



DRAFT

Amended Ring-Fencing

Guideline

Electricity Distribution

July 2017

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1 Nature and authority

1.1 Application of this Guideline

1.1.1 Background and summary

This Electricity Distribution Ring-fencing Guideline (**Guideline**) is made under clause 6.17.2 of the National Electricity Rules (**NER**).

Under clause 6.17.1 of the **NER**, this **Guideline** is binding on all **Distribution Network Service Providers (DNSPs)**. For the avoidance of doubt, any references in this **guideline** to **transmission services** do not bind **Transmission Network Service Providers (TNSPs)** who are not also **DNSPs**.

The objective of this **Guideline** is to:

- -promote the National Electricity Objective by providing for the accounting and functional separation of the provision of direct control services by DNSPs from the provision of other services by them, or by their affiliated entities.
- promote competition in the provision of electricity services.

This **Guideline** imposes obligations on **DNSPs** targeted at, among other things:

- cross-subsidisation, with provisions that aim to prevent a DNSP from providing other services that could be cross-subsidised by its distribution services; and
- discrimination, with provisions that aim to:
 - prevent a **DNSP** conferring a competitive advantage on its **related electricity service providers** that provide **contestable electricity services**; and
 - ensure a **DNSP** keeps information it acquires or generates confidential, and handles that information appropriately.

1.1.2 Commencement

This **Guideline** ~~commences~~commenced on 1 December 2016 and incorporates amendments made from time to time as indicated on page ii.

1.2 Confidentiality

The **AER** will assess confidentiality claims by **DNSPs** arising under this **Guideline** in accordance with the **Distribution Confidentiality Guidelines**, the *Competition and Consumer Act 2010* (Cth) and the National Electricity Law (**NEL**).

1.3 Interpretation

In this **Guideline**, unless the contrary intention appears:

- A term in bold type that is expressly defined in clause 1.4 of this **Guideline** has the meaning set out in that clause.

- A term in bold type that is not expressly defined in clause 1.4 of this **Guideline** has the same meaning it has in the **NEL** or the **NER**.
- The words 'shall' and 'must' indicate mandatory requirements.
- The singular includes the plural, and vice versa.
- A reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as in force from time to time.
- Explanations in this **Guideline** about why certain information is required are provided for guidance only. They do not limit in any way the **AER's** objectives, functions or powers.

For the purposes of the application of this **Guideline** in the Northern Territory, the reference to 'national electricity system' in section 7 of the **NEL** must be taken to mean a reference to a 'local electricity system' or to all 'local electricity systems', as the case requires.

1.4 Definitions

In this **Guideline**:

- **affiliated entity**, in relation to a DNSP, means a **legal entity**:
 - (a) which is a direct or indirect shareholder in the **DNSP** or otherwise has a direct or indirect legal or equitable interest in the **DNSP**;
 - (b) in which the **DNSP** is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or
 - (c) in which a **legal entity** referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest.
- **contestable electricity services** means:
 - (a) **other distribution services**; and
 - (b) **other electricity services**.
- **electricity information** means information about electricity networks, electricity customers or **electricity services**, other than:
 - (a) aggregated financial information; or
 - (b) other service performance information;
 that does not relate to an identifiable customer or class of customer.
- **existing service**, in relation to a **DNSP**, means a type of service that the DNSP was providing on 1 December 2016.
- **information register** means the register a **DNSP** must establish, maintain and keep under clause 4.3.5(a).
- **law** means any law, rule, regulation or other legal obligation (however described and whether statutory or otherwise).
- **legal entity** means a natural person, a body corporate (including a statutory corporation or public authority), a partnership, or a trustee of a trust, but excludes **staff** in their capacity as such.

- **NEL** means, for the purposes of the application of this **Guideline** in a **participating jurisdiction**, the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996 (SA)*, as applied by the participating jurisdiction and subject to any modification made to the National Electricity Law by that jurisdiction.
- **NER** means, for the purposes of the application of this **Guideline** in a **participating jurisdiction**, the rules called the National Electricity Rules made under Part 7 of the National Electricity Law, subject to any modification made to the National Electricity Rules by that jurisdiction.
- **non-distribution services** means:
 - (a) **transmission services**; and
 - (b) **other services**.
- **office** means, as the case may be:
 - (a) a building;
 - (b) an entire floor of a building; or
 - (c) a part of a building that has separate and secure access requirements, such that **staff** from elsewhere in the building do not have unescorted access to it.
- **officer**, in relation to a **legal entity** (such as a **DNSP**) means:
 - (a) a director or company secretary of the **legal entity**;
 - (b) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **legal entity**; or
 - (c) a person who has the capacity to affect significantly the **legal entity's** financial standing;
- **other distribution services** means **distribution services** other than **direct control services**.

[Note: This definition includes **negotiated distribution services** and **distribution services** that are not classified.]
- **other electricity services** means services for the supply of electricity or that are necessary or incidental to the supply of electricity, other than:
 - (a) **transmission services**; or
 - (b) **distribution services**.
- **other services** means services other than:
 - (a) **transmission services**; or
 - (b) **distribution services**.
- **regional office** means an **office** that has less than 25,000 **connection points** within a 100 kilometre radius of that **office**.
- **related electricity service provider**, in relation to a **DNSP**, includes:
 - (a) an **affiliated entity** of the **DNSP**; and

(b) the part of the **DNSP** ~~that provides contestable electricity services~~; that provides **contestable electricity services**, but excludes a part of an **affiliated entity** that provides **direct control services**.

- **service provider**, in relation to a **DNSP**, means a provider of services to the **DNSP**.
- **staff**, of an entity (such as a **DNSP**), includes:
 - (a) employees of the entity;
 - (b) direct or indirect contractors to the entity (whether the contractors are individuals or corporate or other entities);
 - (c) employees of direct or indirect contractors to the entity; and
 - (d) individuals (including secondees) otherwise made available to the entity by another entity.
- **staff position**, in relation to a **DNSP** or a **related electricity service provider**, means a position within the organisational staffing structure of the **DNSP** or **related electricity service provider** (as the case may be) that involves the performance of particular roles, functions or duties.

1.5 Process for revisions

The **AER** may amend or replace this **Guideline** from time to time to meet changing needs, in accordance with clause 6.17.2 of the **NER** and the **distribution consultation procedures**.

2 Relationship with other regulatory instruments

This **Guideline** should be read in conjunction with:

- (a) ~~The~~the decision in the **AER's distribution determination** on the classification of the **distribution services** to be provided by a **DNSP** in a **regulatory control period**, in accordance with clauses 6.2 and 6.12.1(1) of the **NER**;
- (b) ~~Clause~~clause 6.15 of the **NER**, the **Cost Allocation Guidelines** and the **AER-approved Cost Allocation Method (CAM)**;
- (c) ~~Clause~~clause 6.4.4 of the **NER** and the **Shared Asset Guidelines**; and
- (d) any **regulatory information instrument** served on a **DNSP** by the **AER**, or made by the **AER**, under section 28F of the **NEL**.

Together, these instruments achieve the desired ring-fencing outcomes in the long term interest of consumers.

The **AER's** service classification decisions determine the nature of the economic regulation, if any, applicable to a **DNSP's distribution services**. The classification of a **distribution service** (for example, as a **direct control service** or as a **negotiated distribution service**) affects the application of certain obligations in clauses 3 and 4 of this **Guideline**. For the purposes of this **Guideline**, **distribution services** that are not classified are categorised as **other distribution services**.

The **Cost Allocation Guidelines** and a **DNSP's CAM** relate to the allocation and attribution of its costs between its **distribution services**. They complement the obligations in clause 3.2.2 of this **Guideline**, which relate to the allocation and attribution of a **DNSP's** costs between **distribution services** and **non-distribution services**.

The **Shared Asset Guidelines** enable the adjustment of a **DNSP's** revenues that it can recover from its **standard control services** where the assets used to provide those services were acquired in order to provide **standard control services** but are then subsequently used to also provide **other distribution services** or **other services**. The shared asset mechanism therefore modifies the effect of the **CAM**.

A **regulatory information instrument** can require a **DNSP** to provide information to the **AER** and to have this information certified and audited, subject to the requirements of the **NEL**. This can include information that is subject to ring-fencing obligations under this **Guideline**.

3 Prevention of cross subsidies

3.1 Legal separation

- (a) A **DNSP** must be a **legal entity**.
- (b) Subject to this clause 3.1, a **DNSP** may provide **distribution services** and **transmission services**, but must not provide **other services**.
- (c) This clause 3.1 does not prevent:
 - i. an **affiliated entity** of a **DNSP** from providing **other services**;
 - ii. a **DNSP** and a **TNSP** from being the same **legal entity**.
- (d) This clause 3.1 does not prevent a **DNSP**:
 - i. granting another **legal entity** the right to use assets of the **DNSP** in providing ~~other~~**transmission services**, **distribution services** or **other services**, where those assets are also used by the **DNSP** to provide **distribution services** or **other services**, but only where doing so does not materially prejudice the provision of **direct control services** by the **DNSP**;
 - ii. providing corporate services (such as general administration, accounting, payroll, human resources, legal ~~or regulatory~~, or information technology support services) to a **related electricity service provider** ~~or other legal entity~~;
 - iii. providing **staff**, and / or **offices** to a **related electricity service provider** or other **legal entity** where doing so is not prohibited by clause 4.2 (including by reason of a waiver granted by the **AER** in respect of clause 4.2);
 - iv. providing **electricity information** to another **legal entity** where doing so is not prohibited by clause 4.1(c)~~(iv)~~ or clause 4.3;
 - v. providing assistance to another **Network Service Provider** in response to an event (such as an emergency) that is beyond the other **Network Service Provider**'s reasonable control;
 - vi. providing any **other services** authorised in accordance with the waiver process set out in clause 5 of this **Guideline**;

as long as the **DNSP** complies with clause 3.2 in relation to those arrangements.

- (e) A **DNSP** can apply for a waiver of the obligations set out in this clause 3.1.

3.2 Establish and maintain accounts

3.2.1 Separate accounts

- (a) A **DNSP** must establish and maintain appropriate internal accounting procedures to ensure that it can demonstrate the extent and nature of transactions between the **DNSP** and its **affiliated entities**.

[Note: The **AER** may include a requirement in a **regulatory information instrument** for a **DNSP** to:

- i. provide its internal accounting procedures to the **AER**; and / or
 - ii. report on transactions between the **DNSP** and its **affiliated entities**.]
- (b) A **DNSP** cannot apply for a waiver of the obligations set out in this clause 3.2.1.

3.2.2 Cost allocation and attribution

- (a) A **DNSP** must allocate or attribute costs to **distribution services** in a manner that is consistent with the **Cost Allocation Principles** and its approved **CAM**, as if the **Cost Allocation Principles** and **CAM** otherwise applied to the allocation and attribution of costs between **distribution services** and **non-distribution services**.
- (b) A **DNSP** must only allocate or attribute costs to **distribution services** in accordance with clause 3.2.2(a), and must not allocate or attribute other costs to the **distribution services** it provides.
- (c) A **DNSP** must establish, maintain and keep records that demonstrate how it meets the obligations in clauses 3.2.2(a) and 3.2.2(b).

[Note: A **regulatory information instrument** may include a requirement that a **DNSP** provide to the **AER** the records established, maintained and kept in accordance with clause 3.2.2(c) and / or that the **DNSP** otherwise demonstrate to the **AER** how the **DNSP** meets the obligations in clauses 3.2.2(a) and ~~(b))~~. It may also further include requirements about the manner and form in which a **DNSP** is to comply with clause 3.2.2(c)].

- (d) A **DNSP** cannot apply for a waiver of the obligations set out in this clause 3.2.2.

4 Functional separation

4.1 Obligation to not discriminate

- (a) For the purposes of this clause 4.1:
- i. a **related electricity service provider** includes a customer, or potential customer, of the **related electricity service provider** or of the **DNSP**;
 - ii. a competitor (or potential competitor) of a **related electricity service provider** includes a customer, or potential customer, of the competitor (or potential competitor) of the **related electricity service provider**; and
 - iii. dealing, or offering to deal, includes dealing or offering to deal in relation to the provision of goods or services, or the grant of rights, by the **DNSP** or to the **DNSP**.
- (b) A **DNSP** must not discriminate (either directly or indirectly) between a **related electricity service provider** and a competitor (or potential competitor) of a **related electricity service provider** in connection with the provision of:
- i. **direct control services** by the **DNSP** (whether to itself or to any other **legal entity**); and / or
 - ii. **contestable electricity services** by any other **legal entity**.
- (c) Without limiting its scope, clause 4.1(b) requires a **DNSP** to:
- i. in dealing or offering to deal with a **related electricity service provider**, treat the **related electricity service provider** as if it were not a **related electricity service provider** (that is, as if it had no connection or affiliation with the **DNSP**);
 - ii. in like circumstances, deal or offer to deal with a **related electricity service provider** and a competitor (or potential competitor) of the **related electricity service provider** on substantially the same terms and conditions;
 - iii. in like circumstances, provide substantially the same quality, reliability and timeliness of service to a **related electricity service provider** and a competitor (or potential competitor) of the **related electricity service provider**;
 - iv. subject to clause 4.3.3(b), not disclose to a **related electricity service provider** information the **DNSP** has obtained through its dealings with a competitor (or potential competitor) of the **related electricity service provider** where the disclosure would, or would be likely to, provide an advantage to the **related electricity service provider**.
- (d) A **DNSP** cannot apply for a waiver of the obligations set out in this clause 4.1.

4.2 Offices, staff, branding and promotions

4.2.1 Physical separation ~~/~~ co-location

- (a) Subject to this clause 4.2.1, in providing **direct control services**, a **DNSP** must use **offices** that are separate from any **offices** from which a **related electricity service provider** provides **contestable electricity services**.

(b) Clause 4.2.1(a) does not apply in respect of:

- i. **offices** for **staff** who, in the course of their duties:
 - a. do not have access to **electricity information**;
 - b. have access to **electricity information** but do not have, in performing the roles, functions or duties of their **staff position**, any opportunity to use that **electricity information** to engage in conduct that is contrary to the **DNSP's** obligations under clause 4.1; or
 - c. only have access to **electricity information** to the extent necessary to perform services that are not **electricity services** (such as general administration, accounting, payroll, human resources, legal or regulatory, or information technology support services).
- ii. providing assistance to another **Network Service Provider** in response to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control;
- iii. **regional offices**, except to the extent that this exemption has been varied or revoked under clause 5.6; or
- iv. any arrangements authorised in accordance with the waiver process set out in clause 5 of this **Guideline**.

4.2.2 Staff sharing

(a) Subject to this clause 4.2.2, a **DNSP** must ensure that its **staff** involved in the provision or marketing of **direct control services** are not also involved in the provision or marketing of **contestable electricity services** by a **related electricity service provider**; ~~or.~~

(b) Clause 4.2.2(a) does not apply in respect of:

- i. a member of **staff** who, in the course of their duties:
 - a. does not have access to **electricity information**;
 - b. has access to **electricity information** but does not have, in performing the roles, functions or duties of their **staff position**, any opportunity to use that **electricity information** to engage in conduct that is contrary to the **DNSP's** obligations under clause 4.1; or
 - c. only has access to **electricity information** to the extent necessary to perform services that are not **electricity services** (such as general administration, accounting, payroll, human resources, legal or regulatory, or information technology support services);
- ii. providing assistance to another **Network Service Provider** in response to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control;
- iii. **staff** located at a **regional office**, except to the extent that this exemption has been varied or revoked under clause 5.6; or

- iv. any arrangements authorised in accordance with the waiver process set out in clause 5 of this **Guideline**.
- (c) The remuneration, incentives and other benefits (financial or otherwise) a **DNSP** provides to a member of its **staff** must not give the member of **staff** an incentive to act in manner that is contrary to the **DNSP's** obligations under this **Guideline**.
- (d) Clause 4.2.2(a) does not apply in respect of a member of the **staff** of a **DNSP** where the member of **staff** is an **officer** both of the **DNSP** and of a **related electricity service provider**.

4.2.3 Branding and cross-promotion

(a) A **DNSP**:

- i. must use branding for its **direct control services** that is independent and separate from the branding used by a **related electricity service provider** for **contestable electricity services**, such that a reasonable person would not infer from the respective branding that the **DNSP** and the **related electricity service provider** are related~~;~~;
- ii. must not advertise or promote its **direct control services** and its **contestable electricity services** that are not **direct control services** together (including by way of cross-advertisement or cross-promotion)~~;~~;
- iii. ~~must not advertise or promote~~ **contestable electricity services** provided by a **related electricity service provider** other than the DNSP itself.

(b) Clause 4.2.3(a)~~(i)~~~~;~~ does not apply to:

- i. ~~a **regional office**, if clause 4.2.1(a) does not apply to that **office** by reason of clause 4.2.1(b)~~(i)~~~~iii~~~~;~~ or to~~;
- ii. **staff** located at a **regional office**, if clause 4.2.2(a) does not apply to that **office** by reason of clause 4.2.2(b)~~(i)~~~~iii~~~~;~~;
- iii. **branding in connection with the use of an asset of the DNSP by a part of the DNSP that provides contestable electricity services, where the asset is also simultaneously used by the DNSP to provide direct control services, but only where doing so does not materially prejudice the provision of direct control services by the DNSP; or to**
- iv. **providing assistance to another Network Service Provider in response to an event (such as an emergency) that is beyond the other Network Service Provider's reasonable control.**

4.2.4 Office and staff registers

A **DNSP** must establish, maintain and keep a register that identifies:

- (a) the classes of **offices** to which it has not applied clause 4.2.1(a) by reason of clauses 4.2.1(b)~~(i)~~~~;~~ or 4.2.1(b)~~(i)~~~~iii~~~~;~~ and
- (b) the nature of the positions (including a description of the roles, functions and duties) of its members of **staff** to which it has not applied clause 4.2.2(a) by reason of clauses 4.2.2(b)~~(i)~~~~;~~ a., 4.2.2(b)~~(i)~~~~b.~~, 4.2.2(b)iii~~;~~ or 4.2.2(d);

and must make the register publicly available on its website.

4.2.5 Waiver

A **DNSP** can apply for a waiver of the obligations set out in this clause 4.2.

4.3 Information access and disclosure

4.3.1 Meaning of confidential information

For the purposes of this clause 4.3, '**confidential information**' means **electricity information**, acquired or generated by a **DNSP** in connection with its provision of **direct control services**, that is not already publicly available, and includes **electricity information**:

- (a) that the **DNSP** derives from that information; or
- (b) provided to the **DNSP** by or in relation to a customer or prospective customer of **direct control services**.

[Note: aggregated financial information, or other service performance information, that does not relate to an identifiable customer, or class of customer, is excluded from the definition of **confidential information** by reason of the definition of **electricity information** in clause 1.4 of this **Guideline**.]

4.3.2 Protection of confidential information

Subject to this clause 4.3, a **DNSP** must:

- (a) keep **confidential information** confidential; and
- (b) only use **confidential information** for the purpose for which it was acquired or generated.

4.3.3 Disclosure of information

A **DNSP** must not disclose **confidential information** to any person, including a **related electricity service provider**, unless:

- (a) the **DNSP** has first obtained the explicit informed consent of the relevant customer, or prospective customer, to whom the **confidential information** relates;
- (b) the disclosure is required by, or for the purpose of complying with any **law**;
- (c) the disclosure is necessary to enable the **DNSP** to provide its **distribution services**, its **transmission services** or its **other services** (including by acquiring services from other **legal entities**); ~~or~~
- (d) the information has been requested by or on behalf of a customer, or potential customer, of another **legal entity**, and the disclosure is necessary to enable the **legal entity** to provide its **transmission services**, **contestable electricity services** or **other services** to the customer or potential customer;

(e) the disclosure is solely for the purpose of providing assistance to another **Network Service Provider** in response to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control;

(f) the disclosure is solely for the purposes of research by a **legal entity** other than a **related electricity service provider** of the **DNSP**; or

(g) a **related electricity service provider** of the **DNSP** has requested the disclosure and the **DNSP** complies with clause 4.3.4 in relation to that **confidential information**.

4.3.4 Sharing of information

- (a) Subject to clause 4.1(c)(iv), and to this clause 4.3.4, where a **DNSP** shares **confidential information** with a **related electricity service provider**, ~~or where a **legal entity** to whom a **DNSP** has disclosed information under clause 4.3.3(f) discloses that **confidential information** to a **related electricity service provider** of the **DNSP**, the **DNSP**~~ must provide access to that **confidential information** (including the derived information) to other **legal entities** on an equal basis.
- (b) A **DNSP** is only required by clause 4.3.4(a) to provide information to a **legal entity** where:
- i. the **legal entity** has requested that it be included on the **information register** in respect of information of that kind; and
 - ii. the **legal entity** is competing, or is seeking to compete, with the **DNSP**, or a **related electricity service provider** of the **DNSP**, in relation to the provision of **contestable electricity services**.
- (c) A **DNSP** is not required by clause 4.3.4(a) to provide information to a **legal entity** where the **DNSP** has disclosed the information ~~to a **related electricity service provider**~~ in the circumstances set out in clauses 4.3.3(a) to (ee).
- (d) Without limiting clause 4.3.4(a), a **DNSP** must establish an information sharing protocol that sets how and when it will make the information referred to in clause 4.3.4(a) available to **legal entities**, and must make that protocol publicly available on its website.
- (e) Where a **DNSP** discloses information referred to in clause 4.3.4(a) to any other **legal entity** under this clause 4.3.4, it must do so on terms and conditions that require the other **legal entity** to comply with clause 4.3.2 and 4.3.3(a) to (ed) in relation to that information as if the other **legal entity** was a **DNSP**.

4.3.5 Information register

- (a) A **DNSP** must establish, maintain and keep a register of all **legal entities** ~~(including:~~
- i. **related electricity service providers**);
 - ii. **other legal entities** who provide **contestable electricity services** but who are not **affiliates of the DNSP**;

who request access to information identified in clause 4.3.4(a), and must make the register publicly available on its website.

- (b) For each **legal entity** that has requested that a **DNSP** provide access to information identified in clause 4.3.4(a), the **DNSP's information register** must:
- i. identify the kind of information requested by the **legal entity**; and
 - ii. describe the kind of information requested by the **legal entity** in sufficient detail to enable other **legal entities** to make an informed decision about whether to request that kind of information from the **DNSP**.
- (c) A **legal entity** may request that the **DNSP** include it on the **information register** in relation to some or all of the kinds of information that the **DNSP** is required to provide under clause 4.3.4(a), and the **DNSP** must comply with that request.

4.3.6 No waiver

A **DNSP** cannot apply for a waiver of the obligations set out in this clause 4.3.

4.4 Service providers

4.4.1 Conduct of service providers

A **DNSP**:

- (a) must ensure that any new or varied agreement between the **DNSP** and a **service provider**, for the provision of services to the **DNSP** that enable or assist the **DNSP** to supply direct control services, requires the **service provider** to comply, in providing those services, with:
- i. clauses 4.1, 4.2.1, 4.2.2 and 4.3.2 of this **Guideline**; and
 - ii. clause 4.2.3 of this **Guideline** in relation to the brands of the **DNSP**;
as if the **service provider** was the **DNSP**.
- (b) must not, directly or indirectly, encourage or incentivise a **service provider** to engage in conduct which, if the **DNSP** engaged in the conduct itself, would be contrary to the **DNSP's** obligations under clause 4 of this **Guideline**.

4.4.2 Waivers

A **DNSP** can apply for a waiver of the obligation set out in clause 4.4.1(a), but cannot apply for a waiver of the obligation set out in clause 4.4.1(b).

5 Waivers

5.1 Granting a waiver

The **AER** will not grant a waiver of an obligation under this **Guideline** other than in accordance with this clause 5.

5.2 DNSP's application for a waiver

A **DNSP** may apply in writing to the **AER** for a waiver of its obligations under clauses 3.1, 4.2 and / or 4.4.1(a) of this **Guideline**, either on its own behalf or on behalf of itself and one or more other **DNSPs** who are **affiliated entities** of the **DNSP**. An application for a waiver must contain all information and materials necessary to support the **DNSP's** application, including:

- (a) the obligation in respect of which the **DNSP** is applying for a waiver;
- (b) the reasons why the **DNSP** is applying for the waiver;
- (c) details of the service, or services, in relation to which the **DNSP** is applying for the waiver;
- (d) the proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates;
- (e) details of the costs associated with the **DNSP** complying with the obligation if the waiver of the obligation were refused;
- (f) the **regulatory control period(s)** to which the waiver would apply;
- (g) any additional measures the **DNSP** proposes to undertake if the waiver were granted; and
- (h) the reasons why the **DNSP** considers the waiver should be granted with reference to the matters specified in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers.

5.3 AER's consideration of a waiver application

5.3.1 Requirement to consider a waiver and make a decision

The **AER** must consider an application made under clause 5.2, and may, subject to this clause 5.3:

- (a) grant the waiver subject to any conditions the **AER** considers appropriate; or
- (b) grant the waiver as an interim waiver subject to any conditions the **AER** considers appropriate; or
- (c) refuse to grant the waiver.

5.3.2 The AER's assessment of the waiver application

In assessing a waiver application and deciding whether to grant a waiver (subject to any conditions) or refuse to grant a waiver, the **AER**:

- (a) subject to clause 5.3.3(a), must have regard to:

- i. the **National Electricity Objective**;
 - ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
 - iii. whether the benefit, or likely benefit, to electricity consumers of the **DNSP** complying with the obligation (including any benefit, or likely benefit, from increased competition) would be outweighed by the cost to the **DNSP** of complying with that obligation; and
- (b) may:
- i. have regard to any other matter it considers relevant;
 - ii. request from the **DNSP** any further information the **AER** considers appropriate;
 - iii. invite public submissions on the application; and
 - iv. otherwise conduct such consultation as it considers appropriate with any person.

5.3.3 Interim waiver

- (a) The **AER** may, in its absolute discretion, grant an interim waiver, without having regard to any of the matters specified in clause 5.3.2.
- (b) An interim waiver ceases to have effect:
 - i. when the **AER** makes a further decision to grant or refuse to grant the waiver; or
 - ii. on the expiry date (if any) specified by the **AER** when granting the interim waiver; whichever occurs first.

5.3.4 Form of waiver

The **AER** may grant a waiver or interim waiver that applies:

- (a) to one or more of the **DNSPs** that are the subject of the waiver application; ⁷
- (b) for a term that coincides with the **DNSP's** current **regulatory control period**, next **regulatory control period**, or both periods; and
- (c) subject to such conditions as the **AER** considers appropriate.

5.3.5 Trivial or vexatious applications

The **AER** may, in its absolute discretion, refuse to grant an application for a waiver or interim waiver, without having to have regard to any of the matters specified in clause 5.3.2, if it determines that the application was made on trivial or vexatious grounds.

5.4 Publication of reasons

The **AER** may publish its reasons for granting or refusing to grant a waiver or interim waiver.

5.5 Reviewing a waiver

(a) Subject to this clause 5.5, the **AER** may, in its absolute discretion and at any time, vary or revoke a **DNSP's** waiver (including varying the terms and / or conditions of a **DNSP's** waiver), as long as it has given the **DNSP** at least 40 days' notice that it is considering doing so.

(b) In deciding whether to revoke a waiver or vary of a waiver, the **AER**:

- i. must have regard to the matters specified in clause 5.3.2(a); and
- ii. may do the things, or otherwise have regard to the matters, specified in clause 5.3.2(b).

[Note: if the **AER** decides to revoke a waiver or vary a waiver, the **AER** may also decide to grant an interim waiver as a transitional measure].

5.6 Reviewing a regional office exemption

(a) Subject to this clause 5.6, the **AER** may, in its absolute discretion and at any time, vary or revoke a **DNSP's** exemption from the **staff** and / or **office** sharing restrictions conferred by clauses 4.2.1(b)(iii) and 4.2.2(b)(iii) of this **Guideline**, as long as it has given the **DNSP** at least 40 days' notice that it is considering doing so.

(b) In deciding whether to vary or revoke an exemption under this clause 5.6, the **AER**:

- i. must have regard to the matters specified in clause 5.3.2(a); and
- ii. may do the things, or otherwise have regard to the matters, specified in clause 5.3.2(b).

5.7 Waiver register

(a) A **DNSP** must establish, maintain and keep a register of all waivers (including any variation of a waiver) granted to the **DNSP** by the **AER** under clause 5 of this **Guideline**, and must make the register publicly available on its website.

(b) The register established under clause 5.7(a) must include:

- i. the description of the conduct to which the waiver or interim waiver applies; and
- ii. the terms and conditions of the waiver or interim waiver;

as set out in the **AER's** written decision, provided by the **AER** to the **DNSP**, to grant (or vary) the waiver or interim waiver.

6 Compliance and enforcement

6.1 Maintaining compliance

A **DN**SP must establish and maintain appropriate internal procedures to ensure it complies with its obligations under this **Guideline**. The **AER** may require the **DN**SP to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the **AER** concerning the adequacy of the **DN**SP's compliance procedures does not affect the **DN**SP's obligations under this **Guideline**.

6.2 Compliance reporting

6.2.1 Annual compliance report

- (a) A **DN**SP must prepare an annual ring-fencing compliance report each **regulatory year** in accordance with this clause 6.2.1, and submit it to the **AER** in accordance with clause 6.2.2.
- (b) The annual compliance report must identify and describe, in respect of the **regulatory year** to which the report relates:
 - i. the measures the **DN**SP has taken to ensure compliance with its obligations under this **Guideline**;
 - ii. any breaches of this **Guideline** by the **DN**SP, or which otherwise relate to the **DN**SP; ~~and~~
 - iii. all **other services** provided by the **DN**SP in accordance with clause 3.1; and
 - iv. the purpose of all transactions between the **DN**SP and an **affiliated entity**.
- (c) The annual compliance report must be accompanied by an assessment of compliance by a suitably qualified independent authority.
- (d) Annual compliance reports may be made publicly available by the **AER**.

6.2.2 Timing of annual compliance reporting

- (a) Subject to clause 6.2.2(b), a **DN**SP must submit its annual compliance report to the **AER** within ~~4~~four months of the end of the **regulatory year** to which the compliance report relates.
- (b) A **DN**SP is not required to submit an annual compliance report for its **regulatory year** in which this **Guideline** commences.

6.2.3 Reporting by the AER

The **AER** may publish reports from time to time about **DN**SPs' compliance with this **Guideline** on the basis of information provided to it under this clause 6.2.

6.3 Compliance breaches

A **DNSP** must notify the **AER** in writing within five business days of becoming aware of a material breach of its obligations under this **Guideline**. The **AER** may seek enforcement of this **Guideline** by a court in the event of any breach of this **Guideline** by a **DNSP**, in accordance with the **NEL**.

6.4 Complaints and investigations

The **AER** may, at any time, require a **DNSP** to provide a written response to a complaint or concern the **AER** raises with the **DNSP** about its compliance with this **Guideline**, including where the **AER** has previously required the **DNSP** to provide one or more written responses to the relevant complaint or concern.

7 Transitional arrangements

7.1. Despite clause 1.1.2 of this **Guideline**:

- (a) a **DNSP** must fully comply each of the obligations in clauses ~~3~~ and 4 of this **Guideline** in respect of its **existing services** as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018;
- (b) where a **distribution determination** applicable to a **DNSP** results in a change in the classification of a **distribution service** provided by the **DNSP**, and that change puts the **DNSP** in breach of an obligation under this **Guideline**, ~~the DNSP must~~ comply with that obligation within 12 months of the commencement date of the **distribution determination**.

7.2. Subject to clause 7.3, the **transitional guidelines** (referred to in clause 11.14.5 of the **NER**) in force in the **participating jurisdictions** are revoked on 1 December 2016.

7.3. Clause 7.2 does not apply:

- (a) to any **transitional guidelines** in force in Victoria or (for the avoidance of doubt) the Northern Territory; or
- (b) to the extent that the **transitional guidelines** apply to gas distribution.