

2 March 2026

Anna Collyer
Chair
Australian Energy Market Commission
Sydney NSW 2000
Lodged electronically

Dear Ms Collyer,

Rule change request - Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM

Nexa Advisory (Nexa) submits the attached rule change request to maintain a robust and effective regulatory environment amid the rapid transformation of the energy market. We are proposing a significant and necessary reform to the ring-fencing framework, designed to directly address existing deficiencies and emerging competitive challenges within the contestable energy services markets.

Since the rise in the take up of solar rooftop in Australia by consumers, the consumer energy market has been contested by incumbent networks. As a result, the protections delivered by the Australian Energy Regulator (AER) Ring-fencing Guideline (Guidelines) have been progressively weakened - most visibly through the expansion and normalisation of waivers that permit DNSP participation in contestable markets without sufficiently robust conditions, monitoring, or transparency. This creates material risks for competitive neutrality and consumer outcomes at precisely the time these markets are becoming central to the energy transition.

Nexa's efforts are driven by three core objectives: to bolster consumer protections, stimulate greater competition and expertly manage the integration of distributed energy resources and new technologies. We note the proposed rule change is supported by key organisations and member associations across the industry including the Smart Energy Council, the Clean Energy Council, the Australian Energy Council, Solar Citizens, National Electrical and Communications Associations and many other organisations.

The proposed changes are intended to protect long term interests of consumers by enhancing the competitive consumer energy market- resources and services. This is by formally incorporating the Guidelines into the National Electricity Rules (NER). Secondly, introduce five targeted amendments that strengthen the current Guidelines:

1. **Market benefit and consumer failure test** - direct competition by Distribution Network Service Providers (DNSPs) in contestable markets will be permitted only under significantly tightened waiver conditions. Entry must be strictly limited to instances of demonstrated market failure, where the contestable market cannot supply the required service, and where the DNSP's involvement guarantees measurable, long-term benefits for consumers.
2. **Financial resilience and ring-fence triggers** - to prevent DNSPs from jeopardising their own financial stability or credit standing and supporting affiliated enterprises, we are establishing mandatory minimum financial requirements. These stipulations mandate the

maintenance of an investment-grade credit rating and adherence to specific minimum liquidity ratios.

3. **Affiliate Dealings and data access** - the anti-discrimination rules governing DNSP interactions with their affiliated business units are being strengthened. This is intended to mitigate the risk of DNSPs unfairly favouring their own entities in contestable markets. Breaches of these obligations will be subject to enforceable penalties under the Australian Energy Regulator's (AER) compliance framework.
4. **Branding and representation** - new rules are proposed to prevent consumer confusion and the conferral of an unfair market advantage. This includes prohibiting shared branding and ambiguous messaging. Consumers must be given explicit assurance that they are under no obligation to purchase contestable services (such as Distributed Energy Resources (DER) or EV charging) from a DNSP or its associated businesses.
5. **Reporting, complaints and enforcement transparency** - codify a minimum transparency architecture so ring-fencing oversight is observable and auditable through a standardised annual AER compliance/enforcement report (including waivers, investigations and outcomes) and a safe, formalised pathway for stakeholders to raise ring-fencing concerns, supported by consistent triage and complaint publication expectations.

This rule change request is deliberately narrow. We recognise the AEMC's forward work program includes an upcoming network regulation review, and we consider a number of broader issues to be best examined through that review - rather than as part of this proposal. This may include issues around economic/regulatory incentives (including the capital expenditure bias and consideration of alternative regulatory models like totex), connection process performance, tariff/pricing settings and related data reforms. In that sense, this rule change is intended to establish a targeted, near-term reform pathway, while the network regulation review will consider the wider reform package needed to ensure distribution regulation remains fit-for-purpose.

Nexa welcomes the opportunity to work constructively with the AEMC and stakeholders through consultation. Please contact me if you would like to discuss any aspect of the proposal.

Yours Sincerely,

Stephanie Bashir
CEO and Principal
Nexa Advisory



AEMC Rule Change Proposal:
**Protecting Consumers by Enhancing
Competition in Distributed/Consumer Energy
Resources and Services in the NEM**

Prepared by Nexa Advisory

2 March 2026

Preface

Competition and consumer outcomes: why this rule change matters under the NEO

Competition is not an abstract principle in the energy transition; it is the mechanism that has delivered consumer value in Consumer Energy Resources (CER) markets - through lower prices, faster innovation and greater consumer choice in technologies such as rooftop solar, batteries and EV charging. As CER uptake accelerates and these markets deepen, the integrity of competitive delivery becomes increasingly important to achieving the National Electricity Objective (NEO) and delivering electricity services in the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply.

Against that backdrop, the erosion of ring-fencing protections is not merely a compliance or governance issue - it is a consumer-outcomes issue. Distribution Network Service Providers (DNSPs) are regulated monopoly businesses with structural advantages that competitive providers cannot replicate - including guaranteed cost recovery through regulated charges, incentives tied to expanding the Regulated Asset Base (RAB), privileged access to network and customer data and control over key access and connection interfaces. Where network businesses are permitted to participate in contestable markets without robust constraints, these advantages can be leveraged to foreclose competition, distort investment signals and ultimately reduce the dynamic benefits that competition delivers to consumers.

The consumer harms from weakened competition are that:

- **Consumer choice is diminished** when monopoly platforms can use their position, processes, or brand association to crowd out competitive providers. This can lead to reduced entry and weaker rivalry, resulting in fewer product options and less consumer agency - particularly in emerging markets such as EV charging and home battery storage.
- **Long-run consumer costs rise** when regulated businesses can expand into competitive markets in ways that shift risk and cost onto consumers. In practice, this can occur through cross-subsidisation risks or through the expansion of network-led assets and programs that are ultimately recovered through regulated charges.
- **Technology and service innovation slows** when markets tilt toward monopoly delivery. Competitive CER markets have historically driven rapid product iteration and service innovation. By contrast, regulated delivery models tend toward standardised, asset-heavy solutions with weaker competitive pressure to innovate.
- **Gold-plating / capex bias risks increase** because regulated incentives can favour ownership and capital deployment over service procurement and non-network alternatives. Where the 'solution' to an emerging service need becomes regulated asset ownership, consumers risk paying for higher-cost, longer-lived investments even where competitive procurement could deliver the same or better outcomes more efficiently.

These impacts go directly to the NEO. Effective competition improves allocative and dynamic efficiency - placing downward pressure on costs, increasing quality through service differentiation and accelerating innovation.

Conversely, weakening ring-fencing settings shifts the system toward monopoly-led delivery in markets that are otherwise contestable, undermining precisely the consumer outcomes the NEO is intended to protect.

Addressing common claims (speed, cost, and equity)

Certain network businesses and other stakeholders argue that DNSP-led delivery can be “faster”, “cheaper” or “more equitable” because networks have scale, a lower cost of capital, and direct operational visibility. Nexa’s *Empowering Consumer Energy* report¹ recognises these claims are commonly used to justify expanded DNSP roles in contestable CER markets, but cautions they overlook the structural incentives that differ fundamentally between regulated monopolies and competitive providers (including guaranteed cost recovery via network charges and RAB-linked returns that can bias decisions toward asset ownership and capital solutions).

The report also highlights that weakening ring-fencing - particularly through liberal use of waivers - has already blurred the line between regulated and competitive delivery, creating material risks for consumer choice, innovation and long-run costs. Where the application of the Ring-Fencing Guideline (the Guideline) is weakened, DNSPs can take advantage of their position to offer contestable services at prices competitors cannot sustainably match. This reflects cross-subsidisation risk between DNSPs’ contestable services and regulated monopoly services. This undermines competitive neutrality, crowds out specialist providers and ultimately risks harming consumers through reduced choice and weaker innovation.

Though intended to ensure a level playing field, the Australian Energy Regulator’s (AER) application of the Guideline has unintentionally facilitated this environment, which unfairly favours DNSPs.

The AER’s Ring-Fencing Class Waiver for Community Batteries - which enabled community batteries financed through the Commonwealth Government’s *Community Batteries for Household Solar Program* - illustrates this issue. The waiver relaxed specified obligations in the Ring-fencing Guideline (including leasing restrictions and elements of functional separation) to enable DNSPs to lease battery capacity to third parties and to support arrangements where a community battery may be used for both regulated network (direct control) services and non-network/unregulated services - subject to compliance with Cost Allocation Principles (i.e., allocating and attributing costs across service categories).

In practice, however, it is inherently difficult to determine what service the battery is providing at any given moment, and therefore to allocate costs between regulated and unregulated uses with high confidence. Without a transparent, standardised methodology for apportioning shared asset costs (and verifying those allocations), DNSPs retain substantial discretion, increasing the risk of cross-subsidisation and eroding the competitive neutrality and “level playing field” that the ring-fencing framework is intended to protect.

Speed of deployment

¹ Nexa Advisory, [Empowering Consumer Energy](#), 23 June 2025

Structural barriers in network data and connection processes - rather than a lack of competitive market capability - are the main barrier preventing timely deployment by contestable providers. Namely, timely competitive deployment is impacted by:

- fragmented/insufficient access to essential network data (hosting capacity, constraints, locational value);
- opaque or inconsistent access terms; and
- slow or costly connection processes.

Nexa has therefore argued for addressing these barriers via stronger DNSP obligations on data transparency and planning visibility, and to streamline and standardise connection timeframes and requirements - so competitive providers can deliver solutions at pace, rather than defaulting to DNSP ownership or network-led service provision.

Cost and “cheaper capital”.

While regulated networks may have a lower financing cost, this does not translate automatically into lower consumer cost because DNSP investments are ultimately recovered from consumers - and there is no automatic obligation ensuring benefits flow back to consumers.

Additionally, there are several examples where network-led delivery has been more expensive than competitive alternatives, including:

- ARENA’s findings that ‘network’ community batteries were materially higher-cost than non-network (behind-the-meter) batteries (weighted average ~\$2,300/kWh vs ~\$1,330/kWh)²; and
- the Victorian distributor-led smart meter rollout which imposed large costs on consumers with limited direct benefits³ - subsequently prompting reforms to open metering to competition⁴.

Equity

‘Equitable access’ (including for renters and low-income consumers) is frequently cited to justify DNSP entry. However, monopoly delivery in contestable markets can undermine the very consumer outcomes equity depends on by weakening competition, reducing consumer choice and agency, and slowing innovation and service differentiation.

Equity also should not be conflated with socialising costs across the entire customer base: spreading the costs of services used by a subset of consumers through regulated charges is not inherently equitable, particularly where it weakens price signals and imposes costs on those least able to pay. A more durable equity framing is cost-reflective and beneficiary-pays,

² Australian Renewable Energy Agency, [Market Snapshot ARENA Community Battery Funding Round 1](#), November 2024

³ Victorian Auditor-General’s Report, [Realising the Benefits of Smart Meters](#), September 2015

⁴ AEMC, [Expanding competition in metering and related services](#), November 2015

with targeted support for vulnerable cohorts, while preserving competition to deliver cost reductions and innovation.

In this sense, equity objectives can be better achieved through preserving competitive delivery, rather than through structural market interventions that embed higher-cost, asset-centric solutions which risk locking in a new ‘gold-plating’ cycle as CER markets scale.

For these reasons, Nexa proposes reforms that strengthen ring-fencing settings and elevate core obligations into the National Electricity Rules (NER), so that protections are durable, enforceable and aligned with the long-term consumer outcomes required by the NEO as CER markets continue to expand.

A likely counterargument is that, during the transition, ring-fencing should remain primarily in Guidelines to preserve flexibility and avoid slowing delivery. Nexa considers that elevating core protections into the NER need not be overly prescriptive; the Rules can codify the key obligations and decision principles, while the AER Guidelines continue to operationalise and update implementation detail as markets evolve.

In this sense, raising these elements within the Rules does not remove flexibility – but rather creates accountability by placing a clear onus on DNSPs to justify any exemptions or expanded roles through transparently demonstrating that their activity in these markets is least-cost and competition-neutral.

This rule change proposal is directed at DNSPs in their capacity as regulated monopoly service providers, and the obligations it seeks to clarify and strengthen are obligations on DNSPs (as opposed to their affiliated entities). References to affiliates throughout this proposal are included only where necessary to describe the competitive neutrality risk - they do not imply standalone obligations on affiliates.

Why submit these changes – encroaching on competitive new energy service markets risks the long-term interests of consumers

Nexa Advisory has consistently supported stronger ring-fencing as essential to preserving competitive neutrality and consumer protection. In its submission on the AER’s transmission ring-fencing guideline⁵, Nexa called for clear reporting frameworks and enforceable penalties to prevent discrimination in connection services. In 2025, Nexa opposed waivers for DNSPs entering EV charging markets, warning that such exemptions risk eroding ring-fencing and distorting competition⁶. Similarly, Nexa raised concerns about Ausgrid’s community battery

⁵ Nexa Advisory, [Nexa Advisory Submission - AER Ring-fencing guideline \(electricity transmission\) – negotiated services](#), November 2024

⁶ [Nexa Advisory Submission - AER CitiPower, Powercor and United Energy Ring-fencing Waiver Application](#), June 2025

waiver⁷, highlighting the danger of monopoly networks leveraging consumer-funded assets and exclusive data access to crowd out competitive providers. Nexa's position is always clear: ring-fencing must be reinforced, not relaxed, to maintain trust, protect consumers, and enable fair market development.

Nexa's view is that if networks propose a rule change to relax or even remove ring-fencing obligations, it is critical to present a countervailing framework that strengthens protections rather than dismantles them. The rationale in Nexa's submission is simple: ring-fencing exists to safeguard consumers, maintain competitive neutrality, and ensure monopoly revenues are not leveraged to distort emerging markets. Removing ring-fencing obligations would expose customers in the National Electricity Market (NEM) to significant risks; foreclosure of contestable services, cross-subsidisation, and the erosion of consumer trust - *at precisely the time when innovation and investment are accelerating*.

What networks seek through further relaxation is not targeted flexibility, but structural deregulation; effectively granting them a privileged position in contestable markets. This is an emerging regulatory failure, where a series of individually "limited" waivers, trials and incremental relaxations cumulatively dismantle the safeguards intended to preserve competitive neutrality. This shift would dismantle the safeguards that should prevent monopoly businesses from leveraging their regulated status to dominate emerging sectors such as EV charging, DER aggregation, and community batteries. DNSPs will and are using consumer-funded infrastructure, brand recognition, and insider access to data to crowd out competitive providers. The result of further relaxation would be a market where innovation and efficiency are stifled, not because competitors lack capability, but because they cannot overcome the inherent advantages of incumbent networks operating without constraints.

Nexa has raised before that such relaxation would also create systemic risks⁸. By blurring the line between regulated and unregulated activities, networks could expose consumer-funded revenues to commercial ventures with higher risk profiles. This undermines the principle of competitive neutrality and erodes trust in the regulatory framework. Once these privileges are entrenched, reversing them becomes nearly impossible due to path dependence; each decision to relax obligations sets a precedent that weakens future enforcement. In short, structural deregulation would not deliver flexibility; it would fundamentally alter the market architecture, prioritising DNSP convenience over consumer protection and long-term competition.

This would undermine competition, deter third-party investment, and ultimately harm consumers through higher prices, reduced choice and slower innovation. Stronger financial resilience measures, tighter affiliate dealings rules, and clearer branding separation protect consumers and maintain confidence in essential services.

⁷ Nexa Advisory, [Nexa Advisory Submission - AER Ausgrid Community Power Network Trial Waiver](#), September 2025

⁸ Nexa Advisory, [Empowering Consumer Energy](#), June 2025

Nexa’s proposed rule changes cover a stronger waiver framework, financial resilience triggers, affiliate dealings, branding and representation, and improved reporting and enforcement, and are designed to strike the right balance to preserve the core protections of ring-fencing while enabling genuine innovation under controlled, transparent conditions.

A stronger waiver framework

Relaxing ring-fencing now would put Australia out of step with international best practice and create structural vulnerabilities that could take years to unwind.

Networks will argue that flexibility is needed to enable innovation and reduce compliance costs, and this approach has some support amongst the various regulators. However, flexibility without integrity is dangerous. In their intended form, waivers already provide a mechanism for exceptional circumstances, being subject to conditions and public scrutiny. And yet they have been repeatedly granted in entirely unexceptional circumstances, creating a dangerous path dependency. Path dependency describes how once a system takes a certain path, it becomes harder to change direction because of sunk costs, institutional inertia, or established norms. It’s a path the networks have been cultivating.

Experience teaches it would be impossible to get the regulator to contemplate reversing out the possibility of waiver “innovation” in their framework. By embedding affirmative “no harm” tests, mandatory disclosures, and independent verifications, the proposed rule change reforms ensure that networks can participate in emerging services only where genuine market failure exists and measurable consumer benefits are proven. This approach supports the energy transition without sacrificing neutrality or trust.

There are signs the regulator is listening, although stakeholders are having to hold a megaphone to their ear. The recent AER decision granted a time-bound, limited scope ring-fencing waiver to CitiPower, Powercor and United Energy (collectively, CPU), to enable CPU to conduct a kerbside EV charging trial at sites that meet specific criteria in Victoria until mid-2031. This waiver will have nine waiver conditions to help mitigate its impacts on market competition and, taken together, these conditions set an essential baseline for transparency, neutrality, and competitive fairness. They should form the minimum expectation for any future ring-fencing waivers, and our proposal says so. If nothing else, embedding these general requirements as standard to any waiver will help maintain trust in the regulatory framework and ensure that innovation proceeds without compromising market integrity or consumer interests.

Financial resilience triggers

What inspires network adventurism in competitive markets? Nexa believes that the UK experience is instructive. Ofgem has recently launched its review of ring-fencing, with a stated purpose to ensure that network businesses remain “fit for purpose now and remain so as the environment changes.” Ofgem stressed that this wasn't a response to past failures, but was a proactive effort to future-proof infrastructure against evolving risks, including market volatility and increased complexity.⁹

⁹ Ofgem, [Energy Networks Ring-fence Review](#) p.6

This UK example underscores a key principle: as markets evolve and new technologies emerge, the need for robust safeguards increases, not decreases. Consumer submissions to Ofgem noted that robust ring-fencing makes network assets “an even safer investment” and can support lower borrowing costs, benefiting end consumers.¹⁰ This also includes stronger financial resilience measures to protect consumers and maintain confidence in essential services.

Nexa has consistently raised that by blurring the line between regulated and unregulated activities, networks could expose consumer-funded revenues to commercial ventures with higher risk profiles. Nexa highlights that Australia faces the same emerging global hazard: distribution networks may take excessive financial or operational risks because much of the downside is ultimately borne by consumers. Because networks know that regulators will intervene to keep essential services running, they feel insulated from the consequences of risky decisions. This weakens discipline and can incentivise behaviours such as over-leveraging, extracting excessive dividends, or diverting consumer-funded revenues into unregulated ventures - leaving consumers to absorb the costs through higher tariffs or emergency measures. By our framing, the issue is a moral hazard: the argument shifts from theoretical compliance to a real-world risk of distorted incentives that undermine market integrity.

By tightening ring-fencing and embedding financial resilience triggers - as seen in the UK - Nexa argues the framework can reduce the implicit assumption that consumers will absorb losses. Networks would be required to maintain robust credit metrics and liquidity buffers, rather than relying on regulatory intervention. This restores *true risk pricing* – improving risk discipline and leveling the playing field, meaning networks and third-party providers compete on equal financial terms. It also corrects a structural distortion in capital markets, supporting a fairer environment for innovation and investment. Overall, it better aligns incentives with the long-term health of the energy system and the NEO as the energy transition accelerates.

Affiliate Dealings and Data Access

Affiliate dealings and data access obligations are central to ensuring that DNSPs (and TNSPs) treat all market participants - including their own affiliates - on strictly equal terms. These obligations prevent preferential access to information, timing, pricing, or processes, and require networks to operate through standardised, publicly available protocols such as APIs, portals, and queue systems. By addressing the everyday conduct risks that can quietly distort competition, these measures complement structural ring-fencing and ensure that competitive markets are not undermined by subtle operational advantages.

Strengthening these safeguards is essential as emerging energy markets become more dependent on digital interfaces, real-time data and automated service interactions. The proposed changes aim to eliminate practical discrimination by mandating uniform data standards, transparent queues, and open service interfaces. They also reduce foreclosure risks by removing informational and operational asymmetries that can allow network-owned affiliates to win business through insider advantage rather than merit.

¹⁰ Citizens Advice, [Citizens Advice response to Energy Networks ring fence review call for input 11.12.24](#)

Stakeholders have consistently raised concerns that DNSPs' control over connection/access processes, combined with limited transparency of constraint and hosting-capacity information, can create material information asymmetries that chill third-party investment. Additionally, where a DNSP (or its affiliated business) participates – this can heighten risks of discrimination and foreclosure in contestable markets. Early visibility of constraints and hosting capacity¹¹, non-transparent access pricing/charges, and faster connection processing or queue progression are difficult to detect or challenge¹² without standardised data interfaces, published service standards and audit-ready reporting¹³. These risks are amplified in emerging services where DNSPs design and operate the connection and data interfaces that competitors must use¹⁴.

Existing guidance does not provide the prescriptive, testable requirements needed to verify neutrality in practice. By embedding performance metrics and public reporting, the framework increases transparency and trust, ensuring that innovation and efficiency arise from genuine competition rather than monopoly leverage. It is essential to shift assurance from statements of intent to evidence-based neutrality.

Branding and Representation

Consumers must never be led to believe they are required to purchase contestable services such as EV charging, DER solutions, or community batteries from a DNSP (or its affiliate). Shared branding, similar logos, and ambiguous messaging can create this false impression, regardless of intent, and confer an unfair competitive advantage. To address this, the proposed Branding and Representation Rule removes access to waivers and mandates distinct branding and explicit disclaimers at every consumer touchpoint, ensuring consumers understand their choices and that competitive neutrality is upheld. These obligations should be codified in the NER as enforceable standards rather than left to interpretation through guidance.

The purpose of the rule is to eliminate consumer confusion, protect competitive neutrality, and maintain trust in the market by ensuring that affiliates compete on merit rather than perceived monopoly endorsement. Stakeholders, including consumer groups and retailers, have repeatedly raised concerns that shared branding and DNSP logos on affiliate materials create a perception of monopoly endorsement, discouraging consumers from exploring competitive alternatives¹⁵. These risks are heightened in emerging markets where DNSPs operate the underlying infrastructure, and consumers may assume that only the network's affiliate can provide the service. Current ring-fencing guidance lacks prescriptive standards for branding

¹¹ As recognised by Energy Consumer Australia in the recent [Integrated Distribution System Planning \(electricity\) rule change request](#)

¹² Nexa Advisory, [Accelerating Consumer Energy in Australia](#), May 2024

¹³ As recognised by the AER in its [CPU waiver Notice of Decision](#)

¹⁴ As recognised through consultation undertaking by DCCEEW for the [National CER Roadmap](#).

¹⁵ AER, [Ring-fencing waiver applications final decision](#), December 2017

and disclaimers, allowing DNSPs to maintain similar colour schemes, naming conventions, or co-branded materials that blur the line between regulated and contestable services.

A stronger “no misleading representation” test is therefore essential. The rule requires affirmative proof that branding and messaging do not mislead consumers, including distinct logos and naming, clear disclaimers on all materials, public transparency through published artefacts, and independent audits of websites, invoices, advertising, and physical assets. By embedding these requirements, the Branding and Representation Rule ensures consumers are never misled into thinking they must use a DNSP affiliate, and it protects consumer choice, competitive neutrality, and trust in the energy market.

Reporting, complaints and enforcement transparency

Ring-fencing only works if market participants can see that it is being enforced, consistently and without fear or favour. Today, DNSPs already face compliance obligations around annual compliance reporting and self-reporting of ring-fencing breaches. But the transparency that gives those obligations credibility is still too discretionary. When enforcement activity is opaque, stakeholders can’t distinguish between a framework that is working quietly in the background and one that is being stretched through waiver creep, under-reporting, or inconsistent follow-up. That uncertainty alone can chill investment and undermine confidence in contestable markets.

The case for codifying enforcement transparency is supported by history. In the AER’s early ring-fencing compliance reporting, it publicly identified material shortcomings and noted its monitoring and investigation work, alongside a developing penalty framework. This precedent matters because it shows two things: non-compliance is not hypothetical, and transparency is the mechanism that turns ring-fencing from principle into discipline. As waivers expand and networks increasingly overlap with contestable services, the risk is not only breaches themselves, but the perception that oversight is lacking.

This is why Rule 5 complements every other reform in this proposal. Stronger waiver tests, financial resilience triggers, affiliate dealing controls, and branding separation all depend on credible monitoring and an enforcement that is visible to stakeholders. Rule 5 does not add bureaucracy for its own sake; it converts ring-fencing enforcement into an auditable, standardised architecture so that compliance expectations are unambiguous and the regulator’s actions are observable.

Practically, the reform does three things. First, it makes annual AER ring-fencing compliance and enforcement reporting mandatory and standardised, building on what is already published but removing discretion about whether, how, and to what depth it occurs. Second, it creates a safe complaints channel so competitors, customers and even employees or contractors can raise ring-fencing concerns without fear of reprisal. Thirdly, it requires the AER to publish and follow a clear triage and investigation process - what information may be sought from DNSPs, typical timeframes and the range of responses or outcomes - so that the pathway from ‘concern raised’ to ‘issue resolved’ is transparent and repeatable.

Conclusion

Clear ring-fencing waiver criteria, financial resilience triggers, strict affiliate dealings rules, and brand transparency obligations ensure that networks cannot privatise gains while socialising costs. It also levels the playing field, albeit obliquely. For example, right now, networks know they can lean on consumer-funded revenues or expect regulatory bailouts, so lenders perceive them as *low risk regardless of their actual financial discipline*. This *artificially* lowers their cost of capital compared to competitive providers who must bear full commercial risk. This is simply not a level playing field.

Nexa submitting these changes is about future-proofing the NEM. We signal that consumer protection and competitive integrity are non-negotiable, even as we embrace new technologies and business models. If networks succeed in removing ring-fencing, the consequences will be profound and likely irreversible: entrenched monopoly influence in contestable markets, diminished investor confidence, and long-term harm to consumers.

Relaxing ring-fencing now would put Australia out of step with international best practice and create structural vulnerabilities that could take years to unwind. Strengthening the ring-fencing framework now is not just prudent - it is essential to maintain a fair, efficient, and resilient energy market while avoiding future regulatory failure.

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Summary

Nexa Advisory has consistently supported stronger ring-fencing as essential to preserving competitive neutrality and consumer protection. In its submission on the AER's transmission ring-fencing guideline (2024), Nexa called for clear reporting frameworks and enforceable penalties to prevent discrimination in connection services. In 2025, Nexa opposed waivers for DNSPs entering EV charging markets, warning that such exemptions risk eroding ring-fencing and distorting competition. Similarly, Nexa raised concerns about Ausgrid's community battery waiver, highlighting the danger of monopoly networks leveraging consumer-funded assets and exclusive data access to crowd out competitive providers. Nexa's position is always clear: ring-fencing must be reinforced, not relaxed, to maintain trust, protect consumers, and enable fair market development.

Nexa's view is that it is critical to present a ring-fencing framework that strengthens protections rather than dismantles them. The rationale in Nexa's submission is simple: ring-fencing exists to safeguard consumers, maintain competitive neutrality, and ensure monopoly revenues are not leveraged to distort emerging markets. Relaxing ring-fencing obligations could expose customers in the NEM to significant risks; foreclosure of contestable services, cross-subsidisation, and the erosion of consumer trust. *At precisely the time when innovation and investment are accelerating.*

Supporting our view that it is critical to present a ring-fencing framework that strengthens protections rather than dismantles them, Nexa believe that the UK experience is instructive. Faced with a comparable energy transition, Ofgem has not weakened its ring-fencing regime; it has reinforced it. Ofgem clearly stated its view that its role is to ensure that network businesses remain "fit for purpose now and remain so as the environment changes." It stressed that it wasn't responding to past failures, but taking a proactive effort to future-proof infrastructure against evolving risks, including market volatility and increased complexity.¹⁶

Nexa has previously contended that stronger financial resilience measures, tighter affiliate dealings rules, and clearer branding separation protect consumers and maintain confidence in essential services. The UK example underscores a key principle: as markets evolve and new technologies emerge, the need for robust safeguards increases, not decreases. Consumer submissions to Ofgem noted that robust ring-fencing makes network assets "an even safer investment" and can support lower borrowing costs, benefiting end consumers.¹⁷

Nexa's view is that relaxing ring-fencing now would put Australia out of step with international best practice and create structural vulnerabilities that could take years to unwind. That is why Nexa proposes the introduction of four key reforms to ensure ring-fencing remains fit for purpose that will:

1. **Codify last-resort waiver criteria** so exemptions are only granted where market failure is independently verified and consumer benefits are quantified;

¹⁶ Ofgem, [Energy Networks Ring-fence Review](#) p.6

¹⁷ Citizens Advice, [Citizens Advice response to Energy Networks ring fence review call for input 11.12.24](#)

2. **Embed automatic financial safety-switches** that lock regulated cash and suspend dividends when financeability thresholds are breached;
3. **Guarantee equal access and neutrality** through standardised, public data protocols and strict prohibitions on preferential treatment for affiliates; and
4. **Protect consumer choice** by banning branding or representations that imply exclusivity and mandating clear disclaimers and brand separation.
5. **Make ring-fencing reporting and enforcement explicit and observable** by requiring the AER to publish an annual ring-fencing compliance/enforcement report, operate a complaint reporting channel, and publish a clear handling process for alleged breaches of the Guidelines or waiver conditions.

Together, these measures close critical gaps, enhance transparency, and align the framework with the NEO by promoting competition, consumer protection, and financial resilience. In submitting these changes, Nexa signals that consumer protection and competitive integrity are non-negotiable, even as we embrace new technologies and business models. Failure to address relaxations in ring-fencing will be profound and likely irreversible: entrenched monopoly influence in contestable markets, diminished investor confidence, and long-term harm to consumers.

Nexa proposes the *operational mechanisms* that will give effect to the principles outlined below. Each directly addresses a specific, well-documented source of harm that arises when monopoly network businesses participate in, or influence, competitive markets. Strengthening the framework now is not just prudent - it is essential to maintain a fair, efficient, and resilient energy market. This also avoids regulatory failure to protect the best interests of consumers.

Context

The purpose of ring-fencing

The purpose of ring-fencing in the NEM is to ensure that monopoly network businesses do not use their privileged position to gain unfair advantages in competitive markets, thereby protecting consumers and promoting fair competition.¹⁸

The core purposes of ring-fencing are to:

- **Prevent cross-subsidisation:** Ringfencing rules stop regulated revenues (paid by consumers for monopoly network services) from being used to fund competitive activities like retailing, generation, or behind-the-meter services.
- **Ensure functional separation:** Network businesses must separate their monopoly operations from contestable services, both legally and operationally. This includes separate staff, offices, and IT systems.
- **Promote competition:** By preventing discriminatory conduct, ring-fencing allows independent service providers to compete fairly in areas such as distributed energy resources (DER), batteries, and demand response.
- **Protect consumers:** Consumers benefit from lower prices and innovation when competitive markets are not distorted by vertically integrated incumbents.

In this proposal, the core purposes of ring-fencing also reinforce trust that the energy transition is being managed fairly, encouraging investment in DER, storage, and new technologies.

What ring-fencing does not aim to achieve

Stakeholders often misinterpret ring-fencing as anti-innovation or overly rigid. In reality, its purpose is upholding neutrality and consumer protection, not blocking progress. That's why this proposal is for tightening rules while at the same time preserving flexibility for genuine consumer benefit.

While ring-fencing plays a critical role in protecting consumers and promoting fair competition, it is equally important to clarify what ring-fencing does **not** aim to achieve. Namely, ring-fencing is:

- **Not a barrier to innovation:** Ring-fencing is not designed to block DNSPs from supporting the energy transition. It simply ensures participation occurs without distorting competition or misusing monopoly advantages. Waivers exist for flexibility where genuine consumer benefit is demonstrated.
- **Not a cost-reduction tool for networks:** The ring-fencing framework does not exist to optimise DNSP corporate structures or reduce compliance costs. Its purpose is consumer protection and market integrity, not DNSP convenience or to create economies of scope.
- **Not a substitute for economic regulation:** Ring-fencing does not set tariffs or revenue caps that is managed under other NER provisions. Its role is structural and behavioural, not related to price setting.

¹⁸ [Ring-fencing | Australian Energy Regulator \(AER\)](#)

- **Not about restricting core regulated activities:** DNSPs can continue to operate, maintain, and expand networks as required. Ring-fencing applies only to contestable services and affiliate dealings that are not essential to network functions.
- **Not a guarantee of DNSP-led service delivery:** The ring-fencing framework is not intended to create a pathway for networks to dominate emerging markets such as EV charging or DER and should not be the default to enabling this. Waivers were intended as a last resort, not a default business model.
- **Not a branding strategy:** Branding rules exist to prevent consumer confusion, and not to dictate marketing beyond contestable service boundaries.

Ultimately, strengthening ring-fencing is about reinforcing the integrity of the market and ensuring all participants can trust that competition is genuine, transparent, and free from structural bias.

Why ring-fencing still matters in the NEM

The framework can support innovation on a level playing field, safeguard neutrality, and uphold the trust that underpins an efficient and competitive energy system by addressing:

- **Monopoly power risk:** Distribution and transmission networks are natural monopolies. Without ring-fencing, they can leverage their monopoly position to dominate competitive markets.
- **Information advantage:** Networks have access to detailed customer and system data. Good ring-fencing rules prevent them from sharing this information with affiliates in ways that disadvantage competitors.
- **Branding and perception:** Rules also restrict the use of shared branding between monopoly and competitive businesses, so consumers are not misled into thinking they must buy services from the network's affiliate, or that those affiliate services have specific characteristics of the monopoly brand.
- **The energy market transition:** As Australia shifts to renewables and decentralised energy, ring-fencing ensures new entrants (solar installers, battery providers, aggregators and others) can compete on equal footing with incumbent DNSPs (and TNSPs).

This last point, critical to the market transition, has been made repeatedly by multiple stakeholders identifying the problem with the AER's precedent creep. Industry stakeholders have repeatedly stressed that robust ring-fencing is essential to protect consumers and maintain competitive neutrality as the energy market transitions. Clear boundaries and consistent enforcement would give consumers confidence that their interests, and not those of incumbent advantage, are the drivers of market outcomes.

Relaxing ring-fencing obligations is not a new concern

Representatives of Australia's biggest energy investors in the Australian Energy Council (AEC) and the Clean Energy Council (CEC) have previously warned that relaxing these obligations would undermine confidence and distort emerging markets.

The AEC, in its submissions on the AER's transmission¹⁹ and distribution ring-fencing guidelines, has argued that without strong structural and functional separation, networks could discriminate against third-party providers during connection negotiations and in emerging services such as storage and stand-alone power systems. The AEC has also cautioned that allowing DNSPs to expand into contestable markets without strict neutrality rules "would ultimately deny consumers the dynamic benefits of effective competition,"²⁰ and called for enforceable compliance mechanisms, independent audits, and penalties for breaches.

Similarly, the CEC has consistently highlighted the risk that monopoly networks could leverage their position to crowd out competitive providers in renewable and distributed energy markets²¹. In its submissions on transmission ring-fencing, the CEC has warned that even the perception of discriminatory conduct can deter investment and reduce market confidence, also noting that weak enforcement would undermine the integrity of the framework²².

Like the AEC and CEC, Nexa Advisory has also emphasised that robust ring-fencing is crucial to protecting consumers, ensuring competitive neutrality, and enabling innovation. All three have advocated for reinforced obligations rather than weakened ones. All three represent those with the market capital necessary to fund the energy transition.

Today we are facing the following risks:

- **Foreclosure of competition:** DNSPs establish infrastructure (e.g., EV chargers), making it harder for third parties to enter later.
- **Cross-subsidisation:** Regulated revenue subsidises competitive activities, distorting prices and harming consumers.
- **Innovation bottlenecks:** DNSPs do not innovate as aggressively as competitive providers, in fact slowing technology adoption.
- **Regulatory capture:** Networks influence rule settings to entrench their position under the guise of "market development".

The evidence from stakeholders across the market is consistent: weakening ring-fencing undermines confidence, deters investment and shifts risk from monopoly networks onto consumers. If the NEM is to deliver a timely, efficient and consumer-focused transition, ring-fencing must be treated as a core market protection, rigorously enforced and strengthened where necessary - and not incrementally eroded in the name of convenience or short-term expediency.

¹⁹ AEC, [Issues paper: Ring-Fencing Guideline Review \(Electricity transmission\)](#), July 2022

²⁰ AEC, [Proposed changes to the Distribution Ring Fencing Guideline](#), January 2025

²¹ CEC, [Initiation notice - Ring-fencing class waiver Community batteries funded under the Commonwealth Government's Community Batteries for Household Solar Program](#), January 2023

²² CEC, [Submission on draft determination and draft rule for Expanding the transmission ring-fencing framework rule change ERC0371](#), April 2024

Lessons from the CPU EVCI ring-fencing waiver

The AER has granted a time-bound, limited scope ring-fencing waiver to CitiPower, Powercor and United Energy (collectively, CPU), to enable CPU to conduct a kerbside electric vehicle (EV) charging trial at sites that meet specific criteria in Victoria until mid-2031²³. In response to stakeholder concerns, this waiver will have nine waiver conditions to help mitigate its impacts on market competition:

1. **EV charger deployment and public register:** CPU may install up to 100 chargers (with at least 5% V2G) and must maintain a public register showing locations, charging capabilities, and key service information.
2. **Equivalent access fees:** CPU must charge itself the same annual pole-access fees as the median fees paid by unrelated third-party EV charging operators.
3. **End of trial pathway:** At trial completion, CPU must either seek a new waiver, transfer remaining chargers to contestable providers, or remove them entirely.
4. **Fair pole access arrangements:** Until the next regulatory period, CPU must negotiate pole access in good faith and publish clear procedures, standard terms, and cost-justified pricing to support transparent third-party access.
5. **Market testing for e-MSP partners:** CPU must demonstrate broad and transparent market engagement when selecting e-MSP partners and publish a report within 12 months showing how it tested the market.
6. **Site selection transparency:** CPU must publish the final list of trial sites within six months, with evidence that locations were chosen based on network constraints, council diversity, load potential, and absence of competing third-party applications.
7. **Annual audited financial reporting:** CPU must provide the AER with an audited annual financial report detailing trial costs, revenues, and access-fee parity between itself and third parties.
8. **Annual publication of operational learnings:** CPU must publish annual data on charger usage, network impacts, demand-response outcomes, energisation timeframes, and charger performance metrics such as outages and fault resolution.
9. **Annual reporting on third-party energisation:** CPU must publish annual information on expected and actual energisation timeframes for third-party chargers, including reasons for delays or rejected applications, broken down by site.

The waiver will expire on 30 June 2031, unless varied or revoked sooner.

Taken together, these conditions set an essential baseline for transparency, neutrality, and competitive fairness, and they should form the minimum expectation for any future ring-fencing waivers. They demonstrate that waivers must only be granted where robust safeguards are in place to prevent competitive harm, to ensure equal treatment of third parties, and to provide clear, auditable evidence of compliance throughout the defined trial period. Embedding these general requirements as standard to any waiver will help maintain trust in the regulatory framework and ensure that innovation proceeds without compromising market integrity or consumer interests.

As the AER highlights by making these requirements, ring-fencing is not a theoretical safeguard but a practical necessity. The cumulative effect of waivers, carve outs and “precedent creep” is to tilt emerging markets toward incumbent monopolies at precisely the moment when competitive pressure, private capital and innovation are most needed. These general conditions should now become an essential baseline requirement to any waiver.

Alignment with the National Electricity Objective

The National Electricity Objective is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers, with respect to price, quality, safety, reliability and security of supply. The current Electricity Distribution Ring-fencing Guideline is explicit on promoting the NEO through:

- accounting and functional separation of the provision of direct control services by DNSPs from the provision of other services by them or affiliated entities; and
- promoting competition in the provision of electricity services.²⁴

On that basis, we consider the proposed rule changes in this submission are aligned with the NEO because they strengthen - rather than dilute - the intent of ring-fencing provisions that keep consumer-funded monopoly revenues from being used to distort contestable markets, and that maintain confidence that regulated revenues are spent efficiently on regulated outcomes.

²³ AER, CitiPower, Powercor, and United Energy - Ring-fencing waiver - Electric vehicle charging infrastructure [Decision, October 2025](#)

²⁴ AER, [Ring-fencing Guideline Electricity Distribution Version 4](#), p.1, February 2025

Nexa's proposed rule changes

Rule 1 - Codify a last-resort waiver criteria

Background

A ring-fencing waiver allows the AER to grant exceptions to the strict separation rules when doing so is likely to deliver better outcomes for consumers or the market, without undermining the core protections of ring-fencing.

Purpose of a Ring-Fencing Waiver

- **Flexibility in regulation:** Ring-fencing rules are designed to be strict, but the waiver mechanism provides flexibility where rigid compliance may be impractical or counterproductive.
- **Enable innovation:** Waivers can allow DNSPs (and TNSPs) to trial new services, technologies, or business models that would otherwise be prohibited under ring-fencing.
- **Avoid unnecessary costs:** In some cases, strict compliance could impose disproportionate costs on networks and ultimately consumers. A waiver can reduce compliance burden while still protecting competition.
- **Support consumer benefit:** The AER only grants waivers where it is satisfied that consumers will benefit overall. For example, through improved service, lower costs, or faster deployment of new technologies.

In short, waivers are a mechanism for exceptional circumstance while ensuring that the fundamental goals of ring-fencing, preventing cross-subsidisation and protecting competition, remain intact

What a Ring-Fencing Waiver Is Not

While waivers provide flexibility in exceptional circumstances, it is important to clarify what they are **not** intended to achieve:

- **Not a blanket exemption:** Waivers were not conceived to permanently relax ring-fencing obligations or allow unrestricted DNSP participation in contestable markets.
- **Not a shortcut for commercial expansion:** Waivers should never serve as a pathway for DNSPs to grow competitive businesses under the guise of innovation or consumer benefit. Numerous stakeholders have raised this concern repeatedly with the AER and AEMC.
- **Not a substitute for market development:** Waivers were not intended to replace competitive procurement or discourage third-party investment. They should exist only where genuine market failure is demonstrated.
- **Not a substitute for enabling third-party innovation and removing network barriers:** Waivers should not be used to justify DNSP deployment of contestable services where the primary impediment is DNSP-controlled barriers (e.g. access to sites/assets, information asymmetries, or connection/process delays). In emerging markets (such as EV charging),

the priority should be to help customers by removing these barriers and facilitating competitive provision, rather than competing with customers under the guise of innovation.

- **Not a mechanism to avoid compliance costs:** Waivers were not intended to reduce DNSP compliance burden for convenience. Waivers must be justified by clear and measurable consumer benefits.
- **Not a tool for indefinite incumbency:** Waivers must not create long-term DNSP dominance in emerging markets. They must be time limited, with sunset clauses and exit plans. Our rule change proposal also addresses this.
- **Not a way to bypass neutrality obligations:** Even under a waiver, DNSPs must maintain legal and functional separation, equal access to data, and non-discriminatory conduct.

Stakeholder concerns around the manner in which ring-fencing and waiver provisions are enforced are ongoing, and highlight the need for rigorous, transparent, and consistently enforced waiver processes that stakeholders can trust. Additionally, flexibility is granted only in truly exceptional circumstances and never at the expense of competitive neutrality or consumer confidence.

Problem

The Ring-Fencing Guideline Waiver Assessment Criteria (Section 5.3.2) are inadequate in addressing stakeholder concerns.

When considering a waiver application, the AER must have regard to:

*“...whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation (including any benefit, or likely benefit, from **increased competition**) would be outweighed by the cost to the DNSP of complying with that obligation.”*

This current waiver assessment criterion as to whether the benefit to consumers of compliance (including any benefit from increased competition) outweighs the cost to the DNSP exactly frames the decision as a cost-benefit trade-off for the network, and not as a safeguard for market integrity. As drafted it does not require affirmative proof that granting a waiver will avoid harm to competition or consumers. Instead, it allows waivers where compliance is deemed “too costly”, even if competitive neutrality is compromised.

For example, recent AER decisions such as for the CPU kerbside EV charging waiver²⁵ demonstrate that competition risks are recognised, but they are typically balanced qualitatively against claimed benefits and compliance costs rather than through an explicit valuation of the expected competitive detriment of DNSP entry – such as clear quantification of the economic cost of allowing DNSPs to compete with their own customers.

This approach undervalues long-term consumer interests, ignores structural risks like competition foreclosure and cross subsidisation, and has failed to embed a clear “no harm” standard. In short, it prioritises DNSP convenience and a capex-led response over the core

²⁵ AER - [Reasons for decision paper, Ring-fencing waiver for an electric vehicle charging infrastructure trial from CitiPower, Powercor, and United Energy, October 2025](#), p.3

purpose of ring-fencing: protecting competition and consumer trust - instead of prioritising service innovation that lowers barriers to network connections and enables third-party investment. Nexa believes this must be addressed.

Recent ring-fencing waivers have attracted stakeholder concerns, particularly around Ergon Energy's isolated networks waiver, Ausgrid's Community Power Network sandbox waiver and proposals for DNSPs (particularly CPU) to provide EV charging infrastructure. Stakeholders worry that waivers risk undermining competition and consumer trust if granted too broadly.

Recent Examples of Waivers and Concerns

- **Ergon Energy (2025 – isolated networks waiver)**

- The AER granted Ergon Energy a waiver to continue providing both distribution and generation services in Queensland's isolated systems.
- **Concerns raised:**
 - Stakeholders argued that allowing Ergon to operate generation alongside its monopoly distribution business could crowd out independent renewable providers.
 - The AER opened consultation specifically to manage these risks, proposing conditions to ensure clarity for third-party renewable generators.
 - Consumer groups highlighted the risk of reduced competition and innovation if DNSPs are allowed to vertically integrate in these markets.

- **CPU Waiver for EV Charging Infrastructure (2025)**

- The Electric Vehicle Council (EVC) responded to an AER consultation on a DNSP waiver application to provide kerbside EV charging.
- **Concerns raised:**
 - Industry stakeholders warned that DNSPs entering the EV charging market could distort competition, since they control access to poles and public infrastructure.
 - The EVC stressed the need for clear conditions to prevent DNSPs from leveraging monopoly assets unfairly.

- **General stakeholder submissions (Energy Consumers Australia, Australian Energy Council)**

- Consumer groups and energy retailers have consistently argued that waivers should be tightly limited in scope and duration.
- They caution that frequent or broad waivers risk eroding the integrity of ring-fencing rules, especially as DNSPs seek to expand into batteries, DER aggregation, and EV charging infrastructure.

How the AER Uses Positive Assurance Today

Under the current ring-fencing framework, the AER requires DNSPs to provide annual compliance reports supported by an independent auditor's positive assurance opinion. This means the auditor confirms, based on evidence, that the DNSP has complied with all ring-fencing obligations - not merely stating that no breaches were detected. These reports are published on the AER's website, enhancing transparency and stakeholder confidence. Positive assurance is therefore a cornerstone of ongoing compliance monitoring and enforcement.

Why This Is Insufficient for Waivers

While positive assurance works well for verifying compliance with existing obligations, it does not extend to waiver decisions. Waivers allow DNSPs to participate in contestable markets under exceptional circumstances, creating higher risks of discrimination, cross-subsidisation, and market distortion. Currently, the AER often accepts evidence of potential consumer benefit but does not require affirmative proof that granting a waiver will cause no harm to competition or consumers. This gap means waivers can be granted without rigorous testing of neutrality or long-term market impacts.

Key Themes in Stakeholder Concerns

- **Competition risks:** Waivers may allow DNSPs to dominate emerging markets (DER, EV charging, batteries) by leveraging monopoly advantages - such as when DNSP-funded investments are included in the RAB and earn regulated returns.
- **Transparency:** Stakeholders often call for stronger consultation and clearer conditions attached to waivers.
- **Consumer impact:** Concerns that waivers could lead to higher costs or fewer choices if competitive providers are excluded.
- **Precedent risk:** Each waiver sets a precedent; too many waivers could weaken the overall ring-fencing framework.
- **Undermining investor confidence:** lack of safeguards to preserve competition raises the risk / cost of capital for competitive markets and can have a chilling effect on investment.

These key themes emerge because waiver decisions affect both market structure and long-term consumer outcomes. Simply asserting benefit is insufficient; DNSPs should quantify impacts on price, reliability, access, and innovation compared to competitive alternatives, and validate these benefits through independent verification. This helps ensure waivers are granted only when they deliver measurable, material improvements for consumers, consistent with the NEO.

Proposed solution

Embedding a Stronger “No Harm” Test

To align with the NEO and stakeholder expectations, the NER should require that waiver applications include:

- Independent verification of market failure and consumer benefit, supported by published reports.

- Affirmative proof of no harm, meaning DNSPs must demonstrate - through analysis and third-party assurance of the economic cost of competing with their own customers - that granting the waiver will not:
 - foreclose competition;
 - enable cross subsidisation; or
 - create branding or data advantages for affiliates.
- Public transparency, with all evidence and assurance reports published for stakeholder scrutiny.
- Mandatory conditions, including sunset clauses, KPIs, and mid-term reviews to ensure ongoing neutrality. The CPU conditions can provide guidance in this regard.

Importantly, the market failure test should determine whether there is genuine market failure in a sufficiently mature market. This would prevent waivers being granted in nascent markets where demand is still forming – such as emerging services like EV charging, where limited deployment can reflect low current uptake rather than an absence of competition. In this example, this test may determine that connection processes are a major barrier for EV infrastructure deployment, rather than a lack of competition or industry willingness to invest and deploy capital. The test should also consider whether competitive provision is reasonably expected to emerge within a defined horizon absent DNSP entry (i.e., whether the issue is transitional immaturity rather than persistent market failure).

Embedding these requirements would shift the framework from “absence of breach” to affirmative neutrality and benefit, strengthening trust in waiver decisions and protecting consumers.

This proposal would amend the NER to establish an explicit, enforceable minimum obligation on DNSPs. If accepted, the AER Distribution Ring-fencing Guideline would continue to operate as a complementary instrument and could be updated (through the existing Guideline process) to set out practical implementation guidance around the process of waiver applications, including how these new evidentiary requirements should be presented to the AER (e.g., standard templates, minimum information requirements).

Draftable rule changes

A consumer benefit and market failure test: Require DNSPs to prove that no competitive provider can deliver the service, with transparent evidence and independent verification, before any waiver is considered. Therefore, before a DNSP is allowed to step into a competitive market under a waiver, it must prove two things:

- **Market failure:** That no competitive provider can deliver a comparable service. This should:
 - Ensure consideration for stage of market development
 - Demonstrate that efforts have been made to work with existing players in the competitive market, through public consultation if required, and beyond DNSPs’ own contestable business units.

- **Timeframe and planned transition:** If the competitive market is unable to support a trial today, demonstrate how the initiative will be transitioned to the competitive market in the future and the metrics and timeframes that will be applied for such a transition. This reflects that if the competitive market cannot deliver today, this does not mean that the competitive market cannot deliver forever.
- **Consumer benefit:** That the DNSP's involvement will deliver clear, measurable long-term benefits to consumers (such as lower prices longer term, better product or service reliability, or improved access).

This could include a market sounding to establish whether the competitive market is motivated to work with DNSPs to achieve the desired outcomes.

This stops waivers from becoming a shortcut for DNSPs to dominate emerging markets and ensures that they are only granted as a last resort.

See Attachment 1 - Consumer Benefit and Market Failure Test

Implementation costs and benefits

This change is expected to impose modest one-off implementation effort for the AEMC to codify waiver criteria. However, the key benefit is a reduction in ongoing administrative and transaction costs by standardising waiver assessment and narrowing discretion. This is intended to result in fewer 'reinventions' of the same criteria, less precedent creep, clearer expectations for proponents, and faster, more consistent decision-making by the AER. Over time this should reduce the volume and complexity of contested waiver processes and strengthen confidence that waivers remain exceptional and aligned with the NEO.

Rule 2 - Embedding financial safety in ring-fencing rules - financial resilience and ring-fence triggers

Background

The UK experience with ring-fencing – the Ofgem 2025 review to strengthen financial resilience and ensure ring-fence licence conditions remain fit for purpose.

The UK has recently tightened ring-fencing rules for energy networks, with Ofgem launching a review in 2025 to strengthen financial resilience and ensure ring-fence licence conditions remain fit for purpose.

Ring-fencing in the UK energy sector was introduced to ensure that monopoly network businesses (electricity distribution, transmission, and gas networks) remain financially resilient and do not expose consumers to risks from non-regulated activities.

It is similar in principle to Australia’s framework: separating monopoly services from competitive activities and ensuring consumer charges are not cross-subsidising unregulated ventures.

Ofgem’s 2025 review proposes stronger licence-based ring-fence conditions, including distribution lock up and dividend restrictions when credit metrics weaken. Distribution lock-up means the regulated DNSP must not make distributions or other upstream value transfers from the regulated entity to its corporate group when defined financeability or compliance triggers are met.

Whereas Australia’s framework still relies heavily on functional separation and waivers with less codified financial resilience, the UK is moving toward systemic resilience rather than case by case flexibility, by anticipating risks before they materialise. The UK reforms are intended to make sure networks can still withstand shocks (such as supplier failures or market volatility) without jeopardising regulated services.

The bottom line for Ofgem was that ring-fencing for networks is about systemic stability and safeguarding consumer funded infrastructure, whereas unregulated activity is addressed through market rules and consumer credit protections.

What triggered the Ofgem review?

The UK collapse of Bulb Energy in November 2021 marked the largest failure in the UK retail energy market, triggering the Special Administration Regime and requiring government funding to keep the company operating. Around 1.7 million customers were transferred under Ofgem’s Supplier of Last Resort process, but the fallout was costly: a £1.8 billion levy was introduced, adding roughly £68 per year to household bills. Many customers faced billing delays, lost debt protections, and monthly cost increases of about £30, highlighting the consumer vulnerability when suppliers fail.

Bulb’s failure was part of a wider crisis during 2021/2022, when 28 suppliers collapsed, affecting nearly four million households and imposing an estimated £2.6 billion in mutualised costs of around £94 per household. Additional failures, including Together Energy and Pure Planet, compounded the disruption, with more than six million consumers impacted

between 2018 and 2025. These events led to sharp bill rises, service errors, and reduced trust in switching.

Whilst no Distribution Business Ring-Fenced Affiliates were part of the collapses, stakeholders raised concerns over emerging risks related to increasingly complex ownership and corporate structures within network operator groups, which may introduce downstream financial exposures. This ultimately prompted Ofgem to strengthen financial resilience requirements and review ring-fencing rules to protect consumers because Networks hold consumer funded assets.

Problem

Protecting Consumers - networks hold consumer-funded assets

Australia faces the same emerging hazard contemplated by Ofgem that distribution networks may take excessive financial or operational risks because the downside is largely borne by consumers as:

- Network companies manage billions in regulated assets funded by consumers through tariffs.
- Ring-fencing protects these funds from being diverted to unregulated activities or affiliates, ensuring that the money meant for infrastructure stays within the regulated entity.

The bottom line for Ofgem was that ring-fencing for networks is about systemic stability and safeguarding consumer funded infrastructure, whereas unregulated activity is addressed through market rules and consumer credit protections, and not simply via financial separation.

The Lessons for Australia

There is a shared view from the parties represented by Nexa that Australia faces a critical moment in ensuring its ring-fencing framework remains robust and aligned with global best practice. International experience, particularly in the UK, demonstrates that financial resilience and consumer protection cannot be left to chance as markets evolve and new risks emerge. Overseas regulators have responded by reinforcing, and not relaxing, their ring-fencing rules to safeguard both monopoly networks and most importantly the consumers who fund them.

Proposed solution

Ofgem's focus on strengthening ring-fencing arrangements reflects the need to safeguard essential network services and consumer interests in a rapidly evolving energy landscape. It underscores a regulators proactive role in ensuring that monopoly network businesses remain financially resilient and insulated from external risks. Ofgem aims to maintain confidence in distribution infrastructure owners while preventing their consumer funded revenues from being exposed to failures in competitive or unregulated activities. Ofgem resolved to do this through:

- **Financial resilience measures:** Stronger requirements for liquidity, credit ratings, and restrictions on dividend payments if financial health is at risk.

- **Consistency across sectors:** Aligning electricity distribution, transmission, and gas networks under a common ring-fencing standard.
- **Consumer protection:** Ensuring that monopoly revenues are insulated from risks associated with competitive or unregulated activities.

Taken together, Ofgem's measures demonstrate a clear commitment to preserving market integrity and ensuring that essential network services remain stable, trustworthy, and firmly protected from avoidable risks.

Integrity and prudent evolution

International experience demonstrates that effective ring-fencing frameworks must evolve alongside the market, balancing flexibility with firm safeguards that protect consumers and the system as a whole.

- **Flexibility vs. Integrity:** The UK experience shows regulators are willing to adjust ring-fencing rules as markets evolve, but always with the goal of protecting consumers and ensuring monopoly networks remain financially sound.
- **Tightening over time:** Rather than loosening rules, the UK has moved toward strengthening them, anticipating the need to be able to:
 - address the emerging moral hazard that networks may take excessive financial or operational risks because the downside is largely borne by consumers, and
 - respond to financial stress in the energy sector.

Together, Ofgem's developments highlight a consistent regulatory principle that adaptability is important, but never at the expense of financial discipline, consumer protection, or the long-term integrity of the energy system.

Australia should strengthen its own framework

If Australia does not act now, it risks falling behind, leaving its framework vulnerable to financial stress and undermining confidence in essential services.

- Overseas regulators are reinforcing ring-fencing, not relaxing it.
- Financial resilience and consumer protection are central to reforms.
- Australia risks falling behind international best practice if its rules remain weak or waivers are granted too freely.
- Australia faces the same emerging moral hazard that distribution networks may take excessive financial or operational risks because the downside is largely borne by consumers.

Strengthening Australia's ring-fencing framework now is essential to safeguard consumer and investor trust, maintain financial stability, and ensure the energy system keeps pace with global standards of integrity and accountability.

Draftable rule changes

Introducing financial safety switches

This rule change proposal introduces automatic financial ‘safety switches’ in the NER by establishing a distributions lock-up (cash retention) regime for regulated DNSPs. When predefined financeability or material ring-fencing compliance thresholds are breached (or forecast to be breached), the lock-up restricts the DNSP from extracting or transferring value out of the regulated business (including dividends and specified related-party transfers).

In plain terms: if a DNSP’s financial position deteriorates (or it has a material ring-fencing compliance failure), the rules temporarily pause dividends and other value transfer from the regulated entity. This helps ensure regulated cashflows are used first to maintain essential services and restore financial resilience - rather than funding unrelated or riskier ventures elsewhere in the corporate group.

Worked example

The distributions lock-up would apply automatically based on certain pre-defined financeability triggers – such as a breach (or forecast breach within a defined forward period) of one or more objective financeability thresholds such as minimum credit metrics or liquidity buffers.

The proposed safety switches would work like this:

- If the company’s financial health falls below certain thresholds (for example, its credit rating drops or its cash reserves get too low), the rules would restrict the regulated DNSP from transferring value out of the regulated business, so regulated revenues are retained to support the safe and reliable provision of network services.
- This means the company would not be allowed to transfer that money out to fund other parts of its corporate group or risky side projects.
- At the same time, the company would be blocked from paying dividends to its parent company or shareholders until its financial position improves.

The purpose of these measures is simple: to make sure the money consumers pay for essential electricity services stays inside the regulated business and is used for that purpose. It prevents the leakage of funds into unrelated or unregulated ventures and ensures that the monopoly network remains financially stable, even during times of stress; self-inflicted or otherwise.

This proposal would amend the NER to introduce a financial resilience safeguard applying to DNSPs in defined circumstances. If accepted, the AER Guideline could be updated to complement the NER by setting out the monitoring, reporting, assurance and administrative mechanics needed to apply the NER safeguard consistently.

A draft rule change, and compliance and enforcement detail (for ring-fencing guideline alignment) is provided in Attachment 1.

Implementation costs and benefits

This change requires some up-front effort to specify trigger metrics and monitoring arrangements, and to integrate publication of trigger events into the AER’s existing compliance framework. Ongoing costs are expected to be low as the trigger inputs draw on information and

monitoring activities already central to network business governance (i.e., DNSPs already track comparable metrics for internal governance and regulatory reporting). The benefit is a high-value safeguard that protects service continuity, lowering the likelihood of more disruptive and costly interventions later.

Rule 3 – Affiliate Dealings and Data Access - Neutrality, equal treatment, and standardised public protocols

Background

Affiliate dealings and data access obligations ensure DNSPs (and TNSPs) treat all market participants, including their own affiliates, on strictly equal terms, with no preferential information, timing, price, or process advantages. The rule requires standardised, public protocols for data access and service interfaces (e.g., APIs, portals, queues) so that competitive providers receive the same datasets, service levels, and release timings as affiliates. It complements structural ring-fencing by addressing conduct risk; the subtle day to day behaviours that can foreclose competition even without overt cross-subsidisation.

Purpose of Affiliate Dealings and Data Access changes

Strengthening operational and informational safeguards is essential to ensuring that emerging energy markets develop on genuinely competitive, transparent, and non-discriminatory terms.

- **Prevent discrimination in practice:** Eliminate preferential information, timing, and terms to affiliates by mandating uniform, publicly available data and interface standards.
- **Enable contestable markets:** Provide a level playing field for non-affiliate providers (DER aggregators, EV charging, community batteries, DR providers) via mandating open service interfaces and transparent queues.
- **Reduce foreclosure risk:** Break down informational and operational asymmetries that allow, or appear to allow, network owned affiliates to win by insider advantage rather than merit.
- **Increase transparency and trust:** Require performance metrics (SLAs/KPIs) so stakeholders can verify equal treatment.
- **Safeguard consumers:** Ensure innovation and efficiency arise from fair competition and prevent networks leveraging monopoly positions to tilt outcomes toward affiliates.

Together, these measures create the conditions for fair competition, greater trust, and consumer-centred innovation by ensuring that no participant can rely on monopoly privilege rather than performance.

Problem

Stakeholder concerns with existing experience

Stakeholders consistently report that informational advantages (e.g., early visibility of connection constraints, outage plans, capacity forecasts) and process asymmetries (e.g., priority in queueing, bespoke pricing, undocumented API endpoints) can tilt markets toward affiliates. Without publicly standardised protocols and audit-ready logs, these advantages are hard to detect, contest, or remedy. These concerns intensify in emerging services where networks design and operate the interfaces that market participants must use.

As noted earlier the current waiver assessment criterion as to whether the benefit to consumers of compliance (including any benefit from increased competition) outweighs the

cost to the DNSP exactly frames the decision as a cost-benefit trade-off for the network and this is particularly prescient in affiliate dealings and data access. It allows waivers where compliance is deemed “too costly”; even if competitive neutrality is compromised.

This DNSP convenience approach undervalues long-term consumer interests, it prioritises DNSP convenience over the core purpose of ring-fencing: protecting competition and consumer trust. Nexa believes this must be addressed.

The Limitations in Current Guidance

Existing ring-fencing guidance emphasises financial and legal separation and general non-discrimination, but lacks prescriptive, testable requirements for:

- Uniform data release schedules with immutable time stamps.
- Open, documented service interfaces and change control.
- Public queue management rules (capacity allocation, escalations).
- Price schedule transparency and cost allocation explanations.
- Comprehensive access logs to prove parity over time.

These gaps allow discretion and informal channels that can, in practice, advantage affiliates - thus creating uncertainty for competitors and weakening confidence that access, information, and opportunities are being provided on a genuinely equal footing.

Insufficient Controls for Affiliate Dealings and Data Access

Positive assurance against broad principles is not enough to verify everyday parity in data and service access. Neutrality must be measured empirically, using logs, timestamps, API telemetry, queue snapshots, SLA outcomes, and comparative testing between affiliates and third parties. Without these artefacts, and the mandatory publication of key metrics, auditors could not reliably detect advantages that accrue to affiliates.

Key Themes in Stakeholder Concerns

- **Competition risks:** Insider information, bespoke terms, and queue priority can crowd out competitive providers.
- **Transparency gaps:** Lack of public protocols and performance data makes neutrality claims non-verifiable.
- **Consumer impact:** Reduced competition raises costs, lowers service quality, and slows innovation.
- **Precedent risk:** Once informal advantages are tolerated, they have become embedded, weakening confidence and discouraging market entry.

The rule enables quantified parity checks on information timing, service performance, and pricing that can be validated independently and reported publicly.

Proposed solution

The Affiliate Dealings and Data Access rule aims to deliver conduct neutrality within ring-fencing, enabling competitive markets while preserving consumer protections. It requires uniform protocols, verifiable audit trails, and public transparency to prevent discrimination and information advantages. It aims to:

- 1. Maintain competitive neutrality**
Ensure affiliates and third parties receive functionally equivalent data, timing, prices, and process access.
- 2. Promote innovation and transition**
Support efficient scale-up of DER, demand response, EV charging, and community batteries through open, standardised interfaces.
- 3. Ensure transparency and accountability**
Require published data dictionaries, interface specifications, SLA targets, and queue status so stakeholders can scrutinise conduct.
- 4. Apply case-by-case enforcement and assurance**
Apply targeted conditions and independent audits where risk is higher (e.g., affiliate entry into fast-moving contestable services), with verifiable parity testing.

In short, the rule enforces equal treatment in operations and information flows, so competition is based on capability and price. It removes the risks of privileged access.

This proposal would amend the NER to codify enforceable equal-access and non-discrimination obligations on DNSPs in relation to data and regulated service access. If accepted, the AER Distribution Ring-fencing Guideline would continue to operate as a complementary instrument and could be updated (through the existing Guideline process) to specify the practical implementation requirements - including access protocols and processes, service levels and timeliness metrics, and reporting and audit arrangements needed to make compliance transparent and verifiable.

Draftable rule changes

Embedding a Stronger “No Preferential Treatment” Test

To support the energy transition while preserving market integrity, the rules should further codify operational neutrality that integrates conduct assurance with structural ring-fencing to address real mechanisms of discrimination. Waiver-like flexibility is in our view inappropriate for everyday access and dealings and the rule should require affirmative proof of parity, including:

- **Independent verification** that affiliates and third parties receive simultaneous data releases (with public timestamps) and equivalent interface performance.
- **No harm to competition** demonstrated through parity metrics (latency, error rates, throughput, queue wait times, SLA adherence) and comparative pricing analysis.
- **Public transparency via a Data & Interface Register:** datasets, APIs, schemas, SLAs, price schedules, change logs, and incident reports.

- **Remedies** for breaches.

This shifts assurance from statements of intent to evidence-based neutrality, strengthening trust that all participants are treated fairly and that network conduct is genuinely aligned with competitive integrity rather than with perceived or actual preferential treatment.

The Affiliate Dealings and Data Access rule operationalises neutrality: it eliminates preferential information, timing, and terms through standardised, public protocols, measurable parity, and transparent enforcement. This protects consumers by ensuring competition is fair, innovation is genuine, and monopoly positions cannot be leveraged to advantage affiliates.

A draft rule change, Affiliate Dealings and Data Access, is provided in Attachment 1

Implementation costs and benefits

Incremental implementation costs should be limited because the obligations largely elevate practices already stipulated in the Ring-fencing Guidelines (e.g., non-discrimination, transparency, and separation). The benefit is improved competitive neutrality and reduced dispute risk: clearer rules which reduce the scope for informal or preferential arrangements, lower barriers to entry for third parties, and support more efficient market outcomes through stronger confidence in equal access.

Rule 4 - Branding and Representation

Background

Consumers should never be misled into thinking they are required to purchase contestable services such as EV charging, DER solutions, or community batteries from a DNSP or its affiliate. As with most competition law, intent is not relevant. Shared branding, similar logos, and unclear messaging create confusion and confer unfair advantage to network-affiliated businesses.

This proposed rule removes waiver access, and mandates distinct branding and explicit disclaimers at every consumer touchpoint, including any websites, invoices, advertising, and physical assets, to ensure consumers understand their choice and that competitive neutrality is preserved.

To protect consumer choice and market integrity, the NER should codify branding separation and disclaimer obligations as enforceable standards, not guidance.

Problem

Stakeholder concerns

Consumer groups and retailers have repeatedly raised concerns that shared branding and DNSP logos on affiliate marketing create a perception of monopoly endorsement, discouraging consumers from exploring competitive alternatives. This risk is acute in emerging services where DNSPs control infrastructure, and consumers readily assume they must use the network's affiliate for access, or that service is otherwise endorsed or holds or confers certain characteristics.

Key themes in stakeholder concerns

- **Consumer confusion:** Shared branding creates perceived obligation to use affiliates.
- **Market distortion:** Affiliates gain unfair advantage through monopoly association.
- **Transparency gaps:** Lack of clear branding rules undermines trust and competitive neutrality.

Limitations in Current Guidance

Current ring-fencing guidelines require "separation" but lack prescriptive standards for branding and disclaimers. This leaves room for interpretation and inconsistent application, allowing DNSPs to maintain similar colour schemes, logos, or co-branded materials that confuse consumers. Branding neutrality requires observable consumer facing evidence that consumers will not be misled.

Proposed solution

The rule aims to make consumer choice clear and unambiguous. It prevents false representations in that it prevents DNSPs from leveraging monopoly status, intentionally or not, to distort emerging markets. It proposes a complete ban on shared marketing and branding. This is intended to:

- **Prevent consumer confusion:** Eliminate any impression that using a DNSP affiliate is mandatory or exclusive or confers certain characteristics.
- **Protect competitive neutrality:** Ensure affiliates compete on merit, not on the perception of monopoly endorsement.
- **Maintain trust:** Reinforce transparency so consumers can confidently choose among competitive providers.
- **Safeguard the integrity of ring-fencing:** Any regulated separation is meaningless if branding and messaging blur the lines between regulated and contestable services apparent to consumers.

Key measures proposed by the Branding and Representation Rule

1. **Ban misleading marketing**
Prohibit any advertising or communication that implies obligation, exclusivity, or preferential access to DNSP-affiliated services.
2. **Require distinct branding and disclaimers**
Mandate clear visual separation and disclaimers on all consumer facing materials - digital, print, and physical assets.
3. **Ensure transparency and accountability**
Require DNSPs to publish branding compliance statements and undergo independent audits to verify adherence.
4. **Apply case-by-case enforcement**
Targeting of high-risk areas such as EV charging, DER aggregation, and community batteries where consumer confusion is most likely.

The Branding and Representation Rule is not:

- **Not a ban on affiliate participation:** Affiliates can readily compete, but only under conditions of clear separation and neutrality.
- **Not a cosmetic exercise:** This is about substantive consumer clarity, and not token disclaimers buried in fine print.
- **Not a substitute for structural ring-fencing:** Branding and representation rules complement, not replace, legal and functional separation.

This proposal would amend the NER to elevate the minimum DNSP branding and cross-promotion standard (currently reflected in the AER Distribution Ring-fencing Guideline) into an explicit, enforceable rule-level obligation. If accepted, the AER Guideline would continue to operationalise the NER by outlining the practical compliance settings - and could be updated over time through the Guideline process to address new channels and market practices.

Draftable rule changes

Embedding a Stronger “No Misleading Representation” Test

The rule requires affirmative proof that branding and messaging do not mislead consumers, including:

- **Distinct branding:** Separate logos, colour schemes, and naming conventions for affiliates.
- **Clear disclaimers:** Prominent statements on all consumer touchpoints that affiliate services are optional and contestable.
- **Public transparency:** DNSPs must publish branding artefacts and compliance reports for stakeholder scrutiny.
- **Independent audits:** Annual reviews of websites, invoices, advertising, and physical assets to confirm neutrality.

The Branding and Representation rule ensures consumers are never misled into thinking they must use a DNSP affiliate for contestable services. By banning misleading marketing, mandating distinct branding and disclaimers, and enforcing transparency through audits, this rule protects consumer choice, competitive neutrality, and trust in the energy market.

A draft rule change, Affiliate Dealings and Data Access, is provided in Attachment 1.

Implementation costs and benefits

Incremental implementation costs should be limited because the obligations largely elevate practices already stipulated in the Ring-fencing Guidelines. The benefit is a material reduction in consumer confusion that can distort emerging markets, improving consumer choice and supporting competition on merit rather than on perceived obligation or implied exclusivity.

Rule 5 - Reporting, complaints and enforcement transparency

Background

In the current Australian distribution framework, DNSPs already face significant compliance reporting obligations. In particular, the AER describes that a DNSP must submit annual compliance reports and independent assessments, maintain a range of registers, and notify the AER of ring-fencing breaches. Ring-fencing Guidelines require DNSPs to notify the AER of breaches (i.e., self-report), and that the AER will publish breach information.

However, the current Guideline design still leaves key transparency functions framed as discretionary.

Problem

Stakeholders continue to raise concerns that ring-fencing protections can be undermined if enforcement activity is opaque or inconsistent, and that trust in waiver and ring-fencing processes depends on them being rigorous, transparent, and consistently enforced.

The case for stronger enforcement transparency is supported by precedent. Previously, in the AER's first annual ring-fencing compliance report (distribution), the AER stated that distributors were often not compliant, identifying material shortcomings and noting its monitoring/investigation work – though introducing a penalty regime intended to address this.²⁶

As ring-fencing waivers and contestable market overlaps grow, the risk is not just breaches themselves, but the perception of insufficient oversight - where market participants cannot readily gauge whether the regulator is actively and consistently pursuing non-compliance.

Proposed solution

Codify transparency into the ring-fencing framework by creating an enforceable reporting and compliance architecture around the AER's ring-fencing functions. This would strengthen existing annual AER ring-fencing compliance and enforcement reporting, creating a formal channel for stakeholders to raise ring-fencing concerns safely, without fear of reprisal from networks.

This reform would complement the existing Nexa proposals (financial resilience triggers, stronger waiver tests, non-discrimination/affiliate dealings controls, and branding separation) by ensuring those reforms are supported by credible monitoring, complaint intake and transparent reporting.

This proposal would amend the NER to elevate the minimum ring-fencing transparency, reporting and assurance architecture into explicit, enforceable rule-level obligations. If accepted, the AER Guideline would continue to operationalise the NER requirement by prescribing the detailed reporting settings, together with minimum governance and assurance

²⁶ AER, [Annual compliance report on the Electricity Distribution Ring-fencing Guideline 2017–18](#), March 2019

expectations (e.g., independent assessment) and further detail around processes for breaches, complaints and investigations.

Mandatory annual AER ring-fencing compliance and enforcement report (distribution)

This would introduce mandatory annual AER ring-fencing compliance and enforcement reporting for distribution, building on what the AER already publishes, but would make it mandatory and standardised. The report could be a strengthened version of (or companion to) the AER's existing annual compliance reporting approach. This could include:

- number of breach notifications received and published;
- number of investigations / compliance enquiries initiated and completed;
- number and type of enforcement actions;
- number of waiver applications received, approved, rejected, varied, revoked;

Complaint mechanism

This would also create a formal channel for stakeholders (including employees/contractors and competitors) to raise ring-fencing concerns safely, without fear of reprisal. There is clear Australian precedent for this: the ACCC's Gas Market Code includes an anonymous reporting option using a secure third-party platform that protects identity.

Formalised triage and investigation process

Finally, this would require the AER to publish and follow a clear process for handling ring-fencing complaints, including how matters are addressed, what information can be requested from DNSPs, and what responses/outcomes are available. This aligns with the Guideline's existing concept that the AER may require a DNSP to respond to a complaint/concern but makes the existence and transparency of the mechanism explicit and auditable.

Draftable rule changes

Embedding a reporting and compliance framework rule

The rule obligates the AER to undertake annual ring-fencing compliance reporting to ensure transparency around enforcement of ring-fencing, including:

- publish an annual compliance/enforcement report with minimum required content;
- establish an anonymous complaints mechanism; and
- publish a clear process to be followed in handling ring-fencing complaints.

This reporting rule makes ring-fencing enforcement explicit and observable. The intent is to strengthen confidence in compliance; DNSPs know compliance activity will be transparently reported, and third parties can safely raise concerns, reducing the likelihood that non-compliance persists undetected or unaddressed.

A draft rule change, Reporting, complaints and enforcement, is provided in Attachment 1.

Implementation costs and benefits

This change will require additional ongoing effort for the AER to operate enhanced reporting, triage complaints, maintain a complaints channel and publish enforcement outcomes in a

consistent way. These costs are expected to be proportionate and can be integrated into existing compliance and enforcement programs. The benefit is better transparency and increased stakeholder confidence that ring-fencing is being applied consistently and effectively in the long-term interests of consumers.

**AEMC Rule Change Proposal:
Protecting Consumers by Enhancing Competition
in Distributed/Consumer Energy Resources and
Services in the NEM**

Attachment 1 – Draft rule changes

Prepared by Nexa Advisory

2 March 2026

1. Purpose and Rationale

Purpose: Amend the National Electricity Rules (NER) to strengthen ring-fencing arrangements for Distribution Network Service Providers (DNSPs) in emerging markets (e.g., EV charging, DER, community batteries). The amendments will introduce financial ring-fence triggers, require a consumer benefit and market failure test for waivers, harden rules on affiliate dealings and data access, tighten branding and representation obligations, and make enforcement and complaints transparent.

Rationale: The NER already requires the AER to develop ring-fencing guidelines (NER 6.17) for accounting and functional separation and allows waivers; however, increasing reliance on waivers and expanded DNSP participation in contestable services have raised persistent concerns about competitive neutrality and consumer protection. Recent cases illustrate both the need for flexibility and the risk of precedent creep - e.g., the AER's consultation on the CPU kerbside EV charging waiver (Apr 15, 2025) and the Ergon isolated networks waiver (final decision Dec 2, 2025). Internationally, Ofgem's 2025 Energy Networks Ring-fence Review proposes strengthening licence-level ring-fence conditions and financial resilience measures (cash lock-up, dividend restrictions) to protect consumers and investors. These amendments align with the National Electricity Objective (NEO) by promoting efficient investment in and operation of electricity services in the long-term interests of consumers, including reliability, safety, price and quality.

2. Objectives

- 1) **Codify last-resort waiver criteria** - waivers only where market failure is independently verified, quantified consumer benefit is demonstrated and waiver objectives cannot be met through partnership with the competitive market.
- 2) **Embed automatic financial safety-switches** - cash lock-up and dividend restrictions when predefined financeability metrics are breached.
- 3) **Guarantee equal access and neutrality** - standardised, public data/interface protocols; prohibit preferential information timing, terms, and pricing to affiliates.
- 4) **Protect consumer choice** - ban any branding or representation that implies consumers must use DNSP affiliates; require clear disclaimers and brand separation.
- 5) **Make enforcement transparent and auditable** - standardised annual AER ring-fencing compliance/enforcement reporting, establish a safe (including anonymous) complaints channel, and require a published triage/investigation process with clear timeframes and outcomes.

3. Proposed Amendments to the NER (Draft Text)

Location: Amend Chapter 6 by inserting new sub-clauses under Rule 6.17.

3.1 Financial Resilience and Ring-fence Triggers - Rule 6.17.2(b)(3A)

(a) The Distribution Ring-fencing Guidelines must include provisions that: Define minimum financeability thresholds for a DNSP, prescribe automatic ring-fence restrictions where any threshold is breached (cash lock-up, prohibition on dividends and intra-group transfers), require DNSP notification within 5 business days, and require the AER to publish thresholds and enforcement actions in a public register.

3.2 Waiver Criteria - Market Failure and Consumer Benefit - Rule 6.17.2(b)(3B)

(a) The Guidelines must require the AER, before granting any waiver, to be satisfied that: Market Failure Test (open procurement, no competitive provider, independent verification) and Consumer Benefit Test (quantified net benefits, sensitivity analysis, NEO alignment). The AER must publish all evidence and assessments in the public waiver register.

3.3 Affiliate Dealings and Data Access - Rule 6.17.2(b)(3C)

(a) The Guidelines must prohibit preferential treatment to affiliates (information timing, terms, site access) and require DNSPs to publish standardised, public protocols for data access and service interfaces (hosting capacity maps, APIs). Independent audits and civil penalties apply.

3.4 Branding and Representation - Rule 6.17.2(b)(3D)

(a) The Guidelines must prohibit branding or representations suggesting consumers must use DNSP affiliates for contestable services, require clear disclaimers, and enforce distinct branding across all consumer touchpoints. Breaches are civil penalty provisions.

3.5 Reporting, complaints and enforcement - Rule 6.17.2(b)(3E)

(a) The Guidelines must include provisions that require the AER to publish an annual ring-fencing compliance and enforcement report for distribution DNSPs (for each reporting year), which must, at a minimum, disclose ring-fencing compliance and enforcement actions.

- (b) The Guidelines must establish and maintain a ring-fencing complaints mechanism that is accessible to any person, including an anonymous reporting option, for allegations of non-compliance with the Distribution Ring-fencing Guidelines or waiver conditions.
- (c) The Guidelines publish a clear process to be followed in handling ring-fencing complaints.

4. Implementation, Monitoring and Enforcement

- Transitional arrangements: AER to update guidelines within 6 months; DNSP compliance within 12 months.
- Waiver sunset and review discipline: Mandatory short sunsets (24–36 months), mid-term review, KPI reporting.
- KPIs and audits: Competition, consumer, and compliance KPIs; annual independent audits.
- Enforcement: Civil penalties for breaches; public registers for waivers and trigger events.

5. Plain-language Summaries

- (a) Market failure + consumer benefit - Last resort, not first choice: Waivers only if no competitive provider exists and consumer benefits are verified.
- (b) Financial ring-fence triggers - Safety switches for consumer money: If a network's finances weaken, rules automatically keep consumer-funded cash inside the regulated business and pause dividends.
- (c) Affiliate dealings and data access - No fast lanes for insiders: Affiliates cannot receive earlier information or better terms; DNSPs must publish standardised protocols.
- (d) Branding and representation - Clear choices for consumers: Ban marketing implying exclusivity; require disclaimers and distinct branding.
- (e) Reporting, complaints and enforcement - bolstered confidence in compliance: the AER must publish an annual ring-fencing enforcement report (breaches, investigations, waivers, actions taken) and manage a complaints channel, so non-compliance are identified and addressed.

6. Expected Benefits and Alignment with the NEO

- **Competition:** Reduces foreclosure risks and keeps markets open to innovation.
- **Consumer protection:** Prevents cross-subsidisation and ensures transparency.
- **Financial resilience:** Safeguards service continuity and aligns with international best practice.
- **Regulatory certainty:** Codifies tests, sunsets, KPIs, and enforcement.



3 March 2026

Att: Stephanie Bashir
Nexa Advisory
CC: Australian Energy Market Commission (AEMC)

Re: Letter of support for Nexa Advisory ring-fencing rule change proposal

The Clean Energy Council (CEC) is the peak body for the clean energy industry in Australia. We represent and work with Australia's leading renewable energy and energy storage businesses, as well as accredited designers and installers of solar and battery systems, to further the development of clean energy in Australia. We are committed to accelerating the transformation of Australia's energy system to one that is cleaner, equal, fair and transparent for all consumers.

The CEC has been briefed on the key elements of Nexa Advisory's proposed rule change relating to competition, consumer protections, and ringfencing arrangements in the National Electricity Market (NEM), and recognises the importance of ensuring that market frameworks remain fit for purpose as consumer energy resources (CER) continue to scale rapidly.

We agree that strong, transparent, and competitively neutral arrangements will be increasingly critical to protecting consumers and supporting efficient market development. These are matters that have been of ongoing concern to our membership and we therefore consider it valuable for the sector to have this structured forum in which stakeholders can properly examine:

- whether current ringfencing settings provide sufficient assurances of competitive neutrality,
- how to ensure emerging CER related services are delivered in ways that optimise system efficiency and consumer outcomes, and,
- what level of transparency, financial safeguards, and regulatory clarity is necessary to maintain trust and confidence as the CER market continues to evolve.

As this proposed rule change will have varied impacts on our Membership base, the CEC reserves the right to specify support and commentary for each of the rule amendments proposed by Nexa during the AEMC consultation process. We do however strongly support open consultation on these matters that will arise in any future AEMC consultation and endorse Nexa Advisory to submit this rule change proposal.

We welcome the opportunity for further discussion with the AEMC, the AER, market participants, and consumer groups as part of this process. The CEC intends to work collaboratively to support an evidence-based assessment of the issues raised and to help identify any refinements that may be required to maintain fairness, innovation, and efficiency in the NEM.

We would appreciate the Commission's leadership in progressing this conversation and look forward to continued engagement.

If you wish to discuss this rule change proposal further, please contact mrossiter@cleanenergycouncil.org.au.

Kind regards,

Jackie Trad
CEO – Clean Energy Council



27 February 2026

Ms Stephanie Bashir
Principal
Nexa Advisory
PO Box 550
SOUTH MELBOURNE VIC 3205

Dear Ms Bashir

Support for Proposed Rule Change – Enhancing Competition in Distributed Energy Resources

Thank you for providing me with a copy of Nexa Advisory’s proposed rule change entitled “Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the National Electricity Market (NEM)”. I am writing on behalf of the Smart Energy Council to express our strong support for the proposed rule change.

We consider this proposal to be an important and timely reform. As Australia’s energy system continues to decentralise, regulatory frameworks must evolve to ensure competition remains robust, transparent and consumer-focused. Distributed and consumer energy resources are now central to the operation, resilience and affordability of the National Electricity Market. Market arrangements must reflect that reality.

The Smart Energy Council has proudly represented Australia’s consumer energy industry for many decades. Our members operate across rooftop solar, battery storage, electrification technologies, energy management systems and emerging distributed services. We are committed to ensuring this sector continues to deliver tangible and measurable benefits to Australian households and businesses.

Enhancing competition in distributed energy services is essential to:

- Empower consumers with genuine choice and fair access to services
- Encourage innovation and new market entry

THE INDEPENDENT BODY FOR THE SMART ENERGY INDUSTRY IN AUSTRALIA

LEVEL 4, SUITE 2, 10 RUDD ST, CANBERRA ACT 2601
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**PUTTING ENERGY
INTO ACTION**



- Reduce costs through competitive pressure
- Accelerate the transition to a modern, decentralised energy system

We believe that your proposed rule change aligns with these objectives. By addressing barriers and clarifying market arrangements for distributed and consumer energy resources, the reform would support investment certainty, stimulate innovation and improve consumer outcomes across the NEM.

Please feel free to provide a copy of this letter of support to the Australian Energy Market Commission (AEMC). We encourage the AEMC to consider this proposal and to progress reforms that promote competition, strengthen consumer protections and enhance long-term system efficiency.

Please advise the AEMC that the Smart Energy Council would welcome the opportunity to provide further input or participate in stakeholder engagement processes as this proposal is considered.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. McElrea', is written over a light blue rectangular background.

David McElrea
Chief Advocacy Officer

24 February 2026

Ms Stephanie Bashir
Principal
Nexa Advisory
PO Box 550
South Melbourne VIC 3205

Dear Ms Bashir,

We support Nexa's proposed rule change titled "Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM".

The Australian Energy Council (AEC) is the peak body for energy retailers and generators operating in competitive markets. Our members generate and sell energy to over 10 million homes and businesses and are committed to delivering a reliable, affordable and decarbonised energy system for consumers. The AEC supports net zero by 2050 and recognises the electricity sector's role in reducing Australia's emissions. Our members are major investors in renewables, firming and storage technologies that are critical to ensuring that customers continue to receive reliable and sustainable energy supply as we navigate the energy transition.

The National Electricity Market is at a structural inflection point. Distributed energy resources are shifting value behind the meter. The key regulatory question is not whether CER will grow. It will. The question is who competes to serve customers - and under what framework. We support protecting consumers by enhancing competition in CER markets because weakening competitive dynamics will undermine affordability, innovation, and trust in the transition. Protecting consumers in a distributed energy future requires clear boundaries between regulated monopoly and contestable services and robust and enforceable ring-fencing protections.

Please do not hesitate to contact me at jo.desilva@energycouncil.com.au or by telephone on 03 9205 3100 if you wish to discuss our letter further.

Yours sincerely,

Jo De Silva

Jo De Silva
General Manager Retail Policy



SolarCitizens

A community voice for cleaner energy and transport

Solar Citizens
5 Blake Street
Kogarah
NSW 2217

info@solarcitizens.org.au

Tuesday 24 February 2026

Ms Stephanie Bashir

Principal
Nexa Advisory
PO Box 550
SOUTH MELBOURNE VIC 3205

Dear Stephanie,

Solar Citizens support Nexa's proposed rule change titled "Protecting Consumers by Enhancing Competition in Distributed/Consumer Energy Resources and Services in the NEM"

Solar Citizens is an independent charity working to bring down bills and reduce carbon emissions by growing uptake of renewable energy and clean transport. Established in 2013, we have grown to have more than 200,000 active supporters, and we represent the 10 million Australians living in homes powered by rooftop solar, the 400,000+ who have adopted clean transport; and the many more who remain locked out of consumer energy resources (CER).

The proposed rule change presents an important opportunity to strengthen competitive markets for CER and unlock continued innovation. As distributed energy resources become central to the National Electricity Market (NEM), it is essential that regulatory settings support fair competition, lower costs, and greater consumer choice. Innovation in flexibility services, orchestration, storage, and consumer-facing energy services will only flourish in markets that are transparent and competitively neutral.

Nexa's rationale is clear and compelling. Ring-fencing exists to safeguard consumers, maintain competitive neutrality, and prevent monopoly network revenues from being leveraged to distort emerging markets. These protections are not historical artefacts

[SolarCitizens.org.au](https://www.solarcitizens.org.au)



SolarCitizens

A community voice for cleaner energy and transport

— they are foundational guardrails for a modern, decentralised energy system.

This proposal is fundamentally about future-proofing the NEM. It sends a clear signal that consumer protection and competitive integrity are non-negotiable, even as we embrace new technologies and new business models.

If networks were permitted to weaken or remove ring-fencing protections, the likely outcome would be entrenched monopoly influence in contestable markets, diminished investor confidence, reduced innovation, and ultimately long-term harm to consumers. That would undermine both affordability and the pace of the energy transition.

For these reasons, Solar Citizens strongly supports Nexa's proposed rule change and encourages its progression to ensure a fair, competitive, and consumer-focused distributed energy future.

Heidi Lee Douglas
Chief Executive Officer, Solar Citizens
heidi@solarcitizens.org.au

NEXA Advisory
Attn: Ms Bashir
Principal

Via Email: stephaniebashir@nexaadvisory.com.au

Dear Ms Bashir,

NECA writes to formally express its strong support for Nexa Advisory's proposed rule change titled "Protecting Consumers by Enhancing Competition in Distributed Consumer Energy Resources and Services in the National Electricity Market".

The National Electrical and Communications Association represents more than 6,500 electrical contracting businesses across Australia. Our members operate across residential, commercial and industrial markets and are directly responsible for the design, installation, commissioning and ongoing maintenance of electric vehicle charging infrastructure, battery storage systems, rooftop solar, embedded networks, demand management systems and grid connection services. In practical terms, they are delivering the physical infrastructure that underpins Australia's energy transition.

NECA supports this rule change because it addresses structural regulatory deficiencies that are distorting competition in emerging distributed energy markets. Over recent years, monopoly electricity distribution network service providers have increasingly expanded into contestable markets through affiliated entities. This expansion has occurred in circumstances where access to regulated revenues, shared corporate services, brand recognition and customer data creates a material competitive advantage over independent contractors and service providers.

From NECA's perspective, this is not a theoretical concern. Electrical contractors are reporting lost work, constrained market access and price distortion arising from arrangements that blur the boundary between regulated monopoly activities and competitive services. Where regulated businesses are able to cross promote affiliated service providers, leverage publicly funded infrastructure, or utilise shared operational resources without robust and enforceable ring fencing controls, the competitive neutrality principles that underpin the National Electricity Law are compromised.

These practices undermine private sector investment, reduce diversity of market participants and risk crowding out the very small and medium enterprises that are critical to delivering distributed energy infrastructure at scale. Over time, this erosion of confidence will slow innovation, reduce consumer choice and ultimately increase costs for households, businesses and taxpayers.

Australia's decarbonisation pathway depends upon a competitive, efficient and innovative distributed energy services market. The electrical contracting sector has invested heavily in skills, compliance systems and new technologies to support electrification, energy storage and electric vehicle uptake. That investment must be protected by a regulatory framework that ensures monopoly entities do not use their privileged position to dominate competitive markets.

NECA therefore considers the proposed rule change to be both timely and necessary. Strengthening ring fencing, improving transparency, and reinforcing competitive neutrality safeguards will protect consumers,

support genuine market competition and enhance long term system efficiency across the National Electricity Market.

NECA would welcome the opportunity to meet with the Australian Energy Market Commission to provide detailed evidence from industry participants and contribute constructively to the rule change assessment process. Please feel free to provide a copy of this letter to the Commission.

To arrange NECA's further input, or should you wish to meet to discuss any matter relating to the issues raised, please contact Mr Kent Johns, Head of Government Relations and Policy on 0467660110 or at kent.johns@neca.asn.au.

Yours faithfully,



Mark Stedfut
Executive Director NSW
National Electrical and Communications Association (NECA)

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