



ICRC
INDEPENDENT COMPETITION AND REGULATORY COMMISSION

Ring Fencing Guidelines
For Gas and Electricity Network
Service Operators in the ACT

November 2002



Foreword

The Independent and Regulatory Commission (the Commission) has reviewed the ring fencing requirements for gas and electricity network service providers in the ACT. Although the Commission regards the utilities market in the ACT to be relatively effective and efficient there are obligations upon utilities that cannot be disregarded and there is a need for continuing assurance that the market remains effective and efficient without constant intervention by either government or regulator. For these reasons the Commission regards the publication of ring fencing guidelines for network service providers as essential.

The Commission has considered the requirements of the national electricity and gas codes as a starting point in developing these guidelines. The benefit of starting with the requirements of these codes is that they are requirements that contribute to a regulatory standard applicable across most of the states and the ACT and, although independent of the Commission, are also its responsibility by virtue of its role as the jurisdictional regulator. In addition to those generally applicable provisions to which the Territory is a party, the Commission has considered what separations are appropriate in the ACT. If the Commission is to ensure that the market for utility services is, and remains, fair and equitable, local needs and benefits must be recognised.

The Commission is acutely aware of the relationship between the supply of services in the ACT and in NSW, and the regulatory and policy coordination issues that are involved. With those issues in mind, the Commission has prepared these guidelines with a particular view to the ring fencing arrangements in force in NSW. There are a number of reasons for ensuring that as far as possible the ACT and NSW remain aligned. Not least among those reasons are issues raised by the proximity of Queanbeyan to Canberra and the activity of the same utilities in different jurisdictions under the oversight of two separate regulators.

While the Commission has prepared guidelines that are consistent with those in NSW, the Commission needs to consider ACT-specific issues as well as those arising from the Territory's relationships with NSW and the other jurisdictions in the national electricity and gas markets. The ACT arrangements are different to other jurisdictions by virtue of the market presence of a large vertically integrated multi-utility that is partially government owned. The Commission has been careful to weigh up the benefits to consumers arising from the benefits inherent in the scale economies of the ActewAGL joint venture arrangement and the risk of those benefits being diminished by enforced separations that are inappropriate or unnecessary.

The attached guidelines reflect the Commission's desire to ensure that there is proper regulatory management of corporate behaviours that tend to reduce competition while at the same time allowing the market to operate and deliver benefits with the greatest reasonable freedom.

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1 Background

1.1 Regulatory framework

Regulatory reforms in the electricity and gas industry sectors at both the national and state levels have resulted in:

- the separation of monopoly from contestable services;
- the removal of regulatory functions from utility service providers;
- independent pricing oversight of utilities;
- third party access regimes for significant infrastructure;
- application of competitive neutrality principles to government business enterprises; and
- industry based licensing.

1.2 National Reforms

The development of national markets for electricity and gas has allowed suppliers and consumers of electricity and gas to trade in a single market.

The National Electricity Market (NEM) is regulated through the National Electricity Code, which deals with such matters as connection and access to the electricity network, network pricing, market rules and operation, and system security. The ACT participates in the NEM together with Queensland, New South Wales, Victoria and South Australia. Compliance with the Code is required under the *Electricity (National Scheme) Act 1997*, which applies in the ACT and other participating jurisdictions through mirror legislation. In the ACT this is the *Electricity (National Scheme) Act 1997*.

The *Gas Pipelines Access Act 1998* establishes a national gas access regime and the National Third Party Access Code for Natural Gas Pipeline Systems the framework for third party access to gas pipelines, and for the development and operation of a national, competitive market for natural gas.

1.3 ACT regulatory framework

Underpinning the national reforms are structural and regulatory reforms at the state and territory levels.

In the ACT utilities regulation has been restructured with the introduction of the *Utilities Act 2000*. It establishes a new regulatory framework for electricity, gas and water and sewerage utilities in the ACT including a licensing regime for each industry. In addition, the Utilities Act:

- sets out broad objectives for the regulation of utilities;
- specifies the legal rights for each utility including rights of access to, and ownership of, existing assets and rights to acquire land;
- enables the responsible Minister to issue directions on licence conditions or industry codes (disallowable instruments); and
- establishes the Commission as the primary regulatory authority for utilities.

2 Ensuring market competitiveness

The generally accepted economic view is that open competitive markets most effectively deliver the greatest benefits to consumers. However, markets are not always as open and therefore as effective as is assumed in theory. Power in markets is unequally distributed and information necessary for decision making is unequally available or accessible.

In those circumstances regulatory intervention is required to redress those imbalances, particularly as consumers are generally the least powerful or informed market participants. Moreover, there is a natural desire on the part of suppliers in a market to maximise profits, in part by reducing competition wherever possible. In utility markets, regulations seek to redress a number of key issues that would have the effect of lessening competition or reducing consumers' abilities to act rationally in their own interests, that is to capture benefits available to them which would otherwise be captured by suppliers or lost. In particular these regulations aim to:

- reduce or remove barriers to market entry or exit;
- reduce or remove market distortions arising from transactions between related businesses or within integrated businesses (removing cross subsidies or eliminating the sharing of market information);
- remove exclusive arrangements between related or vertically integrated businesses that lessen competition or unnecessarily increase costs; and
- make monopoly services accessible to competitors in the same or related upstream or downstream markets.

Ensuring that there is sufficient separation between the retailers and network operators in gas and electricity utility markets is a substantial means of achieving those regulatory objectives. Separating networks and retail elements of utility markets by 'ring fencing' various elements of their business structures and operations is a principal means of delivering fair market conditions that will benefit both suppliers and consumers.

2.1 The purpose of ring fencing

Ring fencing is the identification and separation of business activities, costs, and decision making within an integrated entity where part of the entity is providing monopoly services and another is providing services in a competitive market. Its purpose is to ensure that businesses operating in regulated monopoly industries do not use their monopoly power, or collude with associated businesses, to give associated businesses an unfair advantage over their market competitors. Ring fencing is intended to reduce or eliminate both incentives and opportunities for such anti-competitive behaviour. Specifically it aims at preventing the deliberate and discriminatory transfer of information and resources from a monopoly business to an associated business thereby:

- improving the effectiveness of retail competition by preventing a monopoly service provider from extending its market power into a contestable sector; and
- improving the efficiency with which monopoly service providers are regulated by preventing contestable costs being recovered through regulated charges.

To assist in determining efficient prices for regulated network and retail businesses regulators consider the costs incurred by each regulated business. The costs of integrated businesses need to be allocated to the appropriate activities. Where businesses are separate, costs are more easily allocated. Where regulated businesses have either regulated or unregulated associated businesses or are part of a single integrated business, it is more difficult to allocate costs for activities performed for, or staff used by, both the network and retail businesses and there is potential for cross subsidisation or cost shifting. Cost shifting occurs where a business manipulates cost allocations between the competitive and monopoly businesses. This practice usually gives the integrated business an advantage in the captive market, namely the power to distort the competitive market in its favour and thereby lessen competition. In addition to distorting efficient cost allocation, cross subsidies may have other undesirable results such as raising barriers to market entry.

Ring fencing is a means of reducing or eliminating cost shifting between related businesses in contestable and regulated markets so that regulated markets do not subsidise competitive activities in contestable markets. Ring fencing issues also arise as a result of exclusive dealings by the monopoly network business with its associated contestable businesses. Such exclusive dealings can take the form of:

- discriminatory sharing of commercially sensitive information between associated businesses;
- discriminatory access (in respect of price and non-price terms and conditions) to networks by associated and third party retailers; or
- joint marketing activities between associated businesses.

These practices are inequitable and inconsistent with the principles in the Trade Practices Act and with the reform intentions of National Competition Policy. Also they are inefficient and may lessen competition in markets in that they favour incumbent retailers, disadvantage new entrants trying to establish themselves and discourage market entry.

Ring fencing is not, however, without cost. It is intrusive by its very nature in that it not only requires entities to behave in ways that they would not have otherwise but also may create inefficiencies in the way organisations conduct their business. In addition, there are compliance costs for the regulators and maybe unintended consequences for utilities, consumers and the overall community. Generally speaking, the more effective strategies are also the more costly. Ownership separation, for instance, is probably the most effective form of ring fencing. However, the costs of such separation – loss of economies of scale and scope, and increased transaction costs – may be such as to make this option uneconomical. Other options, such as legal separation, physical separation and financial separation, are less costly than, say, ownership separation. Taken on their own though, they are not fully effective and, in order to be so, must be used in conjunction with other strategies. Where even these strategies are considered too costly for the benefits they are intended to deliver it may be necessary to use strategies that do not require structural separation but are aimed at discouraging anti-competitive behaviour in other ways. For example, effective controls may be exercised in some circumstances through the development and implementation of procedures and protocols.

The costs of ring fencing therefore need to be carefully weighed against the benefits that would be achieved in the competitive market. Thus, the Commission intends to use a combination of the strategies cited, including the development and implementation of procedures to check anti-competitive behaviour in those instances where the cost of operational separation is considered to outweigh its benefits. Also, the Commission does not intend to impose additional requirements on utilities where sufficient arrangements are already in place. The Commission does not consider ownership separation a viable option in the ACT at this time.

2.2 Ring fencing principles and requirements

In developing its ring fencing guidelines the Commission is concerned to:

- achieve an appropriate balance between the costs (both to utilities and the Commission) and benefits of ring fencing;
- not be unnecessarily prescriptive or intrusive; and
- achieve, as far as possible, consistency with other jurisdictions and consistency between energy sectors within the Territory.

The guidelines must also take into consideration the Commission's objectives, in particular:

- to encourage the provision of safe, reliable, efficient and high quality utility services at reasonable prices;
- to minimise the potential for misuse of monopoly power in the provision of utility services;
- to promote competition in the provision of utility services;
- to encourage long-term investment, growth and employment in utility service industries;
- to promote ecologically sustainable development in the provision of utility services; and
- to protect the interests of consumers.

In addition, the guidelines must be clear and enforceable. There must be no ambiguity over their meaning or application. Also, the guidelines must be supported by a robust compliance program.

Utilities are required under their operating licences to comply with any applicable ring fencing guidelines. Failure to meet the guidelines therefore represents a contravention of licence condition under section 47 of the Utilities Act. Penalties and appeals mechanisms apply in accordance with the Act.

Any information provided to the Commission pursuant to these guidelines are subject to the confidentiality provisions under Part 7 of the *Independent Competition and Regulatory Commission Act 1997*.

3 What businesses should be ring fenced

In principle any business that operates in a competitive market which is associated with, or part of, another business that operates in a related upstream or downstream regulated market should be subject to ring fencing rules. The rules potentially apply to all businesses that operate in the market where there is a risk that competition in the market might be reduced as a result of the business relationships between the entities.

The structure of the gas and electricity utilities in the ACT is important in determining what rules should apply and to whom. The ACT electricity market is composed of a single monopoly network operator with an associated retail supply business. The retail market currently also has twelve other licenced suppliers. The retail market is largely unregulated for customers above 100Mwh per year. For now the market remains regulated below that threshold but will become fully contestable from 1 March 2003.

The gas market in the ACT is composed of retail and network businesses only. There are no gas supply nor transport market sectors. The transmission and distribution markets are regulated monopolies, the former is regulated primarily by the ACCC, and the latter by the Commission. The retail market has two competitors, one of these is related to the distribution network service provider. The retail market effectively opened on 1 January 2002.

The incumbent electricity and gas distributors and retailers came together in a joint venture to form a single energy multi-utility, ActewAGL, in 2000. This utility also provides water and sewerage services under contract from ACTEW, one of the parent companies.

Ring fencing guidelines are necessary in the ACT gas and electricity industries because in both instances there is a monopoly network business with a related business in the retail market. In particular:

- these industries provide largely regulated network services as well as competitive retail supply services;
- some of the services they provide as part of their distribution network businesses are contestable (ie are open to competition);
- some of the services they provide as part of their retail business are not yet contestable (most residential and small business customers are not yet able to choose their own electricity retailer);
- the component businesses have consolidated to form a single multi-utility comprising not only electricity and gas, but water supply and sewerage services.

4 Existing ring fencing rules

4.1 Legislative Authority

Section 28 of the *Utilities Act 2000* requires electricity utilities to comply with determinations made by the Commission as jurisdictional regulator under the National Electricity Code. Similarly, Sections 29 and 30 of the Utilities Act require utilities to comply with determinations made by the local regulator under the *Gas Pipelines Access (ACT) Law* in relation to the transmission of gas and the ring fencing requirements of the National Gas Code.

The provisions of the *Gas Pipelines Access Act 1998* draw the Gas Code into the ACT. The Commission is the jurisdictional regulator under the Gas Code and under the *Gas Pipelines Access Act* (Section 8). Section 14 of the *Gas Pipelines Access Act* sets out the powers and functions of the Commission as regulator.

These provisions do not mandate but are consistent with the development and implementation of a set of rules relating to the operation of vertically integrated monopolies in the supply of utility services.

4.2 Code requirements

Requirements for electricity distribution network service providers

Clause 6.20 of the National Electricity Code requires the Commission, as the jurisdictional regulator for the ACT, to develop and publish ring fencing guidelines. The guidelines must provide for:

- legal separation of the network business from other businesses;
- accounting and functional separation of prescribed distribution services from other services provided by electricity distribution businesses;
- allocation of costs of prescribed services and other services provided by the electricity distribution businesses;
- restrictions on the flow of information between the network service provider and any other person; and
- restrictions on the flow of information where there is the potential for a lessening of competition.

In developing the transmission and distribution ring fencing guidelines the ACCC and each jurisdictional regulator is to consider the need, so far as practicable, for:

- consistency in distribution ring fencing guidelines between each participating jurisdiction;
- consistency with federal and state regulation in each participating jurisdiction of ring fencing requirements for other utility businesses;
- consistency between transmission and distribution ring fencing guidelines; and
- the distribution ring fencing guidelines in each participating jurisdiction to be consistent with the retailer of last resort arrangements in that jurisdiction.

Requirements for gas distribution network service providers

Service providers using a covered pipeline, ie a pipeline covered by the Gas Code, are required under the Code to segregate or ring fence the respective businesses. As a minimum, the service provider is required to:

- be a legal entity;
- not carry on a related business;
- establish and maintain separate accounts for the activity that is the subject of each access arrangement;
- establish and maintain a consolidated set of accounts for all activities undertaken by the service provider;
- allocate costs shared between the different accounts in a fair and reasonable way;
- ensure that confidential information provided by a user or a prospective user is used only for the purposes for which it was provided and is not disclosed without the user's consent;
- ensure that confidential information obtained by a service provider which might reasonably be expected to materially affect the commercial interests of a user is not disclosed to any other person without the permission of the user to whom the information pertains;
- ensure that marketing staff are not also working for an associate that takes part in a related business;
- ensure that marketing staff of an associate that takes part in a related business are not also working for the service provider.

Aside from these minimum requirements, the local regulator may require additional ring fencing obligations. The local regulator may also dispense with some of the ring fencing obligations where there is a public benefit.

5 What separations are appropriate for utilities in the ACT

The overall objectives of the National Electricity and Gas Codes are:

- to promote and safeguard competition and fair and efficient market conduct in the electricity and gas supply industries, including promoting the simulation of competitive market conduct and preventing the misuse of monopoly power; and
- to require that electricity and gas entities have in place arrangements which ensure that contestable businesses are not treated by related monopoly businesses in a way that confers a non-commercial discriminatory price or non-price advantage on the related business compared to other third parties in the same commercial circumstances.

In considering what separations are required, the Commission needs to consider the intentions of the National Electricity and Gas Codes and the Commission's objects. In particular, it needs to observe the following principles:

- that markets should be free, fair and open;
- that effective competition drives efficiency and delivers benefits to consumers in terms of prices, choice and service quality;
- that markets may need some specific regulatory intervention to ensure that there is an equitable distribution of market power, for example, that information be provided in a way that does not disadvantage consumers and diminish their capacity to make rational decisions in their own interest; and
- where market failure does occur, regulation may be required to protect consumers from monopolies or more powerful market participants.

The Commission seeks to establish arrangements that recognise the potential benefits of the Territory's unique electricity and gas market structure and the appropriateness of any separations. That is to say, some separations may not be necessary or desirable in the ACT that would be appropriate elsewhere. The final set of separations must take into account the benefits of scale for both consumers and the government and to achieve a balance of controls and incentives. It must also be able to achieve the Commission's intended outcomes whilst still enabling utilities to select the most appropriate business structure.

In some instances the guidelines reflect existing practices and arrangements. The Commission believes it is important to include these guidelines nonetheless as they make clear desired arrangements and behaviour, and serve to formalise them should utilities wish to change their structures and practices in the future.

5.1 Aspects of behaviour to be addressed

The Commission has identified a number of circumstances or practices that have the potential to diminish competitiveness in the ACT's energy markets. In particular, it wants to ensure that the following activities are curtailed:

- cost shifting between regulated businesses and unregulated businesses;
- inappropriate access by affiliated retailers or businesses to information held by a distributor;

- preferential treatment of associated businesses.

Cost shifting

As noted earlier, costs cannot always be clearly or precisely attributed to particular services or customers. For example, where activities are performed by an integrated business comprising both distribution and retail businesses, there is potential to shift an inappropriate proportion of the costs to the distributor (and ultimately customers) thereby allowing the retailer to provide services more cheaply. Given the relatively small margins in the retail market such a transfer could be significant. Conversely, shifting costs from the distributor to the retailer serves to undermine the effectiveness of regulation.

Inappropriate access to, and use of, information

Any interaction between a distributor and retailer through, for example, IT systems, processes, facilities and employees, creates an opportunity for information to be shared, whether intentionally or not. Thus a retailer may be given a competitive advantage over other retailers by gaining marketing information, general and specific customer information and network information from an affiliated distributor.

The Commission is concerned to restrict the manner in which customer information, in particular, is used by network businesses and the potential for sharing such information with affiliated businesses. Accordingly, it will require that a network business use confidential information provided by an existing or prospective end user or customer only for the purpose for which the information was provided. The information is not to be disclosed to any other person without the approval of the existing or prospective end user or customer who provided it unless the information is publicly available or required under the law.

The Commission will also require equal access to information. Namely, if there is a legitimate commercial reason for any commercially valuable information to be disclosed to an affiliated business it must also be published or made available to all other retailers on an equal basis unless the information is publicly available.

Separation of marketing staff and staff involved in making key business decisions is an important means of restricting information flows, as is restricting access to information, and of information flows via IT systems. These issues are addressed below.

Preferential treatment of associated businesses

The Commission is concerned to ensure that transactions between affiliated (non-retail) businesses are in fact at arms length and that distributors do not provide their services on more favourable terms than to an independent retailer. Provisions are therefore included in the guidelines to ensure that distributors keep affiliated businesses at arm's length and relate to them in a competitively neutral manner.

5.2 Proposed ring fencing strategies

In brief, the Commission proposes to require integrated electricity and gas businesses to:

- legally separate the network and retail parts of their businesses;
- ensure that their marketing staff and certain other operational staff are not also staff of related businesses;
- physically separate the offices of network providers and related businesses;
- separate the information systems of network providers and related businesses;
- develop procedures for cost allocation, for shared boards of management, and for complaints handling; and
- conduct any business with related (non-retail) businesses at arm's length.

Legal separation

This form of ring fencing requires business units to be separate corporate entities with separate services and assets. Entities may be owned by a holding company, or may be subsidiaries of the distributors. However units must clearly identify and delineate their roles through formal contractual and reporting arrangements. The aim is to create clear boundaries between the ring fenced businesses and to reinforce the accounting separation of the businesses by creating a clear audit trail. In so doing the regulator is also able to more clearly identify the services and assets associated with monopoly and contestable functions.

Operational separation

Legal separation does not preclude organisations from pooling some of their resources, for example staff and information systems. The Commission recognises that there are economies of scale to be had in doing so. However, pooling also creates opportunities for the retailer to gain access inappropriately to commercially valuable information. The Commission therefore considers that some operational separation is necessary to clarify the roles and priorities of staff involved in the provision of services to both the distributor and retailer, and to reduce opportunities for the retailer to preferentially obtain confidential information.

Operational separation is proposed to apply to the organisational units providing the following services:

- marketing;
- enquiries, including fault calls;
- connection, disconnection and reconnection;
- customer transfers;
- meter provision and meter reading; and
- processing of data generated from the above activities.

In addition, the retail arm is not to have any greater access to information systems and business processes for providing distribution services than is available to any other retailer.

The sharing of staff not involved in marketing and the provision of the other services mentioned above (eg human resources, corporate services and the maintenance of IT) will be allowed. Likewise the Commission will allow the sharing of staff involved in

complaints handling. However, it will require the development and implementation of procedures to ensure that commercially sensitive information is not disclosed to any other staff of the affiliated business as a result of such sharing.

The Commission notes that other jurisdictions also require the separation of operational staff from the network business and other contestable works businesses (eg meter reading services). Other than retail services there are currently no other affiliated contestable businesses. Consequently guidelines for other contestable works businesses are not required at this time. The Commission will revisit this issue should the situation change.

Accounting separation

Accounting separation serves to differentiate the costs of providing services, assets, liabilities and revenues between the network provider and affiliated businesses. Whilst accounting separation serves as a useful reporting tool it is also an important means of reducing any opportunities for cost shifting. Accordingly the Commission proposes that network businesses develop, and have in place, procedures that will enable the appropriate identification and allocation of costs.

Physical separation

This form of ring fencing requires the physical separation of staff providing distribution services from retail staff. In its more extreme form it means that a building could not be shared. A less restrictive approach would be to allow businesses to occupy different parts of the same building.

The Commission does not consider the costs of requiring businesses to occupy separate buildings to be warranted. Rather, for the Commission's purposes, physical separation could be accomplished by restricting access to parts of the building in which the affiliated business is located.

Systems separation

It is proposed that network service providers be required to ensure that employees of associates are unable to gain access to their information systems in a manner that:

- allows or provides a means of transferring confidential information from the network service provider to the associate; or
- creates an opportunity for exclusive treatment or other unfair competitive advantage.

Information systems may be shared providing there are appropriate access restrictions, for example "Chinese walls", or password access only.

Boards of management

Decision making at the board of management level is of a strategic, rather than operational, level. Consequently the risk of inappropriate access by the retail arm of a business to commercially valuable information through shared boards is considered to be small. There is a risk nonetheless and the Commission therefore believes it is important to have in place safeguards to prevent any inappropriate access to information from occurring.

The Commission does not consider board separation warranted or practicable in a jurisdiction the size of the ACT. It will therefore require network businesses to develop, and put in place, procedures to ensure that confidential information or information that may give an affiliated business a competitive advantage is not disclosed to staff of the affiliated business through board meetings or through board papers.

Arm's length transactions

The Commission is concerned to ensure that distributors' business dealings with affiliated businesses are conducted in the same way as their dealings with unrelated third parties, that is at arm's length and in a competitive neutral manner. Specifically, distributors' network use of system agreements with affiliated businesses should be:

- on a contract basis with terms and costs clearly defined;
- transparent; and
- on terms no more favourable than would be offered to a non-affiliated business.

The distributor will need to satisfy the Commission that any such transactions are in fact at arm's length.

Joint marketing

For the purposes of these guidelines joint marketing is defined as joint advertising, promotions, presentations, and product development. The Commission does not oppose joint marketing as such and does not propose to ring fence such activities by requiring, for example, separate brand names. Nor is the Commission concerned with joint marketing that promotes generic energy services. However, the Commission is concerned to prevent the network business from leveraging its market power into the competitive market. In particular the Commission is concerned to prevent affiliated retailers from receiving a disproportionate benefit from any jointly sponsored marketing (in relation to their actual contribution), and any marketing that confuses the relationship between the network business and affiliated businesses. Accordingly, the Commission will require distributors to:

- seek to avoid misleading customers into associating certain retail products and services with distribution products, services and the quality of those services (eg network reliability); and
- advise potential and actual customers that they have competitive choices, where appropriate.

6 Ring Fencing Guidelines

1. PURPOSE OF THESE GUIDELINES

1.1 Application

The guidelines will apply to all electricity and gas utilities (“utilities”) licensed to provide electricity and gas distribution and connection services under the *Utilities Act 2000*.

1.2 Purpose

The purpose of the guidelines is to:

- (a) promote and safeguard competition and fair and efficient market conduct in the electricity and gas supply industries by promoting and stimulating competitive market conduct and preventing the misuse of monopoly power; and
- (b) require that electricity and gas utilities have in place arrangements that ensure that **Related Businesses** are not treated in such a manner by a utility as to confer a non-commercial discriminatory price or non-price advantage on the **Related Business** compared to the treatment of a third party in the same commercial circumstances.

2. DICTIONARY

The dictionary attached at the end of these ring fencing guidelines is part of these guidelines.

3. RING FENCING MINIMUM OBLIGATIONS

3.1 A utility must:

- (a) Be a legal entity:
 - (i) incorporated under the Corporations Law;
 - (ii) established as a statutory corporation; or
 - (iii) established by a royal charter;
- (b) Not carry on a **Related Business**;
- (c) Not cross-subsidise a **Related Business**;
- (d) Establish and maintain a set of accounts for the provision of distribution services that is separate from the accounts it maintains for its other businesses;
- (e) Establish and maintain a consolidated set of accounts for its entire

business;

- (f) Allocate any costs that are shared between an activity covered by a set of accounts described in clause 3.1(c) and any other activity according to a methodology that is consistent with generally accepted accounting standards and is otherwise fair and reasonable;
- (g) Ensure that confidential information provided by an existing or prospective end user or customer is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the existing or prospective end user or customer who provided it, except:
 - (i) if the information comes into the public domain otherwise than by disclosure by the utility; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
- (h) Ensure that information obtained by the utility and its staff in the course of conducting its business and which might reasonably be expected to affect materially the commercial interests of an existing or prospective supplier or customer is not disclosed to any other person without the approval of the existing or prospective supplier or customer to whom that information pertains, except:
 - (i) if the information comes into the public domain otherwise than by disclosure by the utility; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
- (i) If requested to do so in writing by a customer, the utility must disclose any customer information of a type described in the customer's written request to the customer or to any existing or prospective supplier nominated by the customer. This clause applies notwithstanding and without contravening clause 3.1(h);
- (j) Not disclose the fact that the customer has made a request under clause 3.1(i) to any person (other than a person nominated by the customer under clause 3.1(i));
- (k) In the case that the information has been disclosed contrary to clause 3.1(h), ensure that the information is not used by another person in a manner that is inconsistent with clause 3.1(g);

- (l) Ensure that, where commercially valuable information is made available to a **Related Business**, it is also made available to similarly situated entities unless the information comes into the public domain otherwise than by disclosure by the utility;
- (m) Ensure that its **Marketing Staff** are not also staff of an **Associate** that takes part in a **Related Business** and, if a member of its **Marketing Staff** does become or is found to be involved in a **Related Business** contrary to this clause, must remove that member from its **Marketing Staff** as soon as practicable;
- (n) Ensure that its operational staff involved in providing the following services:
- enquiries, including fault calls;
 - connection, disconnection and reconnection;
 - customer transfers;
 - meter provision and meter reading; and
 - processing of data generated from above activities.
- are not also staff of an **Associate** that takes part in a **Related Business** and, if a staff member involved in providing such services does become or is found to be involved in a **Related Business** contrary to this clause, must remove that member from providing these services as soon as practicable;
- (o) Develop, and have in place, procedures to ensure that confidential information or information that may give a **Related Business** a competitive advantage is not disclosed to staff of the **Related Business** by complaints handling staff that are shared between the utility and a **Related Business**;
- (p) Develop, and have in place, procedures to ensure that confidential information or information that may give a **Related Business** a competitive advantage is not disclosed to staff of the **Related Business** through board meetings or board papers;
- (q) Ensure that the utility's office space is physically separate from that of **Related Businesses**. Physical separation may be accomplished by having office space in separate buildings or, if within the same building, on separate floors or with separate access, unless otherwise approved by the **ICRC**;
- (r) Ensure that employees of a **Related Business** are unable to gain access to the utility's information system in a manner that would allow or provide a means of transferring confidential information from the utility to the **Related Business**, lead to customer confusion, or create an opportunity for preferential treatment or other unfair competitive advantage;
- (s) Conduct business with **Related Businesses** at arm's length and in a competitively neutral manner. In particular, where utilities have network use of systems agreements with a **Related Business** the arrangements:
- should be on a contract basis with terms and costs clearly defined;
 - should be transparent;

- should be on terms no more favourable than would be offered to a third party in the same commercial circumstances; and
 - must be to the **ICRC's** satisfaction.
- (t) Not engage in joint marketing, advertising, promotion or product development with a **Related Business** in a manner that gives the **Related Business** a competitive edge or misleads customers. To that end a utility must:
- seek to avoid misleading customers into associating the products and services of the **Related Business** with the utility's products, services and the quality of those services (eg network reliability);
 - advise potential and actual customers that they have competitive choices, where appropriate.

4. VARIATION OF RING FENCING OBLIGATIONS

- 4.1 The **ICRC** may vary the ring fencing guidelines:
- (i) on application by a utility; or
 - (ii) on its own initiative, by written notice to the utility.
- 4.2 **ICRC** may vary the ring fencing guidelines on its own initiative only if **ICRC**:
- (i) has given the utility reasonable notice of the proposed variation and its reasons for the variation; and
 - (ii) has allowed the utility a reasonable opportunity to make representations to **ICRC** about the proposal; and
 - (iii) has taken account of any representation; and
 - (iv) is satisfied that the variation is appropriate.
- 4.3 **ICRC** may vary the ring fencing guidelines on its own initiative without complying with clause 4.2 if it is satisfied that:
- (i) the variation is necessary or convenient because of an amendment to an Act or a subordinate law;
 - (ii) the variation:
 - is unlikely to adversely affect anyone; and
 - would not materially alter the ring fencing guidelines.
- 4.4 A variation takes effect:
- on the day **ICRC** gives written notice of the variation to the utility; or
 - if the notice specifies a later date of effect, on that day.

7 Dictionary

Associate	Has the meaning given to it under the Corporations Law.
ICRC	Independent Competition and Regulatory Commission established under the <i>Independent Commission and Regulatory Commission Act (ACT) 1997</i> .
Marketing Staff	<p>Staff directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include staff involved only in:</p> <ul style="list-style-type: none">(a) Strategic decision making, including the executive officer or officers to whom Marketing Staff report either directly or indirectly; or(b) Technical, administrative, accounting or service functions.
Related Business	<p>The business of producing, purchasing or selling natural gas or electricity services, as the case may be, but does not include the purchase or selling of gas to the extent necessary:</p> <ul style="list-style-type: none">(a) for the safe and reliable operation of a gas network (or of a gas distribution system); or(b) to enable a utility to provide balancing services in connection with a gas network (or a gas distribution system).