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General Manager Policy
Australian Energy Regulator

Lodged via email to: AERringfencing@aer.gov.au

Submission on draft explanatory statement and draft updated ring-fencing guideline (electricity transmission)

The Clean Energy Council (**CEC**) is the peak body for the clean energy industry in Australia, representing nearly 1,000 of the leading businesses operating in renewable energy, energy storage, and renewable hydrogen. The CEC is committed to accelerating the decarbonisation of Australia's energy system as rapidly as possible while maintaining a secure and reliable supply of electricity for customers.

We welcome the opportunity to comment on the AER's draft explanatory statement and draft updated Ring-fencing Guideline (Electricity transmission) (**Guideline**) dated 9 December 2024. This submission only reflects the views of our developer and investor industry members (**CEC industry members**) and does not reflect the views of TNSPs.

1. Overview

The CEC has consistently called for the establishment of a robust ex-ante framework in relation to the ring-fencing provisions applied to network businesses. This is regardless of the occurrence of any actual abuse of the monopoly position of any specific regulated entity; the entire point of such frameworks is to prevent market power abuse.

There is a need for a robust ring-fencing framework to deter breaches of the Guideline – by enabling the AER to detect breaches of the Guideline and by requiring adequate controls, processes and procedures to be put in place to ensure that the TNSP complies with the Guideline. The very possibility of TNSPs engaging in discriminatory conduct reduces competition and investor confidence, creating the potential for inflated prices for consumers.

We support the AER's draft proposed updates to the Guideline which:

- apply ring-fencing obligations to all classes of negotiated transmission services
- extend the non-discrimination clause to negotiated transmission services
- expand ring-fencing information access and disclosure requirements to capture all information obtained by a TNSP in the provision of negotiated services.

However, we are concerned that these core obligations will be rendered ineffective by:

- inadequate reporting under clause 6 of the Guideline – for the reasons given in section 2 below.

- the failure to require separation of staff for the reasons given in section 5 below.

We have set out in section 3 below the minimum information the AER should require the TNSP to report on. The information provided by the TNSP is intended to put the AER in a position to effectively monitor compliance with the Guideline, and to deter and detect discriminatory conduct which would confer a competitive advantage on a related electricity service provider¹ (**RESP**) that provides contestable electricity services (**contestable services**)². The proposed level of reporting will ultimately result in lower connection costs for projects and lower consumer prices³.

We recommend that the AER exercises its powers under clause 6.1 of the Guideline⁴ to require each of the TNSPs to demonstrate the adequacy of their policies, processes and procedures to ensure the TNSP complies with its obligations under the Guideline through a compliance audit for the reasons given in section 4 below⁵. We recommend that the compliance audit take place within 12 months of the commencement date of version 5 of the Guideline.

We recommend that the staff separation requirements be extended to negotiated transmission services but that the TNSP has the option to seek a waiver if, following a compliance audit, it can demonstrate that there are adequate controls, processes and procedures to ensure that its staff cannot access confidential information which would provide it with an advantage when competing for contestable services or when developing their own competing assets, for example storage⁶ - see section 5 below.

We recommend that the AER provides the opportunity for Proponents to participate in an anonymous annual survey to confirm if the TNSPs are complying with their ring-fencing obligations (including the requirement to self-report breaches of ring-fencing obligations under clause 6.3 of the Guideline) and to confirm findings from any compliance audits – see section 6 below.

We do not support the removal of maximum limit on waivers for the reasons given in section 7 below.

¹ Under the Guideline, related electricity service provider, in relation to a TNSP, includes:

- (a) any affiliated entity of the TNSP; and
- (b) the part of the TNSP,

that provides contestable electricity services, but excludes a part of an affiliated entity that provides prescribed transmission services, negotiated transmission services or direct control services.

² Under the Guideline, contestable electricity services means services for the supply of electricity or that are necessary or incidental to the supply of electricity, other than prescribed transmission services, negotiated transmission services or direct control services.

³ Favouring a RESP results in higher costs to consumers if the RESP is unnecessarily expensive / non-competitive in their costs.

⁴ Clause 6.1 of the Guideline provides that “a TNSP must establish and maintain appropriate internal procedures to ensure it complies with its obligations under clause 6A.21.1 of the NER. The AER may require the TNSP to demonstrate the adequacy of these procedures upon reasonable notice”.

⁵ We note that the AER routinely requires compliance audits in connection with compliance with the retail rules - [AER releases latest audit results on compliance with customer hardship and disconnection obligations | Australian Energy Regulator \(AER\)](#)

⁶ These controls, processes are needed to ensure that no competitive advantage is obtained by a RESP though knowledge relating to competing generation and storage projects, as well as in relation to connection services.

2. Reporting requirements under draft 6.2.1 of the Guideline are inadequate

We consider that the information that the TNSP is required to report on in 6.2.1(b)(v)-(ix) is inadequate. It does not require the TNSP to provide information that is detailed enough for the AER to detect if discriminatory conduct is occurring, and if so at what stage, nor detailed enough to deter discriminatory conduct. This is for the following reasons:

- The reporting timeframes in 6.2.1(b)(v)-(ix) are from the initial receipt of a connection application, rather than from the **receipt of the connection enquiry** (as was considered in the Rule Change Request).

This means the AER will not have information which would assist it in understanding whether there may be discriminatory conduct following a connection enquiry but before a connection application is made. Potential discriminatory conduct that may occur prior to the connection application being lodged, or reviewed and approved, is discussed at sections 3.4 and 3.6 below.

We note that AEMO in its most recent Connections Scorecard has added reporting on connection enquiries.

The period prior to the connection application is becoming more important. An optional but recommended pre-application stage is being introduced to encourage AEMO, the TNSP and the Proponent to engage in early project collaboration to identify potential project issues early⁷. During this pre-application stage, the TNSP could be made aware of commercially sensitive information (which, if disclosed to a RESP, would provide the RESP with an advantage when competing for contestable services and when developing their own generation and storage assets).

- There is insufficient granularity in the information required to be reported under 6.2.1(b)(viii)-(ix). The reporting 6.2.1(b)(viii)-(ix) is unlikely to reveal if there is discriminatory conduct unless it is broken down further by stages and technology types.

We note that AEMO collects information which is broken down by stages and technology types (reported in its Connection Scorecard) and AEMO and industry uses this information to detect where there are bottlenecks in the connection process so that AEMO and industry can take steps to address them. For example, CEC lodged a rule change to improve the R1 process.

- The time taken to complete projects is only one metric for assessing if discriminatory conduct has occurred. We consider that the AER should require reporting on other metrics such as costs and terms and conditions which differ according to whether contestable services are provided by a RESP or not⁸ - see section 3.6 below.

Without adequate detailed reporting requirements to deter and detect discriminatory conduct:

- the AER must rely on self-reporting (which is unlikely to occur).

⁷ This preapplication stage is described on AEMO's website. The website includes a draft [map](#) setting out the steps in this pre-application stage. This pre-application process is being co-designed with industry as a part of a Connection Reform Initiative workstream - [AEMO | Streamlined Connection Process](#)

⁸ We note that the Rule Change Request considered requiring information on costs as well as timeframes for connection.

- the ring-fencing framework to a large extent will be rendered ineffective
 - risk premiums for projects will increase as investors will not have confidence that developers will be able to connect to the grid at an efficient cost without undue delays
 - developers will face significantly higher connection costs which will be passed on to consumers.
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3. Minimum information required

We have set out the minimum information the AER should require the TNSP to report on for the AER to be in a position to effectively monitor compliance with the Guideline, investigate potential breaches of the Guideline and to deter and detect discriminatory conduct.

3.1 Reporting on timeframes to undertake major stages in projects

Clause 6.2.1(viii) and (xi) of the Guideline requires reporting on the average time (in business days) between the initial receipt of the application for connection and the commissioning of the connection – where a RESP provides contestable electricity services and where a non-RESP provides contestable connection services.

We consider that there needs to be additional reporting on timeframes, as set out in 3.2 – 3.5 below, to provide more detailed information so that the AER is to be able to detect if TNSPs are engaging in discriminatory conduct at different stages in a project.

3.2 Projects not using a RESP for contestable services

In relation to **each project that does not use a RESP** to provide contestable electricity services, the TNSPs should:

- report on the project separately
- not report on averaged times across these projects as this may mask when discriminatory conduct is occurring – discriminatory conduct may occur during different stages of each project
- provide details of the technology type of each project so that timeframes can be compared for similar projects that use a RESP for contestable services (see 3.3 below). This will also enable the AER to identify if the TNSP is providing preferential treatment for projects RESPs are actively developing, e.g. storage assets
- report on the timeframes for the major stages outlined in 3.4 below
- provide annual updates - as these projects may be undertaken across calendar years, TNSP should be required to report information about each project in an excel sheet format which is attached to the annual compliance report and update the excel sheet annually with each compliance report until the commissioning of connection.

These are not onerous obligations given the limited number of projects using a non-RESP for contestable services.

3.3 Projects that use a RESP for contestable services

In relation to projects that use a RESP for contestable services, we consider that the TNSPs should report on the average time (in business days) for each of the major stages outlined below in 3.4 below, broken down by the technology types which the Connection Scorecard reports on:

- Solar only
- Solar and battery
- Wind only
- Wind and battery
- Battery only
- Other hybrid plant arrangements.

3.4 Stages for reporting

The potential discriminatory conduct a TNSP may engage in varies at the different stages of a Project (as outlined below and in section 3.6). We consider that there should be reporting on timeframes for the main stages of a Project outlined below to capture the different conduct. We consider that this information, together with the information outlined in section 3.6 below, is needed for the AER to detect whether a TNSP may have engaged in conduct which is contrary to the obligations in the Guideline (including discriminatory conduct) at any stage during a Project.

In addition to the reporting on the timeframes in draft 6.2.1(b)(viii) and (ix) of the Guideline, the TNSP should report on the timeframes in business days:

(a) *Between the connection enquiry to the lodgement of the Connection Application (Stage 1 - Enquiries Stage)*

Stage 1 would capture if a TNSP is engaging in conduct, following a connection enquiry but before a connection application is made, which materially lengthens a Project's timeline - for example, if the TNSP favours its RESP by imposing different or more onerous requirements in relation to a Connection Application where a RESP does not provide contestable services (without objectively justifiable reasons).

Interpretation of detailed design requirements

CEC industry members have advised that for contestable IUSA components or Designated Network Asset (DNA) services where a RESP is not selected to carry out the work, some TNSPs require:

- different and unnecessarily onerous requirements for the detailed design of the contestable IUSA components or DNA to be submitted with the connection application. For example, drawings based in the region of 80% design of the contestable IUSA components or DNA may be required at this early stage, rather than a 30% design if a RESP had been chosen.
- those drawings to be reviewed and approved by the TNSP *prior* to the TNSP commencing its review of the Proponent's connection application modelling-related items.

The preparation of these more detailed design drawings, and their review and approval, can add 6 to 18 months onto a project's timeline (depending on the level of detail required). This is a significant deterrent in connecting parties seeking offers from parties other than the RESP to provide contestable services.

The National Electricity Rules do not require the TNSPs to adopt this approach. The NER only requires:

- the Connection Applicant to *submit* a detailed design with its Connection Application at the R0 stage under clause 5.3.4(b)(2)(ii) of the NER – but does not specify the level of detail of the drawings. The rules also do not require the design to be reviewed and approved at the R0 stage
- the Connection Applicant to outline a *process* for how the TNSP will undertake a review these drawings under clause 5.3.4(b)(2)(i) of the NER – it does not require the drawings to be reviewed and approved at the R0 stage. Indeed, a process for reviewing a detailed design is arguably only necessary if the TNSP’s review is to occur after Connection Application has been approved.
- the detailed design to be consistent with the minimum function specification under clause 5.7.8 of the NER. It does not require drawings to be submitted which demonstrate compliance with the TNSP’s functional specifications at the R0 stage – clause 5.3.5(c) of the NER only requires demonstrated functional specification compliance to occur *prior to commissioning*⁹.

The additional detail being required by TNSPs from the Connection Applicant is arguably more than what is needed at this R0 stage of the connection process, especially since the plant’s own design is not yet at this level of detail when the initial connection application package is submitted. There does not appear to be objectively justifiable reasons for requiring detailed construction drawings (in the region of 80%) at the Connection Application (R0) stage. The rules contemplate that the Connection Application is to be based on initial nominal design values, rather than detailed design values (submitted at the R1 stage)¹⁰.

In conclusion, we have been advised by CEC industry members that TNSPs are favouring its RESP by imposing unnecessarily onerous requirements in relation to a Connection Application where a RESP does not provide contestable services through **its interpretation** of the detailed design requirements in chapter 5 of the NER. However, for the reasons given above, the NER could be interpreted in a way that permits the detailed designs of components or assets required to be submitted under clause 5.3.4(b)(2)(ii) of the NER to be based on nominal design values (which are not more onerous than those required if the RESP had been selected to provide services related to contestable IUSA components or DNA assets) and permits the review and approval process of the detailed design to occur after the Connection Application has been approved. This interpretation is to be preferred as it will promote competition for contestable services (resulting in lower consumer prices) and the NEL explicitly states that the interpretation of the NER that will best achieve the purpose or object of the NEL is to be preferred to any other interpretation¹¹. We request that the AER issues a letter to TNSPs and industry to clarify the interpretation of the detailed design requirements under chapter 5 of the NER to ensure it best supports the National Electricity Objectives.

(b) Between the lodgement of the Connection Application to issue of 5.3.4A letters (Stage 2 - Connection Application Stage)

⁹ Please note that any risk of non-compliance with the TNSP’s functional specification wholly lies with the Connection Applicant. A Connection Applicant is likely to accept this risk as it can be minimised by using the same contractor for D&C services that the TNSPs use (who are familiar with the TNSPs functional requirements and who can provide the exact same outcome as the TNSP would in terms of the assets installed).

¹⁰ We note that Schedule 5.5 (Technical Details to Support Application for Connection and Connection Agreement) of the NER distinguishes between data required to support a Connection Application (which is to be based on system planning data) and more detailed data, including data based on detailed design, which is to be submitted at the R1 stage.

¹¹ Clause 7(1) of Schedule 2 to the NEL.

Stage 2 is aimed at capturing whether there has been unreasonable delays resulting from the TNSP reviewing **and approving** the detailed design drawings of the contestable IUSA or DNA submitted with the Connection Application before it will proceed with the review of the other parts of the Connection Application. The AEMC at page 16 of its Final Determination on Expanding the transmission ring-fencing framework (**Final Determination**) acknowledged that the TNSPs may unreasonably delay the provision of an offer to connect through this review process and “a connecting party ... cannot be confident that delays are a result of legitimate reasons or a result of discriminatory conduct”.

(c) from the issue of 5.3.4A letters to the execution of Connection related Agreements and issuance of an Offer to Connect (Stage 3 - Contract Execution Stage)

Stage 3 is aimed at capturing whether the timeframe in negotiating the entire suite of Connection related agreements (which includes Project Agreement, Connection Agreement, Co-ordination Deeds and Operation and Maintenance Agreements) is longer when a non-RESP is chosen for contestable works than when the RESP is chosen for contestable works. This information is important as:

- There are no timeframes within which the TNSP and the Proponent must negotiate and enter into the Connection related Agreements and the TNSP may prioritise projects to which its RESP provides contestable services. A very relevant statistic is the time taken to negotiate agreements to provide the non-contestable assets depending on whether the RESP has been chosen to provide contestable services or not.
- CEC industry members have advised that the costs, and terms and conditions, for providing non-contestable services, and the project’s timeline, changed (becoming materially more unfavourable) after the TNSP was advised that its RESP would not be providing contestable services.

(d) from the Notice to Proceed (NTP) with the design and construction of the non-contestable assets (or the signing of Connection related Agreements) to the completion of the construction and commissioning of the non-contestable assets (Stage 4 - Project Delivery Stage)

Stage 4 is aimed at capturing whether the timeframe for the TNSP to undertake project works involving the building of a non-contestable asset (including non-contestable IUSA such as a circuit breaker in the substation or DNA secondary systems), and interface works (also known as cut-in works) is longer¹² when the RESP has not been chosen for contestable works than when the RESP has been chosen for contestable works.

As noted in our submission on the Issues Paper, the TNSP could preference its own projects and those projects which have selected its RESP to provide contestable services in terms of the timing and costs of the “cut-in” to the shared network¹³. CEC industry members have expressed concern that the TNSP can hold up the completion of a project in failing to provide contestable services in a timely manner. There are no liquidated damages payable by the TNSPs and as a result the TNSP can theoretically delay or derail a project indefinitely, with no contractual consequences to them.

¹² For example, due to limiting or delaying outage windows needed to carry out the work.

¹³ This risk was recognised by the AEMC at page 15 Final Determination.

3.5 Victoria

The AER should consider whether the reporting stages suggested in 3.4 above need to be modified to take into account differences between the connection process in Victoria and the rest of the NEM.

3.6 Reporting on metrics other than timeframes which could indicate the TNSP is engaging in discriminatory conduct which favours a RESP

As noted above, the time taken to complete projects is only one metric for assessing if discriminatory conduct may have occurred. The AER needs reporting on other metrics to be in a position to detect, and assess, if conduct which might be discriminatory has been engaged in at different stages of a Project.

In relation to each project, the TNSP should report:

- (a) if it imposes costs, risk allocations¹⁴, terms and conditions, and project timelines for projects where the RESP provides contestable services which are different from those where the TNSP does not provide contestable services, and if so, the reasons why.

We have been advised by CEC industry members that:

- TNSPs have informed Proponents at the initial Project stage that projects will take longer and cost more if contestable services are provided by a non-RESP
- TNSPs are prepared to waive certain provisions and costs in their Connection Agreement only if the RESP provides the contestable services
- TNSPs offer early procurement of long lead time items (for example transformers) only if the RESP provides the contestable services.

This is a significant deterrent in connecting parties seeking offers from parties other than the RESP to provide contestable services.

- (b) whether the costs, risk allocations, and terms and conditions, for providing non-contestable transmission services, GPS requirements and the project's timeline, changed after the TNSP was advised that its RESP would not be providing contestable services (becoming materially more unfavourable), and if so, details of the change and the reasons for the change.

We have been advised by CEC industry members that this has occurred (becoming more unfavourable). These have very severe financial impacts on Proponents and the material increase in costs needs to be passed on to consumers.

Reporting on metrics (other than timeframes) would be an effective deterrent to the TNSP engaging in discriminatory conduct.

¹⁴ TNSPs have the ability to offer preferential risk allocations if the RESP provides contestable services, leveraging the lower risk profile of their regulated asset base.

Commercially sensitive information

We note that the TNSP should be required to report on a confidential basis to the AER on metrics that include commercially sensitive information such as costs. This is so that the AER has sufficient information to determine if the TNSP is engaging in discriminatory conduct. The AER can easily exclude commercially sensitive information from its reports on the TNSP's compliance with the Guideline which it may publish under clause 6.2.3 of the Guideline, whilst still providing information about the TNSP's compliance with the Guideline. For example, the AER could in its public reports outline the relative increase in costs (as a percentage) after the TNSP was advised that its RESP would not be providing contestable services, without disclosing confidential information.

4. Audit

CEC industry members have expressed concern about TNSP conduct at different stages of the connection process (including when bidding for contestable transmission work) with very severe financial impact on them, as outlined above. The submissions on the AER's [Issues Paper](#) also indicate that, at least for some of the TNSPs, their current processes and internal compliance measures may not be adequate to ensure strict compliance with ring-fencing obligations under the Guideline and need to be reviewed¹⁵. This may also be the position with other TNSPs.

We therefore recommend that the AER exercise its powers under clause 6.1 of the Guideline and require each of the TNSPs to demonstrate the adequacy of their policies, processes and procedures to ensure the TNSP complies with its obligations under the Guideline through a compliance audit (including obligations to self-report breaches of ring-fencing obligations)¹⁶. We recommend that the compliance audit take place within 12 months of the commencement date of version 5 of the Guideline.

The audit would identify areas in which businesses can strengthen and improve their processes, systems and procedures in connection with their ring-fencing obligations and check that the businesses are complying with their reporting obligations. We consider a compliance audit is particularly important if the AER does not require strict separation of staff and if the AER does not broaden its reporting obligations.

5. Staff separation

We urge that the AER reconsider extending the staff separation requirement in clause 4.3 of the Guideline to the negotiated transmission services. The failure to do so undermines the information access and disclosure requirements in the clause 4.2 of the Guideline.

¹⁵ Transgrid's [submission](#) to the AER's Issues Paper states that:
*...the enshrining of specific ring-fencing measures as regulatory obligations, breach of which triggers regulatory penalties and implications, requires review of existing processes, reconfiguration of existing processes and further internal compliance measures to ensure **strict compliance** with those regulatory obligations. (emphasis added)*

In ENA's [submission](#) to the AER's Issues Paper on behalf of its electricity transmission members notes that the changes from the last guideline (version 4) are only just 'settling in' despite being in place for over a year.

¹⁶ We note that the AER routinely requires compliance audits in connection with compliance with the retail rules.

It is very difficult to ensure that an employee in possession of confidential information¹⁷ (gained from the regulated business) is not using that information in a way that is advantageous to the RESP in competing for contestable services or indeed in the pursuit of its own projects – confidential information can be passed on in corridors or accessed through shared IT systems. As AEMC at page 17 of the Final Determination states:

it would be very difficult in circumstances where employees are permitted to participate in both the regulated and non-regulated activities of the TNSP to ensure that an employee in possession of confidential information (gained from the regulated business) is not using that information in a way that is advantageous to the TNSP.

Incenta considers that the access and disclosure requirements under clause 4.2 of the Guideline require the TNSP to impose staff separation, noting that:

“the requirement for a TNSP to quarantine information that is received during a connection process has the effect of requiring a separation of key staff between those working on a contestable project, and those undertaking the “gate keeper” roles, whilst a contestable connection process is being run”¹⁸.

It would therefore assist all involved in the connection process to have transparency and certainty around staff separation requirements by extending clause 4.3(a) of the Guideline to negotiated transmission services.

TNSP’s concerns about staff separation are better dealt with by a waiver following a compliance audit

We consider that the staff separation requirement should be extended to negotiated transmission services and that each TNSP then has the option to apply for a waiver from this obligation.

The AER should only grant such a waiver if the TNSP can demonstrate **following an independent compliance audit** that it has appropriate controls, processes and procedures in place to ensure that confidential information gained by the regulated business cannot be used by RESP staff (whether by disclosure or access to shared systems) in a way that could advantage them in competing for contestable services or developing its own competing assets.

¹⁷ As noted in our submission on the Issues Paper, the TNSP obtains commercially sensitive information as part of providing its regulated services which, if provided to its RESP, could advantage the RESP in competing for contestable services or when developing its own competing assets (eg storage). This commercially sensitive information includes:

- Commercially sensitive information about a plant’s costs and operations obtained during the RITT tender process
- Information about a competitor’s designs of an IUSA which have been submitted to the TNSP in order to negotiate an operations and maintenance agreement
- Information about grid scale batteries in the pipeline.

It is likely that that the TNSP will acquire additional commercially sensitive information during the optional but recommended pre-application meetings (which are being introduced as part of the CRI workstreams). These meetings will consider the Project’s commercial arrangements as a whole and it is possible for the TNSP to acquire information about whether the Proponent is proposing to tender for contestable services or the commercial details of a competitor’s offer.

¹⁸ Footnote 15 on page 5 energynetworks.com.au/resources/reports/incenta-report-competition-issues-for-contestable-transmission-connection-projects/

Other measures to reinforce clause 4.2 of the Guideline

We note that other controls are needed to ensure that RESP cannot access confidential information, for example, separation of data and computer systems.

6. Annual Survey

The AEMC has acknowledged:

- Connecting parties, whether large or small, would be reluctant to raise concerns about a primary TNSPs behaviour given the need for an ongoing working relationship with the TNSP as the only entity that can facilitate a connection to their network
- Some types of discriminatory conduct would likely not be overt or obvious and clearly detectable but would instead likely be subtle and difficult to detect¹⁹.

For this reason, we consider it would be helpful if the AER provides the opportunity for Proponents to participate in an anonymous survey which would provide feedback on:

- Whether a TNSP has been engaging in discriminatory conduct, or conduct which favours the RESP, at any of the stages outlined in 3.4 above
- whether the Proponent tendered for the contestable connection elements but did not use a non-RESP (and the reasons why)
- other issues which result in barriers to Proponents choosing a non-RESP to provide contestable services
- barriers to the negotiation of contestable and non-contestable services – for example, whether the quote for contestable and non-contestable services are sufficiently transparent with sufficient detail about each of the services being provided to permit effective commercial negotiation and to compare any changes in costs for non-contestable services should a non-RESP be chosen for the contestable works. CEC industry members have expressed concern about the lack of transparency in quotes for non-contestable services when bundled with those for contestable components
- whether existing waivers should be revoked (and the reasons why)
- whether confidential information may have been accessed by, or disclosed to, the RESP.

The survey would confirm if the TNSPs are complying with their ring-fencing obligations (including the requirement to self-report breaches of ring-fencing obligations under clause 6.3 of the Guideline) and confirm findings from any compliance audits. It would also highlight other barriers to a Proponent using a non-RESP for contestable services.

We note that AEMO Victoria sends annual surveys to Proponents for feedback²⁰. The AER has regulatory powers to seek further information should the response from Proponents indicate potential non-compliance with the Guideline (including self-reporting obligations).

¹⁹ Page 16 Final Determination

²⁰ [Connections Enquiry Fee Introduction](#)

7. Removal of maximum limit on waivers

We do not support the removal of maximum limit on waivers.

It is preferable for the AER to reassess a waiver's impact on competition within the current maximum time for granting a waiver as the energy market is undergoing rapid technological and structural change and can be anticipated to continue to do so.

If the AER is minded to remove the maximum limit on waivers, the Guideline should be amended so that:

- the AER is required publish its reasons for granting a waiver that exceeds 5 years prior to granting a waiver (to provide the opportunity for public comment)
- the AER is required to invite public submissions on waiver applications which exceed 5 years (currently the AER has only a discretion to do so under 5.3.2(b)(iii)).

In addition, the AER should seek feedback in the annual survey recommended in section 6 above on whether the waiver should be revoked e.g. because of competition concerns or changes in market structure or technology.

The CEC welcomes further engagement with the AER on the transmission ring-fencing reform. Further queries can be directed to Diane Staats at dstaats@cleanenergycouncil.org.au.

Kind regards

Christiaan Zuur

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