

Electricity transmission Ring-fencing Guideline DRAFT Explanatory Statement – Version 5

December 2024

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Shortened forms

Shortened Form	Extended Form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AusNet	AusNet Transmission Group Pty Ltd
CAM	Cost Allocation Methodology
CEC	Clean Energy Council
current guideline	Ring-fencing guideline – Electricity Transmission (Version 4), March 2023
Draft guideline	Ring-fencing guideline – Electricity Transmission (Version 5, Draft), December 2024
ENA	Energy Networks Australia
EUAA	Energy Users Association of Australia
IUSA	Identified user shared asset
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER or the rules	National Electricity Rules
RAB	Regulatory Asset Base
RESP	Related electricity service provider
SAPS	Stand-alone power systems
SCADA	Supervisory Control And Data Acquisition
TNSP	Transmission Network Service Provider

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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.

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.

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.

Executive Summary

Australia's electricity market is undergoing a fundamental transformation, transitioning from a reliance on coal- and gas-fired power plants to renewable sources of energy (mainly wind and solar) to meet State and Federal renewable energy targets. This transformation presents significant challenges and opportunities for Australia's electricity transmission system (the interconnected networks of high voltage lines and infrastructure that carry electricity from generators to distributors and ultimately to consumers).

The role of transmission network service providers (TNSPs) is expanding to connect this large investment in new generation, while supporting AEMO in its management of system as our reliance on variable renewable energy increases. 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.¹ 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.

Ring-fencing seeks to prevent TNSPs from using their position as monopoly providers of prescribed transmission services in ways that undermine or damage competition, efficiency and innovation in contestable markets. A recent rule change to rule 6A.21.2 of the National Energy Rules (NER) empowers the AER to revise the [Ring-fencing guideline \(Electricity transmission\)](#)² ('the guideline'), to achieve the functional separation of TNSPs' (or their related electricity service provider (RESP)) prescribed transmission services and negotiated transmission services (negotiated services), from the provision of contestable electricity services by them.

There are two types of harmful conduct by TNSPs that ring-fencing can address:

- **Cross-subsidisation**, where a TNSP uses revenues that it earns in providing prescribed transmission services to subsidise its activities in other, contestable markets. Cross-subsidisation can have the effect of undermining or damaging competition and innovation in related contestable markets. In addition, it can result in consumers paying more than they should for regulated transmission services.
- **Discrimination**, where a TNSP is able use its monopoly position in regulated markets, or information obtained through the provision of those services, to favour itself (or a RESP) or to discriminate against a competitor in contestable markets. This harms consumers by undermining competition and so increasing prices and reducing innovation.

The guideline seeks to prevent these harms from occurring by requiring a TNSP to separate the provision of prescribed transmission services from contestable services that may be provided either by the TNSP (or its affiliates) or third parties. Ring-fencing obligations should evolve to remain a targeted, proportionate, and effective regulatory response to the potential harm consumers may face as the market context within which TNSPs operate changes.

¹ Australian Energy Market Operator, [2024 Integrated System Plan, June 2024](#) page 30

² AER, [Ring-fencing Guideline – Electricity Transmission, version 4](#), March 2023

The proposed changes to the guideline 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 (CAM).

Addressing the potential for discrimination

Some stakeholders have told us about the potential for discrimination related to negotiated services and argue that even the perceived risk of discrimination leads to less competition in the market. Non-TNSP stakeholders have told us that TNSPs use their monopoly role in connections (of providing negotiated transmission services) as an opportunity to discriminate against competitors in providing contestable connection services). The risk of discrimination can lead to significant and expensive project delays, as well as increase costs paid by large customers for connection services.

To address the concerns that stakeholders have raised and in light of the Australian Energy Market Commission's (AEMC's) change to rule 6A.21.2 of the NER, we propose to take the following approach to amending the guideline:

1. *Whether ring fencing should be applied to classes of types of negotiated services*

Stakeholder feedback has suggested that either all, or no, negotiated services should be ring-fenced, with limited analysis on whether only some types of negotiated services should be ring-fenced. Our view is that all negotiated services should be uniformly subject to ring-fencing obligations. Categorising negotiated services, with different ring-fencing obligations for different negotiated services, is likely to introduce uncertainty and ambiguity, particularly as there does not appear to be a categorisation framework for negotiated services widely used by industry. Without additional information on the benefits of categorisation, we expect that the cost of compliance to TNSPs will be significantly outweighed by the material savings to connecting parties and, ultimately, consumers.

2. *Extend the non-discrimination clause to negotiated services*

Many stakeholders have indicated that there is the potential for material harm to connection applicants, unless the guideline creates better differentiation of TNSPs' dealings with customers and their RESPs, between negotiated and contestable services. Even perceived discrimination can materially reduce competition and investor confidence, which may inflate energy prices for consumers. Accordingly, we propose to amend clause 4.1 of the guideline to provide that a TNSP must not discriminate (either directly or indirectly) between a RESP and a competitor of a RESP, in connection with the provision of prescribed transmission services or negotiated transmission services.

3. *Expanding ring-fenced information requirements to negotiated services*

Our view is that it is appropriate to extend information access and disclosure requirements in the guideline so that they expressly capture all information obtained by a TNSP in the provision of negotiated services. This aims to reduce any competitive advantage that TNSPs or their RESPs may derive from their possession or acquisition of such information.

4. *Separation of staff*

We do not propose to make any changes to staff separation requirements at this time. TNSPs have a smaller and more highly specialised staff (which reflects that there are fewer, but larger, transmission customers) with relatively high costs to the TNSP to duplicate positions. There is also a risk that greater staff separation will result in slowing down new connections. We do not believe that the cost and administrative burden of extending the staff separation obligations to the provision of negotiated services would be adequately balanced by attendant benefits.

5. *Cross-branding and promotion*

We do not propose to extend restrictions on cross-branding and promotions. We have not received significant evidence from stakeholders that benefits will outweigh costs, particularly as most connecting parties are sophisticated buyers unlikely to be confused by branding.

6. *Reporting on negotiated services*

We consider that there is value in requiring additional, public reporting by TNSPs on several aspects of negotiated transmission service delivery, and will assist with ongoing monitoring of the effectiveness of the guideline. We propose to require reporting on:

- the total number of connection applications received by the TNSP in a calendar year
- the proportion of those connection applications where contestable electricity services were provided solely by a RESP of the TNSP
- the proportion of those connection applications where contestable electricity services were provided by an entity other than a RESP of the TNSP
- for connections where contestable electricity services were provided by the TNSP's RESP, the average time (in business days) between initial receipt of the application for connection and the commissioning of the connection
- for connections where contestable electricity services were provided by an entity other than the TNSP's RESP, the average time (in business days) between initial receipt of the application for connection and the commissioning of the connection.

Our understanding is that reporting this data would not be high cost for TNSPs and connecting customers. Smaller TNSPs can be expected to have fewer connection applications and thus lower costs for reporting this data. We note feedback from connecting parties that additional costs passed to them as a result of more reporting would be far outweighed by the benefit if such reporting encourages more competition in the provision of contestable connection services. Such reporting will also assist the AER in considering whether there are trends or other aspects of this data that may give rise to particular concerns about whether discrimination might be occurring.

Other proposed amendments

We are also proposing two other amendments to the guideline for administrative efficiency.

1. *Removing the maximum term for waivers*

We propose to remove the maximum term limit for ring-fencing waivers. We have observed that it is not always helpful or appropriate to automatically limit the period of a waiver, and that in some limited circumstances, allowing greater flexibility will allow better tailoring of the terms of waivers to individual circumstances. The majority of views we received were supportive of this approach. We note that this proposed change is not intended to signal that the AER prefers waivers to have longer terms, but to allow greater flexibility in certain circumstances. Interested parties will still be expected to provide robust evidence for how a waiver application, for any term duration, is justified. We further note that we are considering a similar change to the Ring-fencing guideline (electricity distribution) (distribution guideline) as part of a separate review. We are consulting on those changes separately, but in parallel with this consultation process, to align the distribution and transmission guidelines on these issues.

2. *Clarifying sign-offs for annual compliance reports*

We propose to standardise submissions of TNSP annual compliance reports by requiring a cover letter signed by the most senior executive in the organisation. We note that this is considered best practise by the AER's Compliance Reporting Best Practice Manual, and that most businesses already provide annual compliance reports in this manner. The majority of the feedback for this change has been in support, and to date, we have not received any evidence of significant cost or administrative burden on TNSPs if this change were to be implemented.

We are proposing to make similar changes in relation to the sign-off of annual compliance reports in the distribution guideline. We are consulting on those changes separately, but in parallel with this consultation process, to align the distribution and transmission guidelines on these issues.

Transitional arrangements

We expect to publish version 5 of the guideline by 24 February 2025 (this will be the **commencement date**). We propose to have a transitional period of 6 months following publication (this date will be the version 5 **compliance date**).

We propose that TNSPs are to comply with version 5 of the guideline no later than the version 5 compliance date. However, we propose that TNSPs must comply with the proposed change to require annual compliance reports to be approved and signed by a TNSP's most senior executive, from the commencement date.

For any connection application received by a TNSP before the version 5 commencement date (and any agreement entered into by the TNSP for that connection), we propose that version 4 of the guideline is preserved and will continue to apply to that connection process.

A change regarding the term of waivers granted by the AER will apply from the commencement date.

Next steps

Following the release of the draft guideline and this draft explanatory statement, we will undertake further consultation before releasing our final guideline. Indicative timing is as follows.

Release consultation on draft changes to the guideline and explanatory statement	9 December 2024
Submissions close on draft changes to the guideline and explanatory statement	28 January 2025
Publish guideline version 5 and related explanatory statement	24 February 2025

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.

Under the NER, the Australian Energy Regulator (AER) is required to develop, and may amend from time to time, a guideline that imposes ring-fencing obligations on TNSPs.³ The guideline provides for the accounting and functional separation of contestable services provided by a TNSP's RESP, 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 (IUSA); 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 RESP or by another provider in 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 undermine or damage competition, efficiency and innovation in contestable markets. There are two key harms that ring-fencing seeks to prevent:

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

³ NER, 6A.21.2.

Both cross-subsidisation and discrimination can have the effect of undermining or damaging competition, efficiency and innovation in contestable markets. The guideline already addresses cross-subsidisation by requiring TNSPs to establish accounting separation and to allocate costs between categories of services in accordance with their approved CAM.

The changes that we propose to introduce in version 5 of the guideline include requirements for a TNSP to ring-fence negotiated transmission services, which are not currently covered by version 4 of the guideline. These changes seek to prevent discrimination in the negotiated services and contestable connections markets.

1.2 The potential for discrimination

While developing the current guideline (version 4), non-TNSP stakeholders shared their concerns with us that the ring-fencing framework does not adequately address the potential for TNSPs to use their monopoly role in connections (negotiated services) as an opportunity to discriminate against competitors in providing contestable connection services.

We undertook further consultation to investigate in early 2023 and stakeholders told us that:

- Non-TNSPs argued that all negotiated transmission services should be ring-fenced, to mitigate the risk of discriminatory practices by TNSPs and increase market confidence.
- Non-TNSPs stated that even the perception of harm is detrimental to the market.
- Non-TNSPs shared scenarios where the absence of ring-fencing between negotiated services and contestable services 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 RESP is not allocated some or all of the contestable connection works,
 - connections will be quoted at a lower price if the RESP is engaged for contestable services, or
 - a TNSP intends to arrange for its RESP to act in the capacity of the TNSP.
- 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.
- TNSPs urged the AER to consider the costs to TNSPs of compliance with new ring-fencing obligations on negotiated services, which they argued would needlessly delay connections and prevent a timelier energy transition.

The AER submitted a rule change request to the AEMC to address the concerns relating to negotiated services. In its final determination, AEMC identified specific behaviour by TNSPs that could be considered discriminatory, including:

- Preference for their own projects and RESPs' projects to provide contestable services⁴
- Charging a price for operating and maintenance costs for an IUSA that is above the cost of supply with the aim of increasing the total cost of a competitor's offer⁵
- For contestable IUSAs, TNSPs request more detailed design drawings than they would otherwise if a RESP was chosen.⁶

The ENA has consistently argued that the current regulatory arrangements are sufficient, through all engagement touchpoints. They state that the guideline and separate provisions of the NER provide TNSPs and connecting parties the opportunity to make their own decisions about managing opportunities for, on the one hand, competitive provision of connection services and, on the other hand, efficient and timely connections that meet customer needs.

However, in the AER's rule change request and the AEMC's subsequent rule change determination, the rationale for the rule change was that it is not sufficient to rely on those regulatory arrangements. It was explained that a lack of ring-fencing obligations for negotiated services, services that are provided exclusively on a monopoly basis, has the real and perceived risk of discrimination, and that TNSP's affiliates have an unfair advantage over other participants in the contestable services markets.

The ENA has further argued that it is not clear that there is a problem, in relation to discrimination, that warrants changes to the guideline, and that the guidelines should focus on regulating genuine risks observable with evidence rather than theoretical perceived risks. This view has been supported by multiple TNSPs who have argued that there is no evidence of any negative impacts on competition or on the timeliness of connections to support ring-fencing of negotiated services. However, both the ENA and individual TNSPs argued that there is no discrimination occurring, and that the current regulatory regime is fit for purpose. On the other hand, we heard very different views from connecting parties. They again shared about their experiences with specific examples of behaviour by TNSPs that appear to be discriminatory.

The Clean Energy Council (CEC) has also argued that in considering additional ring-fencing requirements for TNSPs, we should put considerable weight on the lack of competition that has developed for the provision of contestable connection services. The CEC argues that this shows that the current guideline is not working to protect competition and changes are required to deliver a more robust framework.⁷

Stakeholders have argued that even the perceived risk of discrimination can result in a reduction of competition, as TNSPs' RESPs are preferred over other providers on the contestable connection services market. AGL has submitted that it considers any risk, even the perceived risk, of delays to generation project timelines or additional costs as key factors

⁴ Australian Energy Operations - Electricity Transmission Ring-fencing Guideline Review - Submission to Discussion Paper - 30 January 2020 | Australian Energy Regulator (AER).

⁵ AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), May 2024, page 15.

⁶ AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), May 2024, page 15.

⁷ CEC, Submission on AER Issues Paper on Updating the Ring-fencing guideline (electricity transmission), November 2024, page 5

in selecting transmission service providers, even if more economically efficient options are otherwise available.⁸

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. In addition, there are other large customers that need new connections to the transmission network, who are seeking to grow and leverage competitive advantages in Australia, and are dependent on timely, cost-effective connections.

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, as they are the monopoly providers of prescribed and negotiated transmission services. Stakeholder feedback has illustrated that there is a risk that TNSPs can influence connecting parties' decisions so as to favour their RESPs, and disadvantage competitors in the contestable connection services market.

This type of discriminatory behaviour can result in cost increases and project delays for connecting parties. It may also reduce opportunities for the competitive provision of connection services, if connecting parties give preference to TNSPs' RESPs over their competitors to mitigate the risk of discrimination.

The CEC highlighted a concern that TNSPs have an opportunity to delay projects in order to create an advantage for their RESPs. One example we heard was the need for a TNSP to review detailed connections designs and to delay this process where a connecting party has sourced that design from a competitor of the TNSP's RESP.⁹ Similarly, we heard concerns that a TNSP can create a disadvantage for third-party competitors of its a RESP through operational decisions. One example was delays in providing monopoly 'cut-in' services that can add costs to a customer who has engaged a competitor for contestable services.

AGL noted that the negative impacts associated with discriminatory conduct may not be observed directly.¹⁰ For example, a TNSP could potentially create administrative or financial hurdles for the non-contestable elements of a connection unless the customer decides to complete the entire connections process (both negotiated and contestable components) with the TNSP and its RESP.

⁸ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 1.

⁹ CEC, *Submission on AER Issues Paper on Updating the Ring-fencing guideline (electricity transmission)*, November 2024, page 5.

¹⁰ AGL, page 1.

As a result, connecting parties may choose to engage a TNSP's RESP for contestable services, even when it is significantly more expensive than using a competitor to the TNSP's RESP.¹¹

We note that some connecting parties prefer for both negotiated and contestable connection services to be provided by the TNSP and its RESP. However, other large customers, including some with more than one connection to the network, have discussed aspects of the existing connections process which they consider have created increased risk, led to projects delays and added to costs. We have received feedback from connecting parties that they often preference a TNSP's RESP over other providers, even if the offer price is significantly higher, in order to avoid the risk of discriminatory conduct. This suggests that the risk of discrimination appears to be a more pertinent risk to avoid than the benefits in efficiency possible when a TNSP and its RESP can provide negotiated and contestable connections services at a single point for some customers.

In its final determination, the AEMC noted that through its consultation on the proposed rule change generators and renewable energy developers told it that construction costs are the most significant contributor to total connection costs, and that construction of connection assets has the greatest scope for contestable provision.¹²

If rival providers of contestable connection services are less likely to participate in the market, or connecting parties are encouraged to give preference to a RESP of a TNSP then competition may be negatively impacted. Ultimately this is likely to result in higher consumer costs, if large customers pass on higher connection costs and from the costs of delays in new generation becoming available. There may also be wider economic costs if other large customers experience higher costs or delays as a result of a lack of competition in the provision of contestable connection services.

1.4 Updates to the NER

In light of stakeholder feedback, in July 2023 we submitted a rule change request to the AEMC.¹³ The intent of the request was to give the AER the power to extend the current obligation for a TNSP to not to discriminate in favour of a RESP in connection with the provision of negotiated transmission services.

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

...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*...¹⁴

¹¹ AGL, page 1.

¹² AEMC, [Rule Determination, National Electricity Amendment \(Transmission Connection and Planning Arrangements\) Rule 2017](#), May 2017, page 146

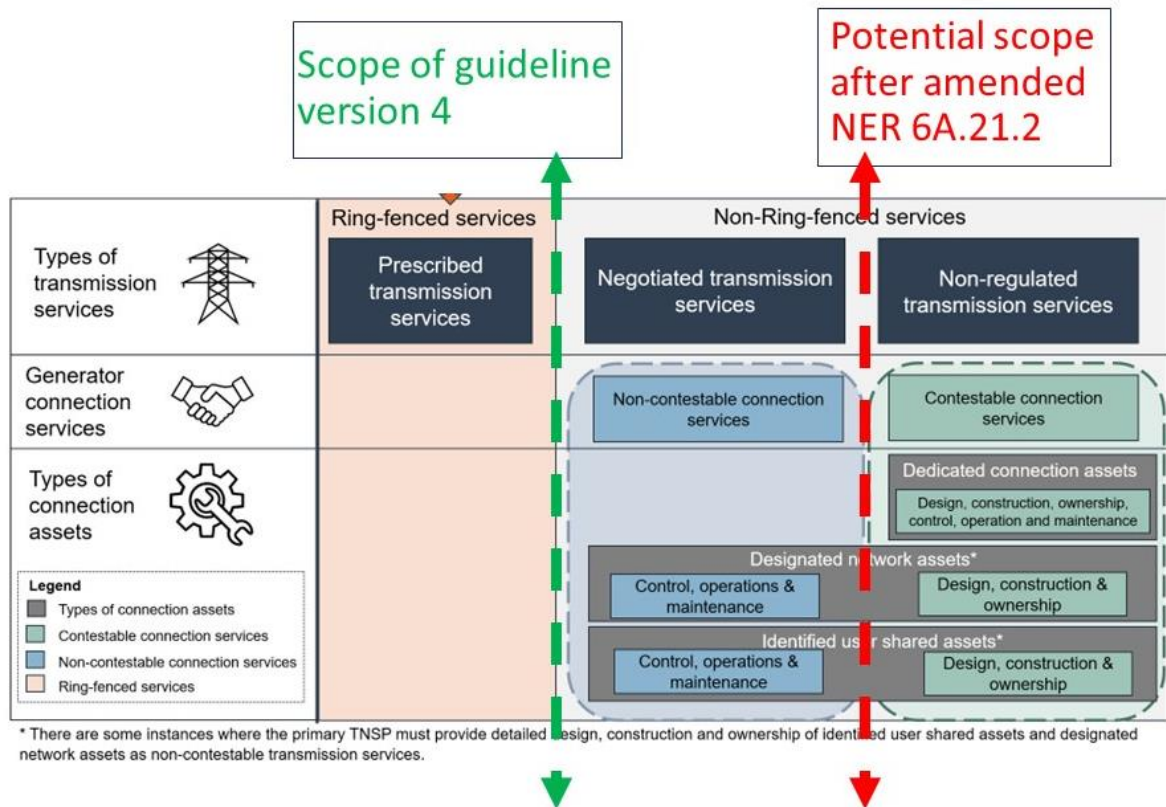
¹³ AER, [Rule change request](#), July 2023

¹⁴ AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), May 2024

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.*¹⁵

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 RESPs.



The AEMC concurrently made rule 11.170 which gave effect to these new powers from that date and required the AER to publish an updated guideline after stakeholder consultation.

¹⁵ AEMC, Rule determination - Expanding the transmission ringfencing framework, p.4

1.5 Our consultation approach

Our most recent issues paper has built upon previous consultation with stakeholders about the guideline and the effectiveness of the transmission ring-fencing framework. The key consultation milestones to date have been:

July 2022	AER issues paper on transmission ring-fencing
November 2022	Draft guideline version 4
March 2023	AER consultation paper on negotiated services
February 2024	AEMC consultation on rule change request
October 2024	AER issues paper

We have focused on 5 core ring-fencing obligations in the guideline that are likely to be the most relevant in addressing the risk of discrimination. These were also outlined in our rule change request to the AEMC:¹⁶

1. Clarifying that there should be no discrimination in negotiated services
2. Extending the definition of ring-fenced information
3. Extending the separation of staff
4. Restrictions on cross-branding and promotion
5. Additional reporting about negotiated transmission services

Previous 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 to any negotiated services. The issues paper sought feedback on a more nuanced approach, which could result in ring-fencing obligations being introduced for only specific negotiated services or categories of services.

The issues paper also described our risk-based approach to assessing possible changes to the guideline. We will examine the potential harm from a weakening of competition absent the introduction of ring-fencing obligations as well as the nature and consequences of such harm. On the other hand, we want to understand the potential costs to industry, to ensure that any changes to the regulatory burden are appropriate and proportionate to the risk of harm. We remain keen to ensure that the AER does not impose obligations on TNSPs beyond what is necessary to reduce the risk of discriminatory conduct.

This draft explanatory statement, along with the draft of the revised guideline (version 5), is the next key step in consultation.

¹⁶ AER [Rule change request](#), page 27.

2 Types of negotiated services

2.1 Outline of the problem

The AEMC's final determination for the amendment of rule 6A.21.2 of the NER provides the AER with flexibility when deciding what ring-fencing obligations should be imposed for negotiated transmission services. It states that:

...the AER may decide to not impose obligations in relation to negotiated transmission services or specific negotiated transmission services...¹⁷

It does not appear that there is a widely used industry standard for categorisation of negotiated services, however, chapter 10 in the NER defines *negotiated transmission services* 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 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
 - Setting the functional settings of an IUSAs, including substations, switchyards and powerlines.
 - Cut-in works to connect the IUSA to the network
 - 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.

In our issues paper, we sought stakeholder views on whether the classification of negotiated services in the NER should be used to assist in determining specific negotiated services, or categories of services, that may be appropriate to impose ring-fencing obligations on, rather than extending the regulatory obligation to all negotiated services. We also requested more detailed information about the costs of discrimination, on the one hand, and the costs of compliance with new obligations, on the other.

¹⁷ AEMC, [Rule determination National Electricity Amendment \(Expanding the transmission ringfencing framework\) Rule 2024](#), May 2024, page 21

The majority of stakeholder responses to our issues paper continued to suggest a binary approach to ring-fencing negotiated services, advocating for either all, or no, negotiated services to be ring-fenced. There was no substantive feedback provided in support of the categorisation of negotiated services.

TNSPs argued against extending ring-fencing obligations to any negotiated services. ENA supported taking a 'nuanced approach', rather than considering a blanket application of any additional obligations, but did not provide further detail on how this might work.¹⁸ Some TNSPs noted that different jurisdictions may be disproportionately affected more by ring-fencing negotiated services, for example leading to longer and more expensive connection processes in Tasmania.¹⁹

In our issues paper we had sought information about the material costs of introducing new ring-fencing obligations. We intended this to be an input to our proposed approach of assessing costs as well as benefits in making changes to the guideline. However, the ENA advised that it was not possible to provide such advice without further detail about specific proposed changes to the guideline.

In contrast, all non-TNSP stakeholders supported extending the same ring-fencing obligations to all negotiated services. They noted that the risks faced by connecting parties are similar for each kind of negotiated service. AGL stated that the benefits of expanding the guideline to include all negotiated services are likely to exceed any minor additional administrative burdens placed on TNSPs as a result.²⁰

2.2 Our draft position

Our view is that all negotiated services should be uniformly subject to ring-fencing obligations. This reflects the risks we have heard from connecting parties, namely that the risk of discrimination in connection negotiation can lead to significant and expensive project delays, as well as increase costs for the connection services themselves. Furthermore, even the perceived risk of discrimination can lead to negative outcomes.

Requiring uniform ring-fencing obligations for all negotiated services will provide connecting parties with more control and choice over the connections process. Connecting parties should have greater confidence that they are able to discuss and agree the terms for negotiated services and contestable services separately, and importantly, have less constraints on their choice of provider for contestable service works.

Given the scale and pace of the energy transition, and the substantial number of generators that will need to be connected to the NEM in the near future, expanding ring-fencing arrangements will improve competition and in turn should drive cost efficiencies in the connection of new generating capacity.

¹⁸ ENA, *Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline*, November 2024, p.1.

¹⁹ TasNetworks, *Submission: Transmission Ring-fencing Guideline Issues Paper*, November 2024, page 2.

²⁰ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 2

As was stated in the issues paper, we do not intend to make changes to the guideline where the cost of compliance and administrative burden on TNSPs will outweigh the material savings to connecting parties, and ultimately, consumers.

We have not received detailed information from TNSPs on likely costs to implement the proposed changes and note that some TNSP stakeholders have expressed an inability to provide such information about costs of compliance without a more detailed proposal from the AER.²¹ We invite further submissions on implementation costs in response to this draft decision.

Based on current evidence, we expect that the cost of compliance and administration will be outweighed by the material savings to connecting parties, and ultimately consumers, that will result from safeguarding competition in the delivery of negotiated services.

We do not propose to categorise negotiated services or to apply different ring-fencing obligations to different types of negotiated services. Categorising negotiated services in order to apply differing ring-fencing obligations is likely to introduce complexity and confusion, noting that there does not appear to be a categorisation framework (e.g. as per clause 5.2A.4 of the NER) widely used in industry.

If categorisation were to be adopted, there is a risk that this would create uncertainty or ambiguity on the definitions of various types of negotiated services, which could cause confusion, unintended outcomes, and delays in connection.

²¹ ENA, *Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline*, November 2024, p.2

3 Extend the non-discrimination clause

3.1 Outline of the problem

The general non-discrimination obligation in clause 4.1(b) of the guideline prohibits a TNSP from, amongst other things, providing recommendations or information in favour of a RESP. However, non-TNSP stakeholders have indicated that there is the potential for material harm to connection applicants, unless the guideline creates a better demarcation of TNSPs' dealings with customers and their RESPs, between negotiated and contestable services.

The CEC has stated that the absence of a robust ring-fencing framework, which includes negotiated transmission services, can result in material harms.²² It noted that even the possibility of discrimination can materially reduce competition and investor confidence, which may inflate energy prices for consumers.

The ENA argues that there are currently sufficient provisions in the NER and other parts of the National Electricity Law (NEL) to prevent such discrimination.²³ Further, the ENA has suggested that “the problem articulated by the AEMC and AER appears to be that there is a risk of discrimination, rather than any (actual) evidence of anti-competitive conduct”.²⁴

We have previously stated our view that there is a material potential for TNSPs to discriminate in favour of themselves or an affiliate in providing contestable connection services. Other frameworks that may mitigate against the associated harms are not sufficiently tailored to provide third parties with confidence that they are competing on a level playing field. The AEMC also acknowledged that other obligations in the NER, such as the connections process in Chapter 5, operate in conjunction with ring-fencing.²⁵

Non-TNSPs pointed to the natural advantages and asymmetries that favour TNSPs, which can limit competition and customer choice. This includes concerns that TNSPs may encourage or exert pressure on a connecting party to engage their RESP for the contestable works required for a new connection. Some of these stakeholders have commented that TNSPs may provide this pressure in subtle ways.²⁶ For example by insisting that all later enquiries from the connecting party must be directed to the TNSP's RESP. TNSPs have stated that this type of 'bundling' creates an opportunity for efficiency to benefit all parties. However, many non-TNSPs believe that this approach suggests that should they choose to not engage the RESP for the contestable component of the project, then there would likely be delays or higher costs for the negotiated services component of the connection.

We have also heard that in some cases a TNSP and its RESP may use this 'bundled' model to make it harder for a connecting party to obtain accurate information about their project or

²² CEC, Submission on draft determination and draft rule for expanding the transmission ringfencing framework rule change ERC0371, April 2024, page 1

²³ ENA, p. 4.

²⁴ ENA, *Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline*, November 2024, p.3

²⁵ AEMC, *Transmission Connection and Planning Arrangements, Rule Determination*, 23 May 2017, p. 151

²⁶ Nexa Advisory, *Submission: Expanding the transmission ring-fencing framework: Draft Determination*, April 2024, page 1

individual costs. There is a material concern that this could result in the padding of costs for individual components of connection works and increase costs for connecting parties.

Some connecting parties also raised concerns based on their experiences with TNSPs in decision-making about identified user shared assets (IUSAs)²⁷, which are central to the connection of large customers to the transmission network. Stakeholders discussed the potential for new connections to incur extra costs or long delays when IUSAs are designed by a contestable provider rather than the RESP of a TNSP. At the same time AER staff have heard from TNSPs that changes to connections processes are sensitive, due to the broad range of issues that need to be considered to ensure that new connections do not introduce risks for the transmission network or other customers. We have concluded that some concerns of non-TNSPs about certain steps in the connections process, or the timing to complete those steps, are beyond the scope of the guideline.

We are mindful of feedback from non-TNSP stakeholders that it is often not in the best interests of a connecting party to challenge perceived discriminatory behaviour, since the connection process is only one element of the relationship between TNSP and a large customer.²⁸ Similarly, the Energy Users Association of Australia (EUAA) previously stated that the perception of discrimination has resulted in some potential third-party providers of contestable services opting to not 'waste their time' by developing a tender for a connecting party.²⁹

While this could limit competition for contestable connection services it can impose other costs on connecting parties. One stakeholder stated that even the perception that discrimination occurs, and this conduct is expected to continue, can create delays and additional costs for connecting parties as they develop their project proposals.

Finally, a key objective of the guideline is to promote the National Electricity Objective (NEO) and competition in the provision of electricity services. To this end, we have heard from the CEC that ring-fencing between negotiated and contestable services could reduce the cost of connection projects by several millions of dollars. They note that connection costs can account for roughly 10 per cent of a proponent's total project costs.³⁰ This means that improvements in the ring-fencing framework that support competition in contestable services have the potential to lower energy costs for consumers.

²⁷ An identified user shared asset (IUSA) is a type of a component required to connect a customer to the transmission network. For example, it can include parts of a substation. An IUSA must be operated and maintained by the TNSP but it forms part of the shared network. The design, construction and ownership of IUSAs can be undertaken on a competitive basis.

²⁸ AGL, Submission: [Gaps in transmission ring-fencing](#), June 2023, page 2

²⁹ EUAA, [Submission: Options to address gaps in transmission ring-fencing](#), June 2023, page 2.

³⁰ CEC, Submission on draft determination and draft rule for Expanding the transmission ringfencing framework rule change ERC0371, April 2024, page 8

3.2 Our draft position

Our rule change request made the point that extending the obligation under clause 4.1 to include negotiated services would help curb potential discriminatory behaviour by TNSPs and promote competition in contestable connections services. Knowing that more costly measures could be imposed would provide an incentive for TNSPs to avoid operating in a way that could be viewed as discriminatory.³¹

Some large customers have told us that more competition for contestable connection services would give them greater negotiating power with TNSPs. They have also told us that they would benefit from more competition in the provision of contestable connection services. We agree that increased competition for these services could lead to more efficient service delivery from service providers, less risk of delays to connections, lower costs of contestable connection services and more transparency over the cost of negotiated transmission services.

We do not agree that this would prevent a large customer, either a generator or another type of customer with a large load, from pursuing the option of a TNSP providing negotiated connection services and a RESP of that same TNSP providing the requisite contestable services.

We also note that TNSPs have consistently reiterated that they are not currently discriminating in favour of their RESPs. This appears to indicate that there are low (or very low) costs of expanding the non-discrimination obligations in the guideline. Non-TNSPs claim that the benefits are likely to be high, if there is a more level playing field for the contestable connections services market. However, TNSPs argue the benefits are likely to be minimal, as they do not believe there is a significant problem. Given the body of evidence provided by non-TNSPs, we are persuaded that there are at least moderate benefits from this change.

For these reasons we propose to clarify that a TNSP must not:

- give itself or its RESP a financial benefit that is not available to its competitors;
- give customers of its RESP a financial or non-financial benefit that would not be available to them if they were customers of a competitor of the RESP; or
- use its position as a TNSP to advantage its RESP in competing to provide contestable services.

This considers the concerns raised by connecting parties about decisions of TNSPs in relation to the timing of non-contestable connection services. We have heard from connecting parties about the opportunity for a TNSP to impact the timing of essential connection services such as works referred to as 'cut-in' or interface services. As a TNSP currently has an opportunity to program such work in order to favour its RESP over a rival provider, connecting parties have identified a risk to their respective projects and, at the same time, a potential for competition to be stifled.

³¹ AER, July 2023, [Rule change request - Expanding the transmission ring-fencing framework to include negotiated transmission services](#), page 28

Accordingly, we propose to amend clause 4.1 of the guideline to expressly provide that a TNSP must not discriminate (either directly or indirectly) between a RESP and a competitor (or potential competitor) of a RESP in connection with the provision of prescribed transmission services or negotiated transmission services.

As a consequence of that change, a TNSP will be required to treat a RESP the same as if it were a competitor of the RESP. This includes:

- dealing, or offering to deal, with the RESP on substantially the same terms and conditions as if it were a competitor (or potential competitor)
- in like circumstances, providing substantially the same quality, reliability and timeliness of service to a RESP and a competitor (or potential competitor)
- in general, not disclosing to a RESP information the TNSP has obtained through its dealings with a competitor (or potential competitor) of the RESP.

We also propose a minor amendment to clause 4.4.1(a) of the guideline, within the 'Service providers' section, consequentially to amending clauses 4.1 and 4.2.1 of the guideline. This clause currently requires that when a TNSP engages an entity to assist it to provide prescribed transmission services, that provider must also comply with clauses 4.1, 4.2.1 and 4.3 of the guideline as if the service provider was the TNSP. The consequential amendment proposed will make it clear that when a TNSP engages an entity to assist it to provide negotiated transmission services, that provider must also comply with clauses 4.1 and 4.2.1 in relation to negotiated services as if it were the TNSP.

4 Expanding ring-fenced information

4.1 Outline of the problem

Currently clause 1.4 of the guideline defines ring-fenced information 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 keep such information confidential, and to use it only for the purpose for which it was acquired or generated. These obligations work in tandem with the general non-discrimination obligation in the guideline, which prohibits a TNSP from providing recommendations or providing information in favour of a RESP.

The ENA has previously pointed to provisions in the NER that require TNSPs to maintain confidentiality of certain customer information.³² However, the AEMC, in amending NER rule 6A.21.2 commented that there remains a risk of a TNSP using confidential information obtained under its regulatory functions to give it an advantage in the provision of contestable connection services.³³

The ENA suggested that any expansion of ring-fenced information needs to recognise that:

- TNSPs do not have access to commercial or pricing information from competing contestable bids
- design and technical information from contestable bids is only seen by the TNSP at the connection application stage after the competitive process has concluded
- connecting parties are free to share information with alternative connection providers at the same time as the TNSP, removing any timing advantage in this regard to the TNSP.³⁴

Non-TNSPs continue to raise concerns about potential instances of information being shared by TNSPs with their RESPs. These concerns focus on the potential for TNSPs to favour themselves or a RESP in the provision of contestable connection services. These stakeholders have highlighted the obligations in the NER about confidentiality of customer

³² ENA, [Response to AER Consultation Paper on 'Options to address gaps in transmission ring-fencing framework'](#), June 2023, page 9

³³ AEMC, [Rule determination National Electricity Amendment \(Expanding the transmission ringfencing framework\) Rule 2024](#), May 2024, page 15

³⁴ ENA, *Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline*, November 2024, page 4

information have limited effectiveness in preventing discrimination, compared to stronger obligations in the guideline.³⁵

Non-TNSPs have highlighted:

- the strong commercial incentive for a TNSP to share information obtained in relation to negotiated services with a RESP to provide an advantage in contestable markets.
- the potential advantages a TNSP could afford to a RESP in terms of the timing and cost of the 'cut-in' to the shared network, or through the price, terms and conditions associated with the ongoing operation and maintenance of assets that the TNSP is required to control.
- opportunities for staff to exchange information with a RESP concerning negotiated connection services and the technical requirements of a connection that are relevant to contestable services.

Some connecting parties have told us of experiences where a TNSP has advised that it does not have resources to process the connections beyond the connection enquiry stage and that the TNSP needs to engage its RESP for this purpose. We understand that there may be operational and efficiency benefits, for TNSPs and connecting parties, from this practice. However, in this scenario connecting parties observe that a TNSP is contracting out, for example, the review of the design of a customer's connection to a RESP that may seek to be engaged to provide contestable services to that connecting party. This could give rise to significant advantages for that RESP with respect to rival providers.

The ENA has expressed concern that expanding the definition of ring-fenced information, which cannot be shared by a TNSP with a RESP under NER clause 5.3.8(a1), may adversely impact the rights of connecting parties and slow the connections process. However, the current guideline allows for a connecting party to consent for a TNSP to share ring-fenced information related to the connecting party with the TNSP's RESP. We do not consider that extending the definition of ring-fenced information in the guideline to include negotiated services will impact or prevent a connecting party from choosing to engage a TNSP's RESP to provide contestable services.

4.2 Our draft position

Our view is that it is appropriate to extend the information access and disclosure requirements in the current guideline to expressly include all information obtained by a TNSP in the provision of negotiated services. This aims to reduce any competitive advantage that TNSPs or their RESPs may derive from their possession or acquisition of such information.

In reaching this view, we considered the likely costs to connecting parties as well as to TNSPs. Based on the views in submissions to the issues paper, we understand that the costs of restricting the sharing of information would largely be borne by connecting parties. This stems from the potential value to some connecting parties to obtain a bundled approach to negotiated and contestable connection services by engaging both the TNSP and its

³⁵ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 2

RESP. However, as noted above, the costs of any loss of efficiency can be avoided by a connecting party using the existing mechanism in the guideline to consent to the sharing of its information.

For other connecting parties, expanding the definition of ring-fenced information to cover negotiated services will have the benefit, for little or no cost, of protecting competition and their decision about who to engage for contestable connection services.

We propose to make this change by amending the definition of ring-fenced information so that it includes electricity information, acquired or generated by a TNSP in connection with its provision of prescribed transmission services or negotiated services that is not already publicly available.

As noted in the previous section, we propose a consequential change to clause 4.4.1(a) of the guideline. This will mean that the new restrictions on information sharing proposed for clause 4.2 must also be complied with by an entity engaged by a TNSP to assist it to provide negotiated transmission services.

5 Separation of staff

5.1 Outline of the problem

Staff separation can reduce the risk that a network service provider (NSP) may, even inadvertently, discriminate in favour of its own business or a RESP to the disadvantage of competitors. Most obviously, the sharing of information between staff, especially if this is inadvertent, is difficult to monitor and to police. Functional separation of staff may reduce the opportunity, and the incentive, for inappropriate communication of ring-fenced information.

The guideline requires a TNSP to 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.³⁶*

In developing version 4 of the guideline, some stakeholders suggested that appropriate ring-fencing would require at least separation of data, computer systems (such as control rooms), and staff, but also potentially offices.³⁷ However, we have heard from stakeholders that TNSPs have a smaller and more highly specialised staff, which reflects that there are fewer, but larger, transmission customers. We also noted that the cost of duplicating staff positions is likely to be relatively high for TNSPs. As a result, we concluded that requiring TNSPs to establish the same degree of staff or logistical separation as is required for distribution network service providers (DNSPs) would impose costs that were not proportionate to the potential benefits in the case of transmission.

Given the amendment of clause 6A.21.2 of the NER, we believe it is appropriate to again consider this approach to staff separation for TNSPs. We have been keen to learn if stakeholders believe that there is merit in enforcing greater separation of TNSP staff between negotiated services and contestable services.

Some stakeholders believe that it is important to separate staff involved in providing negotiated and contestable connection services in order to make the guideline more effective in protecting competition. This is focused on the exchange of ring-fenced information that provides an unfair advantage to the RESP of a TNSP. Some stakeholders also commented on a practice for staff of some TNSPs to work with the staff of the RESP on developing connection offers, including prices and terms. Another concern raised by some connecting parties was that a TNSP and their RESP may insist that all enquiries related to a connection

³⁶ AER, clause 4.3(a) [Ring-fencing Guideline – Electricity Transmission, version 4](#), March 2023

³⁷ Iberdrola, *Feedback for the preparation of the AER's amended Ring-fencing guideline (electricity transmission)*, Page 2.

project must be directed to the RESP. This is irrespective of whether these queries relate to negotiated or contestable connection services.

Responses to our issues paper, however, suggest that many connecting parties share TNSPs' view that further separation of staff is not required and may have negative, unintended consequences. There was broad, though not universal, concern that greater staff separation would have the result of slowing down new connections. Forcing separation may support competition, but stakeholders suggest that the benefits would be outweighed by the costs, potentially lead to delays in connections, and be to the detriment of consumers.³⁸ Some electricity distributors have noted that greater functional separation of staff would create costs for TNSPs and have questioned whether these costs are justified by the benefits in the case of transmission connections.³⁹

An important cost, though perhaps not measurable in quantitative terms, may be the impact of greater staff separation on the ability of TNSPs to engage an adequately sized workforce. This concern was previously raised by a TNSP during the development of the current guideline.⁴⁰ Discussions about the issues paper with some TNSPs and some connecting parties have also highlighted the risk that greater staff separation in relation to the provision of negotiated and contestable connection services will limit the future ability of TNSPs to deliver connection services in a timely way. Both groups of stakeholders have pointed to the limited and specialised resource pool of people with the requisite technical qualifications and experience available to provide negotiated and contestable services. We are mindful of the need to introduce changes to the guideline that do not create other limitations for timely connections of large customers.

5.2 Our draft position

The concerns about the pool of suitable staff are a key issue in assessing the potential costs and benefits of a change to staff separation obligations in the guideline.

It is possible that these concerns could be partly addressed by introducing a mechanism to assist the movement of staff, as required, between a TNSP and a RESP. This could be based on the staff sharing provisions of the equivalent distribution guideline.

However, we are cautious about making changes that might slow the rate at which new connections can be completed. Considering that risk, our assessment is that such a change has the potential for high costs that are not likely to be offset by potential benefits.

Some non-TNSPs remain concerned about the opportunity for sharing of information provided through the current approach to staff sharing in the guideline. The changes we propose to obligations in relation to discrimination by TNSPs (section 2 above) are an important contribution to improving the approach of TNSPs and their staff in better managing

³⁸ ElectraNet, [Submission: Draft Rule – Expanding the transmission ring-fencing framework](#), April 2024, page 2.

³⁹ Ausgrid, Endeavour Energy, Essential Energy. [Submission: Review of options to address gaps in transmission ring-fencing framework](#), June 2023, page 5

⁴⁰ Transgrid, [Submission: AER Draft Transmission Ring-fencing Guideline](#), December 2022, page 7

the separate interests in contestable and non-contestable connection services. We also note that clause 4.2.1(b) will continue to prohibit the misuse of ring-fenced information.

Accordingly, we propose at this time to not make any changes to the staff separation requirements in the guideline.

6 Cross-branding and promotion

6.1 Outline of the problem

One form of functional separation that is possible under the ring-fencing framework is to require functional separation in the form of separate branding and the absence of any cross-promotion. This can be useful to ensure a level playing field between, on the one hand, a monopoly provider and its RESP and, on the other, competitors to the TNSP's RESP.

The AER considered whether this would be appropriate for transmission ring-fencing as recently as the development of the current guideline, which was published in March 2023. We determined that there is insufficient evidence that the benefits of a prohibition on branding and cross-promotion would outweigh the costs. As such, we concluded that requiring separate branding between the TNSP's monopoly business and their RESP was not warranted at that time.

We had taken note of views in stakeholder submissions about the size of TNSPs and the nature of their customers. Large customers seeking to connect to transmission networks are generally large, well-capitalised firms with their own regulatory and technical staff, capable of addressing complex network and legal issues. This is different to electricity distribution where many customers accessing distribution services are residential or small business consumers that are more likely to be susceptible to, or confused by, shared branding and cross-promotions.

In our consultation preceding our rule change proposal for negotiated services and in our issues paper, we revisited this question and sought stakeholder views. We note that the majority of stakeholder's submissions either did not directly address this issue or did not recommend change.

In its submission, ENA noted that restricting cross-branding and promotion is unlikely to deliver any additional benefit, as there is no tangible benefit that entities consider branding when selecting a contestable provider or that they are at risk, or susceptible to, shared branding or other promotions.⁴¹ ENA concluded that the costs of compliance would not be justified.

Conversely, Powercor has shown support for restricting cross-branding and promotion, as it will recognise the increasing number smaller renewable energy providers who may lack the resources to address potential biases from TNSPs.⁴² Powercor described its experience in Victoria that customers often struggled to distinguish between the TNSP and its RESPs, as dual-branded representations frequently blur the distinct roles of each business.

⁴¹ ENA, Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline, November 2024, p.6

⁴² Powercor, Transmission Ring-fencing Guideline Review – Submission, page 3.

6.2 Our draft position

We are not proposing at this time to make further changes to the guideline in relation to branding and cross-promotion by TNSPs. Our approach was to consider changes to the guideline where there is a compelling case. In relation to branding and cross-promotion, we note that there would be costs for TNSPs, and we have not seen significant evidence demonstrating that there are sufficient benefits to outweigh those costs.

7 Reporting on negotiated services

7.1 Outline of the problem

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. Clause 6.2 of the guideline specifies what TNSPs must submit to the AER annually in relation to ring-fencing compliance. Importantly, this clause also provides that the AER may publish reports from time to time about TNSPs' compliance with the guideline on the basis of information provided to it under clause 6.2.

It may be appropriate for the guideline to include a requirement for additional, public reporting by TNSPs on relevant aspects of delivery of negotiated services, as well as extending compliance reporting from contestable services.

Non-TNSP stakeholders have argued that additional reporting by TNSPs about negotiated and contestable connection services is needed to support effective ring-fencing. They have stated that additional reporting would enhance non-discrimination provisions in the guideline, remove some of the current information asymmetry that may allow for discriminatory behaviour, and enable market participants to make more informed commercial decisions.⁴³

In its response to the issues paper, the ENA argued that additional reporting would be meaningful only in relation to information that a TNSP could use to favour itself a RESP to the ultimate detriment of the consumer.⁴⁴ In addition, ENA expressed the view that some data on contestable services does not provide for easy comparison due to project-specific factors. We also heard concerns about the potential cost on small TNSPs of additional reporting.⁴⁵

Finally, the ENA questioned the benefit of additional reporting in relation to ring-fencing given the data publicly available from the AEMO's Connection Scorecard. However, the Connection Scorecard only provides the total number of projects at the Connection Application, Connection Approval, Registration and Commissioning stages within a 12-month period. In the view of the CEC, the Connection Scorecard does not provide sufficient information to determine if there has been discriminatory conduct by TNSPs.

⁴³ Clean Energy Finance Corporation, [Submission: Options to address gaps in transmission ring-fencing framework](#), June 2023 page 3; Energy Users Association of Australia, Submission: AER Ring-fencing Guideline (electricity transmission) – Issues Paper, November 2024, page 1; AGL, Submission: Ring-fencing guideline (electricity transmission) Issues paper, November 2024, page 3, Erne Energy, Submission: Ring-fencing guideline (electricity transmission) – Issues paper, November 2024, page 2; Powercor, Transmission Ring-fencing Guideline Review – Submission, November 2024, page 2

⁴⁴ ENA, 2024 page 4

⁴⁵ APA, Submission to Issues Paper - Transmission Guideline negotiated services updates, November 2024, page 2

The CEC provided the most detailed proposal on additional reporting, which was supported by other non-TNSPs. This proposal was for TNSPs be required to report on:

- 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 services.

7.2 Our draft position

The AEMC highlighted the potential benefit of additional reporting by TNSPs in its final determination for amending to NER clause 6A.21.2(a):

The AER's Guidelines would also be able to require TNSPs to report on what processes they have in place to comply with specific ring-fencing obligations... would have the ability to monitor how TNSPs operate in the negotiated transmission space...⁴⁶

We assessed the change proposed by the CEC. In particular, we assessed the potential costs for TNSPs to provide this additional reporting. Our view is that the benefits of providing the AER with data to assist ongoing monitoring of the effectiveness of the guideline is a clear benefit that offsets the costs to TNSPs. Our understanding that this data is easy to collect and report.

The AER proposes to amend clause 6 of the guideline and require TNSPs to include in their annual compliance report:

- the total number of applications for connection received by the TNSP in that calendar year
- 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
- 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
- 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
- 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.

⁴⁶ AEMC, 2024, page 18

Our intention is that these reporting requirements will apply to any connection application received by a TNSP in the relevant calendar year. That is, we want to provide a point in time for TNSPs to report on connection applications irrespective of whether a connection application is varied or revised subsequent to the date when it is first submitted to the TNSP.

We are particularly interested to hear stakeholders' views on the final two items in the list above, which refer to connection timeframes. We would be interested to learn if stakeholders agree with the milestones that we have used to define the connection process – initial receipt of the connection application and commissioning of the connection – and if there are other relevant milestones in the connection process that should be noted by TNSPs in their reporting.

We do not propose to require reporting by TNSPs on costs for delivery of negotiated services, as such information may be commercially sensitive. However, we invite further stakeholder feedback on whether we should amend the guideline to require further reporting of this information annually to the AER on a confidential basis. We are also interested in feedback as to the specific types of costs (if any) that would be a meaningful metric relevant to monitoring compliance with the guideline.

We consider that the proposed annual reporting:

- will encourage TNSPs to internally monitor that their systems and processes are not facilitating discriminatory behaviour;
- will provide the AER with information to assist in monitoring the effectiveness of the guideline, including in considering whether there are trends or other aspects of this data that may give rise to particular concerns about whether discrimination might be occurring; and
- may assist in monitoring compliance by TNSPs with the guideline.

8 Other proposed changes

8.1 Removing the maximum term for waivers

The current guideline limits the maximum term for which a ring-fencing waiver can be granted (clause 5.3.4), which allows the AER to grant waivers for up to two regulatory control periods (except in respect of batteries). When this maximum term was first introduced into the guideline, we noted that this limit provided an appropriate review mechanism given the speed of change in the environment in which TNSPs operate.⁴⁷

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 to no longer than the end of a subsequent regulatory period.

We note that the guideline already allows greater flexibility in respect of waivers for stand-alone power systems and for energy storage devices.

We believe that allowing the AER to determine the most appropriate term for each individual waiver will provide the flexibility required to tailor the terms of waivers to individual circumstances. There are instances where there may be little benefit to limiting the length of a waiver and requiring a TNSP to seek a new waiver within the length of two regulatory periods.

The majority of views we received were supportive of this approach.

Some stakeholders, however, were cautious that such a change should not weaken the ring-fencing framework overall. Nexa Advisory suggested that permitting waivers of new obligations introduced in relation to negotiated connection services could undermine the ring-fencing framework, leading to adverse market implications contrary to the intention of the amendments.⁴⁸ For this reason, Nexa Advisory does not support changes to the maximum term of waivers from the guideline.

AGL noted its concern that waivers should only be granted on a case-by-case basis for a limited period of time, which aligns with the proposed change to the guideline.⁴⁹ AGL also expressed concern that changes to the maximum term of waivers could result in the AER granting waivers that exclude specific categories of negotiated transmission services or reducing obligations under the existing guideline. AGL argues that this would undermine the ring-fencing framework for negotiated transmission services.

We seek to clarify that the proposed removal of the maximum term for waivers is not a mechanism to weaken the ring-fencing framework. The guideline already provides the AER the option of granting a waiver from some guideline obligations. It also sets out the matters

⁴⁷ AER, [Electricity transmission Ring-fencing Guideline Explanatory Statement](#) – Version 4, March 2023, p. 43

⁴⁸ Nexa Advisory, *Submission: Ring-fencing guideline (electricity transmission) – negotiated services updates*, November 2024, page 2

⁴⁹ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 3

that the AER must consider before granting any waiver from the obligations where a waiver may be permitted. We agree that the purpose, and impact, of changes made to the guideline in relation to negotiated services would need to be weighed before any waiver was granted. It is important to note that we do not propose to expand the specific provisions of the guideline for which waivers may be granted.

Finally, we want to clarify that the proposed change is not intended to signal that the AER prefers waivers to have longer terms. To date, the AER has granted two waivers from the guideline. Both of those were for terms less than the current maximum allowed by clause 5.3.4.

Our draft position

Our proposal is to amend clause 5.3.4 of the guideline so that the AER may grant any waiver for a term that it considers appropriate. This will allow greater flexibility for the AER to grant a ring-fencing waiver that is tailored to the circumstances.

However, this will not change clause 5.3.2 of the guideline that requires the AER to assess a waiver application by having regard to:

- the NEO;
- the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- 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.

Further, this clause states that the AER may:

- have regard for any other matter it considers relevant;
- request from the TNSP any further information the AER considers appropriate;
- invite public submissions on the application; and
- otherwise, conduct such consultation as it considers appropriate with any person.

Further, in future waiver applications, TNSPs will be expected to nominate a preferred waiver end date and, importantly, to provide evidence to support that term. For waiver applications requesting exemption from ring-fencing obligations for a long term, TNSPs will be expected to provide robust evidence demonstrating why a longer term is justified.

We note that there should be no cost associated with this proposed change. Rather, we consider that there is a benefit to TNSPs and consumers from enabling regulatory decisions that, having considered all the circumstances, are tailored to achieving the best outcomes.

We are also proposing to make a similar change to the distribution guideline. That change is being consulted on separately, but in parallel with this consultation process, to align the distribution and transmission guidelines on this issue.

8.2 Clarifying sign-offs for annual compliance reports

Clause 6.2.1 of the guideline requires TNSPs to prepare and submit to the AER an annual ring-fencing compliance report. The same requirement is applied to DNSPs in the relevant guideline. In addition, the AER's Compliance Reporting Best Practice Manual⁵⁰ clarifies that these reports should be submitted to the AER accompanied by a cover letter signed by the most senior executive of the respective business.

TNSPs were first required to submit an annual compliance report in 2024, which covered the 2023 calendar year. AER staff have observed that not all TNSPs are clear on whether this best practice approach is required for ring-fencing compliance reports. Our view is that there is merit in establishing consistency in this matter to support for best practice by all TNSPs and provide additional assurance to stakeholders.

Stakeholders have broadly showed support for this point, with the exception of APA,⁵¹ who submitted that there does not appear to be any value to this proposal as an independent assessment of compliance is already required.

We are considering a similar change to the distribution guideline as part of a separate review. That change is being consulted on separately, but in parallel with this consultation process, to align the distribution and transmission guidelines on this issue.

Our draft position

We propose to amend clause 6.2 of the guideline to require that 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.

We note that most businesses already comply with the AER's Compliance Reporting Best Practice Manual by providing annual compliance reports with an accompanying cover letter signed off by their most senior executive. We expect that costs and compliance burden will be minimal. These are clearly outweighed by the avoidance of confusion and the support for ongoing best practice compliance reporting.

⁵⁰ AER, Electricity Distribution Ring-fencing Guideline Compliance Reporting Best Practice Manual, February 2022

⁵¹ APA, 'APA Submission to Issues Paper - Transmission Guideline negotiated services updates', page 2.

9 Transitional arrangements

The existing transitional arrangements in section 7 of the guideline were included for the commencement of version 4 in March 2023. The clauses in section 7 related to the compliance with obligations during the transition from version 3 to version 4 of the guideline. We consider these transitional provisions are now spent and propose to delete them in version 5 of the guideline.

We expect to publish version 5 of the guideline by 24 February 2025, and we expect that this will be the version 5 commencement date. We propose to have a transitional period of 6 months after the version 5 commencement date. The date 6 months after the commencement date will be the version 5 compliance date, which we anticipate will be 24 August 2025.

We propose that TNSPs must comply with version 5 of the guideline no later than the version 5 compliance date. Until such time as a TNSP is fully compliant with version 5 of the guideline, they must continue to comply with version 4 of the guideline; except to the extent that non-compliance with version 4 of the guideline is necessary in order to comply with version 5 of the guideline.

However, we propose that on and from the commencement date, TNSPs must comply with the proposed change to require annual compliance reports to be approved and signed by a TNSP's most senior executive. Given that we anticipate that the version 5 commencement date will be 24 February 2025, we expect all TNSPs to be able to comply with this change when they deliver their next annual compliance reports, which are due by the end of April 2025.

TNSPs have highlighted that their compliance with version 5 of the guideline should not disturb any connection projects that are already underway. Accordingly, we propose that 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. This would have the effect that if a TNSP receives a connection application on or after the commencement date, version 5 will apply to that connection process on the version 5 compliance date (unless the TNSP decides to comply earlier).

Regarding the change to remove the maximum term for waivers, where the AER is considering granting a waiver for a longer term than allowed under version 4 of the guideline (in anticipation of the commencement of version 5 of the Guideline), we will include this in any consultation we undertake on the waiver application.

We recognise that the proposed 6-month transitional period for TNSPs to relevantly comply with version 5 of the guideline is shorter than the 12-month transitional period proposed in our issues paper. We are mindful of the timing of the energy transition and the need for efficient connections to support the transition. The shorter transitional period also reflects feedback from many non-TNSP stakeholders, who argued that it is critical to implement ring-fencing obligations for negotiated services as soon as possible.

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 TNSPs in managing the impact of becoming compliant with version 5 of the guideline.