

Ring-fencing Guideline Electricity Transmission (Tracked) Version 3

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Background

1. Clause ~~6A.21.1 6.20.1~~ of the National Electricity Rules (NER) requires all Transmission Network Service Providers to comply with the Transmission Ring-Fencing Guideline prepared in accordance with clause ~~6A.21.2 6.20.2~~ of the NER.
2. Clause ~~6A.21.2(a) 6.20.2(a)~~ of the ~~NER Code~~ requires the Australian Energy Regulator (AER) to develop the Transmission Ring-Fencing Guideline.
3. ~~These Guidelines were published by the ACGC on 15 August 2002. This Guideline commences on XX and incorporates amendments made from time to time as indicated on page ii.~~

Preliminary

4. In this Guideline, unless the contrary intention appears, ~~bolded italicised~~ expressions have the meaning given to them in:
 - (a) this ~~Guideline clause 4~~; or
 - (b) if they are not defined in this ~~clause 4~~Guideline, the meaning given to them in the ~~National Electricity Law and~~ NER.

~~Note: To avoid doubt, Code means the National Electricity Code as in force from time to time.~~

In this Guideline:

- **associate**, in relation to a **person**, has the meaning it would have under Division 2 of Part 1.2 of the **Corporations Act** if sections 13, ~~14~~, 16(2) and 17 of that Act ~~did not form part of~~ ~~were repealed~~.

~~Note: Schedule 1 section 13(7) of the Gas Pipelines Access (South Australia) Act 1997 (SA) contains an identical definition of 'associate'.~~

- **auditing standards** means the Auditing Standards and Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies).
- **auditor** means a person who qualifies as an auditor under Part 2M.4 of the Corporations Act.
- **Corporations Act** means the Corporations Act 2001 (Cth) ~~as in force from time to time~~.
- **economic entity** has the meaning given in Accounting Standard ~~and Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies). AASB 1024: Consolidated Accounts as in force from time to time.~~
- **Information Guidelines** means the Electricity Transmission Network Service Providers Information Guideline (Version 2) published by the AER in 2015 or any subsequent versions.
- **marketing staff** means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents involved only in:

- (a) ~~(a)~~ strategic decision-making, including the executive officer or officers to whom marketing staff report either directly or indirectly; or
- (b) ~~(b)~~ technical, administrative, accounting or service functions.

~~Note: Section 10.8 of the National Third Party Access Code for Natural Gas Pipeline Systems contains an identical definition of 'marketing staff'.~~

- **operational activities** means activities common to the production of both ring-fenced services and **unregulated activities**.
- **parent entity** has the meaning given in Accounting Standards and Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies)~~Accounting Standard AASB 1024: Consolidated Accounts as in force from time to time.~~
- **person** includes an individual or a body politic or corporate.
- **related business** means the activities of generation, distribution and electricity retail supply.
- ~~relevant commencement date~~ means [XXX] ~~the later of the following dates:~~

~~(a) 1 November 2002; or~~

~~(b) the date on which the ACCC, under s. 44ZZA of the Trade Practices Act 1974 (Cth), accepts an access undertaking provided by the Transmission Network Service Provider in accordance with clause 2.5 of the Code.~~

- **reporting entity** has the meaning given in Accounting Standard AASB 1024: Consolidated Accounts as in force from time to time.
- **ring-fenced services** means prescribed transmission services.
- **TNSP** means a Transmission Network Service Provider.
- **unregulated activities** means activities other than the supply of ring-fenced services, and includes but is not limited to carrying on a related business.

5. Where these Guideline authorise the making of an instrument or decision:

- (a) the power includes the power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

6. In this **Guideline**:

- (a) words in the singular include the plural; and
- (b) words in the plural include the singular.

Ring-fencing minimum obligations

7. A *TNSP* must comply with the following provisions on and from the *relevant commencement date*:

- 7.1 (a) A *TNSP* that supplies ring-fenced services:

(i) must be a legal entity incorporated under the *Corporations Act*, a statutory corporation or an entity established by royal charter; and

(ii) subject to clause 7.1(b), must not carry on a related business. To avoid doubt, if the *TNSP* is a member of a partnership, joint venture or other unincorporated association, the *TNSP* is carrying on the activities of the partnership, joint venture or unincorporated association.

(b) A *TNSP* is not subject to clause 7.1(a)(ii) if it carries on *related businesses* that, in total, attract revenue of less than or equal to 5 per cent of the *TNSP*'s total annual revenue.

7.2 (a) The directors of a *TNSP* that provides *ring-fenced services* must act in the best interest of the *TNSP* in respect of all decisions relating to the provision of *ring-fenced services* and the terms and conditions on which those services are provided.

(b) A *TNSP* that provides *ring-fenced services* must not make decisions or act in a manner that discriminates in favour of an *associate* in relation to the terms or conditions on which those services are provided. To avoid doubt, a *TNSP* providing ring-fenced services must offer those services to its customers on terms and conditions no less favourable than it provides to itself or its *associates*.

7.3 (a) A *TNSP* that provides *ring-fenced services* must establish and maintain:

i. a separate set of accounts for the provision of *ring-fenced services*; and

ii a separate amalgamated set of accounts for its entire business.

(b) The accounts must be prepared in accordance with any guidelines or instruments that apply to the *TNSP* under clause 8.

Note: Since clause 7.1(a)(ii) prohibits a *TNSP* from carrying on a *related business*, clause 7.3(a)(ii) will only impose additional obligations on a *TNSP* if (a) the *TNSP* is carrying on any *unregulated activities* other than a related business; (b) clause 7.1(b) applies to the *TNSP*; and/or (c) the AER, under clause 11, has waived the *TNSP*'s obligation under clause 7.1(a)(ii).

7.4 A *TNSP* that provides *ring-fenced services* must allocate any costs that are shared between an activity covered by a set of accounts described in clause 7.3(a)(i) and any other activity, in accordance with a methodology that complies with any guidelines or instruments that apply to the *TNSP* under clause 8.

Note: Clause 7.4 regulates the allocation of costs between *ring-fenced services* and any other activity including activities undertaken by other entities. The purpose of clause 7.4 is to prevent *TNSPs* subsidising contestable activities through regulated activities.

7.5 If a *TNSP* that provides *ring-fenced services* is part of an economic entity, the *TNSP* must ensure that:

(a) a separate amalgamated set of accounts in respect of the provision of *ring-fenced services* by that economic entity is established and maintained; and

(b) the accounts are prepared in accordance with any guidelines or instruments that apply under clause 8.

Note: Accounting Standard AASB 1024: Consolidated Accounts requires a *parent entity* in an *economic entity* that is a *reporting entity* to prepare consolidated accounts to reflect the *economic entity* as a *single reporting entity*. Principally, adjustments will be necessary whenever entities within an *economic entity* have had transactions with each other. The purpose of clause 7.5 is to ensure that the cost of providing the *ringfenced services* is adjusted to

reflect any transactions between the entities within the *economic entity*, that relate to the provision of the *ring-fenced services*.

7.6 A *TNSP* that provides *ring-fenced services* must:

(a) ensure that information it provides in relation to its *ring-fenced services*, to any *associate* that takes part in a *related business* is available to any other party; and

Note: The purpose of clause 7.6(a) is to restrict access to information that may give the associated entity an unfair advantage over other participants in the national electricity market.

(b) ensure that preferential treatment is not given to an *associate* that takes part in a *related business*, through sharing of *operational activities*.

7.7 A *TNSP* that provides *ring-fenced services* must:

(a) (i) ensure that its *marketing staff* are not also servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business*; and

(ii) in the event that its *marketing staff* become or are found to be servants, consultants, independent contractors or agents of such an *associate* contrary to clause 7.7(a)(i), procure their immediate removal from its *marketing staff*; and

(b) (i) ensure that none of its servants, consultants, independent contractors or agents are *marketing staff* of an *associate* that takes part in a *related business*; and

(ii) in the event that any of its servants, consultants, independent contractors or agents are found to be the *marketing staff* of such an *associate* contrary to clause 7.7(b)(i), procure their immediate removal from their position with the *TNSP*.

Note: Clause 8.6.1(d) of the NER also states that the officers of a *TNSP* participating in transmission service pricing must not be involved in or associated with competitive electricity trading activities of any other [Registered NER Participant](#).

7.8 A *TNSP* that provides *ring-fenced services* must notify the AER if:

(a) any of its servants, consultants, independent contractors or agents are, or will be, servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business*; or

(b) any servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business* will be servants, consultants, independent contractors or agents of the *TNSP*.

7.9 A notification under clause 7.8 must be provided to the AER on or before the later of the following dates:

(a) the *relevant commencement date*; or

(b) five business days prior to the date:

(i) on which the servant, consultant, independent contractor or agent of the *TNSP* will be a servant, consultant, independent contractor or agent of the *associate*; or

Note: See clause 7.8(a).

(ii) on which the servant, consultant, independent contractor or agent of the *associate* will be a servant, consultant, independent contractor or agent of the *TNSP*.

Note: See clause 7.8(a).

8. In complying with clauses 7.3, 7.4 and 7.5, a *TNSP* must:

(a) ~~comply with the~~ if the AER decides to publish **Information accounting Guidelines and the TNSP's Cost Allocation Methodology** for *TNSPs* that apply to the accounts being prepared, comply with those guidelines; or

(b) to the extent a matter is not dealt with in the **Information Guidelines or TNSP's Cost Allocation Methodology** if the AER has not published such guidelines, comply with any guidelines in relation to that matter that are prepared by the *TNSP* and approved by the *AER*.

~~Note: To avoid doubt, clause 8(b) does not require a *TNSP* to prepare guidelines.~~

Additional ring-fencing obligations

9. The *AER* may, by notice to the *TNSP*, require the *TNSP* to comply with obligations in addition to those contained in clause 7 provided that the *AER* is satisfied that the administrative cost to the *TNSP* and its *associates* of complying with the additional obligations is, or is likely to be, outweighed by the benefit to the public.

10. Without limiting the additional obligations that may be imposed under clause 9, the *AER* may require that:
 - (a) the *TNSP* ensure its servants, consultants, independent contractors or agents are not also servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business* and, in the event that they become or are found to be involved with such an *associate*, ensure their immediate removal from their position with the *TNSP*;
 - (b) at least one director of the *TNSP* is not also a director of a company (whether or not an *associate*) that takes part in a related business or is a *Market Participant* or *Intending Participant*; and
 - (c) the electronic, physical and procedural security measures employed in respect of the offices of the *TNSP* and of all offices of its *associates* are satisfactory to the *AER*.

The examples given in this clause 10 shall not be construed as limiting the types of action a *TNSP* may have to take to comply with clause 7.

Waiver of ring-fencing requirements

11. The AER may, by notice to the *TNSP*, waive any of the *TNSP*'s obligations under clause 7 provided that the AER is satisfied that the benefit, or any likely benefit, to the public is outweighed by the administrative cost to the *TNSP* and its *associates* of complying with the obligation.

Note: In deciding whether to waive any of the *TNSP*'s obligations under clause 7, the *AER* may consider any additional obligations that can be imposed under clause 9.

Compliance procedures and compliance reporting

12. A *TNSP* must establish and maintain appropriate internal procedures to ensure it complies with its obligations under clause ~~6A.21.1 6.20.1~~ of the NER . The AER may require the *TNSP* to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the AER about the adequacy of the *TNSP*'s compliance procedures does not affect the *TNSP*'s obligations under clause ~~6A.21.1 6.20.1~~ of the NER.
13. A *TNSP* must provide a report to the AER, at reasonable intervals determined by the AER , describing the measures taken to ensure compliance with its obligations under clause ~~6A.21.1-20.1~~ of the NER , and providing an accurate assessment of the effect of those measures.
14. A *TNSP* that is required to prepare documents in accordance with clauses 7.3, 7.4 and/or 7.5 must provide those documents to the AER at least once a year or at reasonable intervals determined by the AER.
15. (a) The AER may, on reasonable notice, require a *TNSP* to:
 - (i) appoint an independent *auditor* approved by the AER to report on such matters as specified by the AER; and
 - (ii) provide a copy of the *auditor's* report to the AER by a date specified by the AER.

(b) If the AER nominates *auditing standards* to apply to an audit under clause 15(a), the *auditor* must report in accordance with those *auditing standards*. To avoid doubt, the AER may nominate one or more *auditing standards*.

(c) For the purpose of clause 15(a), the AER may *publish* auditing guidelines with which a *TNSP* must comply.

Note: The AER need not *publish* auditing guidelines to impose an obligation on a *TNSP* under clause 15(a). It is intended that auditing guidelines will be *published* where obligations are to apply generally to *TNSPs* on an on-going basis
16. When a *TNSP* becomes aware of a breach of any of its obligations under clause ~~6A.21.1 6.20.1~~ of the NER, it must immediately inform the AER .

Consultation

17. In deciding whether to:
- (a) amend the *Transmission Ring-Fencing Guideline*;
 - (b) impose additional obligations on a *TNSP* under clause 9; or
 - (c) waive a *TNSP*'s obligations under clause ~~614~~;

the AER will follow ~~a Consultation process that complies with clauses 6.20.2(a) and 6.20.2(e) of the NER. Transmission Consultation Procedures except for reissuing waivers in substantially the same form as the waivers issued under the transmission ring-fencing guideline published by the AER in August 2005.~~ process that complies with clauses 6.20.2(a) and 6.20.2(e) of the Code.

~~Note: Under this consultation process, the AER will:~~

- ~~(a) publish a notice on its website and notify relevant parties about the possible amendments, imposition of additional obligations or waiving of obligations (as the case may be);~~
- ~~(b) specify a time by which any comments or submissions are to be received;~~
- ~~(c) issue a draft decision seeking comments; and~~
- ~~(d) issue a final decision.~~