

Ring-fencing Guideline Electricity Transmission DRAFT Version 5

December 2024

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1 Nature and authority

1.1 Application of this Guideline

1.1.1 Background and summary

Clause 6A.21.1 of the National Electricity Rules (NER) requires all **Transmission Network Service Providers (TNSPs)** to comply with the **Transmission Ring-Fencing Guidelines** prepared by the **Australian Energy Regulator (AER)** in accordance with clause 6A.21.2 of the NER.

For the avoidance of doubt:

- this **Guideline** binds **TNSPs** who provide **prescribed transmission services or negotiated transmission services**;
- any references in this **Guideline** to **distribution services** do not bind **Distribution Network Service Providers (DNSPs)** who are not also **TNSPs**; and
- to the extent a **network service provider** owns a **dual function asset**, this **Guideline** does not apply in the provision of services provided by means of, or in connection with, those assets in accordance with clause 6.24.4 of the **NER**.

The objective of this **Guideline** is to:

- ~~promote the national electricity objective by providing for accounting and functional separation of the provision of prescribed transmission services by TNSPs from the provision of other services by them, or by their affiliated entities; and~~
- promote the **national electricity objective** by providing for:
 - (a) accounting separation of the provision of **prescribed transmission services or negotiated transmission services** by **TNSPs** from the provision of **other services** by them, or by their **affiliated entities**;
 - (b) **functional separation of the provision of prescribed transmission services or negotiated transmission services** by **TNSPs** from the provision of **contestable electricity services** by them, or by their **affiliated entities**; and
- promote competition in the provision of **electricity services**.

This **Guideline** imposes obligations on **TNSPs** targeted at, among other things:

- cross-subsidisation, with provisions that aim to prevent a **TNSP** from providing **other services** that could be cross-subsidised by its **prescribed transmission services or negotiated transmission services**; and
- discrimination, with provisions that aim to:
 - a) prevent a **TNSP** conferring a competitive advantage on **related electricity service providers** that provide **contestable electricity services**; and

- b) ensure a **TNSP** handles **ring-fenced information** appropriately.

1.1.2 Commencement

This **Guideline** commenced under clause 6A.21.2 on 6 July 2022 and incorporates amendments made from time to time as indicated on page ii.

1.2 Confidentiality

The **AER** will assess confidentiality claims by **TNSPs** arising under this **Guideline** in accordance with the **Transmission Confidentiality Guidelines**, the *Competition and Consumer Act 2010* (Cth) and the National Electricity Law (**NEL**).

1.3 Interpretation

In this **Guideline**, unless the contrary intention appears:

- A term in bold type that is expressly defined in clause 1.4 of this **Guideline** has the meaning set out in that clause.
- A term in bold type that is not expressly defined in clause 1.4 of this **Guideline** has the same meaning it has in the **NEL** or the **NER**.
- The words 'shall' and 'must' indicate mandatory requirements.
- The singular includes the plural and vice versa.
- A reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as in force from time to time.
- Explanations in this **Guideline** about why certain information is required are provided for guidance only. They do not limit in any way the **AER's** objectives, functions or powers.

1.4 Definitions

In this **Guideline**:

- **affiliated entity**, in relation to a **TNSP**, means a **legal entity**:
 - a) which is a direct or indirect shareholder in the **TNSP** or otherwise has a direct or indirect legal or equitable interest in the **TNSP**;
 - b) in which the **TNSP** is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or
 - c) in which a **legal entity** referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest.
- **class waiver** means a waiver applicable to more than one **TNSP**;
- **connection** has the same meaning as in clause 5.2A of the **NER**;
- **contestable electricity services** means services for the supply of electricity or that are necessary or incidental to the supply of electricity, other than **prescribed transmission services**, **negotiated transmission services** or **direct control services**.

[Note: For the avoidance of doubt, **contestable electricity services** includes **non-regulated transmission services**];

- **commencement date** means the version 5 amendment date of this **Guideline** on page ii;
- **compliance date** refers to the date that is 6 months after the **commencement date**.
- **DNSP** means **Distribution Network Service Provider**;
- **electricity information** means information about electricity networks, electricity customers or **electricity services**, other than:
 - a) aggregated financial information; or
 - b) other service performance information;that does not relate to an identifiable customer or class of customer;
- **energy storage device** means plant that has the capacity to both:
 - a) consume electricity to convert into stored energy; and
 - b) convert stored energy to produce electricity,together with all related equipment to its functioning as a single entity;
- **Guideline** means these **Transmission Ring-fencing Guidelines** prepared by the **AER** in accordance with clause 6A.21.2 of the **NER**;
- **information register** means the register the **TNSP** must establish, maintain and keep under clause 4.2.4(a);
- **law** means any law, rule, regulation or other legal obligation (however described and whether statutory or otherwise);
- **legal entity** means a natural person, a body corporate (including a statutory corporation or public authority), a partnership, or a trustee of a trust, but excludes **staff** in their capacity as such;
- **marketing staff** means **staff** directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include:
 - a) **staff** only involved in technical, administrative, accounting or service functions; or
 - b) an officer of both the **TNSP** and a related electricity service provider;
- **material variation**, for the purposes of clause 3.1(c), means any agreement to alter or modify the terms of an existing agreement, where such change is not minor in nature. Without limitation, a **material variation** includes changes to:
 - a) the contracting parties;
 - b) the term of the agreement;
 - c) price, including the approach or methodology for calculating or deriving prices;
 - d) the extent of any party's right to utilise the **energy storage device**;

- e) the extent of the **TNSP**'s ability to utilise the **energy storage device** for **network support services**; and
 - f) any party's rights to own, control or operate the **energy storage device** (including the extent to which a party can control or direct another party's or **legal entity**'s operation of the energy storage device).
- **NEL** means, for the purposes of the application of this **Guideline** in a **participating jurisdiction**, the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996 (SA)*, as applied by the participating jurisdiction and subject to any modification made to the National Electricity Law by that jurisdiction;
 - **NER** means, for the purposes of the application of this **Guideline** in a **participating jurisdiction**, the rules called the National Electricity Rules made under Part 7 of the **NEL**, subject to any modification made by the National Electricity Rules by that jurisdiction;
 - **officer**, in relation to a **legal entity** (such as a **TNSP**), means:
 - a) a director or company secretary of the **legal entity**;
 - b) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **legal entity**; or
 - c) a person who has the capacity to affect significantly the **legal entity**'s financial standing;
 - **other services** means services other than **transmission services**;
 - **parent entity** means a **legal entity** which is a direct or indirect shareholder in the **TNSP** or otherwise has a direct or indirect legal or equitable interest in the **TNSP**;
 - **regulated DNSP** means a **DNSP** who provides **direct control services**;
 - **related electricity service provider** means, in relation to a **TNSP**, includes:
 - a) any affiliated entity of the **TNSP**; and
 - b) the part of the **TNSP**, that provides **contestable electricity services**, but excludes a part of an **affiliated entity** that provides **prescribed transmission services**, **negotiated transmission services** or **direct control services**;
 - **ring-fenced information** means **electricity information**, acquired or generated by a **TNSP** in connection with its provision of **prescribed transmission services** or **negotiated transmission services**, that is not already publicly available, and 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** or **negotiated transmission services**;

[Note: aggregated financial information, or other service performance information, that does not relate to an identifiable customer, or class of customer, is excluded from the

definition of **ring-fenced information** by reason of the definition of **electricity information** in this clause 1.4 of this **Guideline**.]

- **service provider**, in relation to a **TNSP**, means a provider of services to the **TNSP**;
- **staff**, of an entity (such as a **TNSP**) includes:
 - a) employees of the entity;
 - b) direct or indirect contractors to the entity (whether the contractors are individuals or corporate or other entities)
 - c) employees of direct or indirect contractors to the entity; and
 - d) individuals (including secondees) otherwise made available to the entity by another entity;
- **TNSP** means a **Transmission Network Service Provider**; and
- **version 5 compliance date** means the date that is 6 months after the **commencement date**.

1.5 Process for revisions

The **AER** may amend or replace this **Guideline** from time to time to meet changing needs, in accordance with clause 6A.21.2 of the **NER** and the transmission consultation procedures.

2 Relationship with other regulatory instruments

This **Guideline** should be read in conjunction with:

- clause 6A.19 of the **NER**, the **Cost Allocation Guidelines** and the **AER**-approved **Cost Allocation Methodology**;
- clause 6A.5.5 of the **NER** and the **Shared Asset Guidelines**; and
- any **regulatory information instrument** served on a **TNSP** by the **AER**, or made by the **AER**, under section 28F of the **NEL**.

Together, these instruments achieve the desired ring-fencing outcomes in the long-term interest of consumers.

The **Cost Allocation Guidelines** and a **TNSP's Cost Allocation Methodology** relate to the allocation and attribution of its costs between its **transmission services**. They complement the obligations in clause 3.2 of this **Guideline**, which relate to the allocation and attribution of a **TNSP's** costs between **transmission services** and **other services**.

The **Shared Asset Guidelines** enable the adjustment of a **TNSP's** regulated revenues that it can recover from its **prescribed transmission services** where the assets used to provide those services were acquired in order to provide **prescribed transmission services** but are then subsequently used to also earn unregulated revenues. The shared asset mechanism therefore modifies the effect of the **Cost Allocation Methodology**.

A **regulatory information instrument** can require a **TNSP** to provide information to the **AER** and to have this information certified and audited, subject to the requirements of the **NEL**. This can include information that is subject to ring-fencing obligations under this **Guideline**.

3 Preventing cross subsidies

3.1 Legal separation

- (a) A **TNSP** must be a **legal entity**.
- (b) Subject to clauses 3.1(c), (d) and (e), a **TNSP** may provide **transmission services**, but must not provide **other services**.
- (c) Notwithstanding any other provision of this **Guideline**, a **TNSP** must not:
 - i. enter into any new agreement; or
 - ii. agree to a **material variation** to an existing agreementwhere such new or varied agreement grants another **legal entity** the right to use any **energy storage device** which is owned, operated or controlled by the **TNSP**, unless it is for the sole purpose of providing that **TNSP** with **network** support services.
- (d) Clause 3.1(b) does not prevent:
 - i. an **affiliated entity** of a **TNSP** from providing **other services**; and
 - ii. a **Regulated DNSP** and a **TNSP** from being the same **legal entity**, in which case, a **TNSP** who is also a **Regulated DNSP**, can provide any **distribution services** in accordance with the **Distribution Ringfencing Guideline**.
- (e) Clause 3.1(b) does not prevent a **TNSP**:
 - i. subject to clause 3.1(c), granting another **legal entity** the right to use assets of the **TNSP**, where those assets are also used by the **TNSP** to provide **transmission services** or (if authorised in accordance with the waiver process set out in clause 5 of this **Guideline**) **other services**, but only where doing so does not materially prejudice the provision of **prescribed transmission services** by the **TNSP**;
 - ii. providing corporate services (such as general administration, accounting, payroll, human resources, legal or regulatory, or information technology support services) to a **related electricity service provider** or other **legal entity**;
 - iii. providing **electricity information** to another **legal entity** where doing so is not prohibited by clause 4.1(c)(iv) or clause 4.2;
 - iv. providing assistance to the extent necessary to respond to an event (such as an emergency) that is beyond a **Network Service Provider's** reasonable control; and
 - v. providing any other services authorised in accordance with the waiver process set out in clause 5 of this **Guideline**;as long as the **TNSP** complies with clause 3.2 in relation to those arrangements.
- (f) A **TNSP** can apply for a waiver of the obligations set out in this clause 3.1.

3.2 Establish and maintain accounts

3.2.1 Separate accounts

- (a) A **TNSP** must establish and maintain appropriate internal accounting procedures to ensure that it can demonstrate the extent and nature of transactions between the **TNSP** and its **affiliated entities**.

[Note: The **AER** may include a requirement in a **regulatory information instrument** for a **TNSP** to:

- i. provide its internal accounting procedures to the **AER**; and / or
- ii. report on transactions between the **TNSP** and its **affiliated entities**.]

- (b) For the avoidance of doubt, a **TNSP** cannot apply for a waiver of the obligations set out in this clause 3.2.1.

3.2.2 Cost allocation and attribution

- (a) A **TNSP** must allocate or attribute costs (including costs allocated or attributed to the **TNSP** by a **parent entity**) to **transmission services** in a manner that is consistent with the **Cost Allocation Principles** and its approved **Cost Allocation Methodology**, as if the **Cost Allocation Principles** and **Cost Allocation Methodology** otherwise applied to the allocation and attribution of costs between **transmission services** and **other services**.

- (b) A **TNSP** must only allocate or attribute costs to **transmission services** in accordance with clause 3.2.2(a) and must not allocate or attribute other costs to the **transmission services** it provides.

- (c) A **TNSP** must establish, maintain and keep records that demonstrate how it meets the obligations in clauses 3.2.2(a) and (b).

[Note: A **regulatory information instrument** may include a requirement that a **TNSP** provide to the **AER** the records established, maintained and kept in accordance with clause 3.2.2(c) and/or that the **TNSP** otherwise demonstrate to the **AER** how the **TNSP** meets the obligations in clauses 3.2.2(a) and (b). It may also further include requirements about the manner and form in which a **TNSP** is to comply with clause 3.2.2(c).

- (d) For the avoidance of doubt, a **TNSP** cannot apply for a waiver of the obligations set out in this clause 3.2.2.

4 Functional Separation

4.1 Obligation not to discriminate

- (a) For the purposes of this clause 4.1:
- i. a **related electricity service provider** includes a customer, or potential customer, of the **related electricity service provider** or of the **TNSP**;
 - ii. a competitor (or potential competitor) of a **related electricity service provider** includes a customer, or potential customer, of the competitor (or potential competitor) of the **related electricity service provider**; and
 - iii. dealing, or offering to deal, includes dealing or offering to deal in relation to the provision of goods or services, or the grant of rights, by the **TNSP** or to the **TNSP**.
- (b) A **TNSP** must not discriminate (either directly or indirectly) between a **related electricity service provider** and a competitor (or potential competitor) of a **related electricity service provider** in connection with the provision of **prescribed transmission services or negotiated transmission services** by the **TNSP** (whether to itself or to any other **legal entity**).
- (c) Without limiting its scope, clause 4.1(b) requires a **TNSP** to:
- i. in dealing or offering to deal with a **related electricity service provider**, treat the **related electricity service provider** as if it were not a **related electricity service provider** (that is, as if it had no connection or affiliation with the **TNSP**);
 - ii. in like circumstances, deal or offer to deal with a **related electricity service provider** and a competitor (or potential competitor) of the **related electricity service provider** on substantially the same terms and conditions;
 - iii. in like circumstances, provide substantially the same quality, reliability and timeliness of service to a **related electricity service provider** and a competitor (or potential competitor) of the **related electricity service provider**;
 - iv. subject to clause 4.2.2(b), not disclose to a **related electricity service provider** information the **TNSP** has obtained through its dealings with a competitor (or potential competitor) of the **related electricity service provider** where the disclosure would, or would be likely to, provide an advantage to the **related electricity service provider**.
- (d) For the avoidance of doubt, a **TNSP** cannot apply for a waiver of the obligations set out in this clause 4.1.

4.2 Information access and disclosure

4.2.1 Protection of ring-fenced information

Subject to this clause 4.2, a **TNSP** must:

- (a) keep **ring-fenced information** confidential; and
- (b) only use **ring-fenced information** for the purpose for which it was acquired or generated.

4.2.2 Disclosure of information

A TNSP must not disclose **ring-fenced information** to any person, including a **related electricity service provider**, unless:

- (a) the **TNSP** has first obtained the explicit informed consent of the relevant customer, or prospective customer, to whom the **ring-fenced information** relates;
- (b) the disclosure is required by, or for the purpose of complying with, any **law**;
- (c) the disclosure is necessary to enable the **TNSP** to provide **transmission services** or (if authorised in accordance with the waiver process set out in clause 5 of this **Guideline**) **other services** (including by acquiring services from other **legal entities**);
- (d) the information has been requested by or on behalf of a customer, or potential customer, of another **legal entity**, and the disclosure is necessary to enable the **legal entity** to provide **non-regulated transmission services** or **other services** to the customer or potential customer;
- (e) the disclosure is solely for the purpose of providing assistance to the extent necessary to respond to an event (such as an emergency) that is beyond a **Network Service Provider's** reasonable control;
- (f) the disclosure is solely for the purposes of research by a **legal entity** other than a **related electricity service provider** of the **TNSP**;
- (g) a **related electricity service provider** of the **TNSP** has requested the disclosure and the **TNSP** complies with clause 4.2.3 in relation to that **ring-fenced information**; or
- (h) another **legal entity**, other than a **related electricity service provider** of the **TNSP**, has requested the disclosure.

4.2.3 Sharing of information

- (a) Subject to clause 4.1(c)(iv), and to this clause 4.2.3, where a **TNSP** shares **ring-fenced information** with a **related electricity service provider**, or where **ring-fenced information** that a **TNSP** has disclosed under clause 4.2.2(f) or (h) is then disclosed by any person to a **related electricity service provider** of the **TNSP**, the **TNSP** must provide access to that **ring-fenced information** (including the derived information) to other **legal entities** on an equal basis.
- (b) A **TNSP** is only required by clause 4.2.3(a) to provide information to a legal entity where:
 - i. the **legal entity** has requested that it be included on the **information register** in respect of information of that kind; and
 - ii. the **legal entity** is competing, or is seeking to compete, with a **related electricity service provider**, in relation to the provision of **contestable electricity services**.
- (c) A **TNSP** is not required by clause 4.2.3(a) to provide information to a **legal entity** where the **TNSP** has disclosed the information in the circumstances set out in clauses 4.2.2(a) to (e).
- (d) Without limiting clause 4.2.3(a), a **TNSP** must establish an information sharing protocol that sets how and when it will make the information referred to in clause 4.2.3(a)

available to **legal entities**, and must make that protocol publicly available on its website.

- (e) Where a **TNSP** discloses information referred to in clause 4.2.3(a) to any other **legal entity** under this clause 4.2.3, it must do so on terms and conditions that require the other **legal entity** to comply with clause 4.2.1 and 4.2.2(a) to (d) in relation to that information as if the other **legal entity** was a **TNSP**.

4.2.4 Information register

- (a) A **TNSP** must establish, maintain and keep a register of all:
 - i. **related electricity service providers**;
 - ii. other **legal entities** who provide **contestable electricity services** but who are not **affiliated entities** of the **TNSP**;

who request access to information identified in clause 4.2.3(a), and must make the register publicly available on its website.

- (b) For each **related electricity service provider** or other **legal entity** that has requested that a **TNSP** provide access to information identified in clause 4.2.3(a), the **TNSP's information register** must:
 - i. identify the kind of information requested by the **related electricity service provider** or other **legal entity**; and
 - ii. describe the kind of information requested by the **related electricity service provider** or other **legal entity** in sufficient detail to enable other **legal entities** to make an informed decision about whether to request that kind of information from the **TNSP**.
- (c) A **legal entity** may request that the **TNSP** include it on the **information register** in relation to some or all of the kinds of information that the **TNSP** is required to provide under clause 4.2.3(a), and the **TNSP** must comply with that request.

4.2.5 No waiver

For the avoidance of doubt, a **TNSP** cannot apply for a waiver of the obligations set out in this clause 4.2.

4.3 Staff separation

- (a) A **TNSP** must ensure that:
 - i. **marketing staff** involved in the provision of **prescribed transmission services** are also not **staff** involved in the provision of **contestable electricity services** by a **related electricity service provider**; and
 - ii. **staff** involved in the provision of **prescribed transmission services** are not **marketing staff** involved in the provision of **contestable electricity services** by a **related electricity service provider**.
- (b) A **TNSP** may apply for a waiver of the obligations set out in this clause 4.3.

4.4 Service providers

4.4.1 Conduct of service providers

A **TNSP**:

- (a) must ensure that any new or varied agreement between the **TNSP** and a **service provider**, for the provision of services to the **TNSP** that enable or assist the **TNSP** to provide **prescribed transmission services or negotiated transmission services**, requires the **service provider** to comply, in providing those services, with clauses 4.1, 4.2.1 and 4.3 of this **Guideline** (where applicable to those services) as if the **service provider** was the **TNSP**; and
- (b) must not, directly or indirectly, encourage or incentivise a **service provider** to engage in conduct which, if the **TNSP** engaged in the conduct itself, would be contrary to the **TNSP**'s obligations under clause 4 of this **Guideline**.

4.4.2 Waivers

A **TNSP** can apply for a waiver of the obligation set out in clause 4.4.1(a), but cannot apply for a waiver of the obligation set out in clause 4.4.1(b).

5 Waivers

5.1 Granting a waiver

The **AER** will not grant a waiver of an obligation under this **Guideline** other than in accordance with this clause 5.

5.2 TNSP's application for a waiver

A **TNSP** may apply in writing to the **AER** for a waiver of its obligations under clauses 3.1, 4.3 and / or 4.4.1(a) of this **Guideline**, either on its own behalf or on behalf of itself and one or more other **TNSPs**. An application for a waiver must contain all information and materials necessary to support the **TNSP**'s application, including:

- (a) the obligation in respect of which the **TNSP** is applying for a waiver;
- (b) the reasons why the **TNSP** is applying for the waiver;
- (c) details of the service, or services, in relation to which the **TNSP** is applying for the waiver;
- (d) the proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates;
- (e) details of the costs associated with the **TNSP** complying with the obligation if the waiver of the obligation were refused;
- (f) the **regulatory control period**(s) to which the waiver would apply;
- (g) any additional measures the **TNSP** proposes to undertake if the waiver were granted; and
- (h) the reasons why the **TNSP** considers the waiver should be granted with reference to the matters specified in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers.

5.3 AER's consideration of a waiver application

5.3.1 Requirement to consider a waiver and make a decision

The **AER** must consider an application made under clause 5.2, and may, subject to this clause 5.3:

- (a) grant the waiver subject to any conditions the **AER** considers appropriate; or
- (b) grant the waiver as an interim waiver subject to any conditions the **AER** considers appropriate; or
- (c) refuse to grant the waiver.

5.3.2 The AER's assessment of the waiver application

In assessing a waiver application and deciding whether to grant a waiver (subject to any conditions) or refuse to grant a waiver, the **AER**:

- (a) subject to clause 5.3.3(a), must have regard to:
 - i. the **National Electricity Objective**;
 - ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
 - iii. whether the benefit, or likely benefit, to consumers of electricity associated with the **TNSP** complying with the obligation (including any benefit, or likely benefit, from increased competition) would be outweighed by the cost to the **TNSP** of complying with that obligation; and
- (b) may:
 - i. have regard to any other matter it considers relevant;
 - ii. request from the **TNSP** any further information the **AER** considers appropriate;
 - iii. invite public submissions on the application; and
 - iv. otherwise conduct such consultation as it considers appropriate with any person.

5.3.3 Interim waiver

- (a) The **AER** may, in its absolute discretion, grant an interim waiver, without having regard to any of the matters specified in clause 5.3.2.
- (b) An interim waiver ceases to have effect:
 - i. when the **AER** makes a further decision to grant or refuse to grant the waiver; or
 - ii. on the expiry date (if any) specified by the **AER** when granting the interim waiver; whichever occurs first.

5.3.4 Form of waiver

The **AER** may grant a waiver or interim waiver that applies:

- (a) to one or more of the **TNSPs** that are the subject of the waiver application;
- (b) **for a term that the AER considers appropriate; and subject to clause 5.3.4(c), for a term that coincides with part or all of the TNSP's current regulatory control period, next regulatory control period, or both periods;**
- (c) **in the case of a waiver of clause 3.1(c) of this Guideline, for a different term or terms; and subject to such conditions as the AER considers appropriate.**
- (d) ~~subject to such conditions as the **AER** considers appropriate.~~

5.3.5 Trivial or vexatious applications

The **AER** may, in its absolute discretion, refuse to grant an application for a waiver or interim waiver, without having to have regard to any of the matters specified in clause 5.3.2, if it determines that the application was made on trivial or vexatious grounds.

5.4 Class waivers

5.4.1 Initiation and consideration of a class waiver

The **AER** may, on its own initiative, in its absolute discretion, and at any time, grant, vary or revoke a **class waiver** of an obligation under clause 3.1, 4.3 and / or 4.4.1(a) of this **Guideline**:

- (a) for a term that the **AER** considers appropriate; and
- (b) subject to any conditions the **AER** considers appropriate,

provided that, in the case of a variation or revocation, it has given at least 40 days' notice that it is considering doing so.

5.4.2 The **AER**'s assessment of a class waiver

In deciding whether to grant, vary or revoke a **class waiver**, the **AER**:

- (a) must have regard to the matters set out in clause 5.3.2(a) of this **Guideline**;
- (b) may have regard to any other matter it considers relevant;
- (c) may request information from one or more **TNSPs**;
- (d) may take the steps set out in clauses 5.3.2(b)(iii) and (iv) of this **Guideline**.

5.5 Publication of reasons

The **AER** may publish its reasons for granting or refusing to grant a waiver or interim waiver.

5.6 Reviewing a waiver

- (a) Subject to this clause 5.6, the **AER** may, in its absolute discretion and at any time, vary or revoke a **TNSP**'s waiver (including varying the terms and / or conditions of a **TNSP**'s waiver), as long as it has given the **TNSP** at least 40 days' notice that it is considering doing so.
- (b) In deciding whether to revoke a waiver or vary of a waiver, the **AER**:
 - i. must have regard to the matters specified in clause 5.3.2(a); and
 - ii. may do the things, or otherwise have regard to the matters, specified in clause 5.3.2(b).

[Note: if the **AER** decides to revoke a waiver or vary a waiver, the **AER** may also decide to grant an interim waiver as a transitional measure].

5.7 Waiver register

- (a) A **TNSP** must establish, maintain and keep a register of all waivers (including any variation of a waiver) granted to the **TNSP** by the **AER** under clause 5 of this **Guideline**, and must make the register publicly available on its website.
- (b) The register established under clause 5.7(a) must include:
 - i. the description of the conduct to which the waiver or interim waiver applies; and

- ii. the terms and conditions of the waiver or interim waiver;
as set out in the **AER's** written decision, provided by the **AER** to the **TNSP**, to grant (or vary) the waiver or interim waiver.

6 Compliance procedures and compliance reporting

6.1 Maintaining compliance

A **TNSP** must establish and maintain appropriate internal procedures to ensure it complies with its obligations under clause 6A.21.1 of the **NER**. The **AER** may require the **TNSP** to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the **AER** about the adequacy of the **TNSP's** compliance procedures doesn't affect the **TNSP's** obligations under clause 6A.21.1 of the **NER**.

6.2 Reporting

6.2.1 Annual compliance report

- (a) A **TNSP** must prepare an annual ring-fencing compliance report each calendar year in accordance with this clause 6.2.1, and submit it to the **AER** in accordance with clause 6.2.2.
- (b) The annual compliance report must identify and describe, in respect of the calendar year to which the report relates:
 - i. the measures the **TNSP** has taken to ensure compliance with its obligations under this **Guideline**;
 - ii. any breaches of this **Guideline** by the **TNSP**, or which otherwise relate to the **TNSP**;
 - iii. all **other services** provided by the **TNSP** in accordance with clause 3.1; ~~and~~
 - iv. the purpose of all transactions between the **TNSP** and an **affiliated entity**;
 - v. the total number of applications for **connection** received by the **TNSP** in that calendar year;
 - vi. the proportion of the total number of applications for **connection** received by the **TNSP** in that calendar year that include the provision of **contestable electricity services** solely by a **related electricity service provider** of the **TNSP**; and
 - vii. the proportion of the total number of applications for **connection** received by the **TNSP** in that calendar year that include the provision of **contestable electricity services** by a person other than a **related electricity service provider** of the **TNSP**.
 - viii. for **connections** commissioned in that calendar year that have included the provision of **contestable electricity services** by a **related electricity service provider**, the average time (in business days) between initial receipt of the application for **connection** and the commissioning of the **connection**.
 - ix. for **connections** commissioned in that calendar year that have not included the provision of **contestable electricity services** by a **related electricity service provider**, the average time (in business days) between initial receipt of the application for **connection** and the commissioning of the **connection**.
- (c) The annual compliance report must be accompanied by an assessment of compliance with each provision of this **Guideline** (except 6.2.2 and 6.2.3) by a suitably qualified independent authority.

- (d) A **TNSP's** annual compliance report may, in relation to clause 3.2 of this **Guideline**, be based on information provided to the **AER** under a **regulatory information instrument** for the **TNSP's** most recent **regulatory year**. If so, that annual compliance report must cover, in relation to clause 3.2 of this **Guideline**, the entirety of that **regulatory year**.
- (e) Annual compliance reports must be accompanied by a cover letter signed by a **TNSP's** most senior executive (whether that person's position is titled chief executive officer, or managing director, or otherwise) and attesting that the contents of the report are accurate to the best of their knowledge.
- (f) Annual compliance reports may be made publicly available by the **AER**.

6.2.2 Timing of annual compliance reporting

A **TNSP** must submit its annual compliance report to the **AER** within four months of the end of the calendar year to which the compliance report relates.

6.2.3 Reporting by the AER

The **AER** may publish reports from time to time about **TNSPs'** compliance with this **Guideline** on the basis of information provided to it under this clause 6.2.

6.3 Compliance breaches

A **TNSP** must notify the **AER** in writing within 15 business days of becoming aware of a breach of its obligations under this **Guideline**, except for a breach of clause 6.2.2 or this clause 6.3 of this **Guideline**. The **AER** may seek enforcement of this **Guideline** by a court in the event of any breach of this **Guideline** by a **TNSP**, in accordance with the **NEL**.

6.4 Complaints and investigations

The **AER** may, at any time, require a **TNSP** to provide a written response to a complaint or concern the **AER** raises with the **TNSP** about its compliance with this **Guideline**, including where the **AER** has previously required the **TNSP** to provide one or more written responses to the relevant complaint or concern.

7 Transitional arrangements

- 7.1 Despite any other provision of this **Guideline**, version 4 of this **Guideline** (rather than version 5) is preserved and applies in relation to an application for **connection** (including any agreement entered into by a **TNSP** for that **connection**) where the application for **connection** was received by the **TNSP** on a date before the **commencement date**.
- 7.2 Despite clause 1.1.2 of this **Guideline** and subject to clause 7.3(b), a **TNSP** must fully comply with version 54 of this **Guideline** by no later than the version 5 **compliance date**.
- 7.3 A **TNSP** must, prior to the version 54 **compliance date** or any such earlier date that the **TNSP** becomes fully compliant with version 5 of this **Guideline**, continue to comply with version 3-4 of this **Guideline**, except to the extent that non-compliance with version 3-4 of this **Guideline** is necessary in order to comply with version 54 of this **Guideline**.
- 7.4 Despite clauses 7.2 and 7.3, a **TNSP** must comply with clause 6.2.1(e) of version 5 of this **Guideline** on and from the **commencement date**.