

# Ring-fencing guideline (electricity distribution)

## Explanatory Statement

Draft Guideline – Version 4

**December 2024**

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**Amendment record**

Version	Date	Pages
1	December 2016	115
2	October 2017	28
3	November 2021	92
4	10 March 2025 [ <i>Note – Version 4 is proposed to commence immediately upon the date of the AER’s decision to amend it</i> ]	11

# Shortened Forms

Shortened Form	Extended Form
AER	Australian Energy Regulator
DNSP	Distribution network service provider
EV	Electrical Vehicle
NEL	National Electricity Law
NER	National Electricity Rules
NERR	National Energy Retail Rules
SAPS	Stand-alone power system

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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 **28 January 2025**.

Submissions should be sent electronically to [AERringfencing@aer.gov.au](mailto: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.

All non-confidential submissions will be placed on the AER's website at [www.aer.gov.au](http://www.aer.gov.au).

For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014 available on the AER's website.

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](mailto:AERringfencing@ aer.gov.au).

# 1 Executive Summary

The Australian Energy Regulator (AER) exists to ensure energy consumers are better off, now and in the future. Consumers are at the heart of our work, and we focus on ensuring a secure, reliable and affordable energy future for Australia. We recognise that energy is an essential service for Australian households and businesses and a critical contributor to the long-term success of the Australian economy.

We regulate electricity networks and covered gas pipelines in all jurisdictions except Western Australia. We are an independent statutory authority. Our powers and functions are set in the National Electricity Law (NEL), National Electricity Rules (NER) and National Energy Retail Rules (NERR).

Electricity distribution network service providers (DNSPs) are currently subject to ring-fencing requirements under the '[Ring-fencing Guideline – Electricity distribution](#)' (Version 3) ('the guideline').<sup>1</sup> This document outlines two proposed changes to the guideline, which we propose to publish as part of version 4 of the guideline.

## 1.1 What is ring-fencing?

Ring-fencing refers to the separation of regulated services provided by a DNSP (for example, installation/maintenance of poles and wires) from the provision of contestable services by a DNSP (for example, the installation of smart meters), or an affiliated entity. The ring-fencing guideline governs the extent to which DNSPs can provide contestable services.

The objective of ring-fencing is to provide a regulatory framework that promotes the development of competitive markets. It does this by providing a level playing field for third party providers in new and existing markets for contestable services. Effective ring-fencing arrangements are an important mechanism for promoting market efficiency and more competitive outcomes in markets for energy services, ultimately leading to benefits to consumers.

The guideline aims to prevent cross-subsidisation and discriminatory behaviour by adopting a range of controls. In particular, the guideline stipulates a range of obligations on DNSPs to identify and separate costs and business activities of delivering regulated network services from the delivery of other services.

## 1.2 Updating the guideline

Version 3 of the guideline was published in November 2021. The guideline provides a waiver application process to determine exceptions to compliance with the guideline, where it can be shown that the compliance burden outweighs the competitive benefits of ring-fencing.

We are proposing to make two amendments to the current guideline (version 3), to improve the operation of the ring-fencing framework:

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<sup>1</sup> Australian Energy Regulator, [Electricity Distribution Ring-fencing Guideline: Compliance Reporting Best Practice Manual \(Version 3\)](#),

1. Provide greater flexibility in determining the duration of ring-fencing waivers. We propose to modify clauses 5.3.4(b) and (c) and remove the current restriction on the maximum term for which ring-fencing waivers can be granted. The restriction currently limits waivers, other than for energy storage devices or stand-alone power systems (SAPS), to the current and upcoming regulatory control periods (i.e. 5 regulatory years, or a maximum of 5 years beyond the remaining duration of a DNSP's current regulatory control period)<sup>2</sup>.
2. Standardise the way in which DNSPs submit annual compliance reports. Specifically, we propose to add a requirement that DNSPs' annual compliance reports for ring-fencing must include a letter signed by the highest-ranking officer of that DNSP.

In preparing the proposed amendments, we have considered views expressed previously by stakeholders, particularly by stakeholders who have engaged with the waiver process. We are seeking more detailed views from stakeholders, to determine if there is support for the proposed amendments. Submissions to these proposed amendments will be in accordance with the NER consultation procedures. We do not intend to update other aspects of the guideline at this stage, other than to repeal spent transitional provisions (concerning the transition from version 2 to version 3 of the guideline).

### 1.3 Scope of the current review

There are significant, long-term changes under way that will impact the energy industry, including DNSPs and consumers. As the energy transition progresses it is likely that the ring-fencing framework, and the guideline will need to evolve. At this point, however, we propose to only consider the two changes to the guideline.

We are, however, open to receive submissions with feedback on other prospective changes to the guideline, which may be considered in a future review of the guideline. We intend to use the views of stakeholders to help shape our consultation on broadening the guideline. To that end, we invite stakeholders to provide their views about:

- (a) new services they expect to emerge as part of the energy transition where ring-fencing may provide benefits or may result in appropriate barriers;
- (b) the costs of ring-fencing those services and whether such costs potentially will be outweighed by benefits to consumers; and
- (c) the extent to which the current ring-fencing framework can either support the competitive provision or hinder the delivery of these services to consumers.

### 1.4 Next steps

With the publication of our draft guideline and this explanatory statement, we now invite interested stakeholders to provide comment and submissions. Details of timing follows.

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<sup>2</sup> National Electricity Rules, Chapter 10.

Indicative Date	Project Milestone/action
2 December 2024	Draft of proposed guideline (version 4) and draft explanatory statement released for consultation. Stakeholders may submit their views for comment.
28 January 2025	Final date to provide submissions on proposed guideline amendments.
10 March 2025	Final version 4 of the guideline is published, with immediate effect.



## 2 Proposed changes to the guideline

### 2.1 Modifying the maximum period for waivers

Currently, the guideline limits the maximum period for which a ring-fencing waiver can be granted. Under clauses 5.34 (b) and (c), the AER may grant a waiver:

- *for a term that coincides with part or all of the DNSP's current regulatory control period, next regulatory control period, or both periods; or*
- *in the case of a waiver of clause 3.1 of this Guideline in relation to the use of a regulated stand-alone power system (SAPS) or of an energy storage device, for a different term or terms.<sup>3</sup>*

The limit on the maximum term of a waiver was introduced in version 1 of the guideline in 2016. At that time, we explained that the end date for a waiver:

*should be linked to a DNSP's regulatory control periods on the basis that if a change to a waiver is made, it enables the DNSP to consider the treatment of any cost implications in its revenue proposal. Also, the regulatory determination process provides a sensible trigger to review an existing waiver.<sup>4</sup>*

However, the volume of ring-fencing waiver applications continues to increase and the purposes of these waivers have become more diverse. We have observed that it is not always helpful or appropriate to automatically limit a waiver (apart from waivers in relation to the use of SAPS or energy storage devices) to no longer than the end of a subsequent regulatory period.

We believe that allowing the AER Board to determine the most appropriate term for each individual waiver will provide the flexibility required to tailor the terms of waivers to individual circumstances. The technology used by the energy sector is continuously changing and the market itself is rapidly evolving. Therefore, we do not believe that the limit imposed by the current clause 5.3.4(b) will be appropriate in all cases. This is not to suggest that the AER will favour waivers of a longer term. Applicants will still be required to provide evidence in support of a proposed term of a waiver. At the same time, however, we have observed instances where there may be little benefit to limiting the length of a waiver and requiring a DNSP to seek a new waiver within the length of two regulatory periods. For example, where:

- there is long-standing jurisdictional policy for a DNSP to deliver certain services which is unlikely to change in the foreseeable future
- a long-term contract exists for services that pre-dates the ring-fencing guideline
- a conflict has arisen between the guideline and the application of ring-fencing in the NER in a single jurisdiction
- there is no reasonable prospect of other providers of those services emerging in the future; or

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<sup>3</sup> The guideline, clauses 5.3.4(b) & (c).

<sup>4</sup> AER, [Electricity distribution Ring-fencing Guideline Explanatory statement November 2016](#) p.61.

- a DNSP is reasonably seeking greater certainty for planning future delivery than is available with the current clause 5.3.4(b).

We consider that there continues to be value in the AER granting ring-fencing waivers with an explicit term. The requirement for a maximum term is intended to safeguard against a waiver becoming obsolete, or no longer appropriate, owing to a change in conditions. It remains the case that the grounds on which a waiver was granted are not static, circumstances can change over time and markets can develop in unforeseen ways.

We note that the guideline already allows greater flexibility in respect of waivers for SAPS and for energy storage devices. Clause 5.3.4 was modified in version 3 of the guideline to exempt these technologies from the maximum waiver duration requirement.<sup>5</sup> The AER Board has used their discretion to grant waivers for SAPS and energy storage devices both for longer and significantly shorter periods than the maximum term allowed for other waivers.

### **Draft position**

One option open to us is to simply extend the maximum length of a waiver permitted by clause 5.3.4(b). This would reduce the incidence of waivers imposing administrative burden for little or no benefit. However, we consider this an imperfect solution as it still limits the capacity for DNSPs, stakeholders and the AER to consider fully the circumstances behind a waiver application and for waivers to be more fit for purpose.

For that reason, we propose to vary the current restriction on the maximum length of waivers from the guideline, by modifying clauses 5.3.4(b) and (c) of the guideline. The proposed change allows the AER Board to grant a ring-fencing waiver or interim waiver for a term that the AER considers appropriate.

The proposed change is not intended to signal that the AER has a preference for waivers to have longer terms. The additional flexibility is intended to allow more tailored decisions on the most appropriate duration for waivers. In a waiver application, DNSPs would be expected to nominate a preferred waiver end date and, importantly, to provide evidence to support that term. Relevant evidence may include, but would not be not limited to:

- level of viable competition from other providers
- whether a waiver will permit an exclusive service
- whether the waiver empowers a trial that will inform industry and consumers
- any downstream benefits (e.g. growing a market for other services)
- relevance of any government policy (e.g. state requirements).

We are also proposing to make a similar change to the Ring-fencing guideline (electricity transmission) ('the transmission guideline'). This [change will be consulted on separately](#), but in parallel, to align the distribution and transmission guidelines on this issue.

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<sup>5</sup> Electricity distribution ring-fencing guideline (version 3) | Explanatory statement, page 8.

## 2.2 Clarifying DNSP approvals of annual compliance reports

DNSPs are required by clause 6.2 of the guideline to submit annual reports, which demonstrates compliance with the guideline and their ring-fencing obligations. The AER's Compliance Reporting Best Practice Manual<sup>6</sup> states that annual ring-fencing compliance reports should be submitted to the AER accompanied by a cover letter signed by the most senior executive of the DNSP (whether that person's position is titled chief executive officer, or managing director, or otherwise). We have observed that the majority of DNSPs have adopted this best-practice approach, however, some DNSPs have expressed uncertainty on the submission requirements. We therefore propose to codify this practice in the guideline to improve clarity.

### Draft position

We propose to amend clause 6.2 to clarify that an annual ring-fencing compliance report must be accompanied by a cover letter signed by the most senior executive of the DNSP.

A similar change will be proposed for the transmission guideline. This change will be consulted on separately but in parallel, to align the distribution and transmission guidelines on this requirement.

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<sup>6</sup> Australian Energy Regulator, [Electricity Distribution Ring-fencing Guideline: Compliance Reporting Best Practice Manual \(Version 3\)](#), page 6.

### 3 Transition to version 4 of the guideline

The existing transitional arrangements in clauses 7.1 and 7.2 were included in the guideline for the commencement of version 3 in November 2021. These clauses related to the compliance with obligations during the transition from version 2 to version 3 of the guideline. We consider these transitional provisions are now spent and propose to delete them.

We expect to publish version 4 of the guideline by 10 March 2025. Our proposed changes are limited and are not expected to have any cost impact or significant compliance burden for DNSPs.

We intend that the change to clause 5.3.4 will commence immediately on publication of the new guideline.

This will have the effect that on and from the commencement date of version 4, the AER will have discretion to grant a waiver for whatever period it considers appropriate under amended clause 5.3.4, even for applications on hand that were received under version 3 of the guideline. This notes that amended clause 5.3.4 in version 4 will be more beneficial to applicants than grandfathering the existing arrangements, because the revised guidelines provide greater flexibility for a waiver period to be tailored to the applicant's circumstances.

Where we are considering granting the waiver for a longer term under those amendments, including before the proposed amendments are made, we will include this in any consultation we undertake on the waiver application.

We note that the expected date of publication for the new guideline will fall in the period when DNSPs are completing their annual reports on ring-fencing compliance. To avoid confusion, we consider that the intended change to reporting requirements in clause 6.2.1 should take effect immediately, so that changes take effect for the 2026 annual reporting date in 2026.