

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: Iberdrola Australia

CONTACT NAME: Ricardo Da Silva

EMAIL: Ricardo.dasilva@iberdrola.com.au

PHONE: 0436127180

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?	<p>It is not clear the intent of this question when services and activities are used interchangeably.</p> <p>In the original 2002 Guideline (AER, 2002), “services” mean “ring-fenced services” and “prescribed services”. “Activities” applies to unregulated “activities”. The distinction appears to be that “activities” are unregulated and “services” are regulated.</p> <p>It appears today that “services” and “activities” are used interchangeably in common parlance and using “services” exclusively may provide clarity.</p> <p>Regardless of whether services or activities are used, the revised guideline should clearly define what are regulated services or activities and clearly define what are unregulated services or activities, treating both services and activities consistently in the guideline to reduce the opportunity for misuse or misinterpretation.</p>

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	There seems limited downside in requiring TNSPs to legally separate transmission (regulated) and non-transmission (unregulated) services.

<p>legally separate transmission and non-transmission services?</p>	<p>TNSPs may incur initial costs in legally separating transmission and non-transmission services, but we expect this to be small and balanced by subsequent competition benefits. The system today is very different to that of 2002 and as the AER rightly says, the Guideline needs to be revised to accommodate the changes of the last 20 years.</p> <p>It is critical that the regulatory frameworks evolve to provide the necessary confidence that will underpin contestable approaches in the cost-effective and timely delivery of new transmission, therefore the benefits to consumers far outweigh the incremental cost of introducing more stringent rigor to the process.</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>Prescribed transmission services are very loosely defined in chapter 10 of the NER:</p> <ul style="list-style-type: none"> (a) prescribed entry services; (b) prescribed exit services; (c) prescribed common transmission services; and (d) prescribed TUOS services. <p>There is no obvious need to further define services in the NER. Trying to define new and emerging services in the NER may be restrictive.</p> <p>The regulated TNSP undertakes prescribed services, as defined in the NER. New or emerging services that are not yet defined in the NER and that can also be provided by an unregulated third party should not become prescribed services in the NER, as benefits from providing these services contestably will flow to customers. That is, new and emerging services should be unregulated and fully contestable.</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>In general, a TNSP should not be able to provide distribution services, contestable electricity services or non-electricity services without legal separation. This is common practice in relevant jurisdictions across Europe and UK.</p> <p>The only exception being the existing provision of distribution services by the two TNSPs, TasNetworks and Ausgrid.</p> <p>The TNSP should only be able to provide regulated and prescribed services.</p> <p>There are no harms to requiring the TNSP to legally (and with appropriate internal ethical wall procedures) separate if wishing to provide other services. This is particularly the case for contestable services now and in the future.</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>Coordinating the location of new batteries with NSPs will help deliver long-term value to consumers. We see there are significant opportunities for embedded, grid-scale batteries to deliver a range of services in both the networks and energy market space. However, it is critical that (aside from value stacking benefits) all projects compete on a level playing field. As such, our view is that TNSPs should not own and operate transmission-connected batteries (or distribution-connected batteries), but rather should work closely with third parties to develop assets and procure/contract the required services.</p> <p>In general, competition will allow the delivery of grid-scale batteries more efficiently and cost effectively than TNSPs. Battery developments for network support in the NEM should be fully contestable.</p> <p>An example of the issues with TNSP (and DNSP) owning and operating a battery is the recent issue in the Integrating</p>

	<p>Energy Storage into the NEM rule change (ERC0280, options paper, page 33), where it became clear that TNSPs cannot have a connection agreement with themselves, but only third parties. This means the TNSP is setting TUOS, other charges and technical requirements that may be perceived to benefit itself or discriminate against a purely third party provided battery, and preferentially providing lower cost access to the market.</p> <p>Where network constraints are an issue, there is a risk (or a perceived risk that will impact on investment cases) that a TNSP (or DNSP for DNSP owned and operated batteries) could preferentially ensure its battery has access for dispatch, excluding another independent third-party battery operator.</p> <p>The AER also raised ring-fencing concerns as part of the same rule change (ERC0280, draft decision, p114)</p> <p>See comments on the cap for questions 6 and 7.</p>
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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>There should be no cap nor a waiver to legal separation for the provision of non-transmission services.</p> <p>Waivers materially weaken the effectiveness of ring-fencing requirements.</p>
<p>7. If a revenue cap approach was maintained, what would be the appropriate form and magnitude of that cap?</p>	<p>When the original guideline was created in 2002 the total RAB for the NEM was significantly lower than it is today. In 2006 the AEMC valued TNSP RAB at \$9.4 billion. Today it is \$22 billion (AER, 2021) and with the construction of all the ISP it will grow by at least another third to ~\$35 billion (+\$12.7 billion, AEMO, 2022).</p> <p>It has not been possible to determine historically how the 5% cap was originally set. And this lack of transparency in the original rationale for imposing a 5% cap suggests it was somewhat arbitrary.</p> <p>A cap is therefore not the appropriate way to screen whether services should be legally separated or not. The current 5% cap will support very significant financial activity by monopoly entities as the RAB increases rapidly. due to new transmission investment, allowing TNSPs to have a material advantage over, and to discriminate against new third party entrants.</p> <p>The cap should be removed and there should be no waiver to the requirement to legally separate the provision of non-transmission services from prescribed transmission services.</p> <p>If a waiver approach is demonstrated by TNSPs to be necessary then the process by which a waiver is applied for, assessed and granted needs to be fully transparent. Any waiver (here and for any other service) must be subject to performance compliance, underpinned by reporting, investigation and penalties to ensure that waivers are not an opportunity to circumvent ring-fencing obligations.</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>Other than the existing arrangements for TasNetworks and Ausgrid (who currently both carry on joint TNSP and DNSP</p>

	<p>activities), there should be no grandfathering of arrangements.</p> <p>Legal separation is a critical component of the ring-fencing approach and rigorous application is required to facilitate contestability in the transmission arena and to provide a level playing field for new entrants. Grandfathering will blur the lines between grandfathered existing services and new services, creating uncertainty and adding unnecessary costs. There is the risk that TNSPs will attempt to misuse the grandfathering of services to limit the impact of the revised new ringfencing arrangements on current practices.</p> <p>Introducing grandfathering to legal separation would completely undermine the purpose of the revised ring-fencing guidelines.</p>
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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>Ensuring non-discrimination is essential for delivering meaningful ring-fencing guidelines. The distribution ring-fencing guideline must be the used as the minimum baseline for the transmission guidelines.</p> <p>In where contestability in delivery of new transmission has been possible (i.e. Victoria), tenders for new transmission lines (as opposed to connection assets) have been secured by the unregulated affiliate of the regulated TNSP. However, it has been the regulated TNSP that has then delivered the new transmission line on behalf of its unregulated business. This raises questions of how shared resources are being funded, and highlights how TNSPs may be able to use unregulated affiliates to discriminate to their own advantage.</p> <p>Similar blurry lines can be found when splitting contestable and non-contestable scopes for renewable connections, making difficult for connectees to understand what can be taken to the market.</p> <p>We encourage the AER to identify the share of contestable scope for connections that have been delivered by unregulated affiliates of the local incumbent TNSP vs the share delivered by its competitors.</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>There are no harms to consumers of reducing the ability of TNSPs to discriminate in favour of their own affiliates. Strengthening discrimination obligations will improve outcomes to ensure genuine transparency in service provision to the benefit of all consumers. We consider there is now sufficient alternative capability in Australia to efficiently and cost effectively deliver transmission services, and no benefit to any implicit or explicit discrimination or cross subsidisation.</p> <p>Furthermore, the challenges Australia faces regarding building the adequate supply chain and resourcing for the energy transition make even more necessary to build confidence on healthy regulation and pipeline of opportunities that can attract consistent growth on capabilities underpinned by a credible level playing field.</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>Functional separation must apply to all TNSP activities to prevent discrimination.</p> <p>No staff should be shared between the unregulated and regulated businesses. Offices should not be shared and there should not be any branding that is common to the regulated and unregulated business. Cross-promotion between the regulated and unregulated businesses should not be permitted.</p> <p>We disagree with the initial AER view that are limited harms that may arise because TNSPs are regulated monopolies (see example of Victoria in Q9). A better understanding of how the current 5% cap and/or waivers will be treated is required.</p> <p>For example, if the AER in its final determination decides to retain the 5% cap for TNSPs, then ensuring functional separation becomes a critical issue as TNSPs will have an unfair advantage when competing with third parties.</p> <p>It is important to ensure that the ringfencing practices and guideline are clear and transparent, providing certainty for third parties that they are competing in a fair environment.</p>
<p>12. Should any new functional separation obligations apply to all contestable services? Should any exceptions apply, and if so, why?</p>	<p>Functional separation should apply to all contestable services, including the delivery of major new transmission lines, such as those detailed in the ISP.</p> <p>Contestability in the delivery of ISP projects should be kept in mind by the AER as the AEMC works through contestability arrangements in the NEM (recent paper published 7 July).</p> <p>The AER has offered no clear rationale as to why TNSPs should have greater flexibility than DNSPs in the application of ring-fencing obligations.</p> <p>The examples from Victoria, where contestable provision of transmission services is the norm, the TNSP and its affiliate routinely use their close relationship to exclude independent third parties from the market. This means that Victorians are likely to be disadvantaged.</p> <p>The relationships between TNSPs and their affiliates mean that they hold an unfair advantage in the provision of services, such as batteries, ancillary services, deliver of contestable connection assets and consultancy services. Prescribed services and unregulated services should be strictly separated by the revised ring-fencing guideline.</p> <p>If TNSPs are required to legally separate their regulated and unregulated businesses (and we believe this is essential), then requiring functional separation is unlikely to additionally onerous.</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>The DNSP Guideline is the minimum requirement for the TNSP Guideline.</p> <p>There is little transparency currently on information access and disclosure.</p> <p>In Victoria, the regulated TNSP undertakes joint planning activities with AEMO to determine what new transmission network assets are required. The TNSP's unregulated affiliate, based in the same building, then tenders for the delivery of the new assets and when successful, the TNSP then builds, owns and operates the new assets. In this case, the TNSP is privy to detailed information about its own network and what is required, which will also be available to</p>

	<p>its unregulated affiliate, the successful bidder, which would not be available to an independent third party.</p> <p>The information access and disclosure should be the same as applies to the DNSPs in their ring-fencing guideline.</p>
<p>14. Are there any potential inconsistencies with the Transmission Connections and Planning Arrangements rule change we need to consider?</p>	<p>If the revised TNSP ring-fencing guideline ensures legal and functional separation of the regulated business and its unregulated business and any unregulated services provided by the TNSP (the regulated business must not provide unregulated services), then there appears to be no inconsistencies with the approach taken in the final determination for ERC0192 Transmission Connections and Planning Arrangements, which make connections contestable. Arguably the requirements of the ERC0192 final decision place more stringent obligations on TNSPs than the current 2002 ring-fencing guideline and potentially (dependent on the final decision by the AER) more stringent than the proposed revisions to the transmission ring-fencing guideline.</p> <p>When the provision of new transmission is fully contestable, there will be an increased need for the TNSP to share information with third parties and this must be facilitated through the revised ring-fencing guideline.</p> <p>The AER must ensure that the new ring-fencing guideline will support the contestable delivery of large new transmission projects, as is currently being explored by the AEMC (AEMC, July 2022).</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>The 2021 Ring-fencing Guideline for Electricity Distribution is the minimum ring-fencing requirement for TNSPs.</p> <p>Any deviation from the application of the same requirements for DNSPs to TNSPs must be evidence-based.</p> <p>We note the current 2002 ring-fencing guideline for transmission is limited, particularly around compliance reporting. When breaches are self-identified or identified by the AER, there is may be no penalty and no limit on repetition. Often the DNSPs are repeat offenders, with limited options to prevent repeated breaches (AER, 2021, page 12):</p> <p><i>“A number of distributors reported multiple breaches of their ring-fencing obligations. While individual breaches may pose minimal harm, repeated breaches of the Guideline by the same distributor may point to a systemic issue with a distributor’s compliance processes”</i></p> <p>DNSPs have also not been responsive to adjusting approaches to ensure compliance (AER, 2019, page 2)</p> <p><i>“...we have been dissatisfied with how distributors have responded to identified breaches and the time taken to rectify these. We are concerned that some of these issues have continued..”</i></p> <p>We understand there has been no reporting on the compliance of TNSPs in the last 20 years and it is essential that not only is the level of compliance transparently shared regularly, but that the ring-fencing guideline offers disincentives to poor compliance, including investigation by the AER and penalties.</p> <p>Any new requirements on TNSPs should apply to third parties delivering prescribed services on behalf of TNSPs.</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>A ring-fencing regime without a strong and robust compliance framework will not be sufficient to support contestable delivery of connections and new large-scale transmission projects, and will allow the regulated TNSP to continue to harm the development of a fair and transparent market in unregulated services. A lack of confidence that ring fencing requirements will be met can impact on competition, both for specific projects and more generally. Transparent compliance reporting is essential and we see no reason not to obligate the TNSPs to meet the same requirements as DNSPs.</p> <p>There are no harms in requiring TNSPs to report their compliance, or otherwise, with the revised ring-fencing guideline.</p> <p>The TNSP must also indicate how any breaches will be rectified and must demonstrate, within a fixed timeframe, that it now complies.</p> <p>The AER must have the powers and tools available to investigate the non-compliance of TNSPs (and DNSPs) and the ability to penalise the TNSP if compliance issues are not rectified immediately.</p>
<p>17. Should the timeframe for reporting all breaches be extended to 15 days?</p>	<p>Agree to bring into line with DNSP ring-fencing Guideline.</p> <p>As mentioned above the AER must have the ability to investigate and penalise non-compliance.</p> <p>Additionally, the AER should not just be dependent on TNSPs (and DNSPs) self-reporting breaches. A clear framework and process for external parties to report breaches needs to be developed. Currently, the evidence that the AER requires to demonstrate a breach of the ring-fencing guidelines is excessive and dependent on information that a third party may not be able to access (the information is held by the NSP).</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 application and assessment process for waivers?</p>	<p>There are lessons that can be learnt from the application of DNSP ringfencing waivers. There has been a lot of push back on the waivers granted to DNSPs (e.g. community batteries) and therefore we encourage the AER to adopt a waiver framework that picks up on the issues identified during work on the revision of the distribution ring-fencing guideline. The AER need to ensure that any waiver approach is rigorous and transparent as this will provide certainty to all stakeholders.</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>We agree with the AER that certain clauses should not be subject to waivers.</p> <p>In our view waivers should not be available for:</p> <p>The legal and functional separation of the business that delivers prescribed (regulated) service from the unregulated business that unregulated services.</p> <p>Noting the existing arrangements for TasNetworks and Ausgrid, which should be grandfathered (these are the only arrangements that should be grandfathered).</p> <p>The obligation not to discriminate</p> <p>The obligation on information access and disclosure</p> <p>The obligation to comply and report on compliance</p>

	Further the 5% cap should be abolished and no waiver should be available to allow TNSPs to undertake any unregulated activities that may now be contestably provided. This includes ensuring that the revised guideline for transmission can support the contestable provision of transmission, such as the ISP projects, which is the subject of a current AEMC paper (July 2022)
20. Which elements of the assessment criteria used to assess waiver applications by DNSPs would be appropriate for transmission?	<p>Waivers should be strictly limited to areas where it can be demonstrated that a TNSP's involvement will deliver benefits to consumers.</p> <p>There should be no presumption that the TNSP (or DNSP) can deliver new and innovative approaches any more efficiently and cost-effectively than a third party.</p> <p>It is not clear that the streamlined waiver process for DNSPs, particularly in relation to batteries, has had benefits for consumers. Even if some smaller trial projects warranted a waiver, once rollouts proceed at scale, third parties should be offered the opportunity to deliver more efficiently than NSPs, offering benefits to consumers and electricity networks alike.</p>
21. What factors should we take into account in considering the duration of waivers?	The likely frequency of any need to apply for a waiver (e.g., batteries and grandfathered TNSP-DNSP treatment) and the area covered by the waiver. For instance, high impact issues like transitioning to the new Ring-fencing guideline should have a limited duration.
22. Are there any circumstances where class waivers may be appropriate for transmission?	<p>There are no circumstances in which a class waiver will be appropriate for transmission.</p> <p>Ring-fencing waivers should only be granted in exceptional circumstances and all waiver applications should be assessed on a case-by-case basis on their individual merits.</p> <p>The formal assessment framework for a waiver must be robust, transparent and easy to follow. The decision criteria against which all waivers will be assessed should be clearly set out. All applications, decisions and supporting reasoning must be made public and open to consultation.</p> <p>All waivers should have a sunset or review date to account for potential changes in the technological or competitive landscape which mean that a waiver no longer serves the long-term interests of customers.</p>

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)?	As long as the revised Ring-fencing Guideline Electricity Transmission is delivered as outlined in the Issues Paper, with the introduction of new obligations and close alignment with the obligations on DNSPs, there should be no need for the AER to retain the ability to impose additional obligations on a TNSP.
24. Are there any other issues in relation to this review that you would like the AER to consider?	<p>Strong Ring-fencing Guidelines Electricity Transmission will be needed to underpin contestable delivery and operation of new transmission. While opportunities for contestable providers to build, own and operate transmission are limited in the NEM, it is a potential approach that should be accommodated in the Guideline.</p> <p>Where an unregulated party owns and operates transmission, such as may have been delivered via a contestable process, they should not be subject to the Ring-fencing Guideline.</p>