

Streamlined Process for Batteries Waivers (Functional Separation Update) – Communications Statement

4 April 2023

The AER has updated the streamlined assessment process for battery waivers to now **allow applications for a waiver from clauses 4.2.1 and 4.2.2** of the Electricity Distribution Ring-fencing Guideline (the Guideline) to be considered through this process. Prior to this update, the AER could only consider waiver applications from clause 3.1 under the streamlined assessment process, while applications for a waiver of clauses 4.2.1 and 4.2.2 required a full consultation process.

Background

On 3 November 2021, the AER published its final Guideline and [explanatory statement](#) which created a new streamlined assessment process for battery waivers. The process was developed to enable streamlined assessment of applications for Distribution Network Service Providers (DNSPs) to lease spare battery capacity to other parties including in relation to community batteries. This process is intended to provide benefits to consumers through access to network connected storage and reducing overall costs of batteries by allowing DNSPs to access alternative funding sources through battery markets. The process also established appropriate controls to manage the risk of foreclosure of competition. On 21 December 2021, the AER published a [communications statement](#) confirming our position on the streamlined process for battery waivers.

On 3 February 2023, the AER finalised the criteria for its distribution ring-fencing class waiver for DNSP-led projects funded under the Australian Government's Community Batteries for Household Solar Program. In the [final decision](#), it was noted that the AER proposed clarifying the streamlined assessment process for individual battery waivers, which was introduced in December 2021, to include clauses 4.2.1 and 4.2.2.

Clauses 4.2.1 and 4.2.2 respectively require DNSPs, in providing direct control services, to use offices and staff that are separate from any offices or staff that are used by a related electricity service provider (RESP) in the provision of contestable electricity services.

The class waiver which is now in effect grants a waiver to eligible DNSPs in relation to eligible battery projects, from clauses 4.2.1 and 4.2.2 in addition to clause 3.1 of the Guideline, subject to conditions that the AER considers appropriate. During the consultation process for the class waiver, the AER sought feedback from stakeholders on a waiver of clauses 4.2.1 and 4.2.2 for DNSP owned batteries funded under the Australian Government's program. The AER's consideration of the submissions received as part of that process formed the basis for the expansion of the streamlined assessment process for battery waivers.

Update to the streamlined process

A waiver from 4.2.1 and 4.2.2 may be necessary because in practice there may only be one person operating and dispatching batteries for both network and leasing purposes. Therefore, these roles would not be separated. Likewise, the negotiation of leasing contracts may require access to ring-fenced information to determine remaining capacity which may

be leased. In practice without a waiver, the staff member negotiating the contract would, if employed by a:

- DNSP, be restrained from partaking in contestable services; or
- RESP, be restrained from accessing the information necessary to accurately negotiate the contract.

The key risk associated with waiving these clauses is the increased potential for discrimination by the DNSP in favour of a related entity when leasing spare battery capacity, for example by failing to hold a competitive tender process. These risks will be mitigated through the AER's assessment of waivers on a case-by-case basis, and application of conditions which could require DNSPs to advise the AER of certain key conditions of contracts, and annual reporting on usage to ensure non-discrimination obligations are adhered to. More information on the discrimination and cross-subsidisation risk of waiving these clauses can be found in the class waiver [decision](#) document.

It should be noted that this expansion **does not have the effect of granting any additional waivers to DNSPs, accordingly it does not apply to existing waivers in retrospect**. It enables the AER to consider waiver applications from two additional clauses using the streamlined assessment process rather than using a full waiver process. Each application under the streamlined process will be individually assessed to ensure that the risks of discrimination and cross-subsidisation are mitigated. Where applications under the streamlined process are identified as not being low risk, they can be considered through a full waiver process.

In the AER's [communications statement](#) for streamlined battery waivers released in December 2021, we indicated that the streamlined waiver process would be re-examined as needed to respond to future developments. We consider that this update is appropriate given our learnings from reviewing battery waivers so far and will align with the class waiver. This process is effective as of the date of publication of this Communications Statement. We will continue to review our approach as needed and update our processes to respond to future developments.