

Stakeholder forum

Updates to the transmission ring-fencing guideline

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We wish to acknowledge the Traditional Custodians of the lands on which we meet today.

We pay our respects to Elders past, present and into the future. We acknowledge their continuing connection to the land, sea and community.

We acknowledge and welcome any Aboriginal and Torres Strait Islander people who are attending today's event.

Today's webinar

The purpose of today's webinar is:

To inform stakeholders about feedback to the issues paper for updates to the transmission ring-fencing guideline.

Introduction

What we heard

Why is this review needed

What we asked

Who we heard from

Categorisation of types of negotiated services

Extend the non-discrimination clause

Expanding ring-fenced information requirements

Separation of staff

Cross-branding and promotion

Reporting on negotiated services

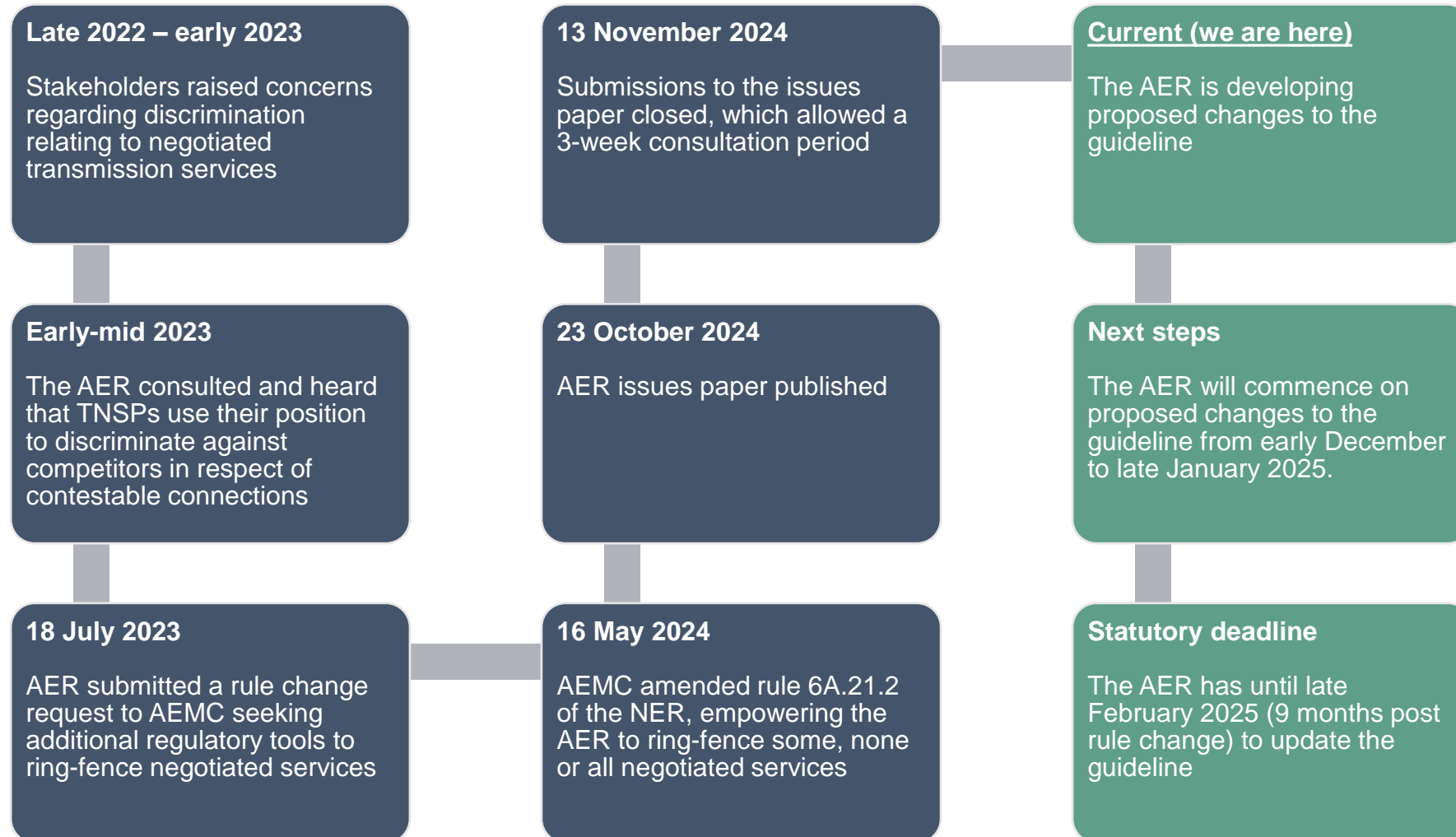
Other proposed amendments

Why is this review needed?

Context for transmission ring-fencing guideline update

- Australia's electricity market is undergoing a fundamental transformation, which presents challenges and opportunities for our electricity transmission system.
- 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.
- It is vital that connections are undertaken efficiently and without avoidable costs.
- 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 distortions in the market.
- We have heard about impacts on time and costs.

Timeline of events

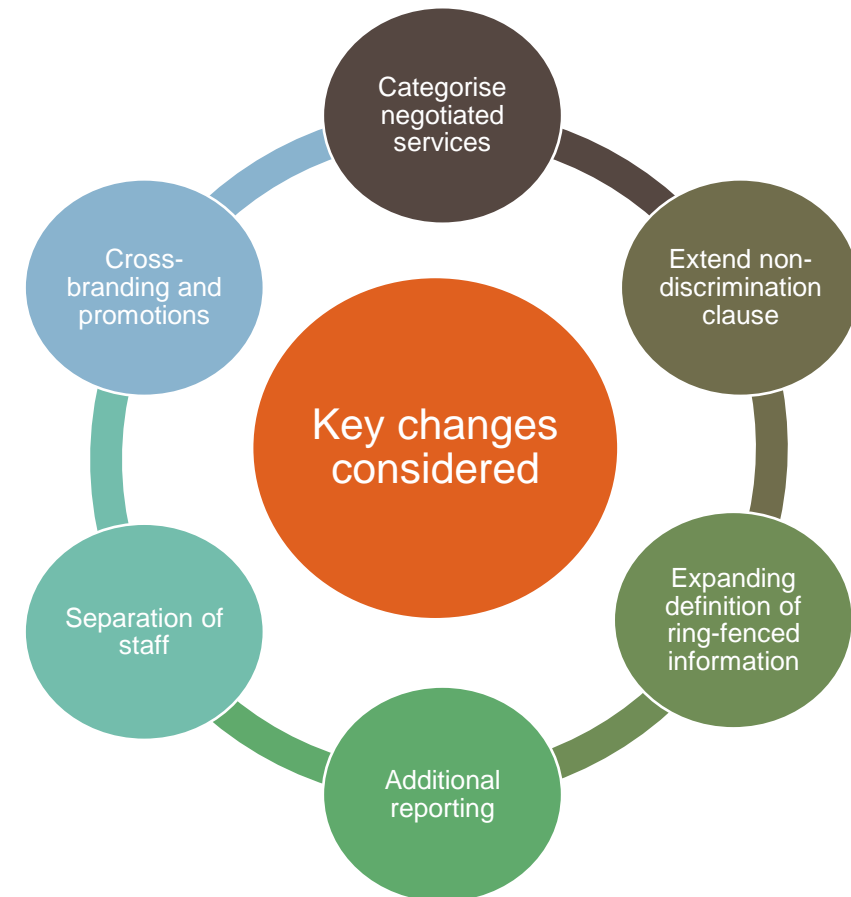


What did we ask?

About the issues paper

The issues paper sought stakeholder input to help the AER develop proposed updates to the guideline, which we will be consulting on shortly.

- Previous stakeholder views had presented a binary: either all obligations in the guideline should apply to all negotiated services, or no obligations should be applied for any negotiated services
- The aim of the issues paper was to learn how the potential costs and impacts may vary depending on which ring-fencing obligations are applied to different types of negotiated services.
- The AER will consider what matters should be excluded from the guideline altogether, what matters should be included in the guideline but waivable upon application, or any matters which should be included but not subject to waiver at all.



Issues paper questions for consideration

Categorisation of types of negotiated services

- Does NER clause 5.2A.4 help to identify which negotiated services should be subjected to ring-fencing controls?
- How should the AER weigh up the categories of services to be ring-fenced?
- Are there alternate classification approaches?

Extend the non-discrimination clause

- What changes would TNSPs have to make for a clearer obligation for non-discrimination?
- Is it feasible to limit this to only some negotiated services?
- What would be the positive and negative impacts? Are there better alternatives?"

Expanding ring-fenced information requirements

- In what circumstances should TNSPs be able to share information with a RESP?
- Should only some types of customer information be included?

Issues paper questions for consideration cont'

Staff separation

- What are the potential benefits of requiring a separation of TNSP staff between prescribed and negotiated services, on the one hand, and contestable services?
- Is there any benefit from making this change for only some types of negotiated services?
- Are the costs mitigated if the sharing of staff is permitted (as is done for DNSP ring-fencing)?

Cross-branding and promotion

- Are there scenarios with potential negative impacts on competition from shared branding and cross-promotion between a TNSP and its RESP?
- What are the costs and benefits of requiring separate branding and promotion?

Reporting on negotiated services

- What additional reporting by TNSPs would support ring-fencing?
- What information would give the most benefit?
- Is there information TNSPs cannot report?

Issues paper questions for consideration cont'

Other changes

Maximum duration

- Do stakeholders support removing the maximum limit for length of waivers?

Annual Compliance report sign off

- What are stakeholders' views on requiring sign-off by CEO or Annual Compliance Reports?

Who did we hear from?

We heard feedback from...

During consultation on our issues paper, we had:

- 16 written submissions plus 2 confidential submissions
- 2 webinar meetings with peak bodies
- Responses from additional non-TNSPs (large loads as well as new generators)
- 1:1 meetings with multiple stakeholders, as verbal submissions

The AER is also considering stakeholder feedback from previous engagement on these issues as we develop proposed changes to the guideline.

TNSPs

**peak
bodies**

generators

**customers
with large
loads**

DNSPs

What did we hear?

Categorisation of types of negotiated services

Potential change to the guideline

- The AEMC's rule change provides the AER with the flexibility to determine how ring-fencing obligations are applied to negotiated services, including the ability to exclude specific categories
- We could use the NER to assist in defining types of negotiated services and consider if obligations should vary depending on the type of negotiated service:
 - Chapter 10 - the definition of negotiated transmission services includes 4 types
 - Clause 5.2A.4 – classifies connection services as either contestable or non-contestable
- We also asked if there was an alternate way to categorise negotiated services
- For any new obligations, the AER will consider the costs of discrimination vs the costs of compliance

Stakeholder feedback

- There does not appear to be a widely-used, industry standard for categorisation of negotiated services
- Majority of responses continued to reflect an all or none approach to ring-fencing of negotiated services



Ring-fence all negotiated services

- Experience of discriminatory behaviour and higher costs
- All negotiated services carry risk
- Risk of discrimination or perceived discrimination reduces competition and drives higher costs for connection projects
- Large customers believe preventing discrimination justifies the potential costs of implementation



Don't ring-fence any negotiated services

- Retain the status quo
- There isn't enough evidence to support the need to ring-fence negotiated services
- Connecting parties frustrated with connection process – this not a ring-fencing problem



**Extend the non-discrimination
clause**

Potential change to the guideline

- The general non-discrimination obligation in clause 4.1(b) of the guideline that prohibits a TNSP from providing recommendations or information in favour of a RESP
- The AER's rule change request in July 2023 acknowledged the risk of discrimination and that existing regulatory frameworks are not fit-for-purpose or sufficiently tailored to address this risk
- We could extend clause 4.1 in 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.
- If this change were made, a TNSP will be required to treat a RESP the same as if it were a competitor of the RESP.

Stakeholder feedback

- TNSPs do not believe this change is required, due to existing regulations and lack of evidence
- Non-TNSPs have provided evidence suggesting discriminatory behaviour and impacts on competition

Non-TNSPs

- Potential for material harm to connection applicants if there is any uncertainty
- Strong pressure on connecting parties from TNSPs to choose their RESP for contestable connection services
- Not all customers want a TNSP to give them 'bundled' services
- Examples of higher costs for connecting parties that do not use a TNSP's RESP for contestable components
- Staff culture is as much a problem as the connection process

TNSPs

- NER, NEL and CCA already mean TNSPs cannot discriminate
- The AER already has powers to deal with discrimination
- There are efficiencies from bundling negotiated and contestable services, which benefit connecting parties
- Some TNSPs might exit the market for contestable services if this change is implemented

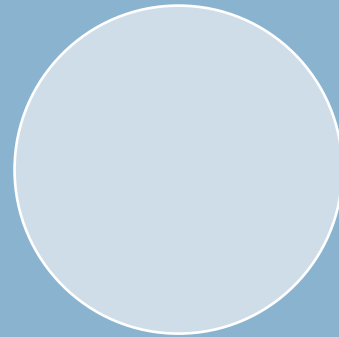
Expanding ring-fenced information requirements

Potential change to the guideline

- Clause 1.4 of the guideline defines ring-fenced information in relation to prescribed transmission services, and we could extend this definition to include information related to negotiated services
- Adding 'negotiated transmission services' to the definition of ring-fenced information would flow to clause 4.2, which relates to information sharing and disclosure
- TNSPs are required to use ring-fenced information only for the purpose for which it was acquired or generated, which creates an obligation to keep such information confidential:
 - TNSP must not disclose this information unless in specific circumstances
 - TNSP must not discriminate in connection with the provision of a prescribed service or a negotiated service
- A TNSP can share ring-fenced information with their RESP **if** they have the consent of the relevant party

Stakeholder feedback

- Non-TNSPs have told us of instances where it appears that TNSPs are sharing customer information about negotiated services to give a competitive advantage to their RESPs
- Some TNSPs argue that the sharing of information is a benefit to connecting customers
- TNSPs' general view is that other NER provisions give adequate protection to customers



Change needed – non-TNSPs

- Strong commercial incentive for TNSPs
- Customers say TNSPs share information to give their RESP an advantage
- 'Efficiency' for the TNSP can be a disadvantage for the customer
- Existing provisions in the NER are not sufficient protection



No change needed - TNSPs

- TNSPs don't get a competitive advantage where customers have already chosen a rival provider of their RESP for contestable services
- NER already requires information to be confidential
- Further restrictions on sharing may slow down the connections process

Separation of staff

Potential change to the guideline

- Clause 4.3 of the guideline requires functional separation of marketing staff of a TNSP from the staff of any RESP.
- This is intended to reduce the risk that a TNSP may, even inadvertently, discriminate in favour of its own business, or a RESP, to the disadvantage of competitors.
- Our rule change request suggested 2 potential options for expanding staff separation requirements if negotiated transmission services are brought into the ring-fencing framework:
 - (1) requiring separation of marketing staff involved in the provision of negotiated transmission services from staff involved in the provision of contestable electricity services
 - (2) widening the scope of staff separation beyond marketing staff

Stakeholder feedback

In support of staff separation

Functional separation of staff can reduce the risk of discrimination in contestable services

Needed to make ring-fencing effective

Should be separation of offices, IT systems etc

Against staff separation

Specialised staff for transmission connections risks unintended consequences

TNSPs may need extra staff from a small pool of qualified staff

Concerns about delays to connections projects

Separation of staff might not be as important as changing the 'culture' of TNSPs

Cross-branding and promotion

Potential change to the guideline

- 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.
 - For example, this is a requirement under the distribution ring-fencing guideline.
- For the current guideline (version 4), we made an explicit decision to not impose such restrictions on TNSPs.
- In our issues paper, however, we noted that circumstances may have changed and asked stakeholders to provide their views on any negative impacts on competition and also the feasibility of changing the current arrangements.

Stakeholder feedback

- TNSPs and some customers submitted a change would not have positive impact
- Others argued the absence of this staff separation gives TNSPs and RESPs an advantage with smaller customers

Change needed

Emergence of new and smaller customers supports change to avoid confusion

No change needed

Transmission customers generally large and sophisticated – costs for TNSPs exceed benefits

Reporting on negotiated services

Potential change to the guideline

- The guideline includes annual compliance reporting obligations in clause 6
- We could require additional reporting from TNSPs tied to monitoring the effectiveness of the guideline
- Stakeholders have previously proposed that TNSPs should also report on:
 - no. of connection enquiries received
 - no. of applicants who tendered for the contestable services
 - no. of connections who engaged a third-party provider
 - timeframes & costs for delivery of negotiated services

Stakeholder feedback

In support of additional reporting

- Assists the AER to monitor compliance and improves effectiveness of updated guideline
- Data can show trends or emerging issues
- Greater stakeholder confidence
- Will deter discriminatory conduct
- Facilitate fairness and equity
- Improve transparency for the market, removing info asymmetry
- Supplement AEMO Connection Scorecard, which doesn't provide enough info

Opposed to additional reporting

- No need to duplicate the AEMO Connection Scorecard
- It is difficult to make the data meaningful
- Every connection is different

Other changes

Removing maximum term for waivers

Potential change

- Update clause 5.3.4
- Waivers for a term the AER considers appropriate
- Retain the current subject to any conditions the AER Board considers appropriate

Feedback

- Feedback broadly supportive
- Some concerns could signal a lax approach to ring-fencing by AER

Changing sign-offs for annual compliance reports

Potential change:

- Clause 6.1 would include a new requirement using similar words to the Best Practice Compliance Manual.
- Requirement for annual compliance reports to be submitted along with a letter signed by most senior executive of the TNSP attesting to accuracy of the report

Feedback:

- Supportive or not mentioned
- One concern noted about compliance burden for TNSPs

Where to next?

Next steps

Milestone	Timing
Publish formal proposal	Early December 2024
Close submissions	Late January 2025
Publish updated guideline	Late February 2025

Questions or comments?

Thank you

If you have any questions or feedback related to this review, please contact the AER's New Markets & Innovation team at:

AERringfencing@aer.gov.au