

## AusNet Response to Questions from the Ring-fencing Guideline Electricity Transmission Issues Paper

AER question	Comment
<p><b>1. What are the potential harms and benefits of the guideline referring to services, rather than activities?</b></p>	<p><i>In principle, AusNet does not object to the guideline applying to “services” rather than “activities” as this is consistent with the approach in Chapter 6A of the National Electricity Rules (NER).</i></p> <p>However, the AER must understand the implications of this change to ensure DTSOs are able to continue to offer the full range of services as required by their licences and the existing regulatory arrangements in Victoria. Failing to take account of these jurisdictional differences risks DTSOs being subject to competing yet conflicting regulatory obligations.</p> <p>Issues the AER should consider include:</p> <ul style="list-style-type: none"> <li>• The purpose of the definition of <i>transmission services</i> in the NER is to facilitate activities pertaining to a transmission system, including the conveyance of electricity through that transmission system. It is not intended to operate as a broad authorisation for TNSPs (including DTSOs) to provide services that would significantly harm the development of, or competition in, other markets, and it should not be interpreted as such.</li> <li>• The definition of <i>electricity transmission system</i> in our transmission licence means AusNet can be lawfully providing relatively low voltage services, which may be defined as distribution services in other jurisdictions: <ul style="list-style-type: none"> <li style="text-align: center;"><b>“electricity transmission system” means a transmission system in Victoria (generally at nominal voltage levels of 66kv or above) which the holder of the <b>transmission licence</b> may use to <b>transmit</b> electricity;</b></li> </ul> </li> </ul> <p>If ring-fencing obligations were to link to the definition of <i>transmission network</i> in the NER (which presumes the network is at 220kV or higher, with some limited exceptions), AusNet may be precluded from providing some services which we are permitted – or required – to provide by the terms of our licence.</p> <ul style="list-style-type: none"> <li>• AusNet's transmission licence also requires that we provide connection offers (clause 5) and enter into network agreements with AEMO (clause 8) regardless of the service classification. We are also required to provide other services on reasonable terms (clause 6). That is, AusNet has an obligation to provide offers to connection applicants. These obligations are unique to Victoria. It is essential that any new ring-fencing obligations do not conflict with these obligations.</li> <li>• Importantly, service classification in Victoria is different to other states. A service that is contestable in Victoria may be a prescribed or negotiated service in another jurisdiction. Understanding how this plays out in practice is essential to making an informed assessment of the risks to competition in Victoria and, relatedly, whether ring-fencing measures aimed at preventing discrimination are necessary. As to the specific reasons the AER's gives to support its review of the current ring-fencing protections,<sup>1</sup> we say: <ul style="list-style-type: none"> <li>○ TNSPs can influence generator connection requirements, access arrangements and network congestion – in Victoria, the connections process is overseen by AEMO</li> </ul> </li> </ul>

<sup>1</sup> AER, Issues Paper, p. 24.

	<ul style="list-style-type: none"> <li>○ TNSPs determine which components of a IUSA are contestable – in Victoria, AEMO determines contestability in accordance with the criteria in Chapter 8 of the NER</li> <li>○ Connecting parties must enter into a network operating agreement with the TNSP – in Victoria, the connection agreement is between AEMO and the connecting party, and its terms are confidential</li> <li>○ TNSPs have a role in procuring system strength and inertia – in Victoria, these services are procured by AEMO</li> <li>○ TUOS charges are calculated by AEMO, not AusNet, and notified to DTSOs.</li> <li>● The difference in service classifications also means the breadth of contestable services in Victoria is greater compared to other NEM jurisdictions. For example, the Western Renewables Link project was awarded following a competitive tender process, whereas Project EnergyConnect is being developed by ElectraNet and TransGrid following a RIT-T process. AusNet would need to undertake a significant legal and operational separation if we were forced to create a transmission company focussed solely on “core” transmission services. It also means there are greater opportunities for interstate TNSPs to compete in in Victoria but AusNet’s ability to compete for similar services in other jurisdictions is more limited. The differing arrangements between jurisdictions could put significant limitations on the viability of AusNet's contestable business and place it at an unwarranted disadvantage relative to its interstate peers.</li> </ul>
<p><b>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?</b></p>	<p><b><i>The contestability framework in Victoria effectively imposes functional separation on DTSOs and, as such, there is no additional benefit from imposing more stringent ring-fencing obligations, particularly legal separation.</i></b></p> <p>In Victoria, AEMO promotes competition and market integrity through the contestability framework. AEMO's role in this process eliminates the need for legal or functional separation of Victorian DTSOs because it removes their ability to engage in the kinds of behaviour the AER is seeking to prevent through a ring-fencing guideline, particularly discrimination in favour of affiliates. To require DTSOs to legally separate the provision of transmission and non-transmission services, in the context of an already existing, independent contestable market would be harmful (rather than helpful) to competition and market development, as the costs incurred as a result of separation (including the loss of any economies of scope or scale) would be passed on to consumers.</p> <p>A key component of the Victorian framework is that DTSOs must provide AEMO with information and assistance it reasonably requires both to plan and to prepare the tender documents it issues for contestable augmentations. This means AEMO is the arms-length purchaser of the majority of services and controls all aspects of the contestable process. If the current Victorian arrangements were amended and the entity responsible for issuing the tender had both ownership of the underlying information and was responsible for assessing tenders and selecting the winning tender (as is the case in other NEM jurisdictions), the scope for potential customer harm would be greater. AusNet, therefore, cannot see what benefits accrue to customers that would off-set the significant costs that will be incurred if DTSOs were required to implement legal separation.</p> <p>Any functional separation of DTSOs would also reduce or eliminate their participation in contestable processes. Services currently provided by the DTSO may be reduced or withdrawn due to the additional costs incurred in providing those services because of the loss of economies of scope e.g., asset leasing to telecommunications service providers. In either case, alternative providers for those services will need to be sought, potentially at a greater cost, or those services will disappear from the market. DTSOs may also be deterred from providing new services (or existing services in new ways) because it is no longer efficient to do so. Under all these scenarios, consumers will ultimately bear the cost of functional separation.</p>

	<p>The non-transmission services that AusNet provides – laboratory services and demand response services – are offered to large and high value, infrequent, largely transparent, and for well-resourced and sophisticated customers. This means the purchasers of non-transmission services are well-placed to negotiate fair and reasonable commercial arrangements with DTSOs and TNSPs, and do not require specific protection through the ring-fencing guideline. If a prospective purchaser is concerned by a DTSO's or TNSP's behaviour, it can raise those concerns with the vendor or with the Australian Competition and Consumer Commission (<b>ACCC</b>). This is different from the market for distribution services, where more services are on offer and the DNSP tends to be dealing with smaller and often less well-resourced customers who may require additional regulatory protection.</p> <p>AusNet also notes that:</p> <ul style="list-style-type: none"> <li>Existing transmission cost allocation arrangements are working well and address the AER's concerns with the potential for cross-subsidisation. AusNet would welcome further AER engagement on any specific concerns it may have with the appropriateness of the cost allocation methodology and/or how TNSPs capture costs in the regulatory accounts submitted to the AER on a regular basis.</li> <li>Third party providers are not precluded from providing non-transmission services. As noted above, the Competition and Consumer Act 2010 (<b>CCA</b>) is available to address any anti-competitive conduct in the transmission sector. Only if there is evidence of behaviour that somehow falls outside the scope of the CCA and is materially detrimental to competition should the AER move to impose energy-specific competition regulation. To do otherwise would be inconsistent with both good regulatory practice and the regulatory framework in the National Electricity Law (<b>NEL</b>) and the NER. While AusNet appreciates that there may be situations where industry-specific regulation is beneficial, we would welcome the AER sharing any analysis it has undertaken that demonstrates the net benefit that would accrue from introducing new, energy-specific regulation.</li> </ul> <p>While AusNet does not support legal separation, if it were imposed a transition period of at least two years will be necessary. This estimate is based on AusNet's experience in complying with the distribution ring-fencing guideline and our assessment of the expected complexities as outlined above. AusNet is open to discussing this issue with the AER should it continue to consider legal separation of transmission and non-transmission services is appropriate.</p>
<p><b>3. How would the definitions for transmission services set out in Chapter 10 of the NER cover these new and emerging electricity services?</b></p>	<p><b>AusNet does not consider a change is required.</b> The definition of a transmission service in Chapter 10 of the NER is sufficiently broad to cover new services.</p>
<p><b>4. What is the appropriate range of services TNSPs should be able to provide without legal separation? For example:</b></p>	<p><b>AusNet does not consider that legal separation of DTSOs is warranted. The nature of the market for the electricity services identified by the AER is such that DTSOs should be permitted to offer them without any form of required separation.</b></p> <p>As outlined in our response to Question 2:</p>

<p><b>a. Distribution services; b. Contestable electricity services; and c. Non-electricity services.</b></p> <p><b>What are the possible harms and benefits to consumers and the market from TNSPs offering these services?</b></p>	<ul style="list-style-type: none"> <li>Existing arrangements for transmission in Victoria mean that legal separation of DTSOs is not warranted.</li> <li>If legal separation is pursued by the AER, it will be costly, and the AER has presented no evidence to demonstrate that these costs will be outweighed by growth in markets for new services or any other benefit to consumers.</li> </ul> <p>Nevertheless, if the AER is minded to proceed with this proposal, AusNet notes:</p> <ul style="list-style-type: none"> <li>In Victoria, AEMO can determine whether a technology – which can be a network service – is a network or non-network service by virtue of how it chooses to design and configure the network i.e., behind or in front of the meter. Any separation requirement may result in DTSOs not bidding for these projects on the basis that it may not be clear whether the DTSO is permitted to deliver it.</li> <li>Victoria's contestability arrangements apply by virtue of Chapter 8 of the NER, not Chapter 5. Therefore, any ring-fencing obligations the AER is minded to impose on DTSOs must be consistent with Chapter 8.</li> <li>There are no competition concerns associated with non-electricity services<sup>2</sup> that are relevant to the ring-fencing guidelines. As such, there is no need for legal or functional separation of these services from prescribed transmission services.</li> <li>A DTSO should be able to continue provide distribution services under the 5% revenue threshold, pursuant to a waiver or by arranging its business in such a way that the AER does not consider it needs a waiver (the latter being the case for AusNet). This increases competitive pressures in the distribution sector without detriment to the transmission sector.</li> </ul>
<p><b>5. In the case of TNSP-owned batteries, should TNSPs be able to lease excess capacity to third parties?</b></p> <p><b>What are the potential harms and benefits to consumers, the market and TNSPs of this?</b></p>	<p><b><i>DTSOs should be permitted to lease excess battery capacity to third parties. This facilitates full utilisation of the asset while simultaneously allowing new technologies to be integrated into the energy network, providing the opportunity for lower cost trials and offering lower cost alternatives for prospective market entrants. This will benefit a range of market participants, including consumers.</i></b></p> <p>In Victoria, services that would typically be provided by a battery (e.g., system strength and inertia services) are contestable, and the process of procuring those services is the responsibility of AEMO. For example, AEMO procured the System Integrity Protection Scheme (SIPS) service<sup>3</sup> in accordance with ministerial orders<sup>4</sup>. AEMO is also responsible for the provision of system strength services, which are now procured in accordance with the recent Australian Energy Market Commission (AEMC) rule change for the efficient management of system strength on the power system.<sup>5</sup></p> <p>To address the specific concerns raised by the AER regarding batteries, AusNet notes:</p> <ul style="list-style-type: none"> <li>The potential for a DTSO to 'over-size' a battery does not arise where AEMO, not the DTSO, determines the specification for the asset, as was the case in the SIPS project.</li> <li>A DTSO has no need to subsidise a contestable service from regulated revenue where the contestable revenue is derived from a market-tested process.</li> </ul> <p>The need for strengthened ring-fencing requirements in Victoria is, therefore, largely unnecessary.</p>

<sup>2</sup> These may include consulting services, laboratory or technical testing services, and demand response services.

<sup>3</sup> See <https://aemo.com.au/en/newsroom/media-release/aemo-completes-system-integrity-protection-scheme-procurement-process>.

<sup>4</sup> VNI SIPS Ministerial Order, Victorian Government Gazette S 238, 15 May 2020 and Second VNI SIPS Ministerial Order, Victorian Government Gazette S 566, 5 November 2020.

<sup>5</sup> National Electricity Amendment (Efficient Management of system strength on the power system) Rule 2021 No. 11.

Where a DTSO owns or proposes to own a battery, it should be able to lease excess capacity to third parties. This will have a range of pro-competitive benefits and contribute to the achievement of the National Electricity Objective (NEO):

- It will enable the asset to be fully utilised, which will make building new energy storage systems more economic.
- Leasing battery capacity to a National Energy Market (NEM) market participant who provides capacity into the NEM energy and/or ancillary services markets, will reduce barriers to entry for new or prospective market entrants who can demonstrate the ability of new technologies to be successfully integrated into the energy network.

Importantly, under these arrangements, a DTSO/TNSP would have:

- No role in determining how or when the battery will participate in the energy and ancillary services markets.
- No scope to influence those markets.

It would be a poor outcome if future projects or trials were curtailed or deterred because of unnecessary amendments to current transmission ring-fencing arrangements.

There is no evidence that DTSO/TNSP participation in the market for energy storage services has had a detrimental impact on the development of that market. As evidenced by the table below, the majority of battery projects that have been delivered or are underway have progressed without the involvement of DTSOs or TNSPs. That said, the early and relatively significant investment (compared to other types of investors) by DTSOs and TNSPs has helped develop and grow the current battery market. Given the important role AusNet has played in this to-date, we do not support any amendments to the transmission ring-fencing guideline that will hinder the ongoing development of this market and the benefits that would bring to customers.

AusNet also notes:

- Ballarat BESS was awarded to AusNet under a competitive process for government funding and was a commercial process unrelated to our role as a DTSO in Victoria.
- The 'hands-off' arrangements outlined above is how our battery at Ballarat operates and AusNet would welcome the AER outlining its concerns with that approach.
- There are currently 16 large scale battery projects either operating or under construction in the NEM. Of these projects, only 3 have involved a Primary TNSP or DTSO. This involvement has mainly been to demonstrate a new technology or service with support of ARENA. This highlights two key points: the benefits of a TNSP to be involved through demonstration of new technology and the lack of evidence around a competitive advantage that a TNSP has for storage projects.

Project	Status	TNSP/DTSO Involvement	Notes
Ballarat	Operating	Yes (Funding & asset risk)	Early adopter of technology. Awarded to Consortium (including AusNet) under competitive funding round (Victorian Government & ARENA) for batteries in Victoria

Broken Hill	Under Construction		
Bulgana	Operating		
Capital Battery	Under Construction		
Chinchilla	Under Construction		
Dalrymple North	Operating	Yes (Funding & asset risk)	Early adopter of technology to demonstrate services from a BESS - ARENA funding to support
Gannawarra	Operating		
Hazelwood	Under Construction		
Hornsedale	Operating		Provides a Network Service
Lake Bonney	Operating		
Lincoln Gap	Under Construction		
New England	Under Construction		
Torrens Island	Under Construction		
Victoria Big Battery	Operating		Provides a Network Service
Wallgrove	Under Construction	Yes (Funding & asset risk)	Early adopter of technology to demonstrate services from a BESS - ARENA Funding to support
Wandoan South	Under Construction		

**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?**

***AusNet supports the continued use of a revenue cap. It is an important mechanism to ensure DTSOs can continue to provide the full suite of transmission services if the AER moves to a “services”-based approach to ring fencing. The revenue cap could operate in conjunction with the waiver process such that a TNSP could seek a waiver for the provision of services that would cause it to exceed the revenue cap.***

Solely relying on waivers would materially increase uncertainty (risk and cost) for DTSOs/TNSPs about the investments they could make and the services they could provide. This could, in-turn, generate delays in service provision and/or result in services no longer being provided to the relevant markets. The provision of these services reduces costs to transmission users and to customers in adjacent markets (e.g., telecommunications), and should not be disincentivised.

Critically, a waiver process could materially impede a TNSP’s ability to participate in large tenders. Entities running project tenders are likely to exclude bids made subject to the condition that the bidder can obtain a waiver from the AER because of the uncertainty this creates for the tendering party. Similarly, the time and expense required to obtain a waiver prior to submitting an unconditional bid which the bidder may not be awarded is not feasible. While not supporting waivers, if the AER was to apply such an approach, there are several issues that could help mitigate the resultant risks (costs) DTSOs/TNSPs would face:

- Waivers should be evergreen or be of sufficient duration to provide stability and minimise investment risk.
- The waiver process should fix a clear but short time frame within which the AER must decide a waiver application. If the AER does not decide a waiver application within that period, the waiver should be deemed approved. This is consistent with existing processes in the NEM such as for cost pass through and contingent project applications.

	<ul style="list-style-type: none"> <li>The AER must publish the factors it will consider when making any decision on a waiver as well as the reasons for any decisions that it makes. This will allow applicants to understand how best to present their applications, and be guided as to the kinds of services that have been granted. AusNet encourages the AER to consult on any proposed factors prior to implementing them.</li> </ul> <p>AusNet makes further comments about the AER's waiver proposal in our response to Question 18.</p>
<p><b>7. If a revenue cap approach was maintained, what would be the appropriate form and magnitude of that cap?</b></p>	<p><b><i>AusNet supports the continued use of a revenue cap. While AusNet is unaware of any evidence that warrants a reduction in the revenue cap in real terms, there are suitable alternate methodologies for calculating the revenue cap.</i></b></p> <p>AusNet does not consider a case has been made to change the revenue cap. However, we understand the AER's concern with the expected increase in transmission expenditure could lead to an excessive cap which renders it ineffective as a limit. Alternative approaches for capping the revenue include:</p> <ul style="list-style-type: none"> <li>A lower percentage revenue cap e.g., 2.5%.</li> <li>Estimate the dollar value of the current 5% revenue cap for each DTSO/TNSP and apply that as the revenue cap going forward, escalated by CPI.</li> </ul>
<p><b>8. If legal separation is applied, how should existing services be treated?</b></p>	<p><b><i>AusNet sees no benefit in imposing legal separation on DTSOs because the contestability framework effectively imposes functional separation.</i></b></p> <p>Legal separation of contestable electricity services will necessitate the splitting of AusNet (the current DTSO) into two entities. This will result in the loss of economies of scale, significant one-off costs as well as higher ongoing costs for both entities. AusNet's position is set out in greater detail in our response to Question 2. However, if the AER wishes to consider legal separation, all existing arrangements should be grandfathered as even small changes to conditions can impact the ongoing viability of a project.</p> <p>Issues the AER should consider before deciding on how existing services should be treated include:</p> <ul style="list-style-type: none"> <li>Dismantling existing arrangements could trigger costly compliance costs because of the need to create new entities, and transfer existing or establish new commercial agreements, apply for new licences and ensure compliance with regulatory obligations.</li> <li>The commercial efficacy of some arrangements may be lost. For example, connection agreements are typically negotiated on the basis of a 25 to 30 year term. Additional costs incurred in providing the connection services as a result of legal separation may not be able to be passed through, so the absolute and relative efficiency of any newly split entity would be adversely impacted. This would increase costs to customers, but it also necessitates the AER amending its efficiency benchmarking process to address any negative consequences its amendments had driven.</li> <li>Material tax effects from separation could emerge from the requirement to move existing activities out of the DTSO's current legal entity into separate legal entities. Again, this will increase regulatory complexity and cost.</li> <li>Ensuring a sufficient transition window. Based on AusNet's experience with distribution ring-fencing, and given the complexities AusNet is likely to experience with the transmission business, a transition period of at least two years is required if legal separation is required.</li> </ul>

	<p>Importantly, the costs incurred in implementing legal separation will need to be recovered from customers. These costs could be significant and, in an environment where there is already significant focus on avoiding costs and keeping customers' bills low, the AER should only impose legal separation if it can point to a clear and persistent market harm for which separation is the most appropriate solution.</p>
<p><b>9. What are the key potential harms and risks that an obligation not to discriminate should target?</b></p>	<p><b><i>AusNet considers that the contestability framework win Victoria means DTSOs have little, if any, opportunity to engage in discriminatory conduct in the context of transmission network investment.</i></b></p> <p>DTSOs should not discriminate and in Victoria, where AEMO has the declared function of a TNSP and ensures competition and market integrity is maintained through contestability, there is limited scope for AusNet to do so. AusNet notes, for example, that where AEMO determines a tender is required:</p> <ul style="list-style-type: none"> <li>• AEMO identifies the identified needs, conducts the RIT-T and selects the preferred credible option.</li> <li>• AusNet is required to provide to AEMO all the information AEMO needs to undertake its function, including running tender processes.</li> <li>• AEMO determines what information to share with the market to ensure the maximum number of market participants can participate in the tender process.</li> <li>• AEMO evaluates the tender responses and selects the preferred tenderer.</li> </ul> <p>AusNet's role (and that of other DTSOs) is, therefore, responsive: DTSOs are limited to providing information to AEMO and, if the DTSO chooses to, bidding into the competitive tender process controlled by AEMO. As a not-for-profit organisation, AEMO has no commercial incentives and should be being driven by its desire to meet its obligations under the NER. Further, AEMO is mindful of the need for ensuring that its requests for information from DTSOs in preparing a tender process do not afford the DTSO a competitive advantage should it decide to bid for the project. In its <i>Tender and Evaluation Process for Contestable Augmentations in Victoria</i><sup>6</sup>, AEMO states that it may require assurances from the DTSO that appropriate ring-fencing arrangements will apply to each procurement process on a case-by-case basis.<sup>7</sup></p> <p>Given the arrangements in Victoria, we are not persuaded there is either the opportunity or actual evidence to show that customers/stakeholders to experience significant harm absent an explicit obligation on DTSOs to not discriminate. As recognised by the AER<sup>8</sup>, DTSOs'/TNSPs' customers tend to be larger than those of distribution network service providers, with greater access to significant financial, technical and legal resources.</p> <p>If the AER is aware of concerns amongst stakeholders to the contrary perceptions, AusNet would encourage the AER to consider more proportionate remedies such as developing information sharing obligations. Only where such processes prove to be unsuccessful should the AER consider imposing non-discrimination obligations on market participants.</p>

<sup>6</sup> See: [https://aemo.com.au/-/media/files/stakeholder\\_consultation/tenders/tender\\_and\\_evaluation\\_process\\_for\\_contestable\\_augmentation\\_in\\_victoria\\_final.pdf](https://aemo.com.au/-/media/files/stakeholder_consultation/tenders/tender_and_evaluation_process_for_contestable_augmentation_in_victoria_final.pdf)

<sup>7</sup> Ibid, p. 10.

<sup>8</sup> AER, Issues Paper, p. 25.



	<p>AusNet agrees with the Energy Networks Australia (<b>ENA</b>) that if broader non-discrimination provisions are imposed, there must be appropriate recognition that third-party access to transmission infrastructure may raise legitimate transmission reliability issues or potentially even national security concerns, and declining to provide access on any of these bases should not be treated as prohibited discrimination.</p>
<p><b>10. What are the potential harms and benefits to consumers, the market and TNSPs of strengthening the obligation not to discriminate?</b></p>	<p><b><i>AEMO's carriage of contestability process means an obligation on TNSPs to not discriminate is unnecessary.</i></b></p> <p>AusNet is not responsible for planning the transmission network and acquiring augmentation services. In Victoria, this is performed by AEMO. This functional separation of TNSP responsibilities between AusNet and AEMO is embedded in the NEL and Chapter 8 the NER and needs to be considered by the AER.</p> <p>Victoria's contestable process for augmentation requires that AEMO (as the Victorian TNSP) issue an invitation to tender to select suitable service providers. This market-based approach, where AusNet competes against other market participants, requires AEMO to provide a significant amount of information to the market. This substantially reduces the scope for a DTSO to leverage any market power. AusNet would welcome the AER explaining why current arrangements in Victoria are of concern and what specific issues it has with the current Victorian arrangements. In addition, if AusNet is requested to provide an offer by AEMO, a generator or other potential customer, by force of its licence, it must do so. As a DTSO, AusNet is not in a position to thwart or impact the competitive process by refusing to participate. This can be contrasted to jurisdictions where TNSPs may have the right, but not the obligation, to provide a service. In the Victorian circumstances, it would be counterintuitive to impose additional ring-fencing obligations that would reduce the competitiveness of DTSOs and, therefore, competition.</p>
<p><b>11. What are the potential harms and benefits to consumers, the market and TNSPs of introducing additional functional separation obligations for:</b>  <b>a. staff sharing;</b>  <b>b. office sharing; and</b>  <b>c. branding and cross-promotion?</b></p>	<p><b><i>DTSOs are already subjective to de facto functional separation by virtue of the Victorian contestability approach. The costs of functional separation of transmission and non-transmission services are unlikely to be outweighed by the benefits to consumers.</i></b></p> <p>Given the arrangements in Victoria, the costs of functional separation would outweigh any benefits to consumers, contrary to the NEO.</p> <p>The Issues Paper suggests that the AER will grant waivers from the requirement to have separate offices, staff and branding and cross promotion. AusNet is concerned that there may be over-reliance on the waiver process at the expense of appropriately crafted primary obligations in the ring-fencing guideline itself.</p> <p>The waiver process should be used to manage exceptional cases or unintended consequences. Further, because the net benefit of functional separation is likely to be negligible, most if not all TNSPs would apply for a waiver which, if granted, erodes the purpose of having the primary obligation in the first place. Therefore, while 'on-paper' consistency between TNSP and DNSP ring-fencing guidelines are appropriate for some matters, consistency for the sake of it could result in DTSOs/TNSPs incurring more costs, while not achieving in any change in market outcomes. This is not an efficient outcome and is not a good outcome for customers.</p>

<p><b>12. Should any new functional separation obligations apply to all contestable services?</b></p> <p><b>Should any exceptions apply, and if so, why?</b></p>	<p><b><i>AusNet strongly opposes a new functional separation obligation on DTSOs because the contestability framework in Victoria effectively imposes functional separation.</i></b></p> <p>If this obligation was imposed, Victoria should be exempt.</p>
<p><b>13. What are the potential harms and benefits to consumers, the market and TNSPs of aligning the transmission and distribution guideline in relation to information access and disclosure?</b></p>	<p><b><i>AusNet sees no benefit in aligning the transmission and distribution guideline in relation to information access and disclosure.</i></b></p> <p>AusNet is required to provide documents or information to AEMO to enable it to perform its functions under clause 15.1 of our transmission licence. There are similar information requirements outlined in the NER. Using the information provided, AEMO will determine what information should be made public and will then run a competitive tender process. This process ensures that AEMO can ensure all tenderers/respondents have access the information required to bid/respond and provide the relevant services, on an equal and non-discriminatory basis.</p> <p>Imposing new requirements on AusNet as a DTSO in these circumstances would only add to costs, for no consumer benefit. Indeed, there is likely to be a disbenefit, as compliance costs will ultimately be passed on to consumers. In addition, such requirements may:</p> <ul style="list-style-type: none"> <li>• Undermine the transparent and competitive arrangements already in place in Victoria.</li> <li>• Result in information sharing and access obligations being placed on AusNet that are more appropriately borne by AEMO.</li> </ul> <p>More broadly, unnecessary alignment of the transmission and distribution ring-fencing arrangement increases regulatory and administrative burdens (i.e., costs) without any commensurate benefit to consumers. If the burden becomes too great, DTSOs may reduce the services they provide – outcomes which are detrimental to the ongoing evolution of the Victorian market and the outcome customers expect.</p>
<p><b>14. Are there any potential inconsistencies with the Transmission Connections and Planning Arrangements rule change we need to consider?</b></p>	<p><b><i>AusNet does not consider there are inconsistencies with the Transmission Connections and Planning Arrangements (TCAPA) rule change that need to be considered.</i></b></p> <p>As the current Victorian arrangements for augmentation ensures a well-defined and contestable regime – an outcome consistent with that seen for connections under the TCAPA rule change, and which the AER appears to suggest is effective – the need for change to the Victorian transmission ring-fencing arrangements is limited. To the extent that any gaps in the Victorian regulatory framework are identified, these should be addressed through a rule change rather than through ring-fencing guidelines. Such an approach will facilitate the continued realisation of the outcomes that the AER is seeking to ensure, while also providing a comprehensive and consistent framework for Victorian businesses to operate within.</p>
<p><b>15. What are the potential harms and benefits to consumers, the market and TNSPs of aligning the transmission and distribution</b></p>	<p><b><i>AusNet accepts there could be benefit in third party providers engaged by a DTSO being subject to the same obligations a DTSO is subject to with respect to discrimination and the sharing of confidential or proprietary information.</i></b></p>

<p>guidelines in relation to obligations on third party service providers that support the provision of prescribed transmission services?</p>	
<p>16. What are the potential harms and benefits to consumers, the market and TNSPs of expanding the scope of compliance reporting?</p>	<p><b>AusNet considers the current compliance reporting requirements are fit-for-purpose and further reform is unnecessary.</b></p> <p>The current approach whereby the AER can request a compliance report from AusNet is working well. The AER can also access information through its regulatory information notice (RIN) process and periodic audits. The AER has provided no evidence that additional regulation would deliver additional benefit relative to the cost or to the customer.</p>
<p>17. Should the timeframe for reporting breaches be extended to 15 days?</p>	<p><b>AusNet accepts that requiring breaches to be reported within 15 days provides more certainty and transparency over the reporting timeframe relative to current arrangements.</b></p>
<p>18. Would there be benefit in the AER providing more clarity on the application and assessment process for waivers?</p>	<p><b>AusNet encourages the AER to provide more clarity on the potential application and assessment process for waivers.</b></p> <p>While AusNet does not support the expansive use of waivers to counter the effect of unduly broad obligations, if the AER is considering a waiver process, it is important to ensure there is transparency regarding the application and assessment process. In particular, the AER should look to provide (and maintain) clear guidance on the process, including the specific steps to be followed, and the timeframes for assessing applications.</p>
<p>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>	<p><b>AusNet considers that new obligations to not discriminate and new information access and sharing requirements may be better directed to AEMO in Victoria, as AEMO performs the declared function of a TNSP and ensures competition and that the market is promoted through contestability.</b></p> <p>AEMO's role is set out in greater detail in our response to Question 9.</p>
<p>20. Which elements of the assessment criteria used to assess waiver applications by DNSPs would be appropriate for transmission?</p>	<p><b>AusNet considers that the criteria currently used by the AER to assess distribution waivers would be a reasonable basis to commence discussions with TNSPs/DTSOs on the criteria that could be used if waivers were introduced to transmission.</b></p> <p>AusNet does, however, note that clause 5.3.2 of the distribution ring-fencing guideline provides significant discretion to the AER, which translates to uncertainty/risk/cost, which may influence investment decisions. AusNet looks forward to further AER engagement on these issues.</p>

<p><b>21. What factors should we take into account in considering the duration of waivers?</b></p>	<p><b><i>AusNet considers that the factors the AER needs to take into account when considering the duration of waivers include the ongoing stability of the regulatory regime and the need to ensure continued investment, innovation and market development. These are issues that are fundamental to ensuring DTSOs can deliver the outcomes customers need as we transition to the new energy future.</i></b></p> <p>While AusNet does not support an approach that relies heavily on waivers, if such an approach is adopted, the AER will need to ensure sufficient regulatory certainty. Increased uncertainty translates to increased risk (cost) which could jeopardise much needed projects or, if those projects do proceed, they could do so a slower pace and/or at more cost.</p> <p>To help mitigate these concerns, the AER should ensure waivers are evergreen or at least as long as the longest asset life being proposed for a project. Failure to provide such certainty undermines the stability of the regulatory regime and could see a fall in investment/lack of market development, all of which will have adverse consequences for customers.</p>
<p><b>22. Are there any circumstances where class waivers may be appropriate for transmission?</b></p>	<p><b><i>AusNet considers there are no circumstances where class waivers are appropriate for transmission.</i></b></p> <p>The need for class waivers suggests incorrectly set policy settings, a sub-optimal solution and a missed opportunity for better targeted reform.</p>
<p><b>23. What are the potential harms and benefits to consumers, the market and TSNPs of removing the ability of the AER to impose additional obligations on a TNSP (clauses 9 and 10 of the guideline)?</b></p>	<p><b><i>AusNet considers clauses 9 and 10 of the guideline should be retained as they represent a flexible mechanism by which the AER can collect the necessary information to deal with real (as opposed to a hypothetical) transmission ring-fencing issues.</i></b></p> <p>The AER is proposing to remove these clauses on the basis that all the reforms it has explored in its Issues Paper proceed. However, as AusNet does not agree with the majority of the AER's potential reforms, it sees benefit in the current framework remaining unchanged, including the retention of clauses 9 and 10 of the guideline.</p>