

Electricity Transmission Ring-fencing Guideline Explanatory Statement – Version 5

February 2025

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Email: aerinquiry@aer.gov.au
Tel: 1300 585 165

AER reference: 17811383

Shortened forms

Shortened Form	Extended Form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CAM	Cost Allocation Methodology
CEC	Clean Energy Council
CEIG	Clean Energy Investors Group
guideline	Ring-fencing guideline – Electricity Transmission (Version 5), February 2025
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
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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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 the Australian Energy Market Operator (AEMO) in its management of the 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 Australian Energy Regulator (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 (prescribed services) and negotiated transmission services (negotiated services), from the provision of contestable electricity services by them.

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

- **Cross-subsidisation**, where a TNSP uses revenues that it earns in providing prescribed 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 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 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

¹ Australian Energy Market Operator, 2024 Integrated System Plan, June 2024 page 30

² AER, Ring-fencing Guideline – Electricity Transmission, version 4, March 2023

targeted, proportionate, and effective regulatory response to the potential harm consumers may face as the market context within which TNSPs operate changes.

In version 5 of the guideline we have introduced ring fencing obligations related to negotiated services, which focus on preventing discrimination in the market. Cross subsidisation is not perceived to be a risk for these services, 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 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 have made the following changes to the guideline:

1. Applying ring-fencing obligations to all types of negotiated services

Our view is that all negotiated services should be uniformly subject to ring-fencing obligations. We note that the AEMC's rule change provided the AER with the flexibility to ring-fence only some types of negotiated services, however we have not identified a helpful categorisation framework for negotiated services widely used by industry. The idea of categorising negotiated services and introducing varied ring-fencing obligations for different negotiated services, was not supported by stakeholders and would likely introduce uncertainty and ambiguity. We expect that the cost of compliance for TNSPs will be significantly outweighed by the resultant material savings to connecting parties, and ultimately consumers, when negotiated services are uniformly subject to ring-fencing obligations.

2. Extending the non-discrimination clause to negotiated services

We have amended clause 4.1 of the guideline so 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 services or negotiated services. Non-TNSP stakeholders provided evidence of the potential for material harm to connection applicants, unless the guideline creates better differentiation between negotiated and contestable services when TNSPs are dealing with customers and their RESPs. Even perceived discrimination can materially reduce competition and investor confidence, which may inflate energy prices for consumers.

3. Expanding ring-fenced information requirements to negotiated services

We have extended 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 have not made 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. Many stakeholders expressed concerns that greater staff separation could 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 have not extended restrictions on cross-branding and promotions. We did not receive evidence from stakeholders that the benefits would outweigh the costs for this potential change, particularly as most connecting parties are sophisticated buyers unlikely to be confused by branding.

6. *Reporting on negotiated services*

We have introduced new requirements for TNSPs to report publicly on aspects of negotiated service delivery, which will assist with ongoing monitoring of the effectiveness of the guideline. The guideline now requires additional 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.

On balance we consider that the regulatory burden on TNSPs to provide this information will be offset by the value of the data, which will assist in identifying trends and better assist to determine whether discrimination may be occurring. We expect that smaller TNSPs will 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.

Other amendments

We have also made two other amendments to the guideline for administrative efficiency.

1. Removing the maximum term for waivers

We have removed the maximum term limit for ring-fencing waivers. We have observed that, in some limited circumstances, allowing greater flexibility will allow better tailoring of the terms of waivers to individual circumstances. The majority of stakeholder views we received were supportive of this approach. This change is not intended to signal that the AER prefers waivers to have longer terms. Interested parties will still be expected to provide robust evidence for how a waiver application, for any term duration, is justified.

2. Clarifying sign-offs for annual compliance reports

We have changed the guideline to standardise submissions of TNSPs' annual compliance reports. TNSPs are required to submit these reports along with a cover letter signed by the most senior executive in the organisation. This is considered best practice by the AER's Compliance Reporting Best Practice Manual and most TNSPs already provide annual compliance reports in this manner.

Transitional arrangements

We published version 5 of the guideline on 24 February 2025 (this is the commencement date). We have allowed a transitional period of 6 months following publication (this date will be the version 5 compliance date).

TNSPs must comply with version 5 of the guideline no later than the version 5 compliance date. This will mean that TNSPs must comply with the requirement that annual ring-fencing compliance reports to be approved and signed by a TNSP's director or most senior executive for the 2026 reporting year (which will assess compliance for the 2025 calendar year).

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), 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.

Table 1: Summary of amendments

Guideline clause	Version 4	Version 5
1.1.1	<p>guideline binds TNSPs who provide prescribed transmission services</p> <p>accounting separation and functional separation of prescribed transmission services by TNSPs from the provision of other services by them, or by affiliated entities</p> <p>obligations to prevent a TNSP from providing other services that could be cross-subsidised by its prescribed transmission services</p>	<p>guideline binds TNSPs who provide prescribed transmission services or negotiated transmission services</p> <p>accounting separation and functional separation of prescribed transmission services or negotiated transmission services by TNSPs from the provision of other services by them, or by affiliated entities</p> <p>obligations to prevent a TNSP from providing other services that could be cross-subsidised by its prescribed transmission services or negotiated transmission services</p>
1.4	<p>ring-fenced information means electricity information, acquired or generated in connection with provision of prescribed transmission services</p> <p>or provided to the TNSP by or in relation to a customer or prospective customer of prescribed transmission services</p>	<p>connection means a physical link to or through a transmission network (including via a connection asset or, in an applicable jurisdiction, a designated network asset, that is physically linked to that transmission network);</p> <p>connection application means an application to form or modify a connection;</p> <p>ring-fenced information means electricity information, acquired or generated by in connection with provision of prescribed transmission services or negotiated transmission services</p> <p>or provided to the TNSP by or in relation to a customer or prospective customer of prescribed transmission services or negotiated transmission services</p>
4.1(b)	A TNSP must not discriminate (either directly or indirectly) in connection with the provision of prescribed transmission services	A TNSP must not discriminate (either directly or indirectly) in connection with the provision of prescribed transmission services or negotiated transmission services
4.4.1(a)	A TNSP must ensure that any new or varied agreement between the TNSP and a service provider that enable or assist the TNSP to provide prescribed transmission services, requires the service provider to comply, in providing those services, with clauses 4.1, 4.2.1 and 4.3 of this Guideline	A TNSP must ensure that any new or varied agreement between the TNSP and a service provider that enable or assist the TNSP to provide prescribed transmission services or negotiated transmission services , requires the service provider to comply, in providing those services, with clauses 4.1, 4.2.1 and 4.3 of this Guideline (where applicable to those services)

<p>5.3.4</p>	<p>The AER may grant a waiver</p> <ul style="list-style-type: none"> (a) to one or more of the TNSPs that are the subject of the waiver application (b) subject to clause 5.3.4(c), for a term that coincides with part or all of the TNSP's current regulatory control period, next regulatory control period, or both periods; (c) in the case of a waiver of clause 3.1(c) of this guideline, for a different term or terms; and (d) subject to such conditions as the AER considers appropriate. 	<p>The AER may grant a waiver</p> <ul style="list-style-type: none"> (a) to one or more of the TNSPs that are the subject of the waiver application (b) for a term that the AER considers appropriate; and (c) subject to such conditions as the AER considers appropriate.
<p>6.2.1(b)</p>	<p>The annual compliance report must identify and describe, in respect of the calendar year to which the report relates:</p> <ul style="list-style-type: none"> i. the measures the TNSP has taken to ensure compliance with its obligations under this Guideline; ii. any breaches of this Guideline by the TNSP, or which otherwise relate to the TNSP; iii. all other services provided by the TNSP in accordance with clause 3.1; iv. the purpose of all transactions between the TNSP and an affiliated entity; 	<p>The annual compliance report must identify and describe, in respect of the calendar year to which the report relates:</p> <ul style="list-style-type: none"> i. the measures the TNSP has taken to ensure compliance with its obligations under this Guideline; ii. any breaches of this Guideline by the TNSP, or which otherwise relate to the TNSP; iii. all other services provided by the TNSP in accordance with clause 3.1; iv. the purpose of all transactions between the TNSP and an affiliated entity; v. the total number of connection applications received by the TNSP in that calendar year; vi. the proportion of the total number of connection applications 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; vii. the proportion of the total number of connection applications received by the TNSP in that calendar year that include the provision of contestable electricity services by a person other than a related electricity service provider of the TNSP viii. for connections commissioned in that calendar year that have included the provision of contestable electricity services by a related electricity service provider, the average time (in business days) between initial receipt of the connection application and the commissioning of the connection ix. for connections commissioned in that calendar year that have not included the provision of contestable electricity services by a related electricity service provider, the average time (in business days) between initial receipt of the connection application and the commissioning of the connection.

6.2.1(e)	N/A (new clause)	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), or by a director of the TNSP, and attesting that the contents of the report are accurate to the best of their knowledge.
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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 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 services and negotiated services provided by a TNSP.

Prescribed 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 services can also only be performed by TNSPs, however, the AER does not regulate the revenue a TNSP earns for providing negotiated 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 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 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 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.

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.

³ National Electricity Rules, 6A.21.2.

The changes that we introduced in version 5 of the guideline include requirements for a TNSP to ring-fence negotiated services, which were not previously 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 previous version of the guideline (version 4), non-TNSP stakeholders shared their concerns with us that the ring-fencing framework did 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 received the following feedback:

- Non-TNSPs argued that all negotiated 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, the AEMC identified specific behaviours by TNSPs that could be considered discriminatory, including:

- TNSPs showing a preference for their own projects and RESPs' projects to provide contestable services.⁴
- TNSPs 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 offer.⁵

⁴ Australian Energy Operations - Electricity Transmission Ring-fencing Guideline Review - Submission to Discussion Paper - 30 January 2020

⁵ AEMC, Rule determination - Expanding the transmission ringfencing framework, May 2024, page 15.

- For contestable IUSAs, TNSPs requesting more detailed design drawings than they would otherwise if a RESP was chosen.⁶

Energy Networks Australia (ENA) has consistently argued that the current regulatory arrangements are sufficient, through all engagement touchpoints. It has stated 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 and multiple TNSPs continued to state that there is no discrimination occurring, and that the current regulatory regime is fit for purpose. However, we heard very different views from connecting parties, who shared their experiences with specific examples of behaviour by TNSPs that appear to be discriminatory.

The Clean Energy Council (CEC) argued that we should put considerable weight on the lack of competition that has developed for the provision of contestable connection services. The CEC argued that this shows that the guideline was not working to protect competition and that changes were required to deliver a more robust framework.⁷

Stakeholders 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. Some submitted that any risk, even the perceived risk, of delays to generation project timelines or additional costs as key factors in selecting contestable 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.

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

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

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 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 RESP through operational decisions. Another 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. 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. 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.¹⁰

We note that some connecting parties prefer for both negotiated and contestable connection services to be provided by the TNSP and its RESP. 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 influences some customers' investment decisions, rather than the benefits in efficiency possible when a TNSP and its RESP provide negotiated and contestable connections services at a single point.

In its final determination, the AEMC noted that through its consultation on the proposed rule change, generators and renewable energy developers reported 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.¹¹

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

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

¹⁰ AGL, [Submission: Ring-fencing guideline \(electricity transmission\) Issues paper](#), November 2024, page 1.

¹¹ AEMC, [Rule Determination, National Electricity Amendment \(Transmission Connection and Planning Arrangements\) Rule 2017](#), May 2017, page 146

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.¹² 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 services.

The AEMC conducted its own consultation and determined on 23 May 2024 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 TNSPs from the provision of other services by TNSPs.

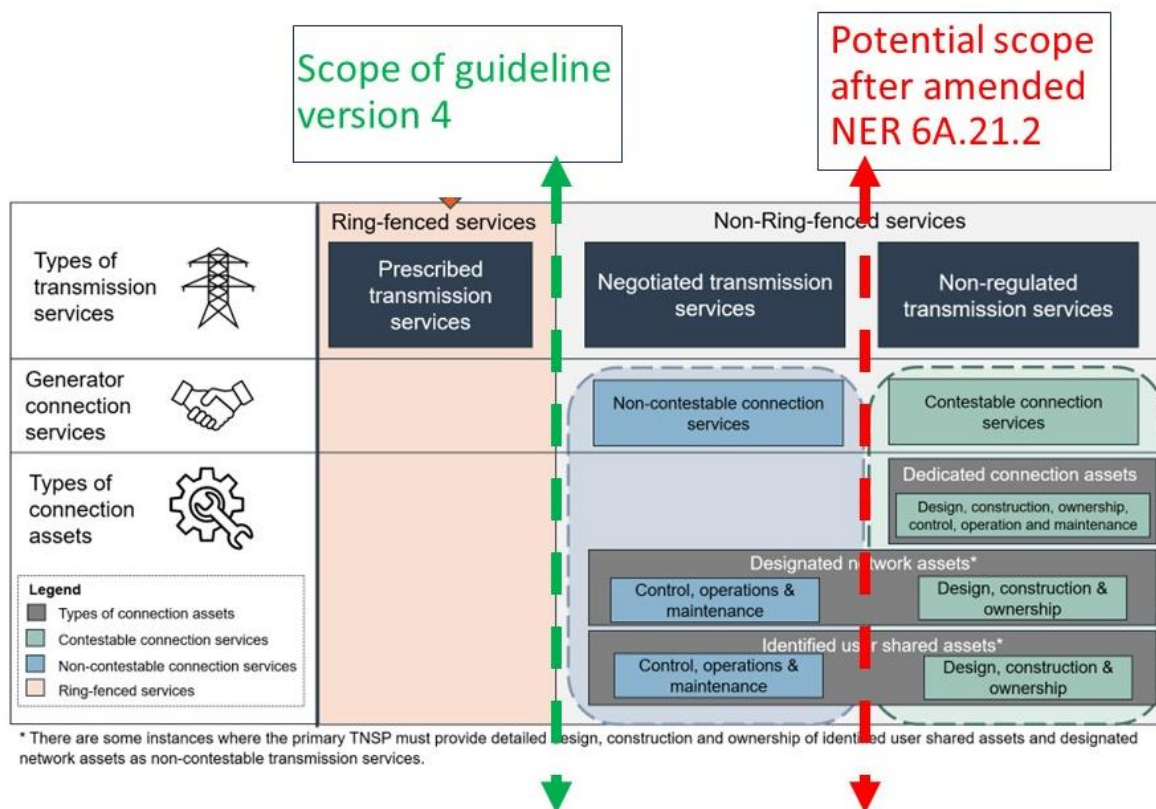
In making its determination the AEMC noted:

*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.*¹³

Consequently, the AER is empowered to revise the guideline to achieve the functional separation of prescribed services and negotiated services by TNSPs, from the provision of contestable electricity services by them, or by their RESPs.

¹² AER, Rule change request, July 2023

¹³ AEMC, Rule determination - Expanding the transmission ringfencing framework, May 2024 p.4



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.

2 Types of negotiated services

2.1 Outline of the issue

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 services. It states that:

*...the AER may decide to not impose obligations in relation to negotiated transmission services or specific negotiated transmission services...*¹⁴

We previously sought stakeholders' 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.

2.2 Submissions

The majority of stakeholder feedback has continued to take a binary approach to the question of whether to ring-fence 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.

A number of non-TNSPs argued that extending ring-fencing to all negotiated services would provide the most robust framework to prevent potential discrimination by TNSPs.¹⁵ These stakeholders continue to argue that this approach recognises that the risks for connecting parties are similar for each kind of negotiated service. For example, Symphony Infrastructure Partners told us that the costs of discrimination (including perceived and potential discrimination) make it appropriate to impose ringfencing obligations on all negotiated services.¹⁶

Similarly, AGL argued that the core risk associated with the monopoly power position of TNSPs is most effectively addressed by the obligations under the ring-fencing guideline applying to all contestable negotiated services.¹⁷ The Energy Users Association of Australia (EUAA) commented that the proposed changes strike a good balance *'that should lead to*

¹⁴ AEMC, [Rule determination National Electricity Amendment \(Expanding the transmission ringfencing framework\) Rule 2024](#), May 2024, page 21

¹⁵ For example, see Energy Users Association of Australia [Submission: AER Ring-fencing guideline \(electricity transmission\) Issues paper](#), November 2024, page 2

¹⁶ Symphony, [Submission by Symphony Infrastructure Partners – Draft changes to Ring-fencing Guideline \(Electricity Transmission\)](#), 28 January 2025, page 2

¹⁷ AGL, [Transmission Guideline negotiated services updates](#), 28 January 2025, page 1

better competition in the provision of non-monopoly transmission services that can only be of benefit to all consumers.¹⁸

We note that AGL previously had told us that the benefits of this change are likely to exceed any minor additional administrative burdens placed on TNSPs as a result.¹⁹

In addition, several stakeholders pointed out that the waiver mechanism in the guideline provides an opportunity for the future exemption of specific negotiated services, if this proves to be warranted.

The ENA and TNSPs continued to argue that there is no need to ring-fence negotiated services.²⁰ TasNetworks had commented previously that ring-fencing of negotiated services may lead to longer and more expensive connection processes in Tasmania.²¹

2.3 Our final position

Our final position is the same as our draft position, which is that all negotiated services are uniformly subject to ring-fencing obligations under the guideline.

This reflects the risks we have heard from connecting parties, namely that the risk of discrimination in connection negotiations can lead to significant and expensive project delays, as well as increase costs for the connection services themselves.

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.

We have not categorised negotiated services or applied ring-fencing obligations differently to certain types of negotiated services. Categorisation would introduce complexity and confusion, leading to unintended outcomes and delays in connection.

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. 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.

¹⁸ Energy Users Association of Australia, *AER Electricity Transmission Ring-fencing Guideline, Version 5*, 28 January 2025, page 1

¹⁹ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 2

²⁰ Energy Networks Association, *AER Draft Transmission Ring-Fencing Guideline*, 28 January 2025, p.1.

²¹ TasNetworks, *Submission: Transmission Ring-fencing Guideline Issues Paper*, November 2024, page 2.

3 Extending the non-discrimination clause

3.1 Outline of the issue

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 indicated that there was a potential for material harm to connection applicants, unless the guideline created a better demarcation of TNSPs' dealings with customers and their RESPs, between negotiated and contestable services.

The CEC stated that the absence of a robust ring-fencing framework, which includes negotiated 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 argued 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

However, in its decision to amend clause 6A.21.2 of the NER, the AEMC expressed its view that, despite the protections embedded in Chapter 5 of the NER, there is a residual risk of TNSPs engaging in discriminatory conduct when providing contestable services.²⁵ The AEMC also acknowledged that other obligations in the NER, such as the connections process in Chapter 5, operate in conjunction with ring-fencing.²⁶

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 the connections process 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

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

²³ Energy Networks Association, *AER Draft Transmission Ring-Fencing Guideline*, 28 January 2025, p.1

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

²⁵ AEMC, Rule determination National Electricity Amendment (Expanding the transmission ringfencing framework) Rule 2024, May 2024, page 15

²⁶ AEMC, Transmission Connection and Planning Arrangements, Rule Determination, 23 May 2017, p. 151

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.

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.

3.2 Submissions

TNSPs advised that their ability to ‘bundle’ negotiated and contestable connection services, the latter provided by a RESP, create an opportunity for efficiency to benefit all parties. However, many non-TNSPs believe that this approach suggests that if a connecting party does not choose to 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.

Non-TNSPs pointed to the natural advantages and asymmetries that favour TNSPs, which can limit competition and customer choice. This extended to concerns that TNSPs 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.²⁸ For example by insisting that all enquiries from the connecting party must be directed to the TNSP’s RESP.

We 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 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.

Related to this, the Clean Energy Investors Group (CEIG) suggested that the non-discrimination clause should mandate greater transparency in TNSPs’ pricing practices. It proposed:

- A requirement for TNSPs to provide an unbundled and detailed breakdown of regulated and contestable pricing components in all pricing estimates and final offers.
- An explicit obligation to ensure that the regulated scope attracts only the regulated return, with evidence of compliance provided as part of pricing disclosures.²⁹

To be clear, it is not the role of the ring-fencing framework to shape commercial outcomes for TNSPs or connecting parties. Our rule change request was clear that the AER did not intend to change the commercial negotiation of connection services.³⁰ In addition, as the AEMC noted, clause 5.3.6(b4)(2) of the NER already requires unbundled pricing.

We have heard concerns from a number of stakeholders about the way TNSPs undertake their role in the regulated process for connections. In addition, we have received suggestions of new measures that could be introduced to assist connecting parties. For example, CEIG suggested that TNSPs should indicate to a connecting party if there are possible delays or risks pursuing competition in contestable services. This could canvass potential risks, such

²⁸ Nexa Advisory, Submission: [Expanding the transmission ring-fencing framework: Draft Determination](#), April 2024, page 1

²⁹ Clean Energy Investors Group, *Response to AER’s proposed changes to the Ring-fencing guideline (electricity transmission)*, 28 January 2025, page 3

³⁰ AER, [Rule change request: Expanding the transmission ring-fencing framework](#), July 2023, page 16

as extended negotiations for Connection Access Agreements, and may assist connecting parties to prioritise certainty over potential contractual benefits with non-TNSP entities.

However, it is important to understand that our approach to ring-fencing is to require the TNSPs to identify the most appropriate way to manage their obligations for functional separation. We have generally not sought for the guideline to be prescriptive as to how this should be done. Introducing changes such as this to the guideline also would need to be considered through further consultation with stakeholders in order to assess overall costs and benefits.

We have concluded that many of these concerns would be managed appropriately by reference to the regulated connections process rather than ring-fencing. Our view is that a number of the concerns or proposals for change that have been raised by stakeholders, such as by CEIG, are outside of the scope of this review of the guideline.

We recognise the need for new connections to be completed in a timely manner, and that the pace of new connections is critical to a successful energy transition. Some stakeholders recommended changes to aspects of the connections process that are beyond the scope of the guideline to increase the speed of connections. We do not believe that the changes that have been introduced in version 5 of the guideline will slow the connections process. However, we also note that if there is an unintended impact on connection timeframes, the new reporting requirements introduced to the guideline to monitor TNSP outcomes (see section 5) may also provide useful data to monitor the situation.

3.3 Our final position

We are mindful of feedback from non-TNSP stakeholders that it is often not in the best interests of a connecting party to challenge discriminatory behaviour directly with a TNSP, since the connection process is only one element of the relationship between TNSP and a large customer.

We also note that non-TNSPs have told us that even the perception of discrimination can impose costs on a connecting party. This can include delays in securing project financing, as well as added costs for financing, and extra costs in preparing a connection application. The 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.³¹

We also took into account the conclusion of the AEMC, in its rule change determination, that it is preferable to have anti-discrimination protections in the guideline in order to ensure consistency across the NEM (noting that some provisions of NER Chapter 5 are not applied in Victoria) and that the *Competition and Consumer Act 2010* relies on connecting parties making complaints rather than the AER monitoring compliance.³²

Additionally, a key objective of the guideline is to promote competition in the provision of electricity services. To this end, we have heard from the CEC that ring-fencing between

³¹ EUAA, [Submission: Options to address gaps in transmission ring-fencing](#), June 2023, page 2.

³² AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), May 2024, page 18

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.³³ This means that improvements in the ring-fencing framework that support competition in contestable services have the potential to lower energy costs for consumers.

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 provides an incentive for TNSPs to avoid operating in a way that could be viewed as discriminatory.³⁴

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 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 bundled services with a TNSP providing negotiated connection services and a RESP of that same TNSP providing 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, clause 4.1 of the guideline clarifies that a TNSP must 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.

This takes account of the concerns raised by connecting parties about decisions of TNSPs in relation to the timing of non-contestable connection services. We have heard from

³³ CEC, Submission on draft determination and draft rule for Expanding the transmission ringfencing framework rule change ERC0371, April 2024, page 8

³⁴ AER, July 2023, Rule change request - Expanding the transmission ring-fencing framework to include negotiated transmission services, page 28

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.

We have made a further minor amendment to clause 4.4.1(a) of the guideline, within the 'Service providers' section, consequentially amending clauses 4.1 and 4.2.1. This clarifies that when a TNSP engages an entity to assist it to provide negotiated 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 issue

Version 4 of the guideline (clause 1.4) defined 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.³⁵ 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.³⁶ However, when consulting about a possible request to amend rule 6A.21.2, some stakeholders pointed to what they consider are strong commercial incentives for a TNSP to share information obtained in relation to negotiated services with a RESP. A likely result of the sharing of information in this way would be that it gives the RESP an unfair advantage in providing contestable services. This would undermine the further development of competition in that market.

4.2 Submissions

Non-TNSPs continue to raise concerns about instances where information may be shared by TNSPs with their RESPs. These stakeholders continue to focus on the potential for TNSPs to favour themselves or a RESP in the provision of contestable connection services. They 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

³⁵ ENA, [Response to AER Consultation Paper on 'Options to address gaps in transmission ring-fencing framework'](#), June 2023, page 9

³⁶ AEMC, [Rule determination National Electricity Amendment \(Expanding the transmission ringfencing framework\) Rule 2024](#), May 2024, page 15

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.

These stakeholders have submitted that the obligations in the NER about confidentiality of customer information have limited effectiveness in preventing discrimination, compared to the proposal for stronger obligations in the guideline.³⁷

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. 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, in turn, 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, in response to our issues paper, suggested that any expansion of ring-fenced information should 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.³⁸

Transgrid did not support a change to expand what is included in ring-fenced information. Its concern is that this change would require TNSPs to obtain explicit informed consent from a customer before sharing the wider set of information with a RESP. Transgrid points to its use of a RESP, Lumea, to provide a single point of contact for a customer to provide a more efficient connection process. It also has pointed to Rule 8.6 of the NER and the regulated connections process as providing adequate protection against discrimination.³⁹

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, we have heard from connecting parties that they have experienced pressure to accept a TNSP's preference for a bundling of negotiated and contestable services. In some cases this may be contrary to the stated preference of a customer. Some non-TNSP stakeholders have expressed concern that this approach not only undermines competition but potentially leaves a connecting party to accept a connection that may not meet its own needs.

³⁷ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 2

³⁸ ENA, *Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline*, November 2024, p. 4

³⁹ Transgrid, *AER's Draft Ring-fencing guideline*, 28 January 2025, page 2

The 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. Extending the definition of ring-fenced information in the guideline to include negotiated services does not prevent a connecting party from choosing to engage a TNSP's RESP to provide contestable services.

The ENA submitted that requiring a customer to consent to its information being shared may not be sufficient to ensure efficient connections processes. It has proposed that the guideline be amended to allow the possibility of waivers from the information sharing obligations (clause 4.2).⁴⁰ Our view is that customer consent for the sharing of information continues to be an appropriate measure which does not impose disproportionate costs.

4.3 Our final position

Version 5 of the guideline extends the information access and disclosure requirements 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.

This means that confidentiality requirements now apply to all information derived in relation to negotiated services. This goes beyond the information provided by a connection applicant (NER 5.3.8), and beyond the reasonable endeavours confidentiality obligations in the Rules (NER 8.6.1). Our intention is that that this change will promote a more level playing field in contestable connection services.

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 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.

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

⁴⁰ Energy Networks Association, *AER Draft Transmission Ring-Fencing Guideline*, 28 January 2025, p.2

5 Reporting on negotiated services

5.1 Outline of the issue

The guideline includes reporting obligations for TNSPs that enable us to monitor compliance with ring-fencing obligations, and to provide 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.

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...⁴¹

Some non-TNSP stakeholders suggested that additional reporting by TNSPs is needed to support effective ring-fencing. Their proposal was for the guideline to include a requirement for additional, public reporting by TNSPs on relevant aspects of delivery of negotiated and contestable connection services.

They argued that this 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.⁴²

In response to the issues paper, the CEC proposed that 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.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 a RESP to the

⁴¹ AEMC, [Rule determination National Electricity Amendment \(Expanding the transmission ringfencing framework\) Rule 2024](#), page 18

⁴² 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

⁴³ Clean Energy Council, [Submission on AER Issues Paper on Updating the Ring-fencing guideline \(electricity transmission\)](#), November 2024, page 11

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 given the data publicly available from the AEMO's Connection Scorecard. However, the CEC submitted that the Connection Scorecard does not provide sufficient information to determine if there has been discriminatory conduct by TNSPs.

5.2 Submissions

Transgrid echoed the concerns of the ENA that reporting on connection projects poses challenges due to the varying circumstances of each connection. It also queried the possible overlap between the guideline and the AEMO Connections Scorecard.⁴⁶

The CEC responded to the consultation proposal with a proposal for more extensive and detailed reporting by TNSPs on the delivery of negotiated services.⁴⁷ For its part, the CEC argued that more detailed reporting on more of the stages in the connections process is key to detecting discrimination by TNSPs when connecting parties choose a competitive provider of contestable services rather than a RESP.

The ENA also noted that the proposed new reporting requirements will not capture connection information held by jurisdictional bodies such as AEMO, VicGrid and EnergyCo, which are responsible for the connections process and decisions in their respective jurisdictions.⁴⁸

5.3 Our final position

Version 5 of the guideline introduces the changes to reporting that we set out in our consultation on the draft of version 5. We have amended clause 6 of the guideline to 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

⁴⁴ Energy Networks Association, Submission: AER Ring-fencing guideline (electricity transmission) Issues paper, November 2024, page 4

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

⁴⁶ Transgrid, *AER's Draft Ring-fencing guideline*, 28 January 2025, page 3

⁴⁷ Clean Energy Council, *Submission on draft explanatory statement and draft updated ring-fencing guideline (electricity transmission)*, 28 January 2025, Page 5

⁴⁸ Energy Networks Association, *AER Draft Transmission Ring-Fencing Guideline*, 28 January 2025, page 2

- 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.

These reporting requirements apply to any connection application received by a TNSP in the relevant calendar year. That is, we have established 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.

The additional reporting is appropriate and reasonable to enable a better understanding of the effectiveness of the guideline, especially in relation to new provision aimed at non-discrimination in relation to negotiated connection services. We consider that this additional reporting will not impose a significant burden on TNSPs.

To take account of jurisdictional differences in the connections provisions of the NER, we have introduced a new definition of 'connection application', and a revised definition of 'connection'. This means that the definitions in the guideline do not rely on the applicability of the NER definitions in order to be effective. Rather, the revised definitions.

We acknowledge that some stakeholders had sought additional reporting that may be more relevant to the regulated connections process. We considered the further changes proposed by the CEC in its submission in response to the consultation proposal. However, our view is that a case for reporting of this additional detail has not been made. While we support the sentiment expressed by the CEC that more detailed reporting is likely to assist the monitoring of compliance by TNSPs, we are concerned not to introduce obligations that are beyond the scope of ring-fencing.

Our conclusion at this time is that much of the further reporting sought by the CEC may be more relevant to the regulation of the connections process, rather than ring-fencing compliance. We are mindful of the comments by TNSPs more generally that each connection project may have a range of circumstances that impact on the timing of each stage.

Further, we have considered that the non-discrimination obligations in the guideline have signalled clearly our expectation that TNSPs and their staff will not engage in discrimination with respect to connection projects where contestable services are being provided by a rival to a RESP.

However, it may be helpful to point out that we consider that the additional information sought by the CEC may be relevant if the AER is to investigate a future complaint about a possible breach of the guideline by a TNSP.

6 Other changes

6.1 Removing the maximum term for waivers

Version 4 of guideline limited the maximum term for which a ring-fencing waiver can be granted (clause 5.3.4), allowing a waiver to be granted for only up to two regulatory control periods (except in respect of batteries). This maximum term was first introduced into the guideline to provide an appropriate review mechanism given the speed of change in the environment in which TNSPs operate.⁴⁹

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.

This is already reflected in the guideline allowing greater flexibility in respect of waivers for stand-alone power systems and for energy storage devices.

Allowing the AER to determine the most appropriate term for each individual waiver to give 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 guideline continues to require the AER to assess a waiver application by considering matters such as whether a waiver would further the NEO, impacts on competition and the likelihood of any cross-subsidy in favour of a TNSP seeking to provide a competitive service. In considering these matters we continue have the option of managing residual risks by imposing conditions on a waiver. The conclusions we reach on all these matters weigh in a decision about the length of a waiver.

In addition, we clarified that such a change would not be 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.

Finally, the guideline already provides the AER the option of granting a waiver from some guideline obligations. It also sets out the matters 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 have not expanded the specific provisions of the guideline for which waivers may be granted.

Some stakeholders 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

⁴⁹ AER, [Electricity transmission Ring-fencing Guideline Explanatory Statement](#) – Version 4, March 2023, p. 43

framework, leading to adverse market implications contrary to the intention of the amendments.⁵⁰

6.1.1 Submissions

While ENA and the TNSPs supported this change, so too did other non-TNSP stakeholders. The Clean Energy Investor Group agreed that this will provide greater flexibility in tailoring waiver terms to individual cases.⁵¹

As we noted in our consultation proposal, some stakeholders argue that waivers in general pose a risk to the effectiveness of the ring-fencing framework. This was especially a concern for Nexa Advisory which has argued that changes to the ring-fencing of negotiated services would be undermined if the AER was to grant waivers.⁵² Others argued that waivers should be considered only on a case-by-case basis and granted only in exceptional circumstances.⁵³

The CEC did not support removing the maximum term for waivers from the guideline. Its view is that the previous limit (no longer than the current regulatory period and the end of the subsequent regulatory period) provides an opportunity to assess a waiver against changed market conditions and new technology.⁵⁴ However it also has proposed that, if the maximum term is removed, the guideline should commit the AER to undertaking public consultation in relation to any waiver application for as term of longer than 5 years. Further, the CEC suggests that this consultation should be accompanied by the AER stating its reasons for proposing to grant a waiver for a term longer than five years. A similar comment was made by AGL⁵⁵.

6.1.2 Our final position

We have amended 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.

We have considered concerns expressed by some stakeholders that waivers have the potential to weaken the ring-fencing framework. In particular, we have assessed concerns that waivers would be used to undermine changes to the guideline that require the ring-fencing of negotiated services from contestable services.

The AER wants to reiterate that any waiver applications must be assessed against the overall benefit and cost to consumers. There is no change to clause 5.3.2 of the guideline that requires the AER to assess a waiver application by having regard to:

⁵¹ Clean Energy Investor Group, *Response to AER's proposed changes to the Ring-fencing guideline (electricity transmission)*, 28 January 2025, page 4

⁵² Nexa Advisory, *Submission: Ring-fencing guideline (electricity transmission) – negotiated services updates*, November 2024, page 2

⁵³ AGL, *Submission: Ring-fencing guideline (electricity transmission) Issues paper*, November 2024, page 3

⁵⁴ Clean Energy Investor Group, *Response to AER's proposed changes to the Ring-fencing guideline (electricity transmission)*, 28 January 2025, page 12

⁵⁵ AGL, *Transmission Guideline negotiated services updates*, 28 January 2025, page 2

- the National Electricity Objective;
- 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.

The guideline also continues to give the AER the discretion to grant a waiver subject to such conditions as the AER considers appropriate (clause 5.3.4).

The CEC argued that the guideline should commit the AER to undertaking public consultation in relation to any waiver application for a term of longer than 5 years. Further, the CEC suggested that this consultation should be accompanied by the AER stating its reasons for proposing to grant a waiver for a term longer than five years.⁵⁶

In response, we make the point that to date, only two applications have been considered for waivers from obligations in the transmission guideline. However, there are some useful learnings from waivers granted from the distribution ring-fencing guideline. It is worth noting, for example, that we do not undertake stakeholder consultation on a waiver application based on a pre-determined view or a draft position on an application. In cases where we have consulted, this was done so that our assessment of a waiver application was informed by stakeholder views. This is very different to the process we are required to follow for possible changes to the guideline itself.

On the other hand, our observation is that consultation is not always appropriate or an efficient way to deal with ring-fencing waivers. This is especially the case where a waiver application is based on long-standing jurisdictional regulation or policy.

Our position remains that for any 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.

⁵⁶ Clean Energy Council, *Submission on draft explanatory statement and draft updated ring-fencing guideline (electricity transmission)*, 28 January 2025, page 12

We note that there should be no cost associated with this 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.

6.2 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 AER's Compliance Reporting Best Practice Manual⁵⁷ 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. This change establishes consistency in this matter to support for best practice by all TNSPs and provide additional assurance to stakeholders.

6.2.1 Submissions

APA responded to this proposal in the issues paper, arguing that there does not appear to be any value to this proposal since an independent assessment of compliance is already required.⁵⁸ APA also advised that the way it has structured its management of Directlink and Murraylink makes it difficult to comply with this new obligation.

6.2.2 Our final position

Our decision is to amend clause 6.2 of the guideline to require that annual compliance reports must be accompanied by a cover letter signed by a director of a TNSP or its 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. Permitting sign-off by a director addresses the issue raised by APA.

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.

⁵⁷ AER, Electricity Distribution Ring-fencing Guideline Compliance Reporting Best Practice Manual, February 2022

⁵⁸ APA, *Submission to Issues Paper - Transmission Guideline negotiated services updates*, 28 January 2025, page 2.

7 Changes not progressed for version 5

7.1 Staff separation

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.

We proposed not to change the staff separation obligation in the guideline. We heard from stakeholders 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.

TNSPs and many connecting parties advised against the guideline being amended to require further separation of staff. While greater separation can support competition, the prevalent view from stakeholders is that these benefits would be outweighed by the costs, result in delays in connections, and be to the detriment of consumers.⁵⁹ The ENA pointed to the likelihood for greater staff separation to *dilute the capability of the limited resource pool providing contestable and non-contestable services*.⁶⁰ This was supported by comments received from some connecting parties.

The Justice and Equity Centre focused on the costs to TNSPs of hiring extra staff and whether less stringent requirements for staff separation provides a financial advantage to TNSPs and RESPs.⁶¹ However, the risk is explained by the potential the impact of greater staff separation on the ability of TNSPs to engage an adequately-sized workforce. Stakeholders have pointed to the limited and specialised resource pool of people with the requisite technical qualifications and experience to provide negotiated and contestable services.

Symphony Infrastructure Partners was concerned that without additional staff separation TNSPs and their RESPs would continue to have an unfair advantage in seeking to be contracted to provide contestable services.⁶² Some non-TNSPs remain concerned about the opportunity for sharing of information with the approach to staff sharing in the guideline.⁶³

The changes we have made 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

⁵⁹ ElectraNet, *Submission: Draft Rule – Expanding the transmission ring-fencing framework*, April 2024, page 2.

⁶⁰ Energy Networks Association, *AER Draft Transmission Ring-fencing Guideline*, 28 January 2025, page 2

⁶¹ Justice and Equity Centre, *Electricity Transmission Ring-fencing Guideline*, 23 January 2025, page 2

⁶² Symphony Infrastructure Partners, *Submission by Symphony Infrastructure Partners – Draft changes to Ring-fencing Guideline (Electricity Transmission)*, 28 January 2025, page 3

⁶³ Clean Energy Council, *Submission on draft explanatory statement and draft updated ring-fencing guideline (electricity transmission)*, 28 January 2025, page 9

better managing the separate interests in contestable and non-contestable connection services. Clause 4.2.1(b) will continue to prohibit the misuse of ring-fenced information.

We are cautious about making changes to the guideline that might slow the rate at which new connections can be completed. Considering that risk, we have not made any changes at this time to the staff separation requirements in the guideline.

7.2 Cross-branding and promotion

One form of functional separation that is possible under the ring-fencing framework is to require 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.

In version 3 of the guideline, published in March 2023, we concluded that requiring separate branding between the TNSP's monopoly business and their RESP was not warranted at that time.

ENA commented in response to our issues paper that restricting cross-branding and promotion is unlikely to deliver any additional benefit of making a change.⁶⁴ Conversely, Powercor pointed to the increasing number of smaller renewable energy providers who may lack the resources to address potential biases from TNSPs.⁶⁵

We have not made a change at this time 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 have not seen significant evidence demonstrating that there are sufficient benefits to outweigh the costs for TNSPs or, ultimately, for consumers.

⁶⁴ ENA, *Submission: AER Issues Paper – Electricity Transmission Ring Fencing Guideline*, November 2024, p.6

⁶⁵ Powercor, *Transmission Ring-fencing Guideline Review – Submission*, 6 November 2024, page 3.

8 Transitional arrangements

Our consultation paper explained that we expected to publish version 5 of the guideline by 24 February 2025, in line with the AEMC's determination, and that this would be the version 5 commencement date.

We further proposed that the date 6 months after the commencement date would be the version 5 compliance date. This was anticipated to be 24 August 2025. TNSPs would be required to 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 would be required to 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.

8.1.1 Submissions

ENA has suggested that it would be more efficient to mandate compliance with the guideline from the beginning of the compliance year after the guideline is published. That is, from 1 January 2026. It argued that this would avoid a mismatch where TNSPs are required to report for the same calendar year of 2025 where there are different sets of obligations.⁶⁶

Transgrid has argued for a compliance date that is 12 to 18 months after the commencement date. Its view is that TNSPs may need to take a wholesale compliance review in order to comply and that a longer transitional period would better ensure that there is time to properly implement new procedures and achieve full compliance.⁶⁷

8.1.2 Our final position

The guideline sets out the commencement date and the compliance date discussed in the formal consultation proposal. That is:

- the commencement date is 24 February 2025
- the compliance date is 24 August 2025
- TNSPs will be required to 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 will be required to 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.

This last point ensures that any connection projects that are already underway will not be disturbed.

We gave consideration to the concerns of TNSPs about the time needed to come into compliance with version 5 of the guideline. We also took into account that the AEMC's final determination on the amended rule had limited the implementation timeframe in response to stakeholder submissions requesting a shorter implementation timeframe, noting the urgency

⁶⁶ Energy Networks Association, *AER Draft Transmission Ring-Fencing Guideline*, 28 January 2025, page 4

⁶⁷ Transgrid, *AER's Draft Ring-fencing guideline*, 28 January 2025, page 3

and critical nature of the issue.⁶⁸ In addition, we have noted that some TNSPs have indicated that they already comply with, for example, the non-discrimination obligations that now are applicable to negotiated connection services.

The change related to a letter accompanying annual compliance reports (clause 6.2.1(e)) will not take effect until the compliance date. The effect is that the new requirement for attestation by a director or most senior executive will not take effect until the reports due in 2026 (for the 2025 calendar year).

Finally, we have included specific transitional arrangements for Powerlink to recognise that, in September 2024, Queensland legislated a partial derogation which alters Powerlink's ring-fencing obligations. The effect of these clauses is that the current version of Powerlink's ring-fencing obligations applies until the version 5 compliance date in order to allow time for Queensland to determine whether it needs to make further amendments to its derogation.

⁶⁸ AEMC, [Rule determination - Expanding the transmission ringfencing framework](#), May 2024, page 30