

Attachment A: Submissions and confidentiality

Approach to handling information received during this consultation

The ACCC/AER information policy¹ sets out the general policy of the ACCC on the collection, use and disclosure of information.

The ACCC considers that a public and transparent consultation process is necessary for it to discharge its obligation to hold a public inquiry about making any new access determinations for the services the subject of this inquiry and allow the ACCC to effectively make a decision in accordance with the legislative framework. Hence, the ACCC will only agree not to disclose information that is the subject of a confidentiality claim in limited circumstances.

In these circumstances, the ACCC has also formed the view that making information available to third parties only through limited individual non-disclosure agreements would not be an appropriate means to manage confidentiality claims in this consultation. Hence in this consultation it does not intend to apply the ACCC's confidentiality guideline for submitting confidential material to ACCC communications inquiries.²

Disclosure of information

The ACCC will assess any confidentiality claims on a case-by-case basis and in doing so will consider whether it is required to publish information having regard to its statutory and common law duties and functions in each instance and in accordance with section 155AAA of the CCA.³

In assessing confidentiality claims, the ACCC will consider whether publication of the information is required to enable effective public consultation and allow it to perform its statutory function of holding a public inquiry about making new access determinations for the services the subject of this inquiry and make a decision in accordance with the statutory framework. The ACCC will assess whether this requirement outweighs any significant commercial harm a party submits may result from publication. The ACCC will afford procedural fairness in reaching these views.

¹ The ACCC/AER Information Policy is available on the [ACCC website](#).

² The Confidentiality guideline is available on the [ACCC website](#).

³ The ACCC notes in this regard paragraph 3.1 of the [ACCC/AER Information Policy](#).

Process for claiming confidentiality

If a party wishes to make a claim of confidentiality over material provided during this consultation, it should follow the process below:

1. Please submit two versions of the submission:
 - a) a **public** submission that can be published on the ACCC's website, in which all confidential material has been removed and replaced with 'c-i-c'. Please ensure that redacted information is not searchable or otherwise able to be viewed.
 - b) a **confidential** version that clearly identifies the information over which confidentiality is claimed by bookending the confidential material with a marking of 'c-i-c'. Please also highlight for ease of reference the material over which confidentiality is claimed.
2. Information over which a party claims confidentiality must be kept to a minimum so that consultation on all relevant material is not unnecessarily impeded.
3. Please provide a supporting submission that specifically substantiates the confidentiality claim for each item of information over which confidentiality is claimed. Confidentiality claims need to detail why the information is competitively sensitive or otherwise confidential, and why disclosure of the information would be likely to cause significant harm to the person to whom the information is confidential. 'Blanket' claims of confidentiality will not be accepted. The ACCC will notify parties of any additional information required to assess a confidentiality claim.
4. Where the ACCC proposes to publish information the subject of a confidentiality claim, it will provide a right to be heard and to amend or withdraw the information before proceeding to publication with redactions removed.
5. Where the ACCC proposes to not publish information the subject of a confidentiality claim and publishes a redacted submission, it may reconsider that claim at a future date if it becomes evident that publication of the redacted information is required to enable effective public consultation and to allow the ACCC to perform its statutory functions. The ACCC would notify the relevant party and engage with them in relation to how this information can be disclosed.