capabilities of each network generally means that a customer service could only practically be performed by one network or the other. Further, TasNetworks stated that a waiver of clause 7.2(b) of the Guidelines is not being sought, so the application will not affect the public benefit arising from protection against the risk of discrimination in favour of itself.<sup>8</sup>

TasNetworks submitted that a waiver of clause 7.1(a)(ii) of the Guidelines would not alter existing obligations in relation to the sharing of information. The existing information provision obligations under the NER, the NEL and jurisdictional regulatory regimes would still apply to a DNSP and TNSP that are part of an integrated business. TasNetworks also submitted that the *Tasmanian Electricity Reform Act 2012* will preserve all existing contractual arrangements, rights and liabilities of the separate businesses when transferred to the new integrated entity.

TasNetworks submitted that it will maintain accounting separation of its transmission and distribution businesses, which will assist in reducing opportunities for cost shifting. The requirement to maintain separate regulatory accounts is necessary to maintain compliance with chapter 6 and 6A of the NER and because both businesses are operating within different revenue settings, pricing rules and incentive arrangements. TasNetworks will have in place procedures that will enable the appropriate identification and allocation of costs in accordance with the NER and associated AER guidelines and approved cost allocation methodologies.<sup>9</sup>

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<sup>6</sup> TasNetworks, *Transmission Ring Fencing Guidelines Waiver Application*, 5 February 2014, pp. 4-5.

<sup>7</sup> ACCC, Draft Decision, *SPI PowerNet Application for Waiver of Ring-fencing Arrangements*, 15 December 2004, p. 9.

<sup>8</sup> Clause 7.2(b) of the Guideline stipulates that a TNSP that provides ring-fenced services must offer those services to its customers on terms and conditions no less favourable than it provides to itself or its associates.

<sup>9</sup> TasNetworks, *Transmission Ring Fencing Guidelines Waiver Application*, 5 February 2014, pp. 6-7.

## 2.2 Administrative cost of ring-fencing

TasNetworks identified a number of administrative costs that would be incurred in order to comply with clause 7.1(a)(ii) of the Guidelines. Duplicate functions identified by TasNetworks include:

- corporate services - administrative support, human resource management, legal services, information technology, finance and office accommodation
- governance, risk and compliance systems
- personnel for common support and operations functions.

TasNetworks quantified the administrative costs arising from compliance with the ring-fencing obligations in clause 7.1(a)(ii) of the Guidelines in the order of \$2.4 million to \$5.6 million per annum. This estimate of administrative costs was made as part of the 2012 review of Tasmania's electricity supply industry, which identified potential savings from the integration of the network businesses.<sup>10</sup>

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<sup>10</sup> Electricity Supply Industry Expert Panel, *Draft Report - An Independent Assessment of the Tasmanian Electricity Supply Industry*, December 2011, p. 264.



### 3 AER's draft decision

The AER released its draft decision on TasNetworks' ring-fencing waiver application on 21 March 2014. In the draft decision, we accepted TasNetworks' submission that the administrative cost of complying with the obligations under clause 7.1(a)(ii) of the Guidelines outweighs the public benefit of compliance in respect of the integration of the transmission and distribution businesses in Tasmania.

We accepted that TasNetworks would incur administrative costs in complying with section 7.1(a)(ii) of the Guidelines in the form of duplicate functions, assets and staff. These costs are potentially significant and would be reflected in transmission and distribution tariffs.<sup>11</sup>

Further, we considered that the public benefit of compliance through the maintenance of legally separate transmission and distribution businesses is minimal. The waiver will not affect other existing obligations on the TNSP and DNSP businesses which protect the interests of consumers, such as the regulatory accounting regime and restrictions on preferential dealing and sharing confidential information.<sup>12</sup>

Having considered TasNetworks' ring-fencing waiver application, we concluded that requiring TasNetworks to comply with the ring-fencing obligations of clause 7.1(a)(ii) of the Guidelines in this case would not achieve a public benefit sufficient to offset TasNetworks' administrative costs. The draft decision therefore set out our intention to issue a notice under section 11 of the Guidelines to waive TasNetworks' obligation to comply with clause 7.1(a)(ii).<sup>13</sup>

We sought submissions on our draft decision from interested parties. No submissions were received.

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<sup>11</sup> AER, Draft decision, *TasNetworks - Application for waiver from transmission ring-fencing guidelines*, March 2014, p. 11.

<sup>12</sup> AER, Draft decision, *TasNetworks - Application for waiver from transmission ring-fencing guidelines*, March 2014, p. 11.

<sup>13</sup> AER, Draft decision, *TasNetworks - Application for waiver from transmission ring-fencing guidelines*, March 2014, p. 13.

## 4 AER's final decision

The AER's final decision is to issue a notice to waive TasNetworks' obligation to comply with clause 7.1(a)(ii) of the Guidelines. The waiver of clause 7.1(a)(ii) also has the effect of making clauses 7.6, 7.7 and 7.8 of the Guidelines redundant.<sup>14</sup> In this case, we consider there is little public benefit in requiring TasNetworks to comply with its ring-fencing obligations under clause 7.1(a)(ii) by maintaining legally separate transmission and distribution businesses. Consistent with our draft decision, we accept TasNetworks' submission that the administrative costs of compliance with clause 7.1(a)(ii) of the Guidelines outweigh the benefit, or any likely benefit, to the public of compliance.

The AER will issue a notice under section 11 of the Guidelines to waive TasNetworks' obligation to comply with clause 7.1(a)(ii) of the Guidelines.

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<sup>14</sup> Clauses 7.6, 7.7 and 7.8 govern the relationship between a TNSP and an associate carrying on a related business, specifically the preferential treatment of associates, the separation of marketing staff between TNSPs and associates, and notification requirements for staff movements between TNSPs and associates. The merged transmission and distribution businesses operated by TasNetworks from 1 July 2014 will not be associates for the purposes of clause 7 of the Guidelines. Refer to AER, Draft decision, *TasNetworks - Application for waiver from transmission ring-fencing guidelines*, March 2014, p. 12.