

Ring-fencing guideline (electricity transmission)

Issues paper

Updating the guideline to include negotiated
transmission services

October 2024

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Request for submissions

Interested parties are invited to make written submissions to the Australian Energy Regulator (AER) regarding this paper by close of business **13 November 2024**.

Submissions should be sent electronically to AERringfencing@aer.gov.au.

Alternatively, submissions can be mailed to:

General Manager Policy
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information are requested to:

- Clearly identify the information that is the subject of the confidentiality claim; and
- Provide a non-confidential version of the submission in a form suitable for publication.

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Enquiries about this paper or about lodging submissions should be directed to the Strategic Policy and Energy Systems Innovation branch of the AER on 1300 585 165 or AERringfencing@aer.gov.au.

Executive Summary

On 18 July 2023, after consultation with stakeholders, the AER submitted a [rule change request](#) to the Australian Energy Market Commission (AEMC) to provide us with additional ring-fencing tools to manage the potential harms in the provision of negotiated transmission services and contestable services.

On 16 May 2024, following its own consultation, the AEMC [amended rule 6A.21.2](#) of the National Electricity Rules (NER).¹ This rule change empowers the AER to revise the [Ring-fencing guideline \(Electricity transmission\)](#) ('the guideline'), to achieve the functional separation of TNSPs' (or their related entities') prescribed transmission services and negotiated transmission services from the provision of contestable (i.e. non-regulated) electricity services by them.

The number of new connections by renewable generators and batteries to the transmission network has increased and will continue to increase as the energy transition proceeds.² To ensure these new sources of energy and storage can enter the market in a timely way and at lowest cost it is vital that connections are undertaken efficiently and without avoidable costs.

We are seeking more detailed views from stakeholders to assist us to develop a formal proposal for changes to the guideline. This is not the start of formal consultation under the transmission consultation procedures required by the NER. Rather, this is a preliminary process to enable us to develop specific proposed changes which will then be consulted on.

In preparing this issues paper we have taken account of views expressed previously by stakeholders to the AER, and to the AEMC during the rule change process. Previous stakeholder feedback has provided a binary view of the changes required: either all obligations in the guideline should apply to all negotiated services, or no obligations should be applied for any negotiated services. We are seeking to undertake a more nuanced assessment of ways in which the guideline can be updated.

Feedback and information from stakeholders will be critical to assist us in understanding the costs and impacts associated the ring-fencing of negotiated services. The aim of this issues paper is to get more detailed and specific information, to learn how the potential costs and impacts may vary depending on which ring-fencing obligations are applied to different types of negotiated services. We are seeking information that will help us to assess what matters should be excluded from the guideline altogether, what matters should be included in the guideline but waivable upon application, or any matters which should be included but not subject to waiver at all. Submissions to this issues paper will inform our development of tailored options for changes to the guideline, which will be subject to a separate consultation process in accordance with the rules consultation procedures.

We intend to take a risk-based approach in understanding the costs and benefits of extending ring-fencing obligations to negotiated services and developing a formal proposal

¹ AEMC, [Rule determination National Electricity Amendment \(Expanding the transmission ringfencing framework\) Rule 2024, May 2024](#)

² Australian Energy Market Operator, [2024 Integrated System Plan, June 2024](#) page 30

for amending the guideline. In doing so we seek to understand what is the likelihood that someone will suffer harm absent the introduction of ring-fencing obligations to different types of negotiated services, and what are the nature and potential consequences of that harm. We also wish to understand the potential costs to industry in imposing ring-fencing obligations in relation to different types of negotiated services, to ensure that any changes to the regulatory burden are appropriate and proportionate to the risk of harm. A better understanding of these issues will give us the opportunity to consider new ring-fencing controls that are most likely to be effective in protecting competition for contestable transmission services, while not imposing disproportionate costs on TNSPs and their customers.

1 Background

1.1 The role of ring-fencing

The aim of ring-fencing is to promote competitive markets by seeking to ensure a level playing field for providers in markets for contestable services, in the long-term interests of consumers.

Ring-fencing in the electricity transmission context refers to the separation of contestable services provided by TNSPs' related entities, from the prescribed transmission services and negotiated transmission services provided by a TNSP.

Prescribed transmission services can only be performed by TNSPs and are provided under a TNSP's revenue cap. They include the installation, operation and maintenance of high voltage towers, poles, conductors and associated switching and protective equipment.

Negotiated transmission services can also only be performed by TNSPs, however, the AER does not regulate the revenue a TNSP earns for providing negotiated transmission services. These services are paid for by the connecting customer, and the terms and conditions, including price, must be agreed between the individual network users and the TNSP. Negotiated transmission services include connection services provided to transmission network users (including generators and batteries) at a single transmission network connection point, services related to design and specification of Identified user shared assets, works to connect a new customer at a transmission sub-station and undertaking system strength connection works.

Transmission connections also involve contestable services, which cannot be undertaken by a TNSP, but can be undertaken by a TNSP's related entity or by another provider on the competitive market. Contestable connection services include construction of power lines and transformers that connect a large customer or generator to a TNSP's network.

Ring-fencing seeks to prevent TNSPs from using their position as monopoly providers of prescribed transmission services to distort outcomes in contestable markets. There are two key harms that ring-fencing seeks to prevent:

- **cross-subsidisation** – this can occur where a TNSP uses revenue that it earns from providing prescribed transmission services to subsidise its activities in other, contestable markets.
- **discrimination** – this can occur where a TNSP is able to favour itself or related entities, or discriminates against a competitor, as a result of providing a monopoly service.

Both cross-subsidisation and discrimination can have the effect of undermining or damaging competition, efficiency and innovation in contestable markets. The changes under consideration in this paper and for negotiated services focus on preventing discrimination in the market. Cross subsidisation is not perceived to be a relevant risk, as the guideline already requires TNSPs to establish accounting separation and to allocate costs between, for example, negotiated services and contestable services in accordance with their approved cost allocation methodology.

1.2 The potential for discrimination

During the engagement process for developing version 4 of the guideline,³ several parties raised concerns that TNSPs have the potential to use their control over transmission networks and their monopoly provision of negotiated services to discriminate against competitors in respect of contestable connections to those networks.

Stakeholders raised concerns about potential harm occurring in two instances:

1. **generator connections** – where a connecting party is seeking both contestable and non-contestable connection services, and the TNSP could discriminate in favour of generators completing all services with the TNSP (including with its related entities).
2. **distribution network connections** – where an electricity distribution network service provider (DNSP) receives a connection application which requires upstream augmentation works on the shared transmission network, a TNSP may use the information about the new connection to its advantage.

Following publication of version 4 of the guideline, we consulted with stakeholders specifically on negotiated services, noting the concerns about the potential for discrimination. Below is a summary of stakeholder feedback that we received:

- Non-TNSP stakeholders were largely in support of ring-fencing all negotiated transmission services, arguing that it would mitigate the risk of discriminatory practices by TNSPs and increase market confidence.
- Several non-TNSP stakeholders stated that even the perception of harm could be detrimental to the market.
- We were advised of several scenarios by non-TNSPs where the absence of ring-fencing between negotiated services (can be undertaken only by a TNSP) and contestable services (can be undertaken by either a TNSP's related entity or another provider) for connections may impact competition if the connecting customer perceives that:
 - a connection process will be given a lower priority by a TNSP if its related entity is not allocated some of the contestable works,
 - connections will be quoted at a lower price if the related entity is engaged for contestable services, or
 - a TNSP intends to arrange for its related entity to act in the capacity of the TNSP.
- Some stakeholders argued that all negotiated services should be covered by the ring-fencing obligations, noting that the guideline already includes a waiver mechanism that would allow the AER to grant exceptions to a TNSP on a case-by-case basis, in circumstances where the AER is satisfied that the compliance costs outweigh the benefits of ring-fencing.
- However, TNSPs and their associated stakeholders argued that discrimination, rather than the potential for discrimination, should be the AER's focus in deciding whether to expand the scope of the guideline.

³ AER, [Electricity Transmission Ring-fencing Guideline \(Version 4\)](#), 1 March 2023

- TNSPs urged the AER to consider the costs to TNSPs of compliance with new ring-fencing obligations on negotiated services and argued that they would needlessly delay connections and prevent a timelier energy transition.

1.3 The impacts of potential discrimination

Australia's electricity market continues to undergo a fundamental transformation, from reliance on coal and gas-fired power plants to new sources of energy and storage as we decarbonise our energy system, replace ageing plant and take advantage of new technologies. The number of new connections by renewable generators and storage providers to the transmission network has increased and will continue to increase as the energy transition proceeds. Irrespective of any contestable services undertaken as part of the connection process, these large customers are reliant on TNSPs for connection to the transmission network. TNSPs are the monopoly providers of prescribed and negotiated transmission services, which are essential for connection to the transmission network. Stakeholder feedback has illustrated that there is a risk that TNSPs can influence connecting parties' decisions so as to favour their related entities, and disadvantage competitors that offer related contestable connection services.

For example, a TNSP could potentially create administrative or financial hurdles for the non-contestable elements of a connection unless the customer agrees to complete the entire connections process (both negotiated and contestable components) with the TNSP and its related entity. Such potential conduct could cause harm by dampening competition in the market for contestable services, delay connections, or increase prices and lead to higher costs for consumers.⁴

1.4 Updates to the NER

On 18 July 2023, we submitted a rule change request to the AEMC seeking additional regulatory tools to ring-fence negotiated services⁵, to:

- manage the possibility of discriminatory behaviour through ring-fencing some or all negotiated transmission services from contestable services. This includes mitigating the risk of TNSPs sharing confidential information obtained as a result of providing negotiated transmission services with a related entity, or using confidential information to its own advantage.
- provide greater transparency for connection applicants and third-party service providers.
- minimise potential dampening of competition in the market for contestable services, due to the perceived ability of TNSPs to discriminate, which may arise where potential competitors consider they are not able to compete on an equal footing with TNSPs.

The AEMC conducted its own consultation and determined on 23 May 2023 to amend clause 6A.21.2 in the NER to allow for:

⁴ AER, [Rule change request - Expanding the transmission ring-fencing framework, July 2023](#), p5.

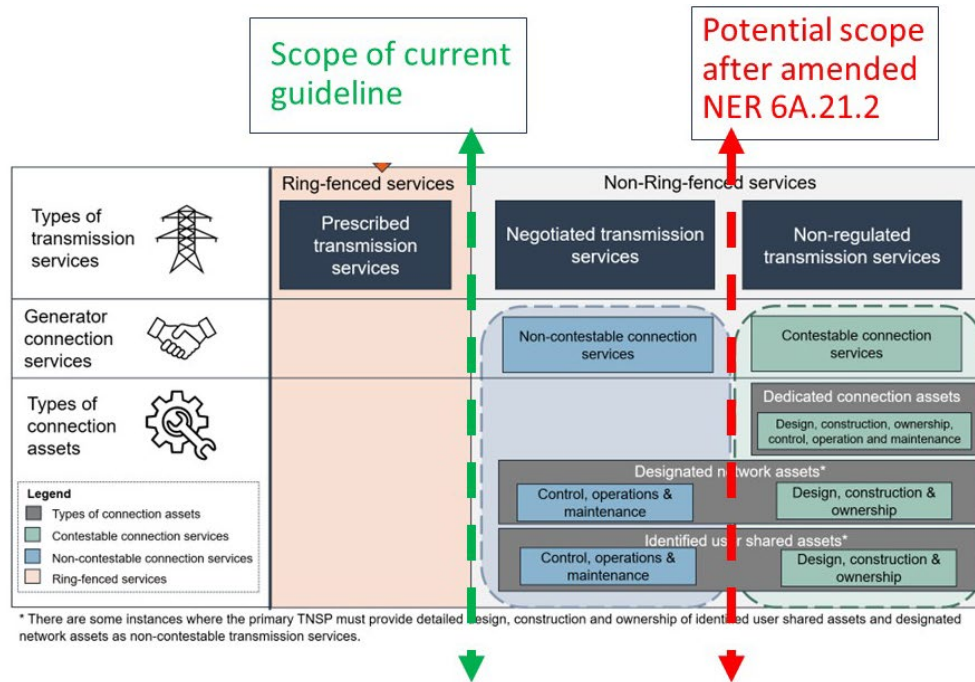
⁵ AER, [Rule change request](#)

...the accounting and functional separation of the provision of *prescribed transmission services* and *negotiated transmission services* by *Transmission Network Service Providers* from the provision of other services by *Transmission Network Service Providers*...⁶

In making its determination the AEMC noted:

*the need for urgent action on this issue, particularly as demand for connection services is increasing and is expected to do so for the foreseeable future.*⁷

Consequently, the AER is empowered to revise the guideline to achieve the functional separation of prescribed transmission services and negotiated transmission services by TNSPs, from the provision of contestable electricity services by them, or by their related entities. NER 6A.21.2 empowers us to ring-fence all, some, or no negotiated services, and separate provision of those negotiated services from all other non-regulated transmission services. The diagram below shows how this change allows ring-fencing to be applied to both prescribed transmission services and negotiated services so that these could now be functionally separated from contestable transmission services.



In making the above rule determination on 23 May 2024, the AEMC concurrently made Rule 11.170 which gave effect to these new powers from that date and required the AER to publish the updated guideline after stakeholder consultation.

The NER also allows the AER to add to, or waive, a TNSP's obligations otherwise applicable under the guideline.

⁶ AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), May 2024

⁷ AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), p.4

2 Our approach to updating the guideline

The recent rule change to clause 6A.21.2 in the NER empowers the AER to:

- not specify any obligations that apply to negotiated transmission services,
- apply to negotiated services some or all of the obligations that currently apply to prescribed transmission services, or
- exclude specific categories of negotiated transmission services from ring-fencing obligations in the guideline.

Previous stakeholder feedback has provided a binary view of the changes required: either all obligations in the guideline should apply to all negotiated services, or no obligations should be applied for any negotiated services. We are seeking to undertake a more nuanced assessment of ways in which the guideline can be updated to incorporate ring-fencing obligations in relation to negotiated services.

2.1 Types of negotiated services

Negotiated transmission services are defined in the NER Chapter 10 to include:

- Certain shared transmission services provided to a Transmission Network User for use of a transmission network
- Connection services that are provided to one or more transmission network users at a single transmission network connection point
- Services specified as negotiated transmission services by clause 5.2A.4 of the NER
- undertaking of some system strength connection works.

Clause 5.2A.4 of the NER (extracted in full in Attachment A) then classifies transmission connection services as either contestable or non-contestable. The latter group (negotiated connection services provided only by TNSPs) includes, for example:

- Functional specification of, among other things:
 - Preferred equipment
 - Design specifications
 - Protection, control and metering requirements
- Construction or installation and ownership of supervisory control and data acquisition (SCADA) systems and cabling forming part of the TNSP's control system
- Upgrades to existing assets that make up the existing shared transmission network.

TNSPs provide those non-contestable connection services on terms and price set by agreement with the connection applicant.

We are seeking information from stakeholders to assist in determining specific negotiated services, or categories of services, that may be appropriate to impose ring-fencing obligations on, rather than necessarily extending the regulatory obligation to all negotiated services. Specifically, we are requesting more detailed information about the costs of discrimination, on the one hand, and the costs of compliance with new obligations, on the other.

Questions for consideration:

- How well does the classification of negotiated services in clause 5.2A.4 of the NER enable stakeholders to identify which negotiated services should be subjected to ring-fencing controls? What kind of additional information would be useful in to distinguish negotiated services?
- What factors should the AER consider in weighing up which of the categories of services should be ring-fenced? What evidence can be provided about the potential costs and benefits of a preferred approach?
- If stakeholders do not consider the classifications in clause 5.2A.4 of the NER to be a feasible method to distinguish types of negotiated services to be ring-fenced, which alternative method would provide better clarity? How would that alternative method achieve a more appropriate balance between benefits for competition and costs for TNSPs to comply with new obligations?

2.2 Obligations that may be applied

We propose to focus on changes to the guideline relating to the functional separation obligations that are most relevant to addressing the risk of potential discrimination.

Five possible changes to the guideline were flagged in the AER's rule change request as examples of ways to address the potential for discriminatory behaviour in the provision of negotiated transmission services.⁸ These changes would involve extending 5 core ring-fencing obligations to TNSPs in respect of negotiated services (section 3 outlines these changes for consideration in more detail):

1. No discrimination in negotiated transmission services
2. Extending the definition of ring-fenced information
3. Separation of staff
4. Restrictions on cross-branding and promotion
5. Additional reporting about negotiated transmission services

With regard to the stakeholder concerns raised previously with both the AER and AEMC, we have identified that the above five changes are likely to be the most relevant in addressing the risk of discrimination, and warrant further stakeholder consultation and analysis. This issues paper is seeking to explore the feasibility, benefits and costs of extending some or all of these five ring-fencing obligations to all, some, or none, of the four broad categories of negotiated services identified at the beginning of section 2.1 above.

Some TNSP submissions to the AEMC's draft rule change determination raised concerns that any changes in relation to the ring-fencing of negotiated transmission services would impact decision-making by TNSPs. While new ring-fencing obligations may change the way

⁸ AER [Rule change request](#), at p 27.

TNSPs and their related entities provide connection services, changes to the guideline will not impact the obligations on TNSPs to ensure the quality and safety of new connections.

2.3 How we will assess proposed changes

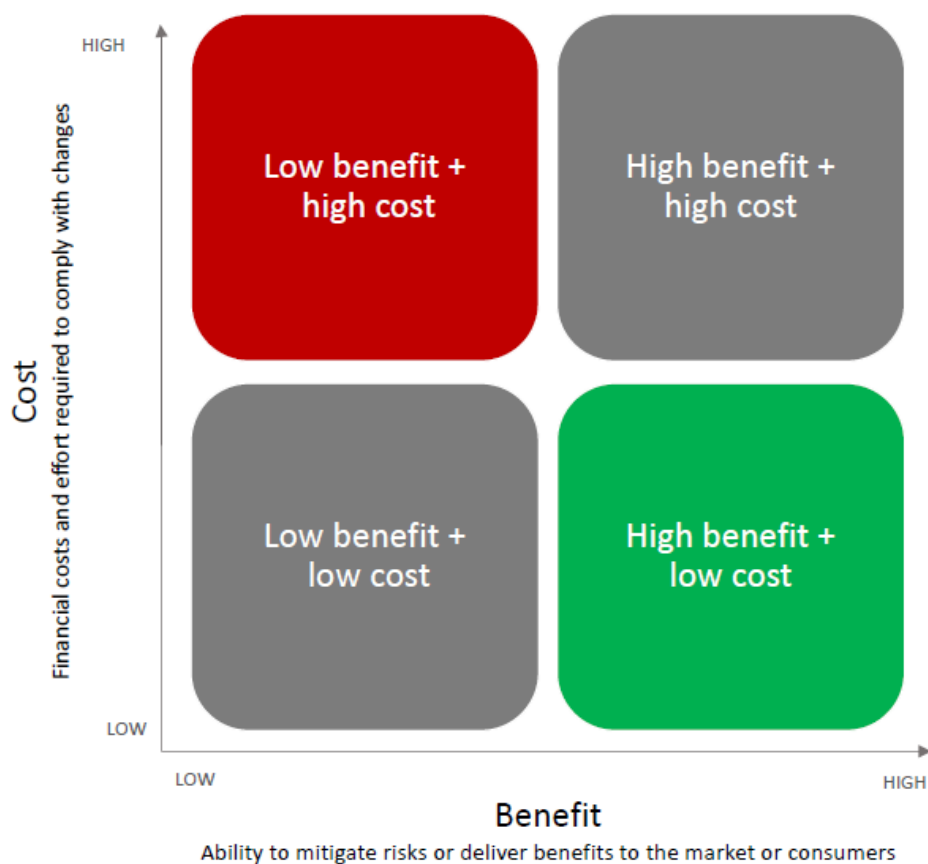
We will evaluate the costs and benefits of potential changes to the guideline, to determine which type(s) of negotiated services should be included in the guideline and what obligations should apply for each type of negotiated service.

We will consider both the direct benefits for the market and consumers, as well as the indirect benefits from mitigating the risks associated with not ring-fencing negotiated services. We will consider risks in terms of both the likelihood of the risk occurring and the potential impact should the risk materialise.

We want to understand the financial and non-financial costs associated with potential changes, particularly on TNSPs who will be required to comply with any changes. Our recommendations will balance these costs and the associated regulatory burden, against the potential benefits. We are keen to ensure that the AER does not impose obligations on TNSPs beyond what is necessary to reduce the risk of discriminatory conduct.

At a qualitative level, we will compare potential benefits and cost so that we can identify:

- changes that are high benefit and low cost, which have a strong case for inclusion in the updated guideline.
- changes that are either high benefit and high cost or low benefit and low cost, which require a more detailed assessment to determine if it is reasonable to include in the updated guideline.
- changes that are low benefit and high cost, which are unlikely to be included in the updated guideline.



Feedback and information from stakeholders will be critical to assist us in understanding the costs and impacts associated the ring-fencing of negotiated services. The aim of this issues paper is to get more detailed and specific information, to learn how the potential costs and impacts may vary depending on which ring-fencing obligations are applied to different types of negotiated services. We are seeking information that will help us to assess what matters should be excluded from the guideline altogether, what matters should be included in the guideline but waivable upon application, or any matters which should be included but not subject to waiver at all. Submissions to this issues paper will inform our development of tailored options for changes to the guideline, which will be subject to a separate consultation process in accordance with the rules consultation procedures (see further section 2.5 below).

2.4 Waivers and flexibility

To date, waivers have been used successfully to help TNSPs and the AER to achieve the overall goal of protecting competition while retaining important efficiencies and avoiding unnecessary costs for TNSPs to provide services. We intend to retain the option of granting waivers, including for any new obligations for ring-fencing negotiated services. It may be the case that a TNSP will wish to consider a waiver to, for example, assist with the implementation of new obligations. Or changes to the way in which connections are completed may provide a good reason for the AER to consider a waiver of obligations in relation to a specific service.

As detailed in this issues paper, we are considering removing the current restriction on the maximum length of waivers from the guideline (see section 3.6.1). Where a longer period for

a waiver is justified. this could have the effect of allowing for greater certainty for stakeholders.

2.5 Consultation process

This issues paper and associated stakeholder engagement is part of a two-part consultation process. The second state will be a formal consultation process, undertaken in accordance with the NER consultation procedure, which will be open from early December 2024 through to the late January 2025.

We plan to hold a webinar for interested stakeholders in November, to share the feedback that we received from this current consultation on the issues paper. The feedback from this first stage of consultation will be crucial to our development of the proposed changes to the guideline, which we will then consult on in the second formal consultation stage.

The AER recognises that the rule change determination by the AEMC requires us to publish a revised guideline within 9 months of the date of the AEMC's final determination. The table below indicates the timeline for this review.

Publish issues paper	Mid October 2024
Webinar to review responses to issues paper	Mid November 2024
Publish formal proposal	Early December 2024
Close submissions	Late January 2025
Publish updated guideline	Late February 2024

3 Changes under consideration

3.1 No discrimination in negotiated transmission services

The general non-discrimination obligation in clause 4.1(b) of the guideline prohibits a TNSP from providing recommendations or information in favour of a related entity. We seek feedback on extending the provision to explicitly state that a TNSP cannot discriminate in relation to its provision of negotiated transmission services. In addition to the existing general non-discrimination obligations, this would require TNSPs to better demarcate their dealings with customers, and their related entities, between negotiated and contestable services.

Non-TNSP stakeholders have indicated that there is the potential for material harm to connection applicants and consumers if there is uncertainty on this point. They have told us that even the perception of discrimination may result in harm to the market for contestable transmission services.

However, TNSPs have previously argued that they already meet legal and regulatory obligations in relation to discrimination against rivals to their related entities. One TNSP has stated:

*there are already extensive provisions in the Rules and extensive clauses in competition law that go above and beyond to ensure that corporations do not engage in anti-competitive behaviour.*⁹

This suggests that there may be minimal change required for TNSPs to comply with a change that extends the non-discrimination clause to negotiated services, and also minimal cost. However, we would like to understand any costs and how they may be weighed against any benefits.

⁹ Transgrid [Submission to AER consultation paper on options to address gaps in transmission ring-fencing framework, June 2023](#), page 6

Questions for consideration:

- What changes would TNSPs have to make to be compliant with a clearer obligation for non-discrimination in relation to negotiated services? What would be the associated financial cost?
- Would it be feasible to extend the current obligation to only some types of negotiated connection services? If so, is there any benefit from making this change for only some types of negotiated services? Please provide details.
- How would extending the obligation for non-discrimination to negotiated services impact the market for contestable connection services, noting these impacts may be positive or negative?
- Are there alternate measures to address the perception of discrimination within the context of the ring-fencing framework that the AER should consider?

3.2 Extending the definition of ring-fenced information

The guideline defines ring-fenced information in clause 1.4 as:

information about electricity networks, electricity customers or electricity services, acquired or generated by a TNSP in connection with its provision of prescribed transmission services, that is not already publicly available. It includes electricity information a) that the TNSP derives from that information; or b) provided to the TNSP by or in relation to a customer or prospective customer of prescribed transmission services.

TNSPs are required to only use this information for the purpose for which it was acquired or generated, and this creates an obligation to keep such information confidential. This obligation underpins the general non-discrimination obligation in the guideline, which prohibits a TNSP from providing recommendations or providing information in favour of a related entity. This is vital to allowing a level playing field as between related entities of TNSPs and their potential rivals in the provision of contestable transmission services.

We are considering the option of expanding the definition of “ring-fenced information” in clause 1.4 of the guideline, to clarify that this includes electricity information, acquired or generated by a TNSP in connection with its provision of prescribed transmission services **or negotiated transmission services**. This would extend current information access and disclosure requirements to include all information obtained via the provision of negotiated services.

The sharing of information by a TNSP with a related entity about a customer or a new connection application has the potential to give that related entity an unfair advantage in offering to provide contestable connection services. In that circumstance, a TNSP would give its related entity a strengthened position over its rivals in seeking to offer contestable transmission services to a connecting customer.

Stakeholder concerns indicate that there is the potential for material harm to competition and to connection applicants if the guideline does not restrict the sharing of electricity information between negotiated and contestable services.

Energy Networks Australia (ENA) argued that these concerns are addressed adequately by the confidentiality requirements of rule 8.6 of the NER.¹⁰

Questions for consideration:

- In what sort of circumstances might it be appropriate for TNSPs to share information on negotiated services to maintain the efficiency of connection processes?
- Would it be feasible to extend the definition of ring-fenced information to only some types of negotiated connection services? If so, is there any benefit from making this change for only some types of negotiated services? Please provide details.
- What specific types of customer information should be included in an updated definition of 'electricity information' in the guideline, and how feasible is it to make a distinction?
- What changes would TNSPs have to make if the definition of ring-fenced information is changed to include information obtained via the provision of negotiated services? What would be the associated financial cost?

3.3 Requiring additional reporting on delivery of services

The guideline currently includes reporting obligations for TNSPs that enable us to monitor compliance with ring-fencing obligations, and provides transparency to the market when reporting is made public. It may be appropriate for the guideline to include a requirement for additional, public reporting by TNSPs on relevant aspects of delivery of negotiated transmission services, as well as extending compliance reporting from contestable services. This additional reporting may assist the AER with understanding whether discriminatory behaviour is occurring, as well as providing stakeholders with a better understanding of the market for contestable services.

In previous consultations, some stakeholders have suggested that TNSPs should publicly report information related to the provision of negotiated services, to increase transparency of the connection process for large customers. For example, stakeholders proposed that TNSPs should publicly report on the following:

¹⁰ Energy Networks Australia, *Response to AER Consultation Paper on 'Options to address gaps in transmission ring-fencing framework*, 8 June 2023, p. 9.

- the number of connection enquiries received
- the number of connection applicants who have tendered for the contestable connection elements (if known)
- the number of connections that proceeded with a non-incumbent provider
- the connection timeframes and costs for delivery of negotiated services¹¹

We are mindful of the role of the guideline in protecting competition and promoting a level playing field between TNSP's related entities and any rivals in contestable transmission services. We welcome information to help us understand what extra reporting by TNSPs may support the functional separation of negotiated transmission services from contestable services.

We also acknowledge that stakeholders may see merit in greater transparency about the market for contestable connection services. Stakeholders are invited to submit comments on the potential benefit for ring-fencing compliance of such extra reporting. We note in particular that there may be other methods, outside of the ring-fencing framework, which may be more appropriate to achieve the above benefits, and invite stakeholder proposals on this point.

Questions for consideration:

- Is there additional reporting by TNSPs that would support the aims of ring-fencing to promote competition in contestable transmission connection services? What are the types of reporting information that would provide the greatest benefit?
- What information do TNSPs currently capture in relation to the provision of negotiated services?
- For TNSPs, would there be differences in the costs and compliance burden of reporting on different types of negotiated services? If so, provide details or examples.
- Are there any restrictions on the type of information relating to negotiated services that can be reported on, which the AER should consider?

3.4 Extending the current obligation in respect of staff separation

The current guideline requires functional separation of marketing staff of a TNSP from the staff of any related entity. This is intended to reduce the risk that a TNSP may, even inadvertently, discriminate in favour of its own business, or a related entity, to the disadvantage of competitors.

When consulting on version 4 of the guideline, we published a draft explanatory statement in which we noted the potential for discriminatory conduct by a TNSP in favour of a related entity providing contestable connection services, owing to its access to sensitive information

¹¹ CitiPower, Powercor, United Energy, [Options to address gaps in transmission ring-fencing framework – Consultation paper, 9 June 2023](#), p. 3.; Clean Energy Finance Corporation, [Options to address gaps in transmission ring-fencing framework – Consultation paper submission](#), 9 June 2024, pg. 3.

gained because of providing prescribed transmission services.¹² At that time, we did not have discretion to ring-fence negotiated services from contestable services. This may need to be revisited now that we have discretion to require ring-fencing or negotiated transmission services from contestable services.

The current guideline lacks clarity about the steps each TNSP should take to ensure that ring-fenced information is not being shared inappropriately with a related entity in ways that would undermine competition.¹³ The current restrictions may be implemented simply by instructing staff not to disclose or use certain information. A TNSP may also choose to impose other forms of staff separation. Each of these options could lead to different compliance outcomes, which may also depend on the incentive structures for staff.

In respect of information obtained through the provision of negotiated services, non-TNSP stakeholders previously have shared their concerns that an effective ring-fencing framework must include clear requirements for staff separation. The point was made that there are considerable risks for competition from opportunities for even inadvertent sharing of information related to the provision of negotiated services between a TNSP and a related entity. This is especially in relation to opportunities for a related entity to obtain network planning and other technical and commercial information that its rivals may be unable to access.

Our rule change request suggested two potential options for expanding staff separation requirements if negotiated transmission services are brought into the ring-fencing framework:

- (1) requiring separation of marketing staff involved in the provision of negotiated transmission services from staff involved in the provision of contestable electricity services
- (2) widening the scope of staff separation beyond marketing staff.¹⁴

Option (2) may be the most robust approach if it requires separation of staff providing negotiated services from those engaged in the provision of contestable services by a related entity. This would likely require TNSPs to ensure that staff involved in providing prescribed services and ring-fenced negotiated services are not involved in the provision of contestable services.

By establishing separation, for example by operating distinct systems for information storage and communication with customers, TNSPs and related entities could demonstrate that there are fewer opportunities for conduct, such as sharing of information, that may undermine competition. This may simplify compliance and provide greater assurance to connecting parties and competitors of the related entity.

On the other hand, it is likely that TNSPs and their related entities will continue to need to share staff in order to undertake new connections with a combination of negotiated services

¹² AER - [Draft Ring-fencing guideline \(electricity transmission\) - Explanatory statement](#) - November 2022, p.34

¹³ AER, [Rule change request](#), p11

¹⁴ AER, [Rule change request](#), p.28

and contestable services. This may be appropriate if this is done via arms-length commercial arrangements.

Questions for consideration:

- What are the potential benefits of the guideline requiring a separation of TNSP staff between the provision of prescribed and ring-fenced negotiated services, on the one hand, and the provision of contestable services?
- Would it be feasible to apply the obligation on the separation of marketing staff to only some types of negotiated services? If so, is there any benefit from making this change for only some types of negotiated services? Please provide details.
- What changes would TNSPs have to make to comply with marketing staff separation for negotiated services? What would be the associated financial cost? Are the costs mitigated if the sharing of staff is permitted, subject to arms-length arrangements and regular publication of registers (as is done for DNSP ring-fencing)?
- What are your views on whether the specification of marketing staff (as opposed to other types of staff) is still pertinent to manage the potential risk of discrimination?

3.5 Introducing restrictions on cross-branding and promotions

Another tool that can support ring-fencing through functional separation is a restriction on any sharing of branding or cross-promotion between a TNSP and a related entity. For the current guideline (version 4), we made an explicit decision to not impose such restrictions on TNSPs. We considered that, while branding separation is appropriate for the distribution sector, the profiles of transmission customers differ considerably from distribution customers.

Our previous understanding was that generators and other large customers seeking to connect to transmission networks are generally large, well-capitalised firms with their own regulatory and technical staff, capable of understanding and addressing complex network and legal issues. In contrast, customers accessing distribution services are typically residential or small business consumers that are more likely to be susceptible to, or confused by, shared branding and cross-promotions.

However, we recognise that it may no longer be the case that customers seeking connection to the transmission network have the capacity to engage readily with TNSPs on all aspects of a new connection. This may be the case for some smaller renewable generators and storage providers. In this context, there may be merit in considering restrictions on cross-branding and promotions.

Questions for consideration:

- In which scenarios may there be potential negative impacts on competition from shared branding and cross-promotion between a TNSP and its related entity? Are there any concrete examples where harm has resulted?
- When may it be feasible for TNSPs and their related arms to use separate branding for provision of negotiated services? What would be the likely costs and impacts of that separation?

3.6 Possible changes not in the rule change request

We also seek stakeholder feedback on two additional, unrelated changes to the guideline, which relate to the length of ring-fencing obligation waivers for TNSPs, and a clarification of obligations for annual reporting of ring-fencing compliance by TNSPs.

3.6.1 Removal of limits for waiver duration periods

Version 4 of the guideline limits the maximum period for which a ring-fencing waiver can be granted (clause 5.3.4). Currently, a waiver can be granted for no longer than *'part or all of a TNSP's current regulatory control period, next regulatory control period, or both periods'* unless it is granted in relation to battery storage.

Our experience is that it may be appropriate for the AER to grant a waiver for a longer duration in some circumstances. This would give extra flexibility to stakeholders and the AER. That may be especially helpful in taking account of the evolving energy market. It also may have the benefit of reducing regulatory burden for TNSPs and encouraging TNSPs to bring forward proposals for new services to benefit energy consumers.

We are considering removing the limitation on waiver duration by modifying clauses 5.3.4(b) and (c) of the guideline.

We will consider a similar change to the distribution ring-fencing guideline as part of a separate review.

Question for consideration:

- What are stakeholders' views on removing the maximum period limitation for granting a waiver from the guideline?

3.6.2 Clarify sign-offs for Annual Compliance Reports

We are proposing to introduce a requirement that annual ring-fencing compliance reports must be submitted to the AER with an accompanying cover letter, which has been signed by the most senior executive of a TNSP. This would apply whether that person is titled chief executive officer, managing director, or otherwise.

This change would ensure that all TNSPs are consistent in the level of review and sign-off for annual compliance reports, noting some TNSPs already provide annual compliance reports

along with a letter signed off by their most senior executive. It would also ensure consistency with our Compliance Reporting Best Practice Manual.

We will consider making this change to the distribution ring-fencing guideline as part of a separate, targeted review.

Questions for consideration:

- What are stakeholders' views on the proposed change to require sign off of Annual Compliance Report by the most senior executive of a TNSP?

4 Transition to version 5 of the guideline

We expect to publish Version 5 of the guideline by 23 February 2025. We recognise, however, that TNSPs are unlikely to be able to comply with the updated guideline from the first day it is published. At this stage we are considering a requirement for TNSPs to comply with changes related to ring-fencing of negotiated services within 9 months of the commencement date of a new guideline.

We consider there are several reasons why TNSPs should be given this transitional period. These reasons include:

- when the amended guideline comes into effect, new arrangements will be more difficult for some TNSPs to meet compared to others, due largely to the differences between current and new ring-fencing obligations.
- we expect that currently ongoing work for some negotiated transmission services may need to be internally relocated within a TNSP (e.g. to the ring-fenced portion of the business that already provides prescribed transmission services), or alternatively, the TNSP will need additional time to seek waivers for some negotiated services.

This compares to the 12 month period provided for compliance with the current guideline (version 4). We are mindful of the timing of the energy transition and the need for speedy connections by applicants, which are clear external pressures that encourage a quicker transition. We also expect it to be less demanding for TNSPs to achieve compliance with the revised guideline following the changes discussed in this issues paper, compared to implementing the changes in version 4.

Finally, we note that the AER already has the option of granting a waiver, to one or more TNSPs if, for example, circumstances dictate that more time is required for a particular TNSP to come into compliance. This may assist to manage the costs of transition to TNSPs being compliant with a revised guideline.

The guideline provides that some obligations are not able to be waived by the AER Board. We will consider whether this approach should be taken in relation to any new obligations concerning negotiated services. Stakeholders are invited to provide any views in response to this issues paper.

Question for consideration:

- What is an appropriate transitional period for TNSPs to come into compliance with any new ring-fencing obligations?
- How can the costs and benefits of a transitional period be best managed? For example, is there additional complexity if certain new obligations have longer or shorter transitional periods?

If the guideline is amended to include obligations related to negotiated services, are there some obligations or services that should be excluded from consideration of waivers?

Appendix A - detailed classification of transmission connection services (rule 5.2A.4 of the NER)

	Asset	Service	Example of service	Classification
1	<i>transmission network including identified user shared asset or designated network asset</i>	Functional specification for an <i>identified user shared asset</i> or a <i>designated network asset</i>	Specification of: <ul style="list-style-type: none"> • preferred equipment suppliers; • preferred equipment; • land/access requirements; • design specifications; • single line diagrams; • remote monitoring and communication requirements; • protection, control and metering requirements; • minimum operating conditions; • supervisory control and data acquisition system interface requirements; • equipment ratings; • equipment protection ratings; and • spare parts itineraries 	non-contestable
2	<i>identified user shared asset</i>	Detailed design for an <i>identified user shared asset</i>	Provision of: <ul style="list-style-type: none"> • site plan; • asset layout and configuration; • the specification for vendor equipment; • civil, structural, mechanical and electrical detailed design; • issued for construction drawings; • as built drawings; • tender specifications; • cable schedules; • protection settings; • applicable technical studies; • earthing design; • the design of lightning protection; and • the design of insulation co-ordination, consistent with the functional specification.	<i>contestable or non-contestable in accordance with clause 5.2A.4 paragraphs (b), (c) and (d)</i>

	Asset	Service	Example of service	Classification
3	<i>transmission network</i>	Cut-in works and upgrades	<ul style="list-style-type: none"> Interface works that cut into the existing shared <i>transmission network</i>, which may include tower realignment, protection control and communications requirements Upgrades to existing assets that make up the existing shared <i>transmission network</i> and increases to the capacity of the existing shared <i>transmission network</i> 	non-contestable (for a <i>designated network asset</i> , the owner of the <i>designated network asset</i> and otherwise, the <i>Primary Transmission Network Service Provider</i>)
4	<i>contestable IUSA components</i>	Construction and ownership	Construction and/or ownership of a substation and/or power lines	<i>contestable</i>
5	<i>non-contestable IUSA components</i>	Construction and ownership	Construction or installation and ownership of supervisory control and data acquisition systems and cabling forming part of the <i>Primary Transmission Network Service Provider's control system</i>	non-contestable
6	<i>identified user shared asset owned by the Primary Transmission Network Service Provider</i>	Control, operation and maintenance	<i>Primary Transmission Network Service Provider</i> provides operation and maintenance services	non-contestable
7	<i>third party IUSA or designated network asset not owned by the Primary Transmission Network Service Provider</i>	Control, operation and maintenance under a <i>network operating agreement</i>	See clause 5.2A.7	non-contestable
8	<i>dedicated connection assets</i>	All development aspects	Design, construction, maintenance and ownership of a power line connecting a <i>facility</i>	<i>contestable</i>
9	<i>designated network assets</i>	All development aspects (other than as specified above)	Design, construction and ownership of a power line connecting a <i>facility</i> through a <i>connection asset</i>	<i>contestable</i>