Ring-fencing Guideline and Shared Asset Guideline Review

CPU submission

06 August 2026

Executive summary

CitiPower, Powercor and United Energy (**CPU**) welcomes the opportunity to provide feedback on the Australian Energy Regulator's (**AER**) proposed scope for the joint review of the Ring-fencing Guideline (Electricity Distribution) version 4 (**ring fencing guideline**) and Shared Asset Guideline version 2 **(shared asset guideline**).

CPU supports the review of both the ring fencing and shared asset guideline (**guidelines**). The electricity sector has changed considerably since both guidelines first developed, with increasing consumer energy resources (**CER**), batteries, electric vehicles and new business models creating greater interaction between regulated network functions and other services. It is appropriate to test whether the guidelines remain clear, workable and fit for purpose in this changing environment.

Our key message

In considering whether the guidelines are still fit for purpose, we encourage the AER to make its decision based on evidence of the following issues:

- actual consumer or competition harm;
- non-compliance with an existing obligation;
- a difference in interpretation of an existing requirement;
- a practical implementation issue, or
- a genuine gap in the regulatory framework.

The AER identifies a broad range of stakeholder concerns. These are important inputs to the review, but a concern or perceived risk does not necessarily demonstrate that the guidelines are failing. The next step should be to test those concerns and establish what is happening in practice and what, if anything, needs to be fixed.

The solution might differ depending on the issue. A compliance issue should primarily be addressed through compliance and enforcement. An interpretation issue may require clearer drafting or guidance. Practical implementation issues may be addressed through worked examples or improvements to the waiver process. Finally, changes to the guidelines should be reserved for circumstances where there is evidence that the existing framework does not adequately manage the identified risk.

In respect to the ring fencing guidelines, they already contain extensive protections against cross-subsidisation and discrimination, including legal, accounting and functional separation requirements, controls over staff and information sharing, cost allocation requirements, annual compliance reporting, independent audits, breach reporting and the AER's enforcement powers.

Similarly, the shared asset guideline ensures consumers receive an appropriate share of the benefits where assets funded through regulated revenues are also used to generate unregulated revenue.

CPU has not seen evidence of a systemic failure of these arrangements with distribution network service providers (**DNSPs**) leveraging their market power. Further, the fact there has been greater use of waivers is due to emerging markets where DNSPs participation can provide long term consumer benefits.

CPU recommends that the AER:

- publish a clear problem statement and supporting evidence before progressing material changes to either guideline;
- retain the core protections of the existing distribution ring fencing guideline unless evidence demonstrates a specific gap or failure;

- provide clearer, risk-based guidance for internal related electricity service providers (internal RESPs), particularly where negotiated or unregulated distribution services rely on common network systems, asset information, staff or operational capabilities;
- review the practical operation of functional separation requirements to ensure they remain proportionate to the risks being managed;
- improve the waiver framework to provide greater clarity, transparency, predictability and timeliness while retaining the flexibility of individual and class waivers;
- ensure any additional reporting is targeted to an identified information gap, avoids duplication and considers whether greater AER transparency on waiver, complaint and enforcement outcomes would address the concern;
- avoid using the ring fencing guideline to address service classification or broader market-design issues being considered through the AEMC's Electricity Network Regulation Review (**ENRR**);
- retain the core shared asset guideline and cost allocation framework, which continue to protect customers while allowing them to share in the benefits of efficient use of regulated assets;
- not extend the shared asset guideline to negotiated distribution services, which are already subject to AER-approved negotiating frameworks, pricing principles and dispute-resolution arrangements; and
- assess the costs and benefits of any proposed additional obligations, including whether the expected benefit justifies the additional costs ultimately borne by consumers.

Response to Consultation Questions

Question 1

Have we accurately described the key changes occurring in distribution networks and the broader energy system? Are there any important developments or trends we have not captured?

Broadly, yes.

The AER rightly describes the growth in CER, batteries, EV charging infrastructure, flexible services and more active distribution system operation, together with the resulting increase in interactions between regulated network functions and adjacent services.

The important distinction for this review is between a changing operating environment and evidence that the guidelines are no longer effective. New technologies and business models create new circumstances in which existing obligations must be applied. That may expose areas where guidance is unclear or where the waiver framework is increasingly used, but it does not necessarily demonstrate a failure of the underlying protections.

The developing Distribution System Operator (**DSO**) role reinforces this point. More active coordination of CER, operating limits, network data and flexibility will necessarily rely on core network systems, information and operational capability. The ring fencing guideline should distinguish access that is necessary for safe and efficient network operation from access that creates a preferential commercial advantage. In many cases, role-based access, information protocols, audit trails and equivalent-access arrangements can manage the risk without duplicating operational systems.

CPU also supports the AER examining how the ring fencing guidelines apply to multi-use assets and evolving service models. However, where the issues identified through this review arise from the underlying service classification framework, they should be referred to the AEMC's ENRR rather than addressed indirectly through more prescriptive ring-fencing requirements. CPU continues to support a more agile service classification framework that can respond to emerging services outside the regulatory reset cycle. Within this review, the focus should remain on whether the existing guideline operate as intended after the change in service classification.

Question 2

Have we accurately reflected the concerns raised by stakeholders regarding the guideline? Are there additional issues that should be considered as part of this review?

The AER fairly records a broad range of stakeholder views, including concerns from third parties about potential use of monopoly advantages and concerns from DNSPs about the cost and proportionality of strict separation. CPU's key observation is that stakeholder concerns should be treated as issues to test in determining whether a regulatory gap exists.

For each concern, we encourage the AER to identify the specific harm alleged, the evidence that the harm is occurring or is reasonably likely to occur, the existing control intended to address it, and why that control is inadequate. This discipline is important because the appropriate response differs depending on whether the issue is a breach of an existing obligation, an ambiguity in how the obligation applies, a genuine gap in the guidelines, or a matter that sits outside this review.

2.1 Functional separation – retain effective controls and test proportionality

CPU supports effective controls over staff, offices, systems, information, branding and customer interactions where they are necessary to prevent discrimination or cross-subsidisation.

However, the existing framework is already highly prescriptive and imposes material direct and opportunity costs. In our AEMC ENRR submission, CPU estimated direct annual ring fencing compliance costs of approximately $970,000, excluding management time and broader opportunity costs associated with duplicated premises, equipment and systems.

Any strengthening of functional separation should therefore be supported by evidence of a specific risk that the existing obligations are not adequately managing. The AER should also consider whether the same outcome can be achieved through a less costly control.

For example, where staff require access to network systems for legitimate safety, asset management or operational reasons, role-based access, audit logs, information barriers and other controls may be more proportionate than complete system duplication.

A risk-based approach should also recognise that the level of competition risk will differ depending on the service, market maturity, whether the service is economically regulated, the type of information involved and whether the person accessing that information is involved in commercial decision-making.

2.2 Internal RESPs – clearer guidance is needed

CPU supports the proposed focus on internal RESPs.

The review should clarify what constitutes an internal RESP, which functional separation requirements appl, and how necessary interfaces with core distribution network service provider systems, information, asset management and operational functions can occur without creating a preferential advantage.

An internal function within the same legal distribution network service provider does not necessarily present the same risk profile as a legally separate affiliate. The guideline should recognise that distinction where appropriate.

2.3 Waiver framework – improve transparency and process

CPU supports reviewing the waiver framework, including greater transparency around applications, decisions, conditions and ongoing compliance. We also support clearer criteria, indicative timeframes and more consistent information requirements.

However, increased use of waivers does not itself indicate that the framework has failed. Waivers are an important mechanism for applying the ring fencing guideline proportionately to different services and circumstances.

Class waivers should remain available where the underlying issue and safeguards are common across DNSPs, with individual waivers used where risks are more service- or business-specific.

2.4 Emerging technologies, batteries and EVCI - manage the risk, not the technology

The differing stakeholder views on batteries and electric charging infrastructure (**EVCI**) illustrate why the framework should remain technology neutral. Concerns about crowding out, access to land or infrastructure, connection processes, data or operational capability should be tested against actual conduct and the controls already in place. If there is evidence of preferential access, cross-

subsidisation or discriminatory behaviour, that should be addressed directly. The existence of an operational advantage or network capability is not, by itself, evidence of anti-competitive conduct.

Similarly, a requirement to demonstrate market failure before a distribution network service provider can obtain a waiver would go beyond the purpose of the ring fencing guideline. Ring fencing should manage the way monopoly advantages are used; it should not become an indirect mechanism for deciding whether a distribution network service provider can enter an emerging market.

2.5 Branding and cross-promotion – identify the gap before adding controls

The current ring fencing guideline already contains strong restrictions on branding, advertising and promotion.

CPU is not aware of evidence demonstrating systemic consumer or competition harm arising from branding or cross-promotion under the distribution framework. If the AER considers there is a gap, it should identify the specific conduct and consumer outcome that the existing provisions do not prevent.

Clearer practical examples distinguishing corporate identity, factual service information, mandatory customer communications and active promotion of a related provider would be more useful than broader prohibitions.

2.6 Distribution and transmission alignment – greater consistency is supported

CPU supports greater alignment between the distribution and transmission ring-fencing frameworks.

As noted in our AEMC submission, the current difference in approach can create an uneven playing field as distribution and transmission businesses increasingly compete for similar connection and emerging services. In particular, the transmission framework does not impose the same operational controls around staff separation, branding, cross-promotion and information access that currently apply to distributors.

Where comparable competition risks arise, CPU considers there should be greater consistency in the safeguards that apply across both sectors.

2.7 Regulatory fit and market development - ring-fencing should not become a market-entry regime

Stakeholders have expressed both concern that DNSPs participation may crowd out third parties and concern that ring-fencing may prevent efficient use of network infrastructure and capability. Both perspectives should be tested against evidence. The ring fencing guideline should protect against cross-subsidisation and discrimination, but it should not be used to determine which markets a distribution network service provider or affiliate may participate in. Where the existing protections are complied with, the fact that a distribution network service provider can provide a service efficiently is not itself a ring fencing problem.

2.8 Shared Asset Guideline – test application before changing core settings

CPU agrees that the shared asset guideline should be tested against newer multi-use assets and more dynamic service models. However, concerns about benefit sharing, thresholds and sharing ratios should be tested against actual consumer outcomes. CPU's position remains that the current CAM and shared asset guideline are fundamentally fit for purpose: costs are allocated between services and material unregulated revenue from regulated assets is shared with customers.

Before changing materiality thresholds or sharing ratios, the AER should demonstrate that the current arrangements are failing to provide an appropriate benefit to consumers. A lower threshold or higher customer sharing ratio may increase the amount returned in the short term, but it can also reduce the incentive to pursue unregulated uses of regulated assets. The review should consider the overall incentive to improve asset utilisation, not only the percentage of revenue shared in an individual year.

For emerging and multi-use assets, CPU supports clearer technology-neutral guidance on when an asset is shared, how materiality applies and how the shared asset guideline interacts with cost allocation and ring-fencing. Cost allocation should not be repeatedly reopened simply because asset use evolves after an investment decision, where the original allocation was reasonable and based on expected use at the time.

CPU also considers that the shared asset guideline should continue to focus on unregulated revenue. Negotiated distribution services are already subject to economic regulation through negotiating frameworks, pricing principles and dispute resolution. Extending the shared asset mechanism to negotiated service revenue would add another regulatory overlay without a demonstrated customer protection gap.

Question 3

Are there relevant experiences, case studies, examples or evidence that would help illustrate these issues or inform the review?

CPU considers the AER should place significant weight on practical implementation experience when deciding whether a guideline change is required. The following examples are particularly relevant to the proposed scope.

3.1 Internal RESP arrangements for negotiated services

CPU's current work to implement an internal RESP model for negotiated services provides a practical example of the issues the review should examine. Functional separation of commercial decision-making, governance and staff responsibilities can be implemented. However, some service delivery activities necessarily interact with the DNSP's core asset, network and customer systems because the DNSP remains responsible for the safety, integrity, operation and ongoing management of the network assets involved.

This experience suggests that the question should not be whether every system, process or interface can be duplicated. The better question is what controls are necessary to ensure the internal RESP does not receive preferential access or use information for a purpose unavailable to competitors. Role-based system access, documented protocols, access logging, cost allocation, compliance oversight and audit can provide robust controls while avoiding unnecessary duplication.

3.2 Evidence from the existing compliance framework

CPU's ENRR submission noted that we are not aware of material breaches of the distribution ring-fencing framework since its inception and that the existing controls are subject to independent external audit. Where breaches do occur, the framework already provides mechanisms for identification, reporting and enforcement. This evidence is relevant when assessing whether further prescription is proportionate.

It does not mean the framework cannot be improved. It means that any proposal to strengthen a control should identify what harm has occurred despite the existing obligation and why the incremental benefit is expected to exceed the additional cost.

Question 4

Do you consider the scope of this review to be appropriate? Are there additional areas of focus that should be included?

CPU broadly supports the proposed scope, subject to several important refinements. The scope should remain anchored to issues that can be addressed through changes to the two guidelines, consistent with the boundary the AER has set with the AEMC ENRR.

4.1 Two scope refinements are particularly important

First, the scope item referring to 'what types of services affiliated entities should be allowed to provide and why' should be clarified. As drafted, it can be read as a market entry question rather than a question about the operation of ring fencing. CPU suggests reframing this item to examine whether the ring fencing guidelines appropriately manage dealings between DNSPs and affiliates when affiliates provide services, including access to staff, assets, systems, information and customer relationships.

Second, the review should explicitly consider implementation and transition. If the AER changes functional separation, reporting or shared asset obligations, DNSPs may need to change systems, access controls, contractual arrangements, internal structures and assurance processes. The final decision should include sufficient transition periods and should avoid retrospective application to arrangements established under existing waivers or regulatory decisions unless a specific risk justifies doing so.

Question 5

Do you have suggestions on ways the AER can make it easier for stakeholders to effectively engage with the review process?

CPU appreciates the AER's early engagement and supports the proposed use of targeted workshops. Given the breadth of the scope and the number of concurrent reform processes, the next stage would benefit from a more issue-specific approach.

- For each issue taken forward, publish a short problem statement identifying the harm or risk being addressed, the evidence supporting it, the existing control and the reason the existing control may be insufficient.
- Structure workshops by issue - for example functional separation/internal RESPs, waivers and reporting, and shared assets - rather than attempting to cover the full guideline in each session.
- Use worked operational scenarios to test proposed changes, particularly for internal RESPs, shared network systems, information access, dual function assets and emerging technologies.
- Clearly map matters being considered through this review against the AEMC ENRR and DSO policy work so stakeholders can see which process is responsible for which question.
- Where the AER is considering new reporting, publish the specific information gap it is trying to address and consult on whether existing reports, audits or AER-held information could meet that need first.
- Consult on implementation cost and operational impact alongside the policy benefit of any proposed amendment, including the cost of system separation, access controls, additional assurance and data collation.
- Provide an exposure draft or marked-up guideline with worked examples before finalising material changes, so stakeholders can identify unintended consequences in the drafting rather than only comment on high-level policy positions.
- Allow sufficient transition time for any new obligations and, where possible, align commencement with existing compliance and audit cycles to avoid unnecessary one-off implementation cost.