

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

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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?	TasNetworks supports the approach of referring to services over activities. This will support the ability for TNSPs to use the most effective solution to address a network need rather than being tied to a specific technology or ownership model.

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>Legal separation comes with costs that may be sufficient to reduce the benefit of providing a service to a point that it is deemed uneconomic to provide through a subsidiary. The effect if this, particularly in cases where there is only limited competition in the provision of that service, would be fewer options and higher costs for end consumers.</p> <p>The current arrangements contain sufficient measures, including the existing cost allocation arrangements, to address the potential for Transmission Network Service Providers (TNSP) to hinder competition.</p> <p>This is also reflective of the economic efficiencies in the provision of other non-transmission services. TNSPs compete in these markets due to an identified commercial benefit from making use of excess capacity or the ability to realise synergies. The ability to extract extra benefit from these resources (whether physical or human) often creates sufficient revenue to make the provision of the service</p>

	<p>economic. By forcing the splitting of the resource it will reduce the ability to realise these efficiencies and could lead to the TNSP exiting the market completely. Again, depending on the depth of the market this can significantly impact competition leading to poorer outcome for customers. It also removes an ability for the TNSP to dilute the costs of providing regulated services, preventing those costs savings being passed onto customers of regulated services.</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>The National Electricity Rules (NER) provides definitions for transmission services. The NER has built in protections for customers especially in the area of defining what is contestable or not in the connection process (see 5.2A.4). The need for new electricity services often arises only when historic processes cease to be as effective as they once were (for example provision of inertia). In these circumstances, TNSPs often invest to ensure the service is provided (either directly or by investing in other areas to minimise the impact of the loss of another service). If there is a decision to introduce competition and exclude the TNSP then this investment will be stranded; an investment funded by customers of regulated services. By allowing the TNSP to continue to provide the service in a rules framework that ensures a level playing field will ensure the historic investment (if it was prudent) retains its value.</p> <p>Because most transmission services are well defined and prescribed in the NER it is expected that the introduction of a future contestable transmission service will require a rule change. If there are concerns about anti-competitive behaviour in the provision of this new service these can be managed as part of the rule change. This will also allow for the protections to be tailored to the specific circumstances. This was the approach used when extending contestability to connection applications and construction which has worked.</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>TasNetworks supports the extension of the range of services able to be provided without legal separation to the provision of distribution services. This would remove the anomaly that distribution business can provide transmission services but not vice-versa.</p> <p>TasNetworks sees little benefit in requiring legal separation for the provision of non-electricity services. A business predominantly established and structured to provide electricity network services will only look to compete in a wholly unrelated market in rare circumstances. In these situations it is unlikely there would be sufficient synergies or economies of scale to provide an advantage that could be exploited through discrimination or cross-subsidies. Therefore the risk is low and could be managed on a case by case basis should they arise. Indeed, flexibility to make the most of any commercial opportunities that may arise should be seen as more likely to provide a benefit to customers (through reduced costs) than a risk. To require legal separation should only be imposed where there is evidence that discrimination or cross-subsidisation is occurring to the detriment of end customers.</p> <p>There are sufficient protections in the area of contestable connections which address the potential for negative impacts on competition for those services. The nature of the customers connecting to transmission networks is quite different to those connecting to distribution networks. The need to connect to the transmission network indicates the scale of the venture is much larger. It then follows that the customer has more resources and capability to understand their options with regards to accessing alternative providers and to negotiate the best outcome.</p>

	From our experience with these sort of customers TasNetworks is unaware of any issues that would require additional ring-fencing arrangements.
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>Energy storage will be a critical part of the energy transformation. To ensure its contribution is maximised and occurs as soon as possible, investors need access all available revenue streams. Limiting the available revenue streams to those involved in the provision of regulated services only will likely deter the required investment.</p> <p>The scale of TNSP-owned batteries is different to those the AER considered as part of its review of the distribution ring-fencing guideline. Typically they will be of much greater capacity and require considerably more investment. In these circumstances it will be even more critical that investors have access to the full suite of revenue earning services to underpin their investment. The more efficient use of assets increases economic efficiency and therefore better meets the National Electricity Objectives (NEO). The decision on the most efficient use of assets should rest with TNSPs not the AER.</p> <p>Where system security issues are identified it will be important that TNSPs can consider the use of batteries as an option. The TNSP will have to undertake extensive analysis to identify whether a battery is most cost effective approach to remedying the issue. While an option could be to lease the capability from a third party, this come with considerable risks to the TNSP. Apart from post-incident contractual penalties, there is little a TNSP can do to ensure the provision of the network support service when needed. While the TNSP can exact some restitution from the third party, that will be of little comfort to customers impacted by the consequence of the lack of network support (usually loss of power). A much lower risk approach for the TNSP is to maintain responsibility for the provision of the service it needs. If the cost of this can be reduced by extracting extra value from the battery providing that service customers will benefit.</p> <p>While there are potential for issues to arise from the TNSP providing contestable services, the use of a waiver process needs to be balanced against the perceived additional costs associated with the uncertainty of that process. If, as is done for distribution, the Australian Energy Regulator (AER) could provide what it perceives are the requirements of an application to be successful that may alleviate the concerns of both TNSP and providers of competitive battery services.</p> <p>Another concern will be the duration of any waiver provided. To support investment in batteries it is critical that a waivers duration is matched to either the life of the asset or at least matches the end of a future regulatory determination period to provide confidence in the ability to recover revenue.</p>

Section 2.2.4 – Legal separation – Exceptions to legal separation

AER Question	Stakeholder feedback
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?	Reliance on waivers introduces uncertainty and therefore costs. A revenue cap at least provides certainty up to a set limit. Having to apply for a waiver takes resources and adds uncertainty and time to any investment and due to the often limited life of waivers reduces investment certainty potentially making the investment seem uneconomic.

<p>7. If a revenue cap approach was maintained, what would be the appropriate form and magnitude of that cap?</p>	<p>Currently the cap applies only to revenue earned through the provision of generation and retail services. If the services covered by the cap were to be extended to all non-regulated services it would be difficult to justify a specific level for a cap. It would depend on the nature of the services, the specific characteristics of the markets and the size of the TNSP. The value of a cap should be linked to some threshold of unacceptable risk of harm to the broader community. There should be well supported justification for such a threshold based on research and analysis.</p> <p>Maintaining the current arrangements of a 5 per cent cap on related business revenue is supported.</p>
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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>The preference is for a reasonable time period before the obligation comes into force. Consideration should be given to the difficulties some DNSPs faced in transferring services to new associated businesses. Having a shorter period to comply, even with assurance that the AER would favourably consider waiver, comes with costs. Since there is no certainty that the waiver will be granted, businesses will be required incur costs in an attempt to meet the initial timeframe. If there is acknowledgement that meeting the timeframes may require a waiver then it would seem more appropriate to provide a longer time to meet the obligation up front to avoid the uncertainty and administrative costs of having to apply for a waiver.</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>The preference would be to match the model applied to distribution businesses.</p> <p>Confidence that TNSPs will not discriminate in favour of its own contestable entities is important. TNSPs already aim to limit perceptions or reality of any discrimination in the way TNSPs operate. TasNetworks is supportive of a reasonable extension of restrictions that prevent discrimination.</p> <p>One area we would urge the AER to consider however, are those circumstances that discrimination is actually appropriate and required. This can occur when access to transmission infrastructure or the provision of certain services can impact on network reliability and security. While TNSPs remain responsible for ensuring the safe and secure operation of the network there may be circumstances where some external parties may pose concerns and thus 'discrimination' may be appropriate.</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>Discrimination leads to poor outcomes for customers so a considered approach to strengthening the obligation is supported.</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</p>	<p>There are considerable costs in implementing functional separation which must be outweighed by the benefits for it to be positive change.</p>

<p>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>The costs can include practical costs like establishing and maintaining separate teams in both businesses. Where there is insufficient on-going work to provide the critical mass to maintain both teams then one option is to cease providing the unregulated service. Since the regulated service must be provided it will be a challenge to continue to provide it as efficiently as before which will either impact service quality or cost to serve.</p> <p>This is a particular concern in the provision of contestable connections. Since the connecting party can choose not to take advantage of competition, the TNSP must be prepared to be the 'provider of last resort'. This requires it to maintain the capability to provide the service at relatively short notice. To do this currently, the TNSP can use the resources to assist in the provision of other regulated transmission services until they are required. If these resources were forced to be separated from the TNSP this benefit would be lost. To replace them adequately may come at a substantial cost. The alternative is to keep the resource in house and not provide the competitive service. In a market with relatively few alternative providers, to withdraw a provider will be detrimental to customers.</p> <p>TasNetworks is unaware of any harm that has come from sharing resources in relation to transmission contestable services. It is therefore, unlikely that functional separation will provide a benefit to customers.</p>
<p>12. Should any new functional separation obligations apply to all contestable services? Should any exceptions apply, and if so, why?</p>	<p>Applying functional separation obligations to all contestable services would most likely provide a poor outcome for customers. For contestable services that are infrequently used and/or of a large scale, functional separation will result in the separated entity operating in an environment of boom and bust with limited ways to manage the resourcing issues this causes. This will either lead to increased costs or withdrawal from the market. Either scenario is a loss to customers.</p> <p>This is a particular concern in the area of contestable connections. Where the risk of harm can be managed in more controlled means which should be the preferred approach.</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>No comment.</p>
<p>14. Are there any potential inconsistencies with the Transmission Connections and Planning Arrangements rule change we need to consider?</p>	<p>For contestable connections, there is an extensive NER framework and regulatory obligations that address any competition harms that may emerge such that no additional ring-fencing arrangements are required.</p> <p>As noted above, imposing further limits on the ability for TNSPs to share resources between connection services and other transmission services would harm the scale and scope efficiencies and increase the cost of the TNSP to provide these services.</p>

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

AER Question	Stakeholder feedback
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?	TasNetworks has no concerns with this proposal.

Section 4 – Compliance

AER Question	Stakeholder feedback
16. What are the potential harms and benefits to consumers, the market and TNSPs of expanding the scope of compliance reporting?	Expanding the scope of compliance reporting will increase costs for customers. The AER should consider whether the benefit from increased regular reporting will exceed these costs. The existing requirement that enables the AER to require compliance reporting at any time is appropriate and can be invoked when necessary. By establishing a regular reporting requirement will increase costs for potentially limited benefit.
17. Should the timeframe for reporting all breaches be extended to 15 days?	TasNetworks supports extending the reporting timeframe to 15 days. Following the identification of a potential breach an investigation is usually required and this can take time. It then needs review, and before reporting, an internal approval process is required. 15 business days should provide just enough time to comply.

Section 5.1 – Other issues - Waivers

AER Question	Stakeholder feedback
18. Would there be benefit in the AER providing more clarity on the application and assessment process for waivers?	<p>TasNetworks supports greater transparency as it relates to waivers. To ensure compliance with the regulatory framework a business will tend to arrange its operations based on the regulations that exist rather than the potential that a waiver would be provided. It is not reasonable to assume that having the option of applying for a waiver will provide an incentive for business to look at innovative options to address issues.</p> <p>TasNetworks does not support the development of an overly prescriptive guideline compensated for by the ability to apply waivers. This is not seen as good regulatory practice. Rather, having a more flexible guideline, targeting key concepts and then relying on specifically targeted restrictions once an issue is identified and proven is seen as more aligned to the NEO.</p> <p>It is also important to note that TasNetworks' experience of operating under the Distribution Ring-Fencing Guideline is that waivers are only granted to provide added time for a business to become compliant, not to modify/remove the obligation.</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	No comment.

information access and sharing)? Please explain your reasons.	
20. Which elements of the assessment criteria used to assess waiver applications by DNSPs would be appropriate for transmission?	TasNetworks supports the use of the same assessment criteria to assess waiver applications for both transmission and distribution.
21. What factors should we take into account in considering the duration of waivers?	To support investment and minimise the cost in managing risks it is critical that a waiver's duration is matched to either the life of the asset or at least matches the end of a future regulatory determination period to provide confidence in the ability to recover revenue.
22. Are there any circumstances where class waivers may be appropriate for transmission?	Having the flexibility in the Guideline to provide class waivers would be a positive addition. Any circumstance that multiple TNSPs would require a waiver would benefit from use of a class waiver approach if a the preferred alternative, a change in the regulatory framework, is not possible. Class waivers would reduce administrative costs and help ensure national consistency (where appropriate).

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)?	The current ability for the AER to impose additional obligations comes at a cost. All TNSPs must be prepared when making decisions about providing contestable services to factor in a level of uncertainty associated with the AER deciding to impose ring-fencing obligations. Given the way transmission services are clearly defined and competition issues are managed (for example contestable connections) in the Rules there seems little reason for the AER to retain the capacity to impose additional ring-fencing obligations.
24. Are there any other issues in relation to this review that you would like the AER to consider?	Transitional timings must be fit for purpose and take into account the level of change. There may be elements where a "quick" transition can be accommodated but this cannot be assumed to be uniform.