SUBMISSION

AER review of the Ring-fencing Guideline and Shared Asset Guideline

Ring-fencing breaches, competitive neutrality, productivity and the transfer of consumer-funded value to DNSP shareholders

Submitted by	[redacted]
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Consultation	AER joint review of distribution ring-fencing and shared asset guidelines
Primary position	Consumer-funded monopoly resources must not be used to create private shareholder value in contestable markets.

Core proposition: when NSW electricity consumers fund the people, systems, depots, vehicles, data, financing capacity and network access used by a DNSP or its affiliate to earn contestable revenue, the resulting private gain is not merely "asset utilisation". It is an direct equity transfer from captive consumers to DNSP shareholders.

Executive summary

[redacted] supports strong, enforceable ring-fencing. The current framework, however, permits the regulated monopoly and its related businesses to share resources in ways that are difficult to observe, difficult to price at true economic cost and difficult to unwind after competitive harm has occurred. The problem is not confined to accounting. It is structural.

The AER's own review materials identify the relevant risks: cross-subsidisation, discriminatory conduct, unfair competitive advantage, shared staff, information access, branding, waivers, weak transparency and whether consumers receive an appropriate share of benefits from assets they funded. The Ring-fencing Guideline is binding and expressly seeks to prevent cross-subsidisation and a DNSP conferring a competitive advantage on a related electricity service provider. Yet the practical regime still allows extensive shared-resource use, relies heavily on internal cost allocation and self-reporting, and gives consumers only a small and uncertain share of commercial upside.

Sources: AER Ring-fencing Guideline v4, cl 1.1.1 and Parts 3-6; AER Call for Input, pp. 1-2, 12-18; AER workshop slide pack, pp. 27-32.

[redacted] central submission is that this should be analysed as an equity transfer. Consumers are compelled to fund the regulated business. They pay for labour, systems, property, plant, overheads, borrowing capacity and the risk of regulated investment. When those resources are made available to an affiliate or unregulated business, the affiliate avoids costs and risks that every independent competitor must bear. Any internal invoice is a transfer within the same ownership group. Unless the full economic value is returned to consumers, shareholder equity increases at consumers' expense.

This transfer is especially acute where:

- the consumer has already funded the asset or capability through regulated revenue;
- the affiliate receives preferential access to staff, data, depots, systems, sites, finance or connection pathways;
- forecast cost allocations are not reconciled to actual use;
- commercial revenue below the materiality threshold is retained entirely;
- only 10 per cent of relevant revenue is returned above the threshold;
- the DNSP controls the bottleneck input on which its competitors depend; and
- government grants remove capital risk while regulated consumers continue to fund operating costs, systems or network support.

The issue is also one of national productivity. Treasury research concludes that weaker competition and rising market power reduce firms' incentives to innovate, slow the movement of labour and capital toward more productive businesses, and make inefficient incumbents less likely to exit. Treasury estimated that reduced dynamic reallocation lowered annual labour-productivity growth by about 0.1 percentage points—around one-fifth of the observed slowdown since 2012. Ring-fencing that permits a regulated monopoly to leverage consumer-funded advantages into contestable markets therefore does more than redistribute income: it suppresses entry, investment, innovation and productivity.

The reported auction of Ausgrid's non-regulated smart-metering business, Plus ES, at an indicative value of about $3 billion provides a concrete test of the framework. The valuation demonstrates that a related business can accumulate very substantial private equity value while operating beside, and historically connected to, a consumer-funded monopoly platform. It does not by itself prove the amount of cross-subsidy. It does, however, make the absence of transparent historical reconciliation unacceptable. The AER should require an independent reconstruction of every regulated resource, capability and advantage that contributed to Plus ES, and ensure that any consumer-funded component of the sale value is returned to NSW consumers rather than crystallised solely for DNSP shareholders.

The AER should therefore replace the current permissive framework with a presumption against DNSP participation in contestable markets, genuine legal and operational separation, first-dollar consumer benefit sharing, annual actual reconciliation, independent AER-directed audits, equal-access reporting and meaningful consequences for breaches.

Recommendations

1. Prohibit shared operational resources in contestable activities. DNSP and affiliate contestable businesses should not share operational staff, field crews, vehicles, depots, engineering systems, procurement, network information, customer relationships or management personnel with the regulated business. Narrow corporate support exceptions should be separately costed, independently benchmarked and publicly disclosed.

2. Treat shared-resource use as a transfer of economic value. The guideline should state expressly that use of a consumer-funded resource by an affiliate is a transfer of value to the common shareholder. The value must be measured at the greater of fully allocated economic cost, arm's-length market value and the avoidable cost to the affiliate.

3. Return consumer-funded value from the first dollar. Remove the aggregate 1 per cent materiality threshold. Where consumers funded the asset or capability and bear the downside risk, 100 per cent of net commercial value attributable to that contribution should reduce regulated revenue, subject only to verified incremental commercial costs and a capped incentive allowance.

4. Require annual reconciliation to actual use. Forecast allocations must be reconciled annually against actual staff hours, asset use, system use, revenue, network use, market-facing use and related-party transactions. Under-recovery for consumers should trigger automatic clawback with interest.

5. Adopt a last-resort waiver test. A waiver should be available only after open market testing shows that third parties cannot provide the service on reasonable terms, monopoly access barriers have been removed, consumer benefits are quantified, competition harm is independently assessed, and an exit plan is established.

6. Impose structural separation for material contestable activity. A related business undertaking material contestable activity should have separate employees, premises, systems, management, branding, financing and procurement. Common ownership should not permit common operational capability.

7. Publish transaction-level transparency. DNSPs should publish standardised registers of shared staff, shared assets, related-party transactions, waivers, information access requests, connection performance and consumer benefit adjustments.

8. Strengthen enforcement. The AER should appoint auditors, prescribe test plans, inspect transactions rather than representations, publish findings, impose remediation deadlines, require disgorgement of benefits and treat repeated breaches as evidence against future waivers.

9. Protect neutral access to monopoly inputs. Publish and compare timeframes, fees, technical requirements, outage access, pole access, capacity information and energisation outcomes for affiliates and independent providers.

10. Quarantine the natural monopoly. DNSPs should facilitate EV charging, batteries and other emerging services through connections, data and neutral network access. They should not ordinarily own or operate contestable assets where private provision is feasible.

11. Require a Plus ES value-transfer review. Before or following any sale of Plus ES, require Ausgrid to disclose and independently audit the business's historical use of regulated staff, systems, data, depots, procurement, finance, brand, customer relationships and other monopoly-derived capabilities. Any sale value attributable to consumer-funded inputs or uncompensated advantages should be credited to regulated consumers through a revenue reduction or direct benefit mechanism.

1. The economic substance: shared resources are an equity transfer

1.1 Consumers provide the capital base and operating platform

A DNSP does not enter a contestable market as an ordinary firm. Its workforce, systems, depots, vehicles, procurement capability, data, customer relationships, brand recognition, financing profile and network-control functions have been developed under a regulated monopoly and funded by captive consumers. Independent providers must raise risk capital, recruit staff, lease premises, acquire systems, build a brand, win customers and bear failure risk. A DNSP affiliate can obtain access to an established platform that consumers have already paid to create and maintain.

Sources: [redacted] NSW Parliamentary submission, pp. 3-4; Bell Doctrine papers supplied by [redacted]; AER workshop feedback summaries, contestable providers pp. 2-3 and government/consumer stakeholders pp. 2-3.

1.2 Internal charging does not eliminate the transfer

An affiliate using the resources of the regulated business, already paid for by the Australian consumer, derives revenue and profit from that resource a second time, this a direct transfer of wealth from the Australian consumer to the DNSP and it's affiliate common shareholders.

A claim that the affiliate pays a "market rate" does not resolve the issue. Where the regulated business and affiliate have common ownership, an internal charge moves money between entities under the same shareholder. The economic question is whether consumers receive the full value of the resource and whether the affiliate has borne the same cost, timing, risk and access constraints as an independent competitor.

Transfer pricing also cannot capture all monopoly-derived advantages. It rarely prices privileged information, priority access, management attention, established systems, balance-sheet strength, customer recognition, regulatory relationships, avoided start-up time or the option value of drawing on a large workforce when needed. These advantages increase the equity value of the competitive business even if an accounting entry is made.

1.3 The equity-transfer mechanism

Stage	Consumer position	Affiliate/shareholder position	Result
1	Consumers fund regulated labour, assets, systems and overheads through network charges.	Shareholders receive a fully functioning monopoly platform.	Consumer-funded base
2	Consumers continue to bear depreciation, opex, availability and downside risk.	Affiliate accesses selected resources without replicating the platform.	Avoided cost and risk
3	A related-party charge may be recorded, often using forecasts or allocations.	Value remains within the same ownership group and may omit intangible advantages.	Paper transfer, not neutralisation

4		Consumers may receive nothing below a threshold, or a small revenue adjustment.	Shareholders retain most commercial upside and enterprise value.	Equity transfer

<u>The transfer is therefore not limited to an incorrectly allocated wage or vehicle cost. It includes the increase in shareholder wealth created by deploying a consumer-funded monopoly platform into an adjacent market</u>.

1.4 Monopoly expansion is a drag on productivity

Competition is a productivity discipline. It forces firms to improve management, adopt better technology, innovate and direct scarce labour and capital toward their most productive uses. Monopoly power weakens each of those mechanisms. Treasury's analysis identifies two channels: within firms, weak competitive pressure slows operational improvement and technology adoption; between firms, it impedes dynamic reallocation, allowing less productive incumbents to retain resources that would otherwise move to more productive entrants. Treasury found that rising mark-ups and weakened competitive pressure have contributed materially to Australia's productivity slowdown.

Those findings apply directly to adjacent electricity-service markets. An independent provider must raise risk capital, develop systems, win customers, secure sites and connections, and bear the consequences of failure. A DNSP affiliate can begin with scale, information, established systems, procurement reach, financing advantages and relationships created under monopoly protection. If those advantages are shared or underpriced, productive independent firms can be denied the opportunity to expand while a less efficient affiliate remains viable. The result is precisely the productivity problem Treasury describes: weaker entry and exit, slower reallocation, reduced innovation and lower incentives to improve.

Leigh and Triggs further explain the distributional consequence of market power: modern monopoly rents tend to benefit shareholders and senior executives at the expense of consumers, and monopoly welfare losses fall most heavily on lower-income households. Electricity is an essential service, so this distributional effect is particularly serious. A ring-fencing regime that permits consumer-funded monopoly advantages to be capitalised in an affiliate compounds both inefficiency and inequality.

Sources: Australian Treasury, "Competition in Australia and its impact on productivity growth" (October 2022), pp. 14–19; Andrew Leigh and Adam Triggs, "Markets, Monopolies and Moguls: The Relationship between Inequality and Competition" (2016), especially pp. 390, 398–401.

1.5 Plus ES: a $3 billion illustration of value crystallisation

The Australian Financial Review reported in July 2026 that Ausgrid was progressing an auction of Plus ES, its non-regulated smart-metering business, at an expected value in the order of $2.5–$3 billion. The report described Plus ES as Australia's largest smart-metering business, with approximately 2.2 million smart meters and a market share of about 48 per cent. A business of that scale and value is not a peripheral side activity. It is a major corporate asset capable of delivering a multi-billion-dollar capital gain to Ausgrid's owners.

The regulatory question is not whether Plus ES has also made genuine commercial investments or whether all of its value arose from regulated consumers. The question is what proportion of that value was enabled by consumer-funded or monopoly-derived inputs that were not fully and transparently compensated. Relevant inputs include historical staff and management capability, information systems, procurement scale, customer and network data, brand and reputation, access to established premises and field resources, financing strength and the strategic advantage of affiliation with the network gatekeeper.

A sale converts those accumulated advantages into cash for shareholders. Once the business is sold, any uncompensated consumer contribution becomes difficult to trace and recover. The sale therefore makes the equity-transfer issue immediate: unless the AER reconstructs and credits the consumer-funded contribution, NSW consumers may have funded part of the platform on which a private multi-billion-dollar asset was built, while the resulting equity value is paid to DNSP shareholders.

This is not an argument to confiscate legitimately earned commercial value. It is an argument for regulatory symmetry. Private competitors must fund their own growth and shareholders receive only the residual value after all inputs are paid for. DNSP shareholders should be in the same position. They should retain value created through independently funded commercial risk, but not value created through regulated resources, under-recovered shared inputs or monopoly advantages supplied by captive consumers.

[redacted] submits that the AER should require, as a condition associated with any disposal of a material related business, an independent value-attribution review covering the entire period of affiliation. The review should identify all regulated inputs, compare actual payments with full economic and market value, quantify avoided costs and monopoly-derived advantages, and direct the consumer-funded share of net sale proceeds back to consumers. Without such a mechanism, a sale can become the final step in an irreversible transfer of equity from NSW households and businesses to DNSP shareholders.

Source: Australian Financial Review, "Future Fund consortium swells as Ausgrid's $3b Plus ES sale hits final lap", 5 July 2026.

2. The current shared asset mechanism does not provide an appropriate consumer return

The AER asks whether consumers receive an appropriate share of benefits, and whether the 1 per cent materiality threshold and 10 per cent benefit-sharing proportion are appropriate. SP Power's answer is no.

The current design allows commercial revenue below the threshold to produce no adjustment. Above the threshold, the AER workshop example shows that a DNSP earning $2 million retains $1.8 million. This is not a sharing rule aligned with funding or risk. It is a rule that transfers most of the upside to the monopoly owner while consumers continue to carry the asset base and downside exposure.

Sources: AER workshop slide pack, questions and examples at pp. 27-30; EVX submission, sections 1 and 7; network stakeholder summary, pp. 4-5.

The mechanism is further weakened where allocations are forecast-based and not routinely reconciled to actual use. A shared asset may ultimately be used predominantly for market-facing activity, but consumers can remain charged on the basis of an earlier forecast. Community battery data cited in the supplied EVX submission illustrates the risk: reported use was approximately 1 per cent for network support and 99 per cent by leasing partners. A regime without annual actual reconciliation cannot establish that consumers are not subsidising commercial use.

Proposed replacement rule

For every shared resource, the DNSP should identify: (a) who funded its creation; (b) who funds ongoing availability and maintenance; (c) who bears downside and stranding risk; (d) actual regulated and commercial use; (e) all direct and indirect commercial revenue; and (f) all avoided costs and intangible advantages received by the affiliate. Consumer benefit should then be calculated from the first dollar and reconciled annually.

3. Ring-fencing breaches and compliance weaknesses

The existing guideline contains clear mandatory obligations. DNSPs must maintain appropriate accounts, allocate costs consistently with approved cost allocation methods, not discriminate between affiliates and competitors, provide substantially the same terms, quality and timeliness in like circumstances, protect ringfenced information, and restrict staff sharing. Those obligations are binding and key non-discrimination and information obligations cannot be waived.

Source: AER Ring-fencing Guideline v4, cls 3.2.1-3.2.2, 4.1, 4.2.2 and 4.3.

The supplied workshop summaries nevertheless record concerns about:

- slower design certification, outage access or equipment availability for independent accredited service providers;
- shared staff being diverted from direct control services to contestable work;
- information, connection pathways and assets not being available on equivalent terms;
- branding and communications that link the DNSP and affiliate;
- limited enforcement, insufficient penalties and unclear reporting;
- waivers being granted too readily without ex-post assessment; and
- forecast allocations for multi-service assets not being reconciled to actual use.

These concerns are not answered by stating that annual reports are independently assessed. An auditor engaged by the DNSP, working from prescribed samples and management records, does not substitute for AER-directed transaction testing, competitor comparisons and investigation of real-world outcomes. Nor does self-reporting provide assurance where the harm is subtle, cumulative or commercially difficult for competitors to prove.

3.1 Breaches should have economic consequences

Where a breach has conferred an advantage on a related business, remediation should not end with corrected branding, a revised register or a future compliance plan. The AER should require disgorgement of the value obtained, repayment to consumers, compensation for improperly allocated costs, enhanced monitoring and adverse consideration in future waiver applications. Otherwise, the expected gain from breach can exceed the expected consequence.

4. Functional separation is inadequate where incentives remain common

Shared ownership creates a common objective: maximise the value of the corporate group. A staff member cannot forget information when changing roles, a common executive cannot divide commercial incentives, and a change of logo cannot remove the benefit of monopoly-funded capability. The government and consumer workshop recorded the practical difficulty of meaningful information separation where staff, executives and boards operate across entities.

Source: AER workshop summary - Government and Consumers, pp. 2-3.

The Bell Doctrine principle is directly relevant. It identifies the enduring problem where a regulated monopoly controls an essential bottleneck, recovers costs from captive customers, participates in an adjacent competitive market and is subject to imperfect oversight. Under those conditions, structural quarantine is more reliable than behavioural rules because it removes much of the incentive and opportunity to discriminate.

Source: Joskow and Noll, "The Bell Doctrine: Applications in Telecommunications, Electricity, and Other Network Industries" (1999), especially pp. 1249-1250 and discussion of accounting and structural separation around p. 1267.

[redacted] therefore submits that material contestable activity should require genuine operational separation: separate staff, premises, systems, management, procurement, branding and financing. The regulated business should provide neutral access to bottleneck inputs, not participate through a lightly separated affiliate that draws on the same platform.

5. Waivers must be exceptional and last resort

The waiver framework should not become a routine path for DNSP entry into emerging markets, or become de-facto rule changes. DNSPs are currently using waivers to socialise rule changes. Early-stage markets are particularly vulnerable: site control, data, technical standards, council relationships and customer expectations can become entrenched before private providers achieve scale. A waiver that reduces uncertainty for the DNSP transfers uncertainty to competitors and investors.

A waiver should be granted only where the DNSP proves, with independently verifiable evidence:

- a clearly defined market failure, not merely low current utilisation or a preference for faster deployment;
- open market testing and a genuine opportunity for third parties to deliver the service;
- removal of access, data, tariff and connection barriers within the DNSP's control;
- quantified net consumer benefit after accounting for competition effects and all regulated support;
- no less distortive option, including competitive grants, tenders, availability payments or neutral platforms;
- short duration, narrow scope, transparent key performance indicators and an exit plan;
- annual actual reconciliation of funding, use and revenue; and
- automatic review, clawback and termination if promised outcomes are not achieved.

The NSW Parliamentary Committee's 2026 report supports a provider-of-last-resort approach for EV charging blackspots and records strong support for the current ring-fencing guideline, along with recommendations for greater DNSP data transparency and standardised connection processes and timeframes. That is consistent with a facilitation role, not routine monopoly ownership.

Source: NSW Legislative Assembly Committee on Transport and Infrastructure, Infrastructure for electric and alternative energy source vehicles in NSW (August 2026), Finding 2 and Recommendations 9, 12-14.

6. Responses network arguments

Network proposition	[redacted] response	Required regulatory treatment
Shared resources create economies of scope.	The claimed economy is often an avoided cost created by consumer funding. Efficiency is not established unless all economic value is returned and competitors receive equivalent access.	Prohibit operational sharing; independently value any narrow permitted support.
Affiliate staff may be expensive after overhead allocation.	Accounting allocation does not price information, timing, access, risk transfer, customer acquisition or the option value of a monopoly workforce. All businesses have overhead costs, DNSPs should not be allowed a competitive advantage having NSW consumers subsidizing the OH costs.	Benchmark full economic cost and audit transactions and outcomes.

The market is immature.	Immaturity increases the risk of entrenchment and crowding out. It does not prove monopoly ownership is necessary.	Allow the competitive market to deliver to match supply and demand, use grants to market to speed up delivery if desired, use and last-resort tests.
Annual independent assessment is sufficient.	Self-commissioned assurance is not a substitute for regulator-selected transaction testing and competitor comparisons.	AER-appointed auditors and published findings.
Asset utilisation benefits consumers.	Maximum utilisation is not the objective if it distorts markets or transfers value. The objective is efficient investment and long-term consumer benefit.	Apply first-dollar sharing and whole-of-market assessment.

7. Proposed drafting directions

7.1 Ring-fencing Guideline

- Insert an express presumption that a DNSP and its affiliates must not provide contestable services using regulated resources or monopoly-derived advantages.
- Define “shared resource” broadly to include people, contractors, data, systems, management, procurement, property, vehicles, finance, brand, customer relationships, government relationships and connection control.
- Require separate operational capability for material contestable activities, with no shared field or technical staff.
- Require equal-access metrics and public comparison of affiliate and third-party outcomes.
- Make waivers conditional on last-resort market testing, short duration, actual reconciliation and exit.
- Require AER-directed audits, transaction testing, disgorgement and consumer repayment for breaches.
- Require a productivity and market-development assessment for material affiliate entry, including effects on independent investment, innovation, entry, exit and resource allocation.

7.2 Shared Asset Guideline

Prior to the separation of operational capability for material contestable activities, the following reforms are need asap.

- Remove the 1 per cent threshold and apply consumer sharing from the first dollar.
- Base the consumer share on funding, ongoing cost and downside risk rather than a fixed 10 per cent.
- Use the greater of market value, fully allocated economic cost and affiliate avoided cost for shared inputs.
- Reconcile annually to actual use and actual revenue, with interest-bearing clawback.
- Aggregate related entities and related contracts to prevent threshold management or fragmentation.
- Publish asset-level funding, use, revenue and adjustment data in a standard format.
- Require a mandatory value-attribution and consumer-credit process when a DNSP or its owners sell, float or otherwise monetise a material related business that has used regulated resources or monopoly-derived capabilities.

8. Suggested Implementation and transition

Timing	Action
Within 3 months	Publish consolidated registers of affiliates, internal RESPs, waivers, shared staff, shared assets and related-party services.
Within 6 months	Require DNSPs to map all shared resources and submit independently assured economic valuations and funding stacks.
Within 12 months	Commence annual actual reconciliation, equal-access reporting and AER-appointed transaction audits.
Next waiver review	Apply last-resort, KPI, exit and clawback conditions to every active waiver.
Next regulatory proposal	Apply first-dollar benefit sharing and reconcile all shared-resource revenue and cost treatment.
Ongoing	Publish breach findings, remediation, consumer repayments and repeat-breach status.

The AER should commence a targeted Plus ES review and preserve relevant records. Ausgrid should provide a complete history of related-party arrangements, shared staff and systems, cost allocations, information access, premises, procurement, financing support and payments made by Plus ES. Before sale proceeds are finally distributed, or as soon as practicable thereafter, the AER should determine the consumer-funded share and apply an equivalent credit to NSW regulated consumers. The same rule should apply prospectively to every material affiliate monetisation.

Conclusion

The AER's review should not treat shared-resource use as a minor accounting issue. It is a transfer of economic value. NSW consumers fund the monopoly platform and bear its ongoing risk. When that platform is used to build contestable revenue, market position and enterprise value for a related business, shareholders receive an equity uplift that independent competitors must finance themselves.

A small internal transfer price or a 10 per cent revenue adjustment cannot neutralise that transfer. Nor can behavioural separation reliably address common ownership, common incentives, privileged information and control of connection pathways. The appropriate response is to quarantine the monopoly, return consumer-funded value from the first dollar, reconcile actual outcomes, enforce equal access and impose economic consequences for breaches.

The Plus ES auction places the issue in stark terms. A business reportedly valued at around $3 billion has been built within the corporate orbit of a regulated monopoly. Unless the AER independently identifies and returns the value of all consumer-funded contributions, the transaction risks crystallising a transfer from NSW electricity consumers to DNSP shareholders. The greater the sale value, the stronger—not weaker—the need for retrospective economic reconciliation.

Strong ring-fencing is also productivity policy. It protects the process by which better firms enter, innovate and attract resources, while inefficient firms improve or exit. Permitting monopoly-derived advantages to determine outcomes in contestable markets entrenches incumbency, crowds out private capital and slows productivity growth.

[redacted] urges the AER to adopt reforms that make the regulated network a neutral facilitator of competitive markets rather than a platform for transferring value from captive consumers to DNSP shareholders.

References to supplied materials

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- [redacted] working papers supplied with this submission concerning DNSP ownership of EV charging infrastructure and application of the Bell Doctrine.