

Electricity distribution Ring-fencing Guideline Explanatory statement – Version 3

November 2021

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Amendment Record

Version	Date	Pages
1	December 2016	115
2	October 2017	28
3	November 2021	92

Shortened forms

Shortened Form	Extended Form
ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AEC	Australian Energy Council
AER	Australian Energy Regulator
ANU	Australian National University
ASP	Accredited Service Provider
CEC	Clean Energy Council
current guideline	Ring-fencing guideline – Electricity distribution (version 2), October 2017
DNSP	distribution network service provider
ECA	Energy Consumers Australia
ENA	Energy Networks Australia
ESB	Energy Security Board
FCAS	frequency control ancillary services
LV network	Low-Voltage network
NBN	National Broadband Network
NECA	National Electricity Contractors Association
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER, NERR or the rules	National Electricity Rules and National Energy Retail Rules
PIAC	Public Interest Advocacy Centre
PV	Photo-voltaic
RAB	Regulatory Asset Base
Regulated SAPS	Regulated Stand-alone Power Systems
RESP	related electricity service provider
RIN	Regulatory Information Notice
YEF	Yarra Energy Foundation

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1 Executive summary

The Australian Energy Regulator (AER) exists to ensure energy consumers are better off, now and in the future. Consumers are at the heart of our work, and we focus on ensuring a secure, reliable and affordable energy future for Australia. We recognise that energy is an essential service for Australian households and businesses and a critical contributor to the long-term success of the Australian economy.

We regulate electricity networks and covered gas pipelines in all jurisdictions except Western Australia. We are an independent statutory authority. Our powers and functions are set in the National Electricity Law (NEL), National Electricity Rules (NER) and National Energy Retail Rules (NERR).

Electricity distribution network service providers (DNSPs) are currently subject to ring-fencing requirements under the 'Ring-fencing Guideline – Electricity distribution' (Version 2) (the current guideline).¹

1.1 What is ring-fencing?

Ring-fencing refers to the separation of regulated services provided by a DNSP (for example, installation/maintenance of poles and wires) from the provision of contestable services by a DNSP (for example, the installation of smart meters), or an affiliated entity. The ring-fencing guideline governs the extent to which DNSPs can provide contestable services.

The objective of ring-fencing is to provide a regulatory framework that promotes the development of competitive markets. It does this by providing a level playing field for third party providers in new and existing markets for contestable services.² Effective ring-fencing arrangements are an important mechanism for promoting increased choice for consumers and more competitive outcomes in markets for energy services.

The guideline aims to prevent cross-subsidisation and discriminatory behaviour by adopting a range of controls. In particular, the guideline stipulates a range of obligations on DNSPs to identify and separate costs and business activities of delivering regulated network services from the delivery of other services.

1.2 Updating the guideline

Ring-fencing obligations should evolve to remain a targeted, proportionate and effective regulatory response to the potential harm consumers may face. With this in mind, we commenced a review of the current guideline to address the changing nature of services offered by DNSPs. This includes generation services related to

¹ For any unaltered clauses of the previous guideline or for the meaning and intent of the previous guideline see AER, [Ring-fencing Guideline \(Version 2\) Explanatory Statement – October 2017](#).

² The 2015 Power of Choice reforms required us to develop the distribution ring-fencing guideline.

regulated stand-alone power systems (SAPS) and contestable services from batteries.³ In some cases, these emerging technologies operate at the boundary between regulated monopolies and contestable markets. Consequently, we are proposing a number of amendments to the current guideline.

Our guideline (version 3) should be read in conjunction with this explanatory statement. This explanatory statement addresses stakeholder submissions and explains our amendments to specific clauses of the guideline for:

- DNSPs providing generation services as part of a regulated SAPS;
- The use of batteries to provide contestable services (including DNSPs supplying excess battery capacity to third party providers of contestable services, or using such capacity to provide other contestable services themselves); and
- Clarifying and improving relevant obligations to make the guideline clearer and simpler to understand and apply.

A list of guideline clauses that we have amended or deleted, together with new clauses, are listed in Appendix A. To assist stakeholders, we have also published the final and marked-up copy of our guideline. Note that the marked-up copy highlights the changes made after the release of our draft guideline, for easy identification.

1.3 Generation services associated with regulated SAPS

Recent amendments to the Law, and soon to the Rules, will allow DNSPs to switch grid consumers to regulated SAPS, where it is more efficient to do so.⁴ The framework envisaged third parties to provide the generation services of these regulated SAPS. However, through our consultation process we heard that there may be instances where third parties may not be able to provide these services. In these situations, we consider that there is a risk to the timely and efficient deployment of regulated SAPS by DNSPs.

In our draft, we proposed:

- An exemption to allow DNSPs to provide generation services for regulated SAPS up to a cap on the revenue they may earn from these services (i.e., a generation revenue cap). We divided the DNSPs into 3 different categories, each with its own generation revenue cap to reflect the likely deployment levels; and
- Implementing reporting obligations on DNSPs providing generation services. This was to provide transparency and information to prospective third-party providers that may assist market development for these services.

³ Batteries is used as a general term to describe all energy storage devices. In the November 2020 Issues paper we referred to 'energy storage devices'. Our draft guideline refers to and defines 'energy storage devices'.

⁴ Following consultation by Energy Ministers on amendments to the National Electricity Law and National Energy Retail Law in July 2020, South Australia, *Statutes Amendment (National Energy Laws) (Stand-Alone Power Systems) Act 2021*, assented on 11 March 2021. The associated Rules are expected to be made later this year.

Submissions on our draft position mainly centred around the way we divided the DNSPs into the 3 categories and the associated revenue cap for those categories. In response to these submissions, we have increased the generation revenue cap for lowest category level, from 0.001% to 0.02%. However, we have retained the same method for dividing the DNSPs into categories.

Our position is intended to promote efficient deployment of regulated SAPS in the early stages of market development. As regulated SAPS deployment progresses, we will review the exemption framework to consider if it remains appropriate. We consider this outcome will be in the long-term interest of consumers.

1.4 Contestable services using batteries

Batteries and other energy storage devices (referred throughout as batteries)⁵ will play a key role in the energy system. They facilitate more renewables onto the grid,⁶ support system security and reduce pressure on electricity prices by meeting peaks in consumer demand.⁷ Providing services to support the distribution network are also an important use of batteries that can realise cost savings for consumers. However, we note that this review is considering the provision of services beyond distribution services, where there are ring-fencing considerations.

Batteries can provide many different services. As such they are an important emerging technology that can meet both regulated network needs and provide a range of contestable services. There is likely to be value in using a single battery to provide regulated network services (or inputs to regulated network services) and contestable services.

Our draft position was to prohibit DNSPs from providing contestable services with a battery (whether the service consists of the supply of excess capacity to third parties, or the provision of other contestable services themselves with the battery) unless we approved a waiver application. In response to our draft position, a number of stakeholders raised concerns that this approach was too strict. In itself, it could risk slowing the deployment of batteries, particularly community-scale batteries, by DNSPs.

Both DNSPs and other potential providers of batteries emphasised the importance of the regulatory framework encouraging efficient investment in and deployment of batteries, particularly for community-scale batteries. For DNSPs, we understand that a clear pathway to deploy community-scale batteries, where appropriate, is needed. For other providers of batteries, there needs to be robust safeguards in place to mitigate the potential risks from DNSP discrimination and cross-subsidisation in

⁵ Battery is a general term used to describe a range of assets at different points in the energy system. It can include large and medium scale grid-connected batteries, such as pumped hydro, to small batteries used in households such as domestic batteries and electric vehicles.

⁶ ARENA, [How are big batteries helping to transition to renewables](#), 2 February 2021.

⁷ Australian Department of Industry, Science, Energy and Resources, [Technology Investment Roadmap: First low emissions technology statement – 2020](#).

order to allow space for competition and innovation to develop. This is particularly important given the nascent and emerging status of battery services markets.

Submissions to our draft position also indicated that there may be lower risk battery applications by DNSPs where the cost of a full waiver process would be greater than the harm that would be caused by these projects. As foreshadowed in our draft position, we believe that batteries applications that can demonstrate benefits and reduced harms would be considered favourably.

Our final position on ring-fencing of batteries provides guidance on the criteria that will be considered favourably. Where a DNSP's battery application meets our criteria then we will apply a streamlined waiver process. The AER's criteria for a streamlined waiver are intended to mitigate the risk of cross-subsidisation. We have included an additional requirement in the guideline to address potential discriminatory behaviour in favour of a battery that a DNSP owns, operates or otherwise controls in some way. We will apply conditions to the approval which aim to ensure there is transparency over the use of the battery. For streamlined waivers we consider that, generally, these could be approved without consultation. However, we reserve the right to conduct consultation on a streamlined waiver application if we consider it necessary to do so. We welcome further comments from interested stakeholders on the process and criteria identified in this document. Stakeholders can provide comments via email to AERringfencing@aer.gov.au until 1 December 2021.

For situations beyond the set criteria, DNSPs will need to apply for a full waiver application.

We also note that third party providers can provide batteries and realise the value stack, including supplying services to DNSPs.⁸

We consider that our approach strikes an appropriate balance in allowing DNSPs and third parties to explore the use and benefits of batteries, especially community-scale batteries.

We also consider that our approach will provide greater certainty for DNSPs and other stakeholders. It does this by creating a mechanism for low-risk projects to continue without adversely impacting competition in this emerging technology. Therefore, leading to the achievement of the NEO and the long-term interest of electricity consumers.

Given the speed and scope of energy transition, there are likely to be further regulatory developments in the future. We will re-examine our approach as needed to respond to developments, such as implementing the Energy Security Board's (ESB) post-2025 Market Design Project.

⁸ Noting that DNSPs need to comply with the ring-fencing guideline in procuring services from the market in a way that does not preference its affiliate.

1.5 Improving the guideline

In our draft position, we proposed amending a number of specific provisions to make the guideline clearer and less administratively complex. Stakeholders were largely supportive of the amendments we proposed. As such, we have made the following changes, captured in version 3 of the guideline:

- Improving staff and office sharing registers by further clarifying the requirement to record certain staff. Further, we are requiring DNSPs to update the registers quarterly;
- Adjusting the timing of annual compliance reports from a financial year to calendar year basis;
- Clarifying information access and disclosure provisions by changing the term ‘confidential information’ to ‘ring-fenced information’. We also clarify that a DNSP may share ring-fenced information with an unaffiliated legal entity that has requested access to the information; and
- Improving compliance by requiring DNSPs to report all breaches (except breaches of certain administrative provisions) within 15 business days.

In line with our draft position, we are retaining current branding provisions due to an increased risk of a DNSP conferring an unfair advantage on its related electricity service provider (RESP) over competitors.

In addition, submissions to the draft suggested a further amendment to the guideline to clarify that where a DNSP shares information with its RESP, that sharing of information must be included in the DNSPs information sharing register. We consulted on this following the draft.⁹ Stakeholders were largely supportive of the clarification. Hence, we are adopting this change also.

In our consultation note we also sought stakeholder feedback on the insertion of an additional clause which would allow us to grant class waivers. Except for Red and Lumo Energy, stakeholders supported this change.¹⁰ On balance we consider the benefit of less administrative complexity provided by class waivers outweighs the possible harms. We have therefore included this amendment in our final guideline.

1.6 Stakeholder consultation

We have undertaken a robust consultation process in reviewing our guideline in accordance with the distribution consultation procedures in the NER.¹¹ The following section outlines stakeholder engagement undertaken since initiating this review. This review was paused to address other work priorities in response to the COVID-19 pandemic.

⁹ AER, [Further consultation](#), 27 August 2021.

¹⁰ Red and Lumo Energy, *Electricity Distribution Ring-fencing Consultation Note submission*, 16 September 2021, p 2.

¹¹ NER, 6G.

Our website contains our issues paper, draft guideline and explanatory statement, a further consultation note and presentations along with all material that stakeholders have submitted as part of this review.¹²

- This review initially commenced in 2019, with stakeholder workshops in Sydney and Melbourne. DNSPs, retailers, independent auditors engaged by DNSPs and other industry bodies attended the workshops.
- We received 11 stakeholder submissions in response to the workshops in September 2019.
- We published an issues paper in November 2020, at which time the issues of the review had widened to include DNSPs providing generation services for regulated SAPS and batteries as well as minor guideline improvements.
- We received 24 submissions in response to our issues paper.
- In February and March 2021, we held two stakeholder workshops targeting regulated SAPS and batteries. Combined we had approximately 70 attendees from across the sector.
- We published a draft guideline in May 2021 and received 40 submissions in response. A summary of all stakeholder submissions is at Appendix B – Summary of stakeholder submission.
- In June 2021, we hosted an online forum with stakeholders. We had 3 stakeholders with different perspectives present their views – Australian Energy Council (AEC), Strategen (on behalf of Energy Consumers Australia (ECA)) and Energy Networks Australia (ENA).
- In August 2021, we consulted on two further minor amendments. We received 7 submissions in response to this consultation.
- Throughout the review process we have had regular meetings with key stakeholders and responded to requests for ad hoc meetings from a range of stakeholders including retailers and third-party providers.

1.7 Next steps

Following release of our guideline and this explanatory statement, the guideline (version 3) takes immediate effect. Details of timing follows.

Indicative date	Project milestone/action
3 November 2021	AER publishes final guideline and explanatory statement
Publication date	AER Electricity distribution ring-fencing guideline (version 3) takes effect
3 February 2022	AER Electricity distribution ring-fencing guideline (version 3) compliance

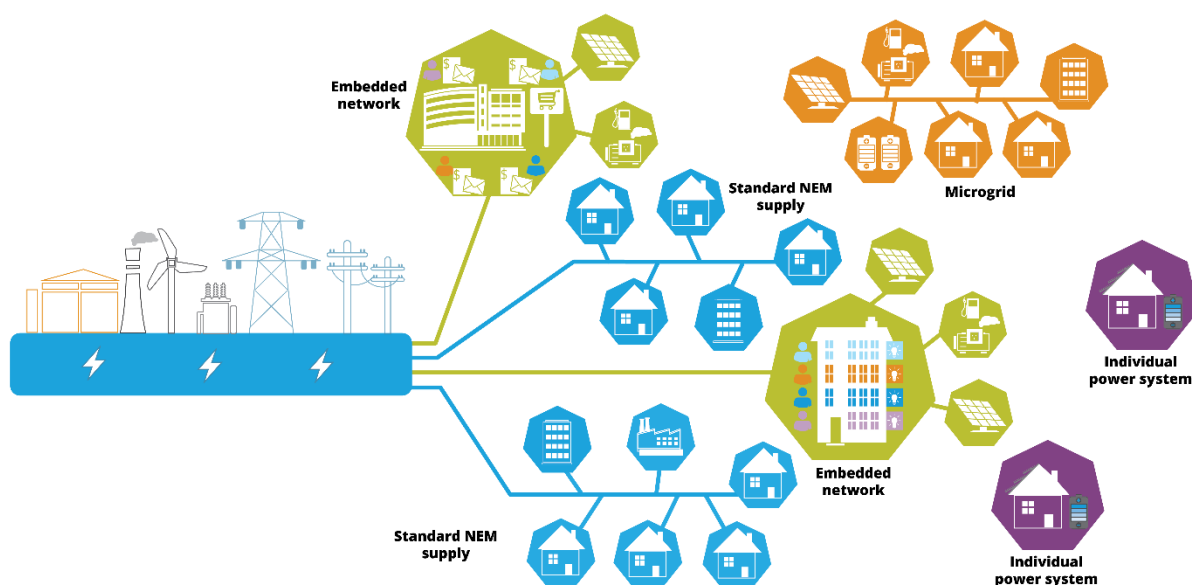
¹² AER, [Distribution Electricity Ring-fencing Guideline review](#).

2 Generation services for regulated SAPS

This chapter examines changes to the current guideline to allow DNSPs to provide generation services as part of a regulated SAPS.

Regulated SAPS are a new delivery model of electricity supply in the National Electricity Market (NEM).¹³ Under this model distributors can move grid connected consumers to a regulated SAPS, where it is economical to do so. This ensures the benefits to consumers, including potentially improved reliability and lower costs, can be realized, while maintaining energy protections such as retail competition. Figure 1 provides an illustration of the 4 delivery models for electricity supply in the NEM that will exist.¹⁴ The changes to the NER to support this framework are expected to be made later this year.¹⁵

Figure 1: 4 delivery models of electricity supply in the NEM



Source: AEMC, *Updating the regulatory frameworks for distributor-led stand-alone power systems*, 28 May 2020, p 4.

¹³ NEL definition (cl. 6B(1)): *a particular stand-alone power system, which consists of a distribution system owned, controlled or operated, or proposed to be owned, controlled or operated, by a regulated distribution system operator, or a stand-alone power system, which consists of a distribution system owned, controlled or operated, or proposed to be owned, controlled or operated, by a regulated distribution system operator, that belongs to a particular class of stand-alone power systems;* AEMC, *Updating the regulatory framework for distributor-led stand-alone power systems*, May 2020, p i.

¹⁴ In figure 1, regulated SAPS encompasses both 'microgrid' and 'individual power system'

¹⁵ See National Energy Laws (Stand-Alone Power Systems) Bill 2011 and Energy Ministers, *Stand-Alone Power Systems Legislative Amendments – Consultation on Revised National Electricity Rules and National Energy Retail Rules*, March 2021. Note that only those DNSPs in jurisdictions that opt in will be able to implement this SAPS regulatory framework. Jurisdictions may also create their own framework and have the related DNSPs implement this framework.

2.1 Contestable supply of generation services

Regulated SAPS are split into the provision of two service groups:

- distribution services provided by DNSPs and regulated as such under the NER, and
- generation services provided by a SAPS resource provider. This service is considered as an “other service” under ring-fencing. As such DNSPs are not allowed to provide these services.

The AEMC noted in its review that the ring-fencing guideline might, in some circumstances, result in outcomes that are not in consumers’ interests.¹⁶ Through submissions, a number of instances were identified in which a DNSP may not be able to find a third-party SAPS resource provider, including that:

- A third-party provider is not available or willing to offer services;¹⁷
- The SAPS may be too small to make outsourcing the generation services economical;¹⁸ and
- A third party may not be able to offer the ongoing operating and maintenance required to meet NER technical and performance standards.¹⁹

In these circumstances, a DNSP may not be able to find a SAPS resource provider. This could result in consumers not being switched to a regulated SAPS, even though it is the most economical option for DNSPs and in consumers’ long-term interests to do so. Therefore, there may be merit in the DNSP acting as the SAPS resource provider.

Our ring-fencing objectives are to:

- promote the National Electricity Objective (NEO)²⁰
- promote competition in the provision of electricity services.²¹

The focus of our review is on if and how a DNSP can provide generation services for a regulated SAPS. We have to balance both of these objectives, to ensure that

¹⁶ AEMC, *Updating the Regulatory Framework for Distributor led stand-alone power systems*, 28 May 2020, p 50.

¹⁷ AEMC, *Final Report – Updating the Regulatory Frameworks for Distributor-Led Stand-Alone Power Systems*, May 2020, p 52.

¹⁸ AEMC, *Final Report – Updating the Regulatory Frameworks for Distributor-Led Stand-Alone Power Systems*, May 2020, p 16.

¹⁹ SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p 2; ENA, *Feedback on AER forum on Electricity Distribution Ring-fencing Guideline*, 16 March 2021, p 4.

²⁰ to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to: price, quality, safety and reliability and security of supply of electricity; and the reliability, safety and security of the national electricity system.

²¹ AER, *Ring-fencing Electricity Distribution Guideline (Version 3)*, October 2021, cl. 1.1.1.

DNSPs deploy regulated SAPS in a way that promotes the long-term interests of consumers.

2.2 Final position

Our final position is to allow DNSPs to act as the SAPS resource provider (i.e., provide generation services) for regulated SAPS under an exemption framework. This will promote the NEO by allowing for regulated SAPS to be deployed in a timely manner.

Many stakeholders were supportive of this change to the guideline.²² Submissions on our draft position mainly centred around the way we divided the DNSPs into the 3 categories and the associated revenue cap for those categories. In response to these submissions, we have increased the generation revenue cap for lowest category level, from 0.001% to 0.02%. However, we have retained the same method for dividing the DNSPs into categories.

Our changes to the guideline include:

- An exemption allowing DNSPs to provide generation services to regulated SAPS up to a cap on the revenue they may earn from these services (i.e., a generation revenue cap); and
- Implementing reporting obligations on DNSPs providing generation services to provide transparency and information to prospective third-party providers that may assist market development for these services.

Specifically, we achieve this by:

- Inserting a definition of Category 1, Category 2 and Category 3 DNSPs (clause 1.4), to allow DNSPs to provide generation services;
- Inserting a definition of “generation revenue cap” (clause 1.4);
- Inserting an exemption from legal separation (clauses 3.1(d) vii – viii) to allow DNSPs to provide SAPS generation services up to a generation revenue cap of 0.2% for Category 1 DNSPs, 0.07% for Category 2 DNSPs and 0.02% for Category 3 DNSPs;

²² AGL, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Ausgrid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 6; AusNet Services, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; CEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; Energy Consumers Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, pp 2-3; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 12; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4; Essential Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 2; Origin Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; PIAC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 2; Reposit Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1; Shell Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 5; TasNetworks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 7 July 2021, p 1.

- Where a cap may be reached, allowing DNSP to apply for a waiver to the cap and period, as identified by the AER (clause 5.3.4 (c)); and
- Inserting new requirements (clauses 6.2.3 (a)–(b)) for DNSPs to maintain a register of instances where they provide SAPS generation services.

Our position is intended to promote efficient deployment of regulated SAPS in the early stages of market development. As regulated SAPS deployment progresses, we will review the exemption framework to consider if it remains appropriate. We consider this outcome will be in the long-term interest of consumers.

Our reasons and responses to stakeholder submissions, along with our amendments to the guideline are outlined below.

2.3 DNSPs providing SAPS generation services

There were a number of arguments against DNSPs providing SAPS generation services. These included:

- Firm Power, Red Energy and AEC submitted that DNSPs providing SAPS generation service would not promote the efficient deployment of SAPS when the market is still developing and that it would consolidate DNSPs' advantage in the market;²³
- AEC, NECA and Off-grid submitted that competitive markets are dynamic and will provide SAPS generation services if given the opportunity by DNSPs;²⁴ and
- Off-grid stated that the circumstances would be rare where a third party could not be an ongoing SAPS resource provider. Noting that in the private SAPS market there are 6000 accredited providers.²⁵

We acknowledge that the private SAPS market may be well developed. However, a regulated SAPS has more complex arrangements in terms of registering and receiving payment, compared to private off-grid consumers. We agree that these companies may develop to fulfil this role over time but have concerns that they may not be ready to meet it now.

Energy Australia noted that the competitive market is underdeveloped.²⁶ Essential Energy and Endeavour Energy undertook market testing for regulated SAPS. They found that the market was unable to cost efficiently provide SAPS generation

²³ Australian Energy Council, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 2-3; Firm Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Red Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 7 July 2021, pp 1-2.

²⁴ NECA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1; Off-grid Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 1-2; Australian Energy Council, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 2-3.

²⁵ Off-grid Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 1-2; Australian Energy Council, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 2-3.

²⁶ Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 3-4.

services due to the ongoing operation and maintenance requirements to satisfy NEM standard.²⁷

AEC submitted that our justifications to allow DNSPs to provide generation services are based on hypothesis and not market experience.²⁸ We have undertaken extensive consultation before reaching our position. We acknowledge that there is uncertainty about the regulated SAPS market which is nascent and untested. On balance, we consider there are scenarios where there is likely to be no competition in the delivery of generation services. We consider that there is a greater risk in delaying the deployment of regulated SAPS. To promote the long-term interest of consumers to access regulated SAPS we are amending the guideline to allow DNSPs to provide generation services.

2.4 Approach to allow DNSPs to provide generation services – Generation revenue cap

In our issues paper, we asked stakeholders to consider possible approaches to allow DNSPs to provide generation services. The options included waivers, specific exemptions (e.g., location) and broad exemptions (e.g., up to a generation revenue cap).²⁹ In our draft position, we considered that a broad generation revenue cap exemption was most appropriate as it allows DNSPs to meet the need for regulated SAPS in a flexible and efficient manner. As the market develops for SAPS Resource Providers, this approach may need to change in the future.

We received submissions from stakeholders that were against a broad exemption framework. Firm Power, Red Energy and Energy Australia supported market testing for each regulated SAPS rather than having an exemption.³⁰ Shell Energy and CEC submitted that market testing should be required for each regulated SAPS over a specified size.³¹ We agree that market testing provides a clear indication of the ability of the competitive market to provide the SAPS generation service for each project. However, given the limited level of third-party suppliers observed to date, such a measure would not necessarily encourage or accelerate the provision of generation services by third parties. It could though have the potential to delay regulated SAPS deployment in cases where there are clear benefits to consumers.

Our approach will limit the amount of revenue DNSPs can earn from providing generation services up to a percentage of their annual revenue requirement. This limit incentivises DNSPs to use third parties as a SAPS resource provider when it is cost efficient to do so. We refer to this mechanism as a generation revenue cap. The

²⁷ Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 6; Essential Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 3.

²⁸ Australian Energy Council, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 2-3.

²⁹ AER, *Electricity Distribution Ring-fencing Guideline Issues Paper*, 20 November 2020, pp 16-17.

³⁰ Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3; Firm Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Red Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 7 July 2021, p 2.

³¹ CEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Shell Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 5.

cap is easy for DNSPs to apply and for us to regulate, which reduces the administrative burden.

In order to apply the exemption in the guideline, clause 3.1(d)vii has been added³²:

Supplying **other services** as a **SAPS Resource Provider**, provided that the revenue the **DNSP** receives as a **SAPS Resource Provider** in a **regulatory year** does not exceed the **generation revenue cap**;

This means that a DNSP is able to provide generation services up to their generation revenue cap in a year.

2.5 The generation revenue cap for each DNSP

Each DNSP has a different regulated SAPS rollout planned, with nearly half of the NEM's DNSPs not identifying any SAPS sites.³³ Table 1 provides a summary of the forecast regulated SAPS deployment of each DNSP. This is partly because each DNSP has a different population, environment and area in Australia that it serves. The geographical areas in which DNSPs currently expect to deploy significant numbers of regulated SAPS (including high bushfire risk areas in Victoria) are likely to be relatively less attractive to potential third-party providers. Essential Energy supported a generation revenue cap but noted that regional DNSPs would need a higher allowance given the larger rollout of regulated SAPS in these areas.³⁴ In our draft position we stated that applying a single revenue cap for all DNSPs would not be appropriate, therefore we believe that multiple generation revenue caps are required.³⁵

Table 1 – Potential SAPS Sites for each DNSP

DNSP	Forecast Deployment Data
Ergon Energy	1000-2000
Essential Energy	880-1400
AusNet Services	300-400
Ausgrid	175-250
Endeavour Energy	12
Powercor	10
SA Power Networks	5
TasNetworks	5
CitiPower	Unknown
United Energy	Unknown
Evoenergy	Unknown

³² Note SAPS Resource Provider is defined in the NER.

³³ Energy Networks Australia, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p 7.

³⁴ Essential Energy, *Electricity Distribution Guideline Issues Paper submission*, 21 December, p 7.

³⁵ AER, *Electricity Distribution Ring-fencing Guideline Draft Position*, 27 May 2021, p 21.

DNBP	Forecast Deployment Data
Jemena	Unknown
Energex	Unknown
Power and Water Corporation	Unknown

Source: Energy Networks Australia, Electricity Distribution Guideline Issues Paper submission, 18 December 2020, p. 7; Ausgrid, Electricity Distribution Ring-fencing Guideline Draft Position submission, 8 July 2021, pp 6-7.

ENA submitted on our draft position that we could divide DNBP into categories based on the percentage of rural population to urban population in a DNBP's distribution area through regulatory information notices (RIN) data.³⁶ We note that this is a simple and objective measure for determining the categories and we appreciate ENA's work on this issue. However, this would equate SAPS deployment solely with remoteness which may not be accurate or appropriate. There are DNBP that have not provided us with evidence that they have plans for significant rollout in the next 5-10 years. There is a risk of increasing the threshold too high for some DNBP, including for DNBP that operate both in rural areas and in urban areas. This could result in the generation revenue cap allowing DNBP to provide SAPS generation services in all instances and unnecessarily stunting the competitive market development in those areas.

Red Energy, Off-grid and Shell Energy raised concerns about the transparency and accuracy of the figures ENA submitted, while others indicated that there could be exponential growth in the deployment of regulated SAPS in the future.³⁷ We agree this market is nascent and is difficult to predict the potential deployment. However, as we try to balance incentivising the competitive market, these numbers provide us with the best understanding of the potential regulated SAPS deployment.

Our preference is to use the current forecast deployment data and to adopt a conservative approach to setting the generation revenue cap. The purpose of this is to balance the risk of negatively impacting the potential market for SAPS generation services. We have calculated the cap on the basis of revenue that would support 75% provision of SAPS generation services. In addition, where a DNBP installs larger regulated SAPS than modelled, it would reach the cap sooner. This is due to the modelling based primarily on each regulated SAPS serving a small number of houses (20kW systems). Where a DNBP connects microgrids or large number of houses to regulated SAPS, this could impact the speed of reaching the cap quite quickly. We consider that a low cap will likely support the provision of DNBP generation services in situations where the required SAPS are small.

Shell Energy submitted that all 3 categories' percentages are too high and will not effectively encourage a competitive market.³⁸ Shell Energy is concerned about

³⁶ Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 13-16.

³⁷ Off-grid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; Red Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 7 July 2021, p 1; Shell Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 5.

³⁸ Shell Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 5.

DNSPs providing SAPS generation services on a large-scale.³⁹ We acknowledge these concerns and note that we are able to review the guideline at any point. We will monitor the market as DNSPs deploy regulated SAPS and if we see a change in the market that warrants a review, we will do so.

After applying this approach to the expected regulated SAPS deployment of each DNSPs, there are naturally 3 groupings. Each category sets the cap as a percentage of a DNSP's annual revenue requirement. For further information on the calculations, see Appendix C.

Table 2 – Generation Revenue Cap categories

Category	Percentage	DNSPs
Category 1	0.2%	Ergon Energy, Essential Energy
Category 2	0.07%	AusNet Services
Category 3	0.02%	Ausgrid, Endeavour Energy, Powercor, SA Power Networks, TasNetworks, CitiPower, United Energy, Evoenergy, Jemena, Energex Power and Water

In addition, Ausgrid submitted that it had recently completed a detailed assessment for SAPS and projected deployment of 175-250 regulated SAPS.⁴⁰ In response to these submissions we have increased the generation revenue cap for lowest category level, from 0.001% to 0.02%. This allows these DNSPs to trial and deploy regulated SAPS.

2.5.1 Amendments to the guideline

In order to apply this in the guideline, we have inserted new definitions to the guideline at clause 1.4:

- **category 1 DNSP** means Ergon Energy Corporation Ltd (commonly known as Ergon Energy), and Essential Energy.
- **category 2 DNSP** means AusNet Services Ltd (commonly known as AusNet Services).
- **category 3 DNSP** means a **DNSP** other than a **category 1 DNSP** or **category 2 DNSP**.
- **generation revenue cap** means:
 - (a) in relation to a **category 1 DNSP** in a **regulatory year**, 0.2 per cent of the **DNSP's annual revenue requirement** for that **regulatory year**;
 - (b) in relation to a **category 2 DNSP** in a **regulatory year**, 0.07 per cent of the **DNSP's annual revenue requirement** for that **regulatory year**;
 - (c) in relation to **category 3 DNSP** in a **regulatory year**, 0.02 per cent of the **DNSP's annual revenue requirement** for that **regulatory year**.

2.6 How the exemption works

³⁹ Shell Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 5.

⁴⁰ Ausgrid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 6-7.

Ausgrid, CitiPower, Powercor, ENA, Energy Queensland, Essential Energy and SA Power Networks submitted to our Issues paper that the regulatory framework should accommodate the life of the regulated SAPS asset.⁴¹ This was to provide more certainty to DNSPs on SAPS investments and for consumers connected to a regulated SAPS.

In order to provide certainty for when DNSPs provide generation services, we have amended the guideline to ensure that the DNSP has an exemption for future years. In effect this means that the DNSP, for a SAPS that was within the cap initially, is exempt indefinitely with respect to providing generation services by means of that SAPS (noting the below restrictions).

This is done through new clause 3.1(d)viii a:⁴²

This clause 3.1 does not prevent a **DNSP**:

- viii. supplying **other services** as a **SAPS Resource Provider**, using a particular **regulated stand-alone power system**, where:
 - a. the **DNSP** was previously permitted to do so under clause 3.1(d)vii of this **Guideline**; but
 - b. a change in the **DNSP's annual revenue requirement**, and / or in the revenue the **DNSP** receives as a **SAPS Resource Provider** for using one or more **regulated stand-alone power systems**, and / or in the number of **regulated stand-alone power systems** used by the **DNSP** to supply **other services** as a **SAPS Resource Provider**, means that the **DNSP** is no longer permitted to do so under clause 3.1(d)vii of this **Guideline**;

The effect of this clause is that, to provide certainty where there is a decrease in the DNSP's annual revenue requirement, or an increase in revenue from generation services, then the exemption continues to apply to those particular stand-alone power systems.

⁴¹ Ausgrid, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p 5; CitiPower, Powercor, United Energy, *Electricity Distribution Guideline Issues Paper submission*, 21 December 2020, p 8; Energy Networks Australia, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p 9; Energy Queensland, *Electricity Distribution Guideline Update submission*, 21 December 2020, p 5; Essential Energy, *Electricity Distribution Guideline Issues Paper submission*, 21 December 2020, p 3; SA Power Networks, *Electricity Distribution Guideline Update submission*, 21 December 2020, p 4.

⁴² And complying with cl. 3.2.

For example:

- DNSP X is the SAPS resource provider for XX regulated SAPS.
- The generation revenue earned in Year A was under DNSP X's generation revenue cap.
- DNSP X can continue to provide generation services for these regulated SAPS for as long as this continues.
- In Year G, DNSP X's annual revenue requirement decreases and/or generation revenue earned increases.
- DNSP X is at risk of breaching their generation revenue cap.
- DNSP X can continue to provide generation services in respect of existing regulated SAPS. DNSPs must apply for a waiver to provide generation services using yet-to-be installed systems, or it can seek third party SAPS resource providers to provide services in respect of yet-to-be installed SAPS. The DNSP could also transition the supply of some of its existing regulated SAPS generation services to third party SAPS resource providers, in order to make room for additional new SAPS within the cap.

2.7 Increasing the generation revenue cap with a waiver

In circumstances where a DNSP reaches its generation revenue cap, it will be able to apply for a waiver. Specifically, we have inserted clause 5.3.4 (c) into the guideline to allow waivers in the case of regulated SAPS to alter the percentage cap and length of the waiver (beyond the current and next regulatory period).

in the case of a waiver of clause 3.1 of this **Guideline** in relation to the use of a **regulated stand-alone power system**, for a different term or terms; and

The effect of this is to allow us to grant a waiver for different terms (i.e., to exceed the initial revenue cap for a term that is not linked to the DNSP's current or next regulatory control period).

For example;

- DNSP X is reaching its cap and wants to apply for a waiver.
- DNSP X undertakes forecasting that estimates that over the coming 11 years it will potentially earn 0.YY% generation as a percentage of its annual revenue requirement and that third party providers are unable to supply the generation services;
- DNSP X applies for a waiver to:
 - Increase its generation revenue cap to 0.YY%
 - For a period of 11 years.

A DNSP would have to provide evidence in its waiver application that an increase is necessary for the long-term interests of consumers and balances the risk to the competitive market for SAPS generation services.

In this instance, it is highly likely that the DNSPs would use the waiver process set out in the guideline. We would expect DNSPs to include:

- the number and size of additional regulated SAPS sites;
- an indication of the ability to secure third party resource providers; and
- the estimated revenue that it expects to earn over the period.

The information listed is not an exhaustive list.

We consider that this approach will provide transparency to stakeholders, including potential third-party providers, about future sites. It provides an opportunity for stakeholders to participate in any consultation for the waiver process. Furthermore, it allows us to understand how the regulated SAPS market is developing and assess the waiver application.

Endeavour Energy submitted that a waiver being required to increase the generation revenue cap is an administrative burden and may disincentivise investment in regulated SAPS.⁴³ By having this waiver mechanism, changes can be made to a DNSP's cap if the generation revenue cap is set too low without having to undertake a lengthy review of the guideline.

Off-grid submitted that we should not expedite waivers for SAPS and the usual waiver arrangements are an important safeguard for the competitive market.⁴⁴ We agree. It is therefore highly likely that we will run a full waiver process for a DNSP applying to increase its generation revenue cap.

⁴³ Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1.

⁴⁴ Off-grid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

AEC submitted that market testing should be required as part of a waiver application.⁴⁵ A DNSP would need to provide clear evidence for its need for a waiver to increase its cap and market testing would be a useful part of this evidence. SA Power Networks submitted that if a waiver requires market testing, the cost effectiveness of third parties should be considered rather than whether a market exists.⁴⁶ We agree that there are many factors that affect a third party's ability to provide SAPS generation services cost efficiently. A DNSP can provide any information in the waiver application, and we can consult stakeholders if considered necessary.

2.8 Reporting requirements

It is important that there is transparency for the competitive SAPS resource provider market about the extent to which DNSPs are providing generation services under the guideline, and about the locations in which those SAPS are being deployed. This will allow third parties to plan for future opportunities.

Our final position is that DNSPs will need to provide a public register with additional information about regulated SAPS deployed in the market. We consider it will be useful for third parties seeking to understand the design and economics of the systems being offered by DNSPs and the potential for them to offer these services in the future. As such, the availability of this information may promote competition for the provision of generation services. It will also be beneficial for us in seeking to understand where competition has developed as we consider the guideline in the future.

DNSPs must provide a register reporting each instance a DNSP provides generation services for a regulated SAPS with the following information:

- The local government area in which the SAPS was deployed. This will allow stakeholders to understand where SAPS have been deployed. Third party providers who are looking to understand the potential market where they could offer services will be able to use this information to identify local demand;
- The number of premises served by the SAPS. This will allow stakeholders to understand the demand for SAPS;
- The estimated maximum demand in kW served by the SAPS. This will allow stakeholders to understand the size of the system;
- The aggregated annual average energy consumption in kWh. This will assist stakeholders to understand how the design of the SAPS is appropriate for consumers' needs;
- The revenue earned by the DNSP for providing other services by means of the SAPS. This information will allow stakeholders to understand the demand for those services.

⁴⁵ AEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

⁴⁶ SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 5.

The revenue earned in a calendar year will be published quarterly, with the quarter 1 update reporting the entire previous calendar year's revenue earned; and

- A statement of whether the DNSP has requested the supply of other services by one or more unaffiliated third parties. This will provide an indication to stakeholders of whether market testing has occurred, and will help them to understand where further demand for those services may exist. The extent to which third party supply is (or is not) occurring, and the reasons for this, will also be relevant to our future consideration of the continued appropriateness of the exemption framework. A request may take various forms, including but not limited to a request for offers or for expressions or indications of interest.

Therefore, in amending the guideline, a new clause, 6.2.3, has been inserted which identifies the items that the DNSP must keep on its register and how often it must be updated:

- (d) A **DNSP** must establish, maintain and keep a register that identifies, for each **regulated stand-alone power system** used by the **DNSP to provide other services**:
 - i. the local government area in which the **regulated stand-alone power system** is deployed;
 - ii. the number of premises served by the **regulated stand-alone power system**;
 - iii. the maximum demand, in kW, served by the **regulated stand-alone power system**;
 - iv. the aggregated annual average energy consumption, in kWh, of the premises served by the **regulated stand-alone power system**;
 - v. the revenue earned by the DNSP for providing **other services** by means of the **regulated stand-alone power system** in the current **calendar year**; and
 - vi. whether the **DNSP** has made a request, in writing, for the supply of the **other services** by another **legal entity** (other than an **affiliated entity** of the **DNSP**).
- (e) No later than 15 January, 15 April, 15 July and 15 October each year, a **DNSP** must publish, on its website, an updated version of the register referred to in clause 6.2.3(a). The **DNSP** must ensure that the information published in each updated version is current to the end of the calendar month that is immediately prior to the required publication date for that updated version under this clause 6.2.3(b).

DNSPs must update the regulated SAPS register quarterly and publish on their website. This includes requiring this information to be current to the end of the previous calendar month. For example, where a DNSP is required to update its regulated SAPS register on 15 January 2022, the information published in this updated version must be current as at 31 December 2021. In addition to the regulated SAPS register, other provisions of the Guideline require the DNSP to publish any waivers relating to regulated SAPS that we grant on their website. This will allow third parties to access regulated SAPS information for each DNSP in a

central location (i.e., the DNSP's website). We will also publish waiver applications and our decisions on our website.

SA Power Networks, ENA, Essential, NECA, Origin Energy, AGL and CEC were supportive of these requirements.⁴⁷ AGL submitted that tenders awarded by a DNSP to its affiliated entity should be reviewed by us to ensure these proposals are efficient.⁴⁸ As part of the guideline's annual compliance process, all tenders that are awarded to a DNSP's affiliated entity will be reviewed by an independent assessor in line with obligations not to discriminate or cross-subsidise. If a DNSP is found in breach of an obligation, there are penalties that can be applied as with any breach of the guideline. We consider that the benefits of reviewing these tenders at the time of award does not outweigh the costs to us, DNSPs and affiliated entities.

2.9 Natural disasters and other emergencies

Temporary SAPS are not considered to be "regulated SAPS" under this framework. They are used to provide assistance to the extent necessary to respond to an event that is 'beyond a DNSPs reasonable control'. We consider that, in this particular scenario, temporary SAPS were already allowed under Version 2 of the guideline.

However, to further clarify this, we are amending clauses 3.1(d)v, 4.2.1(b)ii, 4.2.2(b)ii, 4.2.3(b)iv and 4.3.2(e) to allow DNSPs to respond to emergency events, (including on their own network) with a temporary SAPS, if appropriate. These amendments remove the words "to another Network Service Provider" which clarifies that a DNSP can provide assistance in emergency events.

We consider that any SAPS deployments that are 'necessary' to respond to such an event will inevitably be temporary in nature. We consider that these temporary SAPS should not be included in the DNSP's revenue cap. However, if a permanent SAPS is installed as part of a response to an emergency event (i.e., an event beyond a DNSP's reasonable control), the regulated SAPS must be included as part of the revenue cap.

2.10 Future review of the guideline

As the deployment of regulated SAPS and consequently our approach under our guideline is new, we consider that a future review is likely to be appropriate.

⁴⁷ AGL, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 7; CEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 18; Essential Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 3; NECA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1; Origin Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 4.

⁴⁸ AGL, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

AEC submitted that we should monitor the SAPS deployment against our current expectations.⁴⁹ We agree and will be monitoring the information provided in registers to understand the market development.

PIAC submitted that we should commit to a specified timeline for a review of the guideline.⁵⁰ We maintain our position from the draft, that we will review the guideline when it is appropriate to do so. At this stage, we do not consider that it is possible to specify a timeframe. We note that the guideline permits us to initiate a review of the guideline at any time.⁵¹

⁴⁹ AEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

⁵⁰ PIAC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 4.

⁵¹ AER, *Ring-fencing Electricity Distribution Guideline (Version 3)*, October 2021, cl. 1.5.

3 Contestable services from batteries

Australia's energy system is rapidly changing. This is affecting how energy networks are used. Technological developments and consumer preferences are leading us away from a supply-side system to one that needs to support two-way flows of electricity. The centralised generation system is moving to one with distributed generation.⁵²

Batteries are set to play a key role in the energy system. They will facilitate more renewables onto the grid,⁵³ support system security and reduce pressure on wholesale electricity prices by meeting peaks in consumer demand.⁵⁴ AEMO has identified batteries⁵⁵ as a key area where there is a growing need for services.⁵⁶ Batteries are an emerging opportunity as they can provide services including:

- “providing frequency control ancillary services (FCAS), fast frequency response and recovery service, load shifting, and active management of DER”; and
- “soaking excess solar generation, by storing it or having demand flexibility when solar is plentiful it can be used to benefit consumers and there is no need to curtail either large-scale renewable generation or consumer’s distributed PV”.⁵⁷

Providing services to support the distribution network are also an important use of batteries that can realise cost savings for consumers. However, we note that this review is considering the provision of services beyond distribution services, where ring-fencing considerations are concerned.

To optimise the use of batteries, it is ideal to use the battery to perform a range of services. This ensures that the full value from batteries can be realised.

This is particularly important given the nascent and emerging status of battery services markets.

3.1 Community-scale battery

Submissions to our draft position focused on the benefits that specifically arise from community-scale batteries. Community-scale batteries potentially allow storage of energy near to where households generate it. Stakeholders considered that they are

⁵² AER, [Strategic Plan 2020-25](#), 2020.

⁵³ ARENA, [How are big batteries helping to transition to renewables](#), 2 February 2021.

⁵⁴ Australian Department of Industry, Science, Energy and Resources, [Technology Investment Roadmap: First low emissions technology statement – 2020](#).

⁵⁵ Battery is a general term used to describe a range of assets at different points in the energy system. It can include large and medium scale grid-connected batteries, such as pumped hydro, to small batteries used in households such as domestic batteries and electric vehicles.

⁵⁶ AEMO, [2021 Electricity Statement of Opportunities](#), p 61.

⁵⁷ AEMO, [2021 Electricity Statement of Opportunities](#), p 10.

“uniquely suited to providing social, economic and technical benefits to the broader energy system”.⁵⁸ The potential benefits raised included:

- Make better use of available renewable resources and grid infrastructure.⁵⁹ Increase the amount of consumer energy resources (e.g., solar PV) that DNSPs can accommodate on the grid;⁶⁰
- Offer renewable energy access to residents who are renting, living in multi-unit dwellings or homeowners who cannot afford behind-the-meter storage devices and solar.⁶¹ If targeted at solar have nots (not just solar PV owners) batteries can potentially resolve existing inequalities in the energy system;⁶²
- Reduce carbon emissions, through enabling more renewable generation. Support councils’ efforts to achieve carbon emissions reduction and renewable energy targets;⁶³
- Shared asset solution accelerates access to more efficient and more sustainable energy.⁶⁴ Consumers are inclined to participate in shared battery concepts;⁶⁵
- Defer potentially more expensive network augmentation. Address increasing demand and voltage management issues on the network, due to higher integration of DER;⁶⁶ and
- Reduced energy costs for consumers.⁶⁷

There are a range of ownership models to deploy community-scale batteries. ANU research has investigated a number of models, such as:⁶⁸

- Third-party owned (e.g., retailer, community group or a local council), community battery
- Third-party owned (e.g., retailer, community group or a local council), for-profit model

⁵⁸ ANU, [Implementing community-scale batteries](#), December 2020, p 2.

⁵⁹ Southern Sydney Regional Organisation of Councils, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 13 July 2021, p 1.

⁶⁰ ANU, [Implementing community-scale batteries](#), December 2020, p. 3; CEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 2.

⁶¹ Inner West Council, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; Essential Energy *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 6.

⁶² ANU, [Implementing community-scale batteries](#), December 2020, p 5

⁶³ Southern Sydney Regional Organisation of Councils, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 13 July 2021, p 2; Northern Sydney Regional Organisation of Councils, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Inner West, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1.

⁶⁴ Blacktown City Council, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

⁶⁵ ECA *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 4.

⁶⁶ ANU, [Implementing community-scale batteries](#), December 2020, p 5.

⁶⁷ ANU, *Operating a community-scale battery: electricity tariffs to maximise customer and network benefits*, February 2019, p 2; PIAC *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1; CEC *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Ausgrid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

⁶⁸ ANU, [Implementing community-scale batteries](#), December 2020, p 7.

- DNSP owned, community battery
- DNSP owned, for-profit model

The research found, among other things:

- Strong preference among households for community-scale batteries that are simple to interact with, owned by local government (as opposed to a DNSP) and that are run as a not-for-profit entity;
- Energy users tend to not want to engage with industry incumbents. There is substantial public support for community energy models that are owned and operated by trusted local organisations; and
- There is interest from many third parties to own energy storage, including councils, investors and community energy groups. In particular, councils may be in a financial position where they could buy larger-scale energy storage to support their communities.⁶⁹

We note that Ausgrid presented contrary research. This research tested which battery providers consumers had the greatest comfort in providing community-scale batteries. It indicated consumers had the greatest comfort level with the DNSP (Ausgrid) as the battery provider.⁷⁰

Battery technology is still relatively new and emerging. There are a number of potential deployment models, one of which involves DNSP ownership. Relative to other models, DNSP ownership of batteries presents risks to competition that needs to be carefully considered. As a result, we do not think that the research provides a conclusive position on this. DNSPs are only one of many potential providers of community-scale batteries. It is therefore important that the regulatory framework supports a range of deployment models.

3.2 Final position

We agree that batteries are likely to provide the market and consumers with many benefits. Where possible, multiple value streams should be realised. By doing this, there are likely to be increased efficiencies realised and lower costs to consumers.

At this early stage of the battery market, it is important that the framework supports different deployment models. ECA stated that the relative maturity of the markets is important and that several models “will emerge to share and pool localised distributed generations benefits”.⁷¹ AER wants a framework that supports innovative battery projects. To do that, space needs to be provided to the market to determine how to deliver the services that best meet the needs of consumers.

⁶⁹ ANU, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

⁷⁰ Ausgrid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 5.

⁷¹ ECA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, pp 4-5.

We are concerned that allowing DNSPs to actively engage in this market, without appropriate controls, risks the foreclosure of other players. This would not be in the long-term interest of consumers. A number of stakeholders identified concerns for the development of the market. Flow Power submitted that as the market for contestable services is emerging, DNSP involvement risks undermining the development of the market.⁷² Enel X further said that “competitiveness of the market is threatened when DNSPs are allowed to leverage their monopoly role to crowd out third party providers”.⁷³ It could mean that the benefits from batteries might not materialise to the same extent and may hinder innovation and competition from what is currently an emerging technology and market.

Our draft position was to prohibit DNSPs from providing excess capacity to others unless we approved a waiver application. Our objective was to guard against the risk that opportunities for new entry and competition in these emerging markets could be foreclosed. We foreshadowed a number of factors related to the benefits and harms that we would like to see addressed in a potential application, in order for us to consider it favourably.

In response to our draft position a number of stakeholders raised concerns that this approach was too strict and may slow the deployment of batteries by DNSPs, which could be an efficient model. ECA stated that flexibility and optionality would allow a range of applications to emerge and avoid “inadvertently precluding opportunities that could provide consumers with improved service outcomes”.⁷⁴ Furthermore, PIAC disagreed with the proposition that allowing distributor-owned batteries would exclude new entry and competition in emerging markets.⁷⁵

In response to feedback on our draft position, we are providing further guidance on the criteria that would be considered favourably under a streamlined waiver process. This process will facilitate certain types of DNSP batteries, especially community-scale batteries, where they supply capacity to others. In order for us to consider a DNSP battery under a streamlined waiver approach, cross-subsidisation risk will need to be addressed. There are a few ways this could be achieved. Where the risk is satisfactorily addressed, it is likely that we will approve the waiver with little or no consultation. This is further outlined below. We are interested to hear from interested stakeholders on our proposed approach.

To ensure the battery is not used in a discriminatory way we will also require, through conditions to the waiver approval, that the DNSP’s ring-fencing auditor would verify each year, as part of the annual compliance process, the use of the battery.

There are 3 scenarios for battery deployment that we have explored. Below we indicate how these different deployments can occur under the current framework:

⁷² Flow Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p. 1.

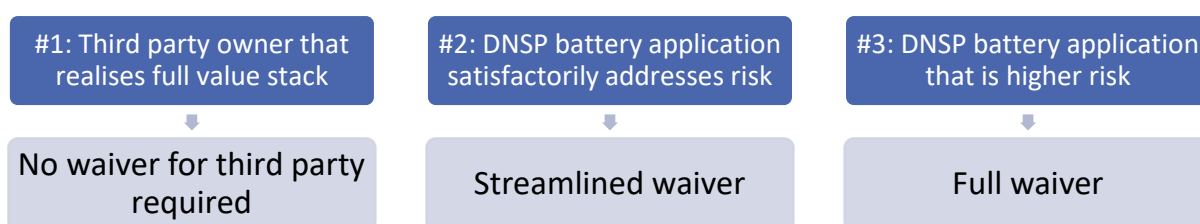
⁷³ Enel X, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p. 1.

⁷⁴ ECA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1.

⁷⁵ PIAC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, pp 1-2.

- The first scenario would see a third-party provider install the battery. Under this scenario, the full value stack can be realised. The third party is not subject to ring-fencing requirements.
- The second scenario would see a DNSP, meeting a set number of criteria (such as cost allocation), deploy a battery under a streamlined waiver process. It is likely that this process would not require any consultation. We could approve the application with specific conditions outlined below. However, we reserve the right to conduct consultation on a streamlined waiver application if we consider it necessary to do so. We welcome further comments from interested stakeholders on the process and criteria identified in this document. We note that as this relates only to our process, rather than to the content of the guideline itself, further amendments to the guideline will not be needed. Stakeholders can provide comments via email to AERringfencing@aer.gov.au until 1 December 2021.
- Scenario 3 is where a DNSP wants to deploy a battery that is outside the set criteria under scenario two. Under this scenario the project is likely to create additional cross subsidisation risks which could impact the battery market. As such, a full waiver process will be required.

Figure 2: 3 scenarios for battery deployment and ring-fencing implications



3.3 Scenario 1: Third party

Under this scenario, a third party installs a battery and offers services such as regulated services (network support), market services (such as FCAS) and consumer services (such as storage). An example of this is the Yarra Energy Foundation (YEF) community battery trial.⁷⁶ The third party could be an entity that is related to the DNSP.

Submissions to our draft indicated that this model is viable and growing:

- Origin Energy stated “there is the potential for significant growth in the use of [batteries] and an active and growing market for competitive provision of [batteries]”;⁷⁷ and
- Reposit Power stated that “there are mature platforms that leverage existing and future distributed energy resource assets to provide the same services as DNSP-owned

⁷⁶ YEF, [Yarra Community Battery Project](#).

⁷⁷ Origin Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

batteries at a comparable and/or lower cost. To potentially ignore or threaten the market for these consumer-owned assets through networked-owned storage could be economically inefficient”.⁷⁸

Given the interest from third parties and competitive players in batteries and the fact it is an emerging technology, it is important that we ensure that we do not foreclose the potential benefits that this innovation may provide, particularly at a time when the electricity sector is going through a major transition in which batteries are expected to play a significant role. For this reason, we need to ensure that the regulatory framework achieves a balance between being able to test different deployment approaches whilst also ensuring that we are not foreclosing competition and innovation.

A number of submissions stated that the “competitiveness of the battery market is threatened” if DNSPs are allowed access to the market.⁷⁹ We consider that if other players do not enter the market when they otherwise would, because of the uncertainty and risks of competitive foreclosure created by DNSPs in the market, then only one model of battery deployment will materialise and the sector may lose the benefits of innovation and efficiencies that the competitive provision of batteries may otherwise provide.

Ecojoule supported a framework to support the efficient and open participation of a wide variety of market players.⁸⁰ We agree. We are therefore highlighting this third-party model, as it is very important that there are trials carried out under this scenario too. This will help to understand different deployment models and relative efficiencies.

3.3.1 DNSP and network services

DNSPs can procure network support services from the third-party battery. The DNSP could “reserve priority use of them for network support for an agreed number of days per annum at their call”.⁸¹

DNSPs can also play an important role in enabling the market to realise the benefits from batteries. Below we note 3 potential ways in which DNSPs can support the development of the market.

⁷⁸ Reposit Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1.

⁷⁹ Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 2-3; Flow Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, pp 1-2; Enel X, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 3; Shell Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; CEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 2-3; AEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 3-4; AGL, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 4-5; ANU, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Reposit Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 6; Firm Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

⁸⁰ Ecojoule, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1.

⁸¹ Origin Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

3.3.1.1 Offer the market the opportunity to provide the network support services

As previously mentioned, batteries are most efficient when they can realise the full value stack. This means that third party batteries also need to be able to realise all services, including network support services. ANU stated that the “services must be properly valued”.⁸² We agree that, to realise a range of potential deployment models, the DNSP can play an important role by offering the opportunity to the market to provide network services in an open and transparent way, ideally through competitive tender or potentially via a market platform.

3.3.1.2 Provide location data and information

DNSPs have an insight into the best location for batteries, in terms of knowing the constraints within the network. A battery located in a constrained part of the network can offer more value to the network.⁸³ Therefore it would be highly beneficial if DNSPs publish all relevant data and forecasts for opportunities.

Furthermore, DNSPs could facilitate the provision of batteries by allowing access to land to locate the battery, if the prime location is a substation.

3.3.1.3 Level playing field

For competitive benefits to be realised, it will be important that there be a level playing field for all battery service providers connected to the networks. By this we mean that the DNSP behaves in a non-discriminatory manner. This means that the DNSP treats the battery the same regardless of the owner (e.g., by charging the same tariffs for the same services) and that all batteries are treated the same across the network (for example in times of constraint, the DNSP related battery is not given preference).

CEC stated: “it would be hypocritical and anti-competitive for DNSPs to advocate export charges for household distributed energy resources while also advocating that community-scale batteries they own should be exempt from network tariffs”.⁸⁴ This concern also extends to batteries owned by affiliate of the DNSP, not just batteries owned by the DNSP itself.

The additional discrimination clause that we have inserted into the guideline will assist in addressing this. See section 3.6.2 below.

3.3.2 Process for deployment

It is important to note that ring-fencing requirements only apply to DNSPs. For third party battery deployment, there are no ring-fencing requirements for the third party.

⁸² ANU *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

⁸³ AEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; AGL, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 1-2.

⁸⁴ CEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

The DNSP will need to comply with ring-fencing requirements if it is obtaining services from the battery (such as behaving in a non-discriminatory manner).

Under Scenario 1 value stacking across multiple services (wholesale, system security and network services) can be achieved with multiple stakeholders' needs met. Ring-fencing does not delay the rollout of community batteries in these circumstances.

3.4 Scenario 2: Lower risk DNSP projects

A number of submissions noted that DNSP batteries can play an important role in developing the battery market and offering services from the market.⁸⁵ We believe that if a DNSP battery waiver application for supplying excess capacity for use by third parties meets our streamlined waiver criteria, then this battery deployment may be lower risk. By this we mean that we will be confident that cross-subsidisation risk will be satisfactorily addressed, which reduces competitive harm.

In order to qualify for the streamlined waiver process, the DNSP would need to address cross subsidisation risks. We have identified the criteria by which a DNSP can do this below.

3.4.1 Criteria for low risk to the market

There is unlikely to be one exact criterion that will identify all low-risk applications. As such, a layered approach is likely to be required. We believe that there are at least two potential scenarios that could be considered; firstly, a scenario where the potential for cross subsidies does not arise, and, secondly, a scenario where it is satisfactory addressed.

Appropriate cost allocation of batteries is a key consideration for ring-fencing. It aims to address the significant possibility that “other”, contestable, services could be funded using regulated revenue.

If we do not protect against this, the following harms could occur:

- DNSPs could compete unfairly in the market by not having to recover its costs for competitive services. This could damage and distort the market for services from batteries;
- Consumers in the DNSP's area could pay for battery assets (through regulated prices) that they may not benefit from or be able to access services from;⁸⁶ and
- DNSPs earn revenue twice; once from return on regulated asset base (RAB) and again from supplying capacity for contestable services. EnergyAustralia notes that a level playing field is unlikely to be achieved when “networks mainly operate under the

⁸⁵ PIAC/Simply Energy/Ausgrid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1.

⁸⁶ Flow Power *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

protection of guaranteed returns and capped liability”.⁸⁷ AEC raise the RAB as a potential issue that might lead to inefficient investment.⁸⁸

Origin Energy notes that it is a “first-order requirement” to ensure that the DNSP does not cross subsidise between regulated and unregulated businesses.⁸⁹ Simply Energy preferred that the AER develop a consistent cost allocation methodology or principles rather than relying on waiver applicants to propose their own methodologies.⁹⁰ We agree with these comments. Therefore, the first layer in our consideration of a waiver application will be to focus on how the DNSP intends to address cross-subsidisation.

3.4.1.1 Cross subsidisation does not arise

If a DNSP chooses to not allocate any of the cost of the battery to the RAB then the potential for cross-subsidisation does not arise. In this scenario, the DNSP would still be able to use opex or other regulated revenue streams for expenditure related to the use of the battery for network services. For batteries that meet this criterion, we have confidence that the above impacts and harms will not materialise.

Battery applications that meet this criterion will have the streamlined waiver process applied, subject the conditions in 3.4.3.1.

3.4.1.2 Cross subsidisation is satisfactorily addressed

DNSPs may choose to allocate part of the battery that is used to provide network services to the RAB. This raises potential cross-subsidisation concerns.

Where assets provide only one service, it is easier to identify where the costs should lie. Batteries, however, provide multiple services and are more difficult to fully cost allocate to eliminate cross subsidy issues. It may be difficult to determine exactly how much of a battery will be used for network services, and therefore how much of the cost of the battery should be paid for using regulated revenue. Red and Lumo Energy raised concerns about determining the split between supplying regulated and contestable services of a battery as there is no “understanding or firm knowledge about what split is appropriate” and that “battery use changes over time hence a cost allocation methodology would need to somehow cater for the changes of use to prevent cross subsidisation”.⁹¹

In order to address cross subsidisation, the key principle is that only the cost of the portion of battery that provides standard control network services should be included in the RAB. Applications should provide evidence that the cost allocation method chosen appropriately ensures that only the cost of the portion of the battery providing those services is included to the RAB. This evidence will provide us with comfort that

⁸⁷ Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1.

⁸⁸ AEC, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4.

⁸⁹ Origin Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4.

⁹⁰ Simply Energy *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

⁹¹ Red Energy and Lumo Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

the DNSP has satisfactorily addressed cross-subsidisation risk. If we are satisfied that the DNSP has evaluated the proposed use of the battery and has correctly allocated costs to the provision of those network services from the battery, then this will meet our criteria for a streamlined waiver process.

For DNSPs to provide evidence that they are only allocating to those network services, and therefore including in the RAB, the costs of the part of the battery providing those services, they could:

- Provide modelling of the exact capacity of the battery that is required for the network support services. This modelling would indicate how much will be used by the network and thereby the worth of the battery. This would support a marginal cost approach to the value of regulated use of the battery; or
- Commit to the present value percentage of time that the DNSP will use the battery for network support (such as 20%); or
- Provide the value that the DNSP offered third-party battery market to supply the network service. Evidence that the market was not able to supply services at this price would give us reassurance that is an efficient amount to spend on regulated network services.

For all battery waiver application, including this scenario, we are highly likely to impose additional conditions (see section 3.4.3.1 below), under which the DNSP's ring-fencing auditor would verify each year, as part of the annual compliance process, the use and appropriate cost allocation of the battery. This will confirm that the use of the battery was not different than expected.

In addition to addressing cost subsidisation risk, to be eligible for a streamlined waiver process the application would also need to meet a second criterion – namely, that the DNSP has established a sufficient process for engaging third party suppliers to provide the relevant network services from non-affiliated service providers. This is discussed further below.

3.4.1.2.1 Established process to engage third party suppliers

Before providing a streamlined waiver to enable the DNSP to own and operate a battery where the cross-subsidisation risk is satisfactorily addressed, it is important that we establish that the DNSP has sufficiently tested the market for the battery services in the first instance to support the DNSP's cost allocation proposal.

ENA and a number of DNSPs outlined in their submissions that there have been mostly unsuccessful attempts at sourcing third party providers to date.⁹² The AEC, however, indicated that there is less appetite from competitive players because the information provided by DNSPs in seeking third-party providers is incomplete and hard to decipher.⁹³

⁹² ENA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 5–6; Ergon and Energex, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 10.

⁹³ AEC *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1.

A number of stakeholders, including AGL, ANU, AEC, Flow Energy and Shell Energy, said that DNSPs should be required to test the market before installing its own battery.⁹⁴ AGL recommended:

- Standardised network service procurement obligations with a 12-week consultation window;
- That a register be established to publish network service opportunities.⁹⁵

We agree with this position and think that this should be a prerequisite to receiving a waiver where the cross-subsidisation risk arises. This will assist us to further ascertain that the costs are efficient. Thereby giving further confidence that the cross-subsidisation risks are satisfactorily addressed. Under this criterion the DNSP should have a process established to seek third party providers. This could include a pre-register process of qualified providers which it actively engages when there is an identified need.

By having this in place we will be confident that an appropriate outcome will be achieved. We recognise that it is open to each DNSP to develop its own processes. In assessing each streamlined waiver application, we will evaluate the adequacy of the process that the DNSP has established, and may decide that the streamlined process is not appropriate where the DNSP's engagement processes have not been adequate. We expect DNSPs to develop a process that can be used for all batteries for which a streamlined waiver will be sought.

3.4.2 Alternative criteria raised in submissions for low-risk scenarios

There were a number of other alternative approaches raised for a low-risk projects. We would like to specifically address an option that we have not adopted.

DNSPs and ENA proposed a size-based exemption (e.g., 1MW, 1.5MW and 5MW⁹⁶).⁹⁷ Under this threshold, DNSPs proposed an exemption would apply to ring-fencing. CitiPower, Powercor and United Energy proposed a tiered approach based on the size of the battery. We do not support this proposal for two reasons:

- These sizes proposed (1MW, 1.5MW and 5MW) are significant. It is likely that such a size approach would cover most of the potential batteries on the LV network. To give

⁹⁴ ANU *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 1; AGL *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; Shell Energy *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3; Flow Power *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

⁹⁵ AGL *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4.

⁹⁶ Essential Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 7.

⁹⁷ SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 7; ENA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 10; Ausgrid *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 9.

some context, the UE waiver approval last December was for 40 pole top batteries which were each 30kW;⁹⁸ and

- The DNSPs have not provided evidence that battery size would alleviate cross-subsidisation risks and harms raised by stakeholders.

3.4.3 Process

ENA did not support a streamlined waiver process as it does “not address the investment uncertainty that is inherent in the waiver process and is not a practical nor innovative solution to enabling technologies such as community batteries”.⁹⁹ Instead, they suggested focusing on an approach with strong oversight and transparency measures.¹⁰⁰ Simply Energy also considered that a full waiver process would delay investments, increase uncertainty and stifle development of community batteries.¹⁰¹ Where a DNSPs battery project meets the two criteria set out above, we agree that the full waiver process would potentially be more costly than the benefits that it would achieve.

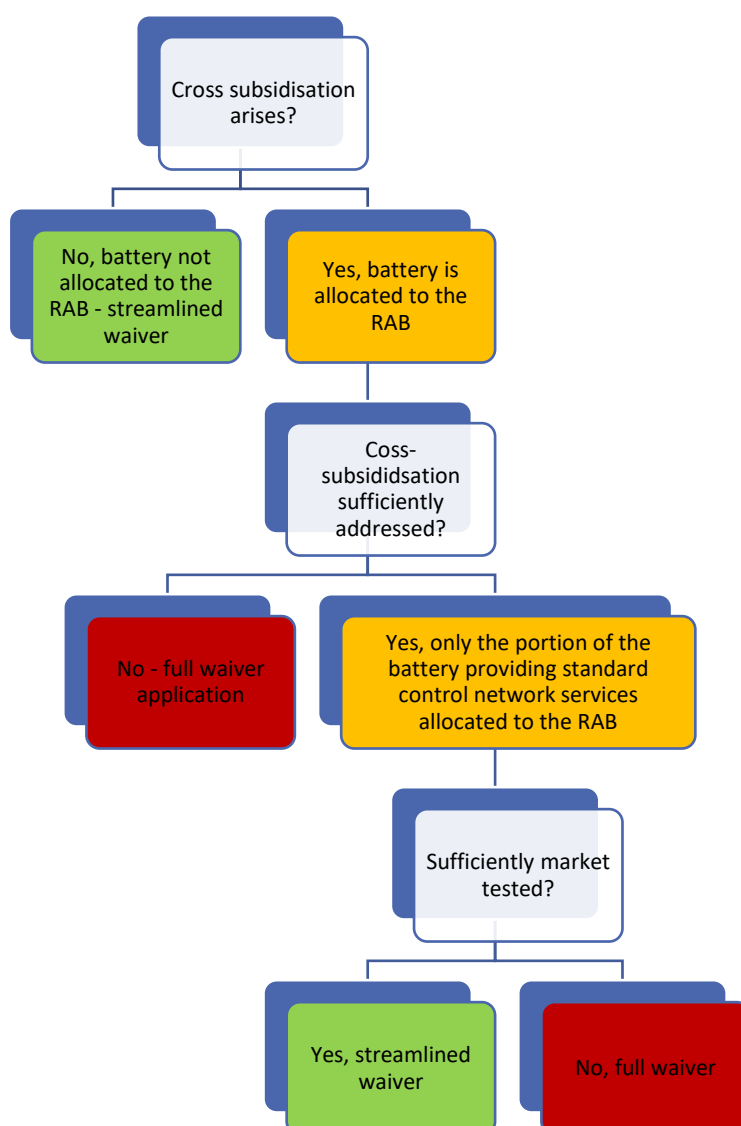
⁹⁸ United Energy, [Ring-fencing waiver application](#), 12 October 2020, p. 5.

⁹⁹ ENA, *Electricity Distribution Ring-fencing Guideline Draft Position further submission*, 17 September 2021, p 1.

¹⁰⁰ TasNetworks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 7 July 2021, p 2; ENA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4.

¹⁰¹ Simply Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

Figure 3 – Cross subsidisation risk arises



Where a DNSP wants to deploy batteries in a way that meets these criteria, the following process will apply:

- Template application – the DNSP would complete a standardised short template form. The AER will release this template in a note published on our website, following consideration of any further comments, in December. Information that will be required includes:
 - Confirmation and description of how the criteria are met. This includes the cost allocation methodology and market testing approach.
 - Information on the reason for the battery and services it will provide;
 - The period of the waiver;
 - Achievement of the NEO, cost to comply and benefits;

- Decision – once the AER confirms that the above criteria have been fully satisfied and there are no other variations that would require consideration, the AER would issue the waiver, without public consultation.
- Conditions – the waiver will have a standard set of conditions (discussed further at 3.4.3.1).

DNSPs requested a time limit on waiver processes under this model. CitiPower proposed that waivers should be approved unless objection within 20 business days.¹⁰² We do not agree that these limits are appropriate. However, we consider that, in practice, it is likely that we will be able to grant these applications in a similar timeframe (in the absence of any special issues associated with the particular proposal).

3.4.3.1 Conditions of the waiver - clear information on battery use

In issuing a streamlined waiver, we believe there are a number of conditions that all projects will need to comply with.

Stakeholders raised concerns that DNSPs could preference their own battery in times of constraint or access. Shell Energy suggested that the DNSP be required to “periodically disclose the value of the contestable and non-contestable services provided by the battery to verify consistency with the problem statement provided to market, and the waiver application provided to the AER”.¹⁰³ We believe that the new discrimination clause (see section 3.6.2 below) will assist in addressing this issue. However, to further remove the potential for this to occur, we are considering imposing waiver conditions that, in substance, will require the following:

- DNSP will need to provide information to the public about the battery project and any useful findings that will support the battery market, particularly for community-scale batteries;
- the DNSP’s ring-fencing auditor will need to verify the use of the battery each year, as part of the annual ring-fencing compliance process. This will involve a comparison of the extent to which volume and frequency) that the battery was used for distribution services and other services (including the volume and frequency of such uses), against the way in which the DNSP has used other batteries, and an explanation of any differences between the two; and
- Where regulated revenue is used to fund the battery, the auditor will need to evaluate the use of the battery to confirm the appropriate cost allocation was applied between the regulated and un-regulated uses of the battery.

¹⁰² CitiPower, Powercor, United Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 18.

¹⁰³ Simply Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3.

3.5 Scenario 3: higher risk DNSP battery projects

Alternatively, a DNSP could propose a battery model that does not meet the criteria described in scenario 2. There still may be benefit to this project, however, it is likely that the AER will need to give greater consideration to it. For batteries that have features that are beyond the streamlined waiver option, the waiver application will need to be considered via a full assessment process. As with scenario 2, we are highly likely to impose an additional condition (see section 3.4.3.1 above), under which the DNSP's ring-fencing auditor would verify each year, as part of the annual compliance process, the use and appropriate cost allocation of the battery.

3.6 Amending the guideline

3.6.1 Clarifying the supply of excess capacity to third parties

The current guideline could be interpreted as allowing DNSPs to offer third parties use of batteries owned by the DNSP. Whilst otherwise requiring legal separation, the current guideline does not prevent a DNSP from:

granting another legal entity the right to use assets of the DNSP in providing 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 (right to use assets exception).¹⁰⁴

The original intention of this exception to legal separation was to facilitate the 'shared asset' rules introduced in 2012.¹⁰⁵ This was to facilitate assets (such as poles) that were fully cost allocated for the provision of electricity services to be used for other purposes (such as to support telecommunication cables). As the above discussion indicates, we have identified that this exception is not appropriate for batteries. Therefore, we are amending it. This involves making it clear in the guideline that the exception does not apply to batteries (or energy storage devices as defined in the guideline).

We are amending clause 3.1(d)i to read:

granting another legal entity the right to use assets **(other than new energy storage devices)** of the DNSP in providing 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 (right to use assets exception).

In our draft position, we defined "energy storage device as follows:

energy storage device means plant that has the capacity to both:

¹⁰⁴ AER, *Ring-fencing Electricity Distribution Guideline (Version 3)*, October 2021, cl. 3.1 d(i).

¹⁰⁵ AER, *Ring-fencing Electricity Distribution Guideline (Version 1) – Explanatory Statement*, November 2016, p 79.

- (a) consume electricity to convert into stored energy; and
 - (b) convert stored energy to produce electricity,
- together with all related equipment to its functioning as a single entity.

ENA, in discussing its proposed size based exemption approach, proposed that existing installations would be grand-fathered, and value-stacking opportunities that have commenced the internal investment planning cycle allowed to progress”.¹⁰⁶ We agree that grandfathering arrangements do need to be considered and could be appropriate.

As such, we have now also added a definition of “new energy storage device” in clause 1.4 (and as now used in clause 3.1(d)i) as follows:

New energy storage device means an **energy storage device** first installed on or after version 3 amendment date set out on page 2 of this Guideline.

Currently, the NEL and the NER do not define batteries. If, in the future, another definition of battery is introduced into the NEL or the NER, we will consider whether the ring-fencing guideline requires further amendment in this respect. For present purposes, however, the inclusion of our definition is necessary to provide immediate clarity on the treatment of batteries under the guideline.

3.6.2 Discrimination

The current guideline is focused on discrimination in favour of a DNSP’s affiliate, and against non-affiliates. However, increased third party use of a DNSP’s batteries (and other assets) also increases the potential for DNSPs to discriminate between non-affiliates who are using the DNSPs batteries and those that are not. SA Power Network suggested to the issues paper including a new provision in the guideline requiring DNSPs to not discriminate against competitive battery providers.¹⁰⁷ There are non-discrimination restrictions on monopolies in other markets. For example, Telstra and NBN are prevented from discriminating where they are providing telecommunication access and supply of network services.¹⁰⁸

As such, we have inserted a new clause, 4.1(d), in addition to the current non-discrimination requirements, to prevent a DNSP from discriminating between two parties where it owns the asset. The clause is as follows:

- (d) A DNSP must not discriminate (either directly or indirectly) between any two legal entities, in connection with the supply of contestable electricity services by those legal entities on the basis of the use by one or both of those legal entities of assets owned, operated or otherwise controlled (in whole or in part) by the DNSP.

¹⁰⁶ ENA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 10.

¹⁰⁷ SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 7.

¹⁰⁸ Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011 (Access Act).

3.6.3 Length of waiver

At present, the guideline allows the AER to grant waivers for the current and next regulatory control periods.¹⁰⁹ This is in effect up to a period of 10 years, depending on the year the DNSP is in its current regulatory period. ENA proposed that battery waivers should be for the life of the asset.¹¹⁰

We acknowledge that batteries are a significant investment for DNSPs and the potential uncertainty that the waiver length will add. We have amended the guideline to allow battery waivers to be approved for the life of the battery. We have inserted 'or of an **energy storage device**' into clause 5.3.4(c). This will allow the AER to grant a waiver or interim waiver, for batteries, for a length of time that is unrelated to length of a DNSP's regulatory control periods. The clause is as follows:

- (c) in the case of a waiver of clause 3.1 of this **Guideline** in relation to the use of a **regulated stand-alone power system** or of an **energy storage device**, for a different term or terms; and

This provides certainty for DNSP investment.

We also retain the ability to revoke a waiver if there are grounds to do so, and following the process set out in the guideline.

¹⁰⁹ AER, *Ring-fencing Electricity Distribution Guideline (Version 3)*, October 2021, cl. 5.3.4 (b).

¹¹⁰ ENA, *Electricity Distribution Ring-fencing Guideline Draft Position further submission*, 17 September 2021, p 3.

4 Improving the guideline – minor amendments

This chapter examines certain guideline obligations and how they can be made clearer and less administratively complex. Specifically, these amendments will:

- Improve the transparency of staff sharing arrangements between a DNSP and its affiliates;
- Improve the practicality of DNSP annual compliance reporting;
- Address confusion associated with the term ‘confidential information’ as defined in the guideline;
- Improve the timeliness of DNSP breach reporting;
- Retain current branding arrangements;
- Clarify the information sharing register provision; and
- Improve the practicality of the waiver process by allowing the AER to grant class waivers.

Our reasons and consideration of stakeholder submissions on the amendments follow.

4.1 Staff and office sharing registers

The guideline imposes staff sharing restrictions on a DNSP so it cannot confer a competitive advantage on its RESP providing contestable electricity services.¹¹¹ Information about a DNSP’s network, consumers or services could provide a RESP with an unfair advantage in the market. The current guideline therefore requires that staff with:

- Access to information about the DNSP’s network and its consumers (‘electricity information’); and
- An opportunity to use that information in a way that would provide a discriminatory advantage to the DNSP’s RESP,
- not be shared with the DNSP’s RESP providing contestable electricity services.¹¹²

We recognise that determining whether a staff member has an opportunity to use ‘electricity information’¹¹³ can be a complex, fact-specific and fact-intensive exercise.

¹¹¹ A RESP refers to an affiliated entity of the DNSP or the part of the DNSP that provides contestable electricity services. It excludes a part of an affiliated entity that provides direct control services. See: AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 1.4.

¹¹² AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.2.2(a), 4.2.2(b).

¹¹³ Electricity information means information means information about electricity networks, electricity consumers or electricity services, other than: aggregated financial information; or other service performance information; that does not relate to an identifiable consumer or class of consumer. See AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl.1.4.

Through our ongoing ring-fencing compliance activities, issues have arisen when interpreting this requirement. In particular, we have observed issues and breaches in relation to staff secondments and sharing of procurement staff.¹¹⁴

In addition, we consider there is insufficient transparency regarding a DNSP's decision to share staff with an affiliate. In particular, staff registers on DNSPs' websites do not provide adequate transparency of staff sharing arrangements. Further the DNSP registers are largely updated yearly or half-yearly. This risks outdated information being left on the website for most of the year and does not provide confidence to stakeholders that the information is current.

4.1.1 Final position

Our final position, as with our draft position, is to further clarify the information required in the registers and when DNSPs need to update the registers.

We are amending clause 4.2.4 to require more detailed reporting of staff sharing arrangements between the DNSPs and their RESPs. This includes new clause 4.2.4(a)iii to identify seconded staff positions on the register that have had access to electricity information in the last 12 months.

For example:

- A staff member in position A had access to electricity information in the last 12 months before moving to position B where they ceased to have access to electricity information. In this example, position B would need to be included on a DNSP's staff register for 12 months.
- The same staff member then moves to position C. Position C would now need to be included on the DNSP's staff register for 12 months.

We will update our Ring-fencing Compliance Best Practice Manual (Best Practice Manual) to provide further guidance on the format and level of detail we expect DNSPs to provide in their registers.

The guideline currently requires a DNSP to establish and maintain registers on its website.¹¹⁵ As timely reporting is imperative to stakeholders receiving current information, we have further amended clause 4.2.4(b) to require that DNSP staff registers be updated quarterly. This includes requiring this information to be current to the end of the previous calendar month. For example, where a DNSP is required to update its staff register on 15 January 2022, the information published in this updated version must be current as at 31 December 2021.

¹¹⁴ AER, *Electricity Distribution Ring-fencing Annual Report 2018-19*, April 2020, p 5.

¹¹⁵ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.2.4.

4.2 Timing of annual compliance reports

The timing of annual compliance report submissions for non-Victorian DNSPs is currently the same as other end of year reporting requirements imposed on those DNSPs, such as RIN audits. The ENA, on behalf of these DNSPs, has generally stated that this creates resourcing difficulties as the workloads of compliance staff are concentrated to one period of the year.¹¹⁶ Currently, DNSPs must submit their annual compliance reports to us within 4 months of the end of the regulatory year to which the compliance report relates. For non-Victorian DNSPs, this date is currently 31 October.¹¹⁷

4.2.1 Final position

Our final position is to retain our draft position by amending clause 6.2.2 of the guideline so that annual compliance reports are due within 4 months of the end of the calendar year to which the compliance report relates. This means that all DNSPs must submit compliance reports on 30 April each year. We consider this change to the current guideline will reduce the burden created by other reporting requirements under the NER being due at the same time.

We have included a transitional arrangement in clause 7.2 of the guideline, extending the first annual compliance period under version 3 by 6 months where required. This means non-Victorian DNSPs will submit their first compliance reports under version 3 of the guideline for an 18-month period.¹¹⁸

In addition, DNSPs will be able to rely on information obtained from their most recent financial year audit, to adhere to clause 3.2 (cost allocation). Clause 6.2 and clause 3.2 are intended to work together to prevent the risk of cross subsidy. The effect of this amendment is that a DNSP's annual reporting obligations in relation to clause 6.2 of the guideline will cover a financial year period rather than a calendar year period in the rest of the report (for example, a DNSP reporting on its 2020–21 financial year data in its 2021 calendar year annual compliance report).

We consider these changes will reduce inefficiencies that would arise from requiring a DNSP to:

- submit its first annual compliance report under version 3 of the guideline for a 6-month period; and

¹¹⁶ ENA, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 16.

¹¹⁷ Note that Victorian DNSPs are shifting to regulatory controls periods based on a financial year, commencing from 1 July 2021. Therefore, Victorian DNSPs would also be required to submit their annual compliance reports on 31 October each year under the current guideline.

¹¹⁸ Non-Victorian DNSPs will submit their first annual compliance report under version 3 of the guideline on 30 April 2022 relating to the second half of 2020 and the 2021 calendar year (an 18-month period). Victorian DNSPs have already submitted annual compliance reports for the 2020 calendar year. Therefore, Victorian DNSPs will submit their first annual compliance report under version 3 of the guideline on 30 April 2022 relating to the 2021 calendar year (rather than an 18-month period).

- complete a financial audit for the ring-fencing annual compliance report in addition to the general audits conducted at the end of the financial year (that would result in an audit every 6 months).

4.2.2 What stakeholders said to us

Stakeholder submissions to our issues paper and draft guideline indicated broad support for proposed amendments on this matter.¹¹⁹ Energy Queensland and the ENA indicated their support but sought confirmation that the next annual compliance reports for all DNSPs would be due in April 2022. We confirm that annual reports normally expected on 31 October 2021, are deferred to 30 April 2022.

4.2.2.1 Transparency

To address transparency issues with the current staff sharing requirements under the guideline we considered a number of options. In 2019, we considered narrowing the guideline definition of ‘electricity information’ to ‘sensitive electricity information’. Ausgrid suggested this as a way of defining, more prescriptively, the staff that can and cannot be shared.¹²⁰ However, we consider that this approach raises similar issues to those associated with implementing the current requirement, as it would be difficult to prescriptively define the term ‘sensitive electricity information’.

As an alternative, the ENA, on behalf of DNSPs, suggested using registers to provide greater transparency.¹²¹ We agree with the ENA’s suggestion on this point and proposed this approach in our issues paper and draft guideline, which received broad stakeholder support.

The revised register must identify which staff positions, in the last 3 months, have been occupied by someone who, had access to electricity information within the 12 months prior to commencing the position. Thus:

- it applies to such a person regardless of whether they ceased to have access and regardless of the reason they ceased to have access;

¹¹⁹ The following stakeholders indicated overall support in their submissions to our draft guideline: Energy Queensland, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 10 ; ENA *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, pp 20-21; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8; Essential Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 8. The following stakeholders indicated overall support in their submissions to our issues paper AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p 8; Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, pp 8-9; AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 9; CitiPower, Powercor, United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020 pp 9-10; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p 10; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 15; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 10-11; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 6-8.

¹²⁰ Ausgrid, *Electricity Distribution Ring-fencing Guideline review submission*, 23 September 2019, p 5.

¹²¹ The ENA made this suggestion in discussions with the AER prior to the release of our issues paper in November 2020.

- it applies where a person who held the position (and who otherwise met the requirements of the clause) ceased to work for the DNSP at some point within the previous quarterly update; and
- it does not apply to someone who has never had access to electricity information.

The intent of the clause is to provide transparency about short term secondment arrangements. These affect positions that are exempt from the staff sharing arrangements and involve staff who previously had access to electricity information.

CitiPower, Powercor and United Energy further noted that registers ‘should not capture staff who have ceased to have access to electricity information for other reasons, or who have not been in a staff position for which the distributor makes its ring-fenced electricity information available’.¹²² This clause will not require the inclusion of additional staff positions other the ones already required to be included under the Version 2 of the guideline.

SA Power Networks submitted that we should provide more detail on the information that should be included in the registers such as a register template. We will update our Best Practice Manual to provide clearer guidance on what we expect DNSPs to include in its register.

NECA submitted that the increased reporting requirements do not go far enough to address the issue.¹²³ We note that this reporting must be accompanied by an independent assessment of the DNSPs compliance with the guideline.¹²⁴ We consider this provides us with appropriate oversight to ensure a DNSP is not discriminating in favour of its RESP in relation to shared staff.

4.2.2.2 Timing of reporting

CitiPower, Powercor, United Energy and SA Power Networks queried whether quarterly reporting was an appropriate time period for updating the register.¹²⁵ They submitted that we should require half-yearly reporting instead.¹²⁶

From our experience of administering the guideline we have found that most reporting already occurs on a yearly or half yearly basis. The objective of the increased quarterly reporting is to provide timely and detailed information to stakeholders to alleviate previous concerns in relation to a DNSP’s staff sharing arrangements.

¹²² CitiPower, Powercor, United Energy, *Electricity Distribution Ring-fencing Draft Guideline submission*, 9 July 2021, p 21.

¹²³ NECA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 3.

¹²⁴ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 6.2.1(c).

¹²⁵ CitiPower, Powercor, United Energy - *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 21; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8.

¹²⁶ CitiPower, Powercor, United Energy - *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 21; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8.

Quarterly reporting provides an appropriate balance between increased transparency for stakeholders and the administrative burden on DNSPs.

4.3 Information access and disclosure

The current guideline requires a DNSP to keep ‘confidential information’ confidential, except in limited circumstances.¹²⁷ The current guideline defines ‘confidential information’ as ‘electricity information’ acquired or generated by a DNSP.¹²⁸ A DNSP creates, and has access to, a significant database of information about its network, some of which has commercial value to businesses operating in contestable electricity markets (e.g., load aggregation). A DNSP is able to share ‘confidential’ information with its RESP as long as it provides access to that ‘confidential’ information to other legal entities on an equitable basis.¹²⁹ This aims to prevent a DNSP from conferring a competitive advantage on its RESP.

However, there is confusion about the intent of the current guideline relating to information access and disclosure. This is highlighted by the enquiries we receive from accredited service providers (ASPs) or third-party providers concerned about DNSPs withholding information on the basis of it being ‘confidential information’ under the guideline.¹³⁰ We also consider uncertainty is perpetuated, in part, by the general under-use of the information register process to share information.¹³¹

4.3.1 Final position

Our final position (same as our draft position) is to amend clause 4.3 to replace the term ‘confidential information’ with the term ‘ring-fenced information’. The definition of the term remains unchanged, however has moved from clause 4.3 to the definitions section. Renaming ‘confidential information’ to ‘ring-fenced information’ removes the association of the term ‘confidential’ with its use in other contexts. The operation of information access and disclosure provisions of the guideline will remain substantively the same.

For clarity, as stated in 4.2 above, there are already a number of instances in which a DNSP may share ‘ring-fenced information’ under the guideline.¹³² In this instance, on condition that access to the information is provided to all legal entities equitably, the information may be shared.

To give further effect to this clarification, we are also inserting a new clause, 4.3.2 (i), to expressly allow a DNSP to share ring-fenced information with a legal entity (such as a third-party competitor to a RESP) where it has requested disclosure of the information. The wording of the current guideline appears to allow a DNSP to share

¹²⁷ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.3.2, 4.3.3.

¹²⁸ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.3.1.

¹²⁹ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.3.4.

¹³⁰ The majority of these enquiries have been received from accredited service providers (ASPs) under the New South Wales ASP Scheme, which requires a person providing contestable network services in New South Wales, be accredited.

¹³¹ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.3.4, 4.3.5.

¹³² AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.3.4.

ring-fenced information with its RESP as long as it is then disclosed on the register. However, the current guideline does not refer to the situation where another legal entity requests ring-fenced information.

4.3.2 What stakeholders said to us

DNSPs indicated there has been confusion between the term ‘confidential information’ and the concept of personal information (such as information about individual employees). The information to which the guideline applies does not include personal information. Additionally, legislative protections that are applicable to personal information are unlikely to apply to the vast majority of ‘confidential information’ as currently defined in the guideline.¹³³

Stakeholders supported our preliminary view in our issues paper and draft guideline to amend the term ‘confidential information’ in the guideline.¹³⁴

Although supportive of strengthening the guideline, EnergyAustralia noted that the restrictions on information sharing between DNSPs and their RESP should be proactively reviewed. This would establish how RESPs procured the client and whether all ring-fencing obligations were adhered to.¹³⁵ Compliance with the information sharing provisions of the guideline are imperative to the successful operation of functional separation. As such the relationship between the DNSP and their RESP is reviewed annually as part of the annual compliance reporting process.

CitiPower, Powercor and United Energy queried whether changing the term ‘confidential information’ to ‘ring-fenced information’ would apply to staff and office sharing provisions of the guideline. The ‘confidential information’ provisions now ‘ring-fenced information’ provisions will not change the operation of the staff and

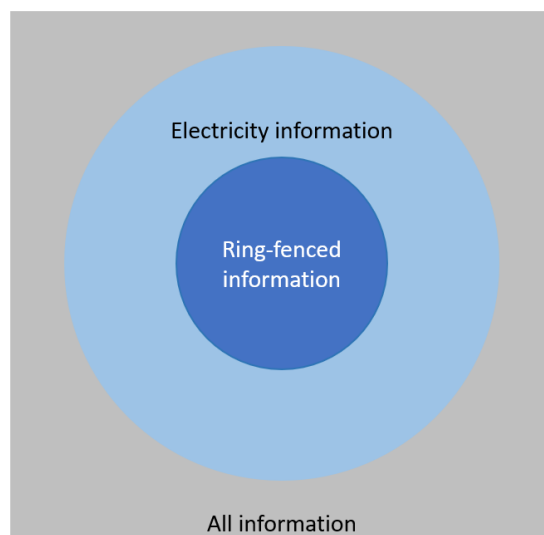
¹³³ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.3.1.

¹³⁴ The following stakeholders indicated overall support in their submissions to our draft guideline: AGL, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 7; Ausgrid, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 7; AusNet Services, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 3. CitiPower, Powercor, United Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 21; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1; Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4; ENA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 20; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8; Origin Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8. The following stakeholders indicated overall support in their submissions to our issues paper: Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p 10-11; ENA, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 15; Energy Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 16; CitiPower, Powercor, United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 9-10; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p 6; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p 10; AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, pp 8-9; Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 11; AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p 8.

¹³⁵ Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission* 8 July 2021, p 4.

office sharing provisions of the guideline. This is because the definition of ‘ring-fenced information’ is only used in the ring-fenced information clauses, and not in the staff and office sharing provisions of the guideline. The staff and office sharing provisions use the term ‘electricity information’ which has a wider scope than the information sharing provisions. See diagram below.

Figure 4: Electricity information vs ring-fenced information



4.4 Materiality of breaches

The current guideline requires that a DNSP notify us within 5 business days of becoming aware of a ‘material’ breach of its obligations under the guideline.¹³⁶ However, there are differing views among DNSPs, other stakeholders and us on the meaning of ‘materiality’ under the guideline. Our interpretation of ‘material’ in the context of a guideline breach is that it means ‘something that is more than trivial’.¹³⁷ However, we have observed a number of non-trivial breaches that have not been reported within the required 5 business days and have only been reported as part of a DNSP’s annual compliance report. Some examples include:

- Staff of a DNSP’s RESP having IT access to ‘confidential information’ – potentially conferring a competitive advantage on the DNSP’s affiliate; and
- Staff of a DNSP’s affiliate sending an email from an account that belongs to the DNSP (including the branding of the DNSP) – amounting to cross-promotion.

Where there is a delay beyond the 5-business day requirement in reporting a material breach, it reduces the available opportunities for taking action in relation to the breach, and therefore potentially allows the harms arising from the breach to continue.

¹³⁶ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 6.3.

¹³⁷ AER, *Electricity Distribution Ring-fencing Guideline - Compliance reporting best practice manual (Version 2)*, July 2019, p 7.

4.4.1 Final position

Our final position retains our draft position to amend clause 6.3 of the guideline so that all breaches must be reported to us within 15 business days, irrespective of materiality. We consider this approach will eliminate issues with interpreting materiality. Some administrative clauses are an exception to this requirement. Specifically, a DNSP will only be required to report breaches of the following administrative clauses as part of its annual compliance report:

- Clause 6.2.2 – submitting annual compliance reports within the required timeframe; and
- Clause 6.3 – failure to report a breach of the guideline within the required timeframe.¹³⁸

We note that our draft guideline contained a typographical error where the word ‘material’ inadvertently remained in clause 6.3. The intention was to remove all references to the word ‘material’. This error has been rectified in the final guideline.

4.4.2 What stakeholders said to us

Our issues paper sought stakeholder views on requiring DNSPs to report all breaches, (except for the administrative clauses listed above) to us within 10 business days. While some stakeholders agreed with the overall approach, issues were raised with reporting all breaches in 10 business days.¹³⁹

As a result, in our draft guideline we increased the reporting period to 15 businesses days as proposed by the ENA.¹⁴⁰ Origin Energy, Enel X and Flow Power were supportive of our draft position.¹⁴¹

NECA and ASP Assist Group although supportive argued that making all breaches reportable does not provide enough protection to ensure the AER is aware of all breaches.¹⁴² Energy Australia was supportive of the change but noted that it was not supportive of the self-reporting mechanism of breach reporting in the guideline.¹⁴³ In our time administering the guideline, self-reporting breaches have largely been an effective means of detecting non-compliance. This along with the annual independent assessment acts as a check and balance against self-reporting.

¹³⁸ Note clause 6.3 of the current guideline also refers to the term ‘material’. We are proposing to remove this reference.

¹³⁹ ENA, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 March 2021, p 15; CitiPower Powercor United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 9-10; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 17-18; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 10-11; SA Power Networks *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 6-8; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p 10.

¹⁴⁰ ENA, *Electricity Distribution Ring-fencing Guideline review submission*, 18 December 2020, pp 15-16.

¹⁴¹ Origin Energy, - *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4; Enel X, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 5; Flow Power, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2.

¹⁴² NECA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 3; ASP Assist Group - *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 1.

¹⁴³ Energy Australia, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 4.

Occasionally, we also receive enquires from stakeholders if they are unsure of whether proper practices are being followed by the DNSP. The AER will in this circumstance investigate the matter.

TasNetworks, AusNet Services, Energy Queensland, ENA, CitiPower, Powercor and United Energy, SA Power Networks and Essential Energy were not supportive of non-material breaches being reported in 15 days noting that it would add extra reporting burden on the DNSPs. They suggested that a change to the definition of materiality would be more suitable.¹⁴⁴

Overall, we consider that determining the materiality of a breach is a difficult and subjective process. In our view, attempting to provide further clarity on the definition of 'material' or amending the definition of 'material' will not stop potentially significant breaches being reported to us in an untimely manner. Furthermore, the requirement to report all breaches must be balanced with the extra reporting burden. Therefore, the increase in reporting timeframe from 5 to 15 days to allow all breaches we believe is appropriate. Where we receive breaches earlier, we are able to conduct an earlier assessment and take quicker action, where appropriate, to prevent harm to the market or consumers.

4.5 Branding

Currently, a DNSP must use branding that is independent and separate from the branding used by its RESP. The branding must be sufficiently different that a reasonable person would not infer from the respective branding that the DNSP and its RESP are related.¹⁴⁵ The principal objective of the obligation is to avoid confusing consumers in regard to services offered by a DNSP that are regulated by us, and those offered by its RESP. Use of the DNSP brand could give a RESP of the DNSP an advantage over competitors of the RESP that is unfair and against consumers' interests.

4.5.1 Final position

Our final position (which is the same as our draft position) maintains the approach under the current guideline without any change to clause 4.2.3. We consider revising or relaxing the branding obligations in the guideline increases the risk of potential harms, particularly where an affiliate leverages off the reputation of the DNSP. We consider the potential harms outweigh the administrative burden on DNSPs.

4.5.2 What stakeholders said to us

¹⁴⁴ TasNetworks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 2; AusNet Services, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, pp 2-3; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 10; ENA, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 8 July 2021, p 20; CitiPower, Powercor, United Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 22; SA Power Networks *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8; Essential Energy, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 12 July 2021, p 8.

¹⁴⁵ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 4.2.3(a).

During consultation in 2019, some stakeholders suggested the branding and cross promotion obligations in the current guideline are disproportionate to the harms they seek to prevent.¹⁴⁶ Therefore, in our issues paper, we sought stakeholder feedback on whether the guideline's branding obligations are proportionate to the harms they aim to mitigate.¹⁴⁷

In response to our draft guideline, SA Power Networks submitted that it did not support the lack of changes to the branding provision of the guideline to reduce the burden on DNSPs and clarify the intent of branding.¹⁴⁸

While there are some circumstances where a potential branding breach may be minor, we consider relaxing the current requirement will increase the risk of potential harm. We consider it would be difficult to create an exception for minor branding breaches and that this would not substantially decrease administrative costs or burden for DNSPs. Therefore, our final position is to retain the current approach under the guideline.

4.6 Waivers and class waivers

Currently a DNSP may apply for a waiver under specified provisions of the guideline. The waiver process must be triggered by an application by the DNSP.

In the future it may be useful for a class waiver mechanism to be available in the ring-fencing guideline. This would apply to situations where the waiver was for the same purpose. For example, to increase the regulated SAPS generation revenue cap for all DNSPs in one category.

4.6.1 Final position

Our final position is to insert a new clause, 5.3A, (consulted on post draft guideline) to give the AER the option to begin the process for a class waver. A class waiver would still follow the usual waiver consultation process. However, it may be a simpler, more efficient solution in some circumstances, as it will allow the AER to address issues across multiple DNSPs in one waiver process.

The current guideline restricted DNSPs to apply for waivers on behalf of themselves and one or more other DNSPs who are affiliated entities. To allow for a more efficient waiver process we have amended the guideline to allow multiple DNSPs to apply for waivers together.

¹⁴⁶ This was discussed at a private roundtable between the AER and stakeholders in September and December 2019.

¹⁴⁷ The following stakeholders indicated in their submissions that the branding obligations under the current guideline may be too restrictive or burdensome on DNSPs: AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, pp 8-9; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p 10; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p 10; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp 6-8.

¹⁴⁸ SA Power Networks, *Electricity Distribution Ring-fencing Guideline Draft Position submission*, 9 July 2021, p 8.

4.6.2 What stakeholders said to us

We consulted on amending the guideline to insert this clause in an additional consultation note in September 2021. We received 7 submissions which were either supportive or neutral and one submission that objected on this additional clause.

Red and Lumo Energy stated that the treatment of waiver applications under the guideline en masse may increase the risk of regulatory error as each DNSP operates in specific competitive markets.¹⁴⁹

We do not propose to begin granting class waivers en masse. We would only use the option of a class waiver where it reduces the administrative complexity of running multiple waiver applications at the same time. However, if the competition issues being considered in a potential class waiver application are unique to each DNSP, then a class waiver would not be considered an option.

ENA, Evoenergy, AusNet Services and Western Sydney Regional Organisation of Councils supported the addition of the clause.¹⁵⁰ ENA agreed that the additional flexibility built into the guideline will be useful in the future.¹⁵¹

In addition, the ENA asked for consideration of a further change so DNSPs can submit joint waivers.¹⁵² We agree with ENA that allowing multiple DNSPs to submit waivers relating to similar issues together will be more time efficient and less administratively burdensome. We have therefore amended the guideline to allow this.

4.6.3 Errors in the consultation note

The consultation note released on 27 August 2021 contained two errors:

- 1) The note incorrectly implied that multiple DNSPs could apply for waivers together. The current version of the guideline only allows for a DNSP to apply for a waiver on behalf of itself and one or more other DNSPs who are affiliated entities of the DNSP. The ENA submitted that this would however be a useful change resulting in a more efficient waiver process. We have therefore made an additional change to the guideline to allow multiple waivers together.
- 2) The consultation note also incorrectly refers to clause 4.3 as a clause class waivers could be granted for. This was an error and should be clause 4.2. Our intention is that the clauses a DNSP can apply for a waiver for, and the clauses the AER may initiate a class waiver for, will be the same.

¹⁴⁹ Red and Lumo Energy, *Electricity Distribution Ring-fencing Consultation Note submission*, 16 September 2021, p 2.

¹⁵⁰ ENA, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; Evoenergy, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; AusNet Services, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; Western Sydney Regional Organisation of Councils, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1.

¹⁵¹ ENA, *Electricity Distribution Ring-fencing Consultation Note submission*, 14 September 2021, p 1.

¹⁵² ENA, *Electricity Distribution Ring-fencing Consultation Note submission*, 14 September 2021, p 1.

4.7 Other guideline amendments

This section explains and lists amendments to the guideline that are more administrative and largely for clarification purposes.

4.7.1 Cost allocation

We are amending clause 3.2.2(a) of the guideline to make it clear that where a DNSP is required to allocate or attribute costs to distribution services, this includes costs allocated or attributed to the DNSP by a parent entity.

In workshops held between in August 2019, we sought stakeholder views on the cost allocation obligations in the current guideline.¹⁵³ Stakeholders noted some confusion surrounding the intent of clause 3.2.2 of the guideline.¹⁵⁴ In particular, through the annual ring-fencing compliance process we have observed confusion where a DNSP has used or relied on inputs from its parent entity. We consider this amendment clarifies that the cost allocation obligations extend to this circumstance.

4.7.2 Information sharing registers

To clarify the information sharing register provision, clause 4.3.4, we have inserted the words ‘or RESP’ to clarify that information a DNSP shares with a RESP must be identified on the information sharing register. I.e., it is not only information requested by another third-party legal entity that must be identified but information requested by the RESP must be identified as well.

Submissions from CEC and Enel X to our draft guideline stated that the information sharing provisions in clause 4.3 are unclear. They noted that a third party must first request the information being shared between a distributed network service provider (DNSP) and their related electricity service provider (RESP) before it is disclosed on the information sharing register. This means that the third party needs to be aware of information the DNSP is sharing with their RESP before they can request it.

The intention of the guideline provision was to provide transparency into the information DNSPs are sharing with their RESPs. This means that third parties also have access to the information DNSPs are sharing with a RESP. Additional consultation, after the release of our draft guideline, on this new amendment received 7 submissions. The submissions were largely supportive of the change.¹⁵⁵

AusNet Services, although supportive of our changes suggested the AER to re-consider the wording of the proposed amendments to clarify that a reference to a

¹⁵³ AER, [Distribution Ring-fencing Guideline Update – Stakeholder workshop slides](#), 28-29 August 2019.

¹⁵⁴ AER, [Distribution Ring-fencing Guideline Update – Workshop meeting notes](#), 28-29 August 2019.

¹⁵⁵ ENA, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; Evoenergy, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; AGL, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; Western Sydney Regional Organisation of Councils, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; Enel X *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1; AusNet Services, *Electricity Distribution Ring-fencing Consultation Note Submission*, 14 September 2021, p 1.

legal entity includes a RESP. They noted that using the conjunction ‘or’ suggests a RESP is distinguishable from a legal entity. This could result in confusion in other clauses of the guideline which only reference a legal entity as it raises the possibility that a RESP is not captured by unless it is specifically identified.

To be consistent with other sections of the guideline that use the same phrasing we have continued with the conjunction ‘or’. The clause now reads as ‘RESP or legal entities’.

Although this interpretation was the initial intent of the guideline and DNSPs largely comply with the guideline in this way, we believe this clarification is useful to remove any grey areas.

4.7.3 Compliance reporting

We have inserted a new clause, 6.2.1(d), to clarify that a DNSP’s annual compliance report must be accompanied by an assessment of compliance with each provision of the guideline (except for clauses 6.2.2 and 6.3).

In practice, as part of the current annual compliance reporting process, we have received independent assessments of compliance which assess a DNSP’s compliance with each clause of the guideline. However, we consider that this amendment will make this expectation clearer for all independent assessors engaged by DNSPs in the future. We also consider an assessment of each provision of the guideline (except for administrative clauses) provides a high level of transparency to the ring-fencing framework.

4.7.4 Transitional arrangements

We have amended the guideline to require a DNSP to comply with version 3 of the guideline as soon as reasonably practicable, or (at the latest) by the compliance date specified in that version. In general, a DNSP will also still be required to comply with the current version of the guideline up until that date. The guideline will provide exceptions to this in circumstances where non-compliance with the current guideline is not possible while moving to compliance with the amended guideline, or where an obligation under version 2 of the guideline no longer exists under version 3. We consider this amendment is necessary to ensure DNSPs are:

- Provided a sufficient amount of time to make any necessary changes to ensure its compliance with version 3 of the guideline; and
- Not found to be in breach of an obligation under the current guideline where the obligation conflicts with version 3 of the guideline.

Other transitional arrangements under the current guideline have been removed.¹⁵⁶ These provisions were inserted in 2016 when the guideline was first made. We consider that these provisions are no longer relevant.

¹⁵⁶ AER, *Ring-fencing Guideline Electricity Distribution (Version 2)*, October 2017, cl. 7.

Appendix A – List of guideline amendments, deletions or additions

Guideline section	Amend/Delete/Add	Clause
1.1 Application of this Guideline	Amend	cl. 1.1.1 (final bullet point)
1.4 Definitions	Add	Category 1 DNSP Category 2 DNSP Category 3 DNSP energy storage device generation revenue cap parent entity ring-fenced information version 3 compliance date class waivers
3. Prevention of cross-subsidies	Amend	3.1(d)(i) 3.1(d)(v)
	Add	3.1(d)(vii) 3.1(d)(viii)(a)-(b)
3.2 Establish and maintain accounts	Amend	3.2.2(a)
4.1 Obligation to not discriminate	Amend	4.1(c)(iv)
	Add	4.1(d)
4.2 Offices, staff, branding and promotion	Amend	4.2.1(b)(ii) 4.2.2(b)(ii) 4.2.3(b)(iv) 4.2.4(a)(i)-(iii) 4.2.4(b)
4.3	Delete	4.3.1 Meaning of confidential information
4.3.1 Meaning of confidential information	Amend	Heading of 4.3.1 protection of ring-fenced information 4.3.1(a)-(b)
4.3.2 Disclosure of information	Amend	4.3.2 4.3.2(a) 4.3.2(e)

Guideline section	Amend/Delete/Add	Clause
		4.3.2(h)
	Add	4.3.2(i)
4.3.3 Sharing of information	Amend	4.3.3(a)-(d)
4.3.4 Information register	Amend	4.3.4(a)(ii) 4.3.4(b)-(c)
4.4.1 Conduct of service providers	Amend	4.4.1(a)(i)
5.2 DNSPs application for a waiver	Delete	5.2
5.3.4 Form of waiver	Amend	5.3.4(b)-(d)
5.3 A Class waivers	Add	5.3 A.1-2
6.2.1 Annual compliance report	Amend	6.2.1(a)-(c)
	Add	6.2.1 (d)
6.2.2 Timing of annual compliance	Amend	6.2.2(a)
	Delete	6.2.2(b)
6.2.3 Regulated Stand-alone power system reporting	Add	6.2.3 (a)-(b)
6.3 Compliance breaches	Amend	6.3
7 Transitional arrangements	Amend	7.1
		7.2

Appendix B – Summary of stakeholder submissions

B.1 Regulated SAPS

Topic	Feedback
<i>Use of broad exemption – supportive</i>	<ul style="list-style-type: none"> • TasNetworks, Ausgrid, Shell Energy, Origin Energy, Energy Queensland, AGL, CEC, ENA, AusNet Services, Endeavour Energy, Essential, ECA, Reposit Power, PIAC, SA Power Networks – Supportive of the exemption framework in the draft • Essential Energy – AER should consider removing street lighting from the revenue cap as these assets consume minute electricity and are insignificant to the competitive market • Firm Power – Supportive but only as a last resort. Prefer if DNSPs undertake market testing to determine if third parties are able to provide SAPS generation and maintenance services. • Origin Energy– Supportive in the short term. <ul style="list-style-type: none"> ○ Where it can be demonstrated that third-party provision is unavailable, alternative arrangements may be necessary to facilitate timely provision of services to consumers. ○ A well-designed exemption process will provide benefits to both DNSPs and consumers by providing certainty and clarity to DNSPs and expediting potential service provision to consumers. ○ Agree with the AER that it is important that potential competitive provision is accommodated where possible within the process.
<i>Use of broad exemption – against</i>	<ul style="list-style-type: none"> • Red energy, AEC, NECA, Off-grid – Opposed to exemption framework • Red energy, AEC – AER should be promoting efficient deployment of SAPS in the early stages of market development. The AER should review the whole exemption framework to consider if it remains appropriate to consolidate the advantage to DNSPs. • Off-grid – The SAPS market is far more mature than the draft implies – it's one of the oldest and best understood segments of the Australian renewable energy market. The current 'waiver' arrangements are an important safeguard and should be maintained. <ul style="list-style-type: none"> ○ There are more than 6000 accredited providers. ○ The draft exaggerates SAPS market inadequacies to justify DNSP participation in generation services.

Topic	Feedback
Data used for exemption threshold	<ul style="list-style-type: none"> ○ The arguments for the proposed changes made are speculative and unsupported. Arguments to justify changes, such as “A third party provider is not available or willing to offer services”, “The SAPS may be too small to make outsourcing the generation services economical, or “A third party may not be able to offer the ongoing operating and maintenance required to meet NER technical and performance standards” extrapolate unusually rare circumstances to appear widespread. Off-grid submits that these are not common enough to change the ring-fencing guidelines. ○ DNSPs have been and can continue to engage effectively with third party SAPS providers without the need for a softening of the ring-fencing safeguards • AEC – <ul style="list-style-type: none"> ○ Third party providers are signalling that they do not find the SAPS economical: they cannot get a sufficient return. Why would this be the case? This question has not been tested at all. Competitive markets are dynamic and ready and waiting to serve opportunities. Why could not the market provide the solution? ○ If only the DNSP or its affiliate can find the necessary returns in all or the majority of cases, does not that provide a prima facie case that there is something about ring fencing arrangements that is facilitating a discriminatory outcome? ○ Drawing from the AEMC’s analysis and final decision on SAPS, the AER’s justification for exemptions seems based on hypothesis and not market experience. The point made by SA Power Networks, that a <i>third party may not be able to offer the ongoing operating and maintenance required to meet NER technical and performance standards</i> again represents a fear rather than fact. • Ausgrid, Endeavour Energy, Energy Queensland, ENA, TasNetworks – Figures provided in ENA submission was largely based on rough estimates at a point in time. <ul style="list-style-type: none"> ○ This approach results in a threshold that is too low. ○ Difficult to provide accurate estimates ○ There has been sufficient evidence provided that the market has not yet developed, and as such, the cap should be higher for the conservatively low thresholds provided for category 3 • Endeavour Energy – The uncertainty of the figures means that there should be an error estimate added to the threshold <ul style="list-style-type: none"> – SAPS strategy and plan will not likely be developed prior to New South Wales opting into the framework ○ The spread of Endeavour Energy’s consumers in rural, remote and high bushfire risk locations is more closely aligned to AusNet Services than it is to Jemena, CitiPower or United Energy

Topic	Feedback
<i>Exemption threshold categories and caps</i>	<ul style="list-style-type: none"> ○ Interest in SAPS is limited to its potential to reduce bushfire risk • PIAC – DNSPs should be given the opportunity to provide up-to-date estimates of expected SAPS, which DNSPs are comfortable informing their revenue caps, and these estimates should be adjusted over time. • Red Energy – <ul style="list-style-type: none"> ○ Concerns that the evidenced relied upon by the AER was submitted by the DNSPs. ○ Unable to comment on the evidence of the forecast of SAPS required by DNSPs as the information was not publicly available; unable to refute any claims that might have detriments to competition. • Energy Australia – <ul style="list-style-type: none"> ○ The allowable percentage of the revenue cap is based on information provided to the AER by DNSPs on their forecast SAPS deployment. ○ Concern that a broad exemption could see DNSPs providing generation services for SAPS that may have been provided by a third party, had the opportunity been provided. Energy Australia does not support a broad exemption on the percentage of the cap. ○ Do not dispute a current lack of competition, however, do not support a proposal that will innately create additional challenges for competition to overcome. Therefore, not unreasonable for a waiver process to be included. • Off-grid – Detailed examination of the established SAPS market seems to be missing in this discussion and draft. More engagement on what percentage of the identified 4000 SAPS sites can be serviced by third parties. • Shell Energy – Caps calculated by the AER are too high. Should use the lower range number provided by the ENA (e.g.: 1000-2000, use 1000) in order to mitigate the risk of damaging the market for SAPS generation services
	<ul style="list-style-type: none"> • ECA, CEC, PIAC – Not opposed to increase of cap based on revised DNSP forecasts • ENA – Propose using RIN data to determine the proportion of rural population serviced and then use a rural/urban exemption <ul style="list-style-type: none"> ○ Use of RIN to determine categories of DNSPs. ENA prefers the use of rural and urban caps. See table below.

Topic

Feedback

Category	DNSP	Basis of Categorisation	Category	DNSP	Proposed ENA SAPS gen. revenue cap (%)	Number of indicative 20kW SAPS under cap ⁷
Category 1	Ergon Energy	80-100% rural proportion	Category 1	Ergon Energy	0.20% of annual revenue requirement (ARR)	1,492.4
	AusNet Services			AusNet Services		776.6
	Power and Water Corporation			Power and Water Corporation		211.0
	Powercor			Powercor		735.9
	Essential Energy			Essential Energy		961.2
Category 2	SA Power Networks	50-80% rural proportion	Category 2	SA Power Networks	0.07% of ARR	339.3
	TasNetworks			TasNetworks		151.3
Category 3	Evoenergy	0-50% rural proportion	Category 3	Evoenergy	0.02% of ARR	15.3
	Endeavour Energy			Endeavour Energy		97.8
	Ausgrid			Ausgrid		157.0
	Energex			Energex		172.9
	Jemena			Jemena		32.5
	United Energy			United Energy		50.6
	CitiPower			CitiPower		36.2

- ENA's proposed categorisation and thresholds provide an appropriate level of flexibility as the market for SAPS develops, recognising the need to provide investment certainty and to address the early stages of SAPS competitive market development, particularly in remote areas as recognised in the AEMC's final report.
- SA Power Networks, PIAC, Essential, Ausgrid, Energy Queensland, AusNet Services, Endeavour Energy** – support ENA's new proposal and the caps in the tables above.
- Ausgrid and Energy Queensland** – Minimum increase Category 3 to 0.02%
- PIAC, Endeavour Energy** – Minimum increase Category 3 to 0.01%
- CEC/ENA** – Support increasing the threshold for all categories
- Endeavour Energy** – If the cap is too low, a waiver is required and this is an administrative burden and will disincentivise DNSP investment in SAPS.
- Ausgrid** –

Topic	Feedback
Market testing / procurement / negative effects on competition	<ul style="list-style-type: none"> ○ The increase of the category 3 threshold balances the need for a SAPS number to set the initial generation revenue cap, but also benefit from flexibility, considering the forecasting challenge. ○ As part of the development of the SAPS trial, Ausgrid recently completed a detailed assessment of the cost effectiveness of SAPS for 3,200 individual consumer sites located on 18 rural feeders. Results of the analysis indicate that up to 175-250 SAPS installations by 2030 are viable in the Ausgrid network area – significantly more than 12. If the AER were minded to adopt the 75% threshold for distributed-led SAPs, this would be approximately 131-187 SAPs, which is broadly consistent with the ENA's proposed threshold of 0.02% (or 157 SAPs for Ausgrid).
	<ul style="list-style-type: none"> ● Red energy – <ul style="list-style-type: none"> ○ Competitive markets should, in the first instance, be engaged to supply generation services to DNSP-led SAPS. The DNSPs themselves should be required to provide evidence to the AER to substantiate market failure before being allowed direct ownership of SAPS generation. ○ If the DNSP indicates to the market that it is willing to procure these services, then a tender process should inform the market's capability to deliver. An exemption process that gives DNSPs the right to supply up to 75% of the DNSP-led SAPS over the next 5-10 years would crowd out market investment and limits the development of these services. The net outcome of this would substantially lessen competition, to the detriment of consumers. ● Energy Australia – In the SAPS generation services market, any competition is already hindered by competing against networks that are well established, enjoy minimal risk, and largely dictate how competitive entities can operate and interact. ● AEC – The affiliate could provide the service at a discounted price by using part of the benefit available to them. This has the potential to crowd out potentially more efficient service providers from the SAPS market in the short-term, which diminishes productive efficiency, and would have a chilling effect on competition and technological development in the SAPS market in the long-term, which diminishes dynamic efficiency. This outcome is not in the long term interests of consumers ● Off-grid – The draft understates the impact of permitting DNSP-led SAPS: <ul style="list-style-type: none"> ○ DNSPs have access to data for existing consumers connected to the grid which would give them an advantage when providing a SAPS. ○ Focusses only on a small sub-segment of the potential SAPS market – only those consumers that are already connected to the respective DNSP networks, and who today might benefit from a switch to SAPS based on today's economic assumption.
DNBP as role in growing the market and not	<ul style="list-style-type: none"> ● ENA, Endeavour Energy, Essential – DNSPs are not incentivised to compete for SAPS generation revenue. DNSPs operate under a revenue cap and the AEMC's rules package includes an amendment to clause 6.4.4(c)(3) of the National Electricity Rules that allows the AER to deduct revenue earned by a DNSP from the sale of energy to a SAPS from the DNSP's revenue

Topic	Feedback
<i>being able to find suppliers</i>	<p>allowance. SAPS will be rolled out when it is cost efficient to do so, and this is primarily driven by high cost to serve consumers and a DNSP's asset retirement strategy</p> <ul style="list-style-type: none"> ENA and Essential – Essential Energy recently undertook an expression of interest for SAPS services and received 26 compliant submissions. <ul style="list-style-type: none"> 19 companies provided information on capabilities to complete all installation, servicing, and fault repairs. Companies viewed small SAPS as uneconomical for Power Purchase Agreements, based on the minimal generation, revenues and variable consumption habits. SAPS leasing options contained full capital recovery mechanisms early in the life of the SAPS to reduce risk and ensure an adequate return on investment. This approach simply adds costs to the SAPS which reduces their economic viability and the potential savings that can be passed onto consumers This research shows that, at this stage in SAPS market development, requiring the private sector to complete fault and emergency, and operating and maintenance activities will introduce substantial ongoing payments to achieve the required reliability and performance standards expected under existing licence conditions, thereby reducing the viability of installing SAPS using the AEMC model. Endeavour Energy – Recently tested the market. There was interest. However, proponents demonstrated limited understanding of the DNSP-led SAPS framework and its service delivery model. <ul style="list-style-type: none"> Feedback revealed that third parties are generally looking to provide to DNSPs SAPS design, provision and installation only with limited interest in committing to ongoing obligations. This is due to the comparatively low and potentially volatile energy-based revenue earned from providing a SAPS generation service. From a commercial perspective, the forecast \$1,600 - \$1,800 p.a. in generation revenue pales in comparison to the \$200,000 - \$300,000 sale of an 'average' SAPS with no ongoing commitments or responsibilities outside of Australian Consumer Laws. Essential – The competitive market will almost always be able to deliver a SAPS installation. However, there may be instances where a third-party is not available or willing to undertake the operating & maintenance activities and unlikely to be able to deliver fault & emergency services for DNSPs to meet licence conditions or reliability obligations. In this situation the DNSP is needed.
<i>Further safeguards</i>	<ul style="list-style-type: none"> Shell Energy, CEC – The AER should include a threshold SAPS size, over which DNSPs are required to conduct market testing for third party providers prior to supplying SAPS generation. We believe an appropriate threshold would limit unnecessary administrative burden for DNSPs, while addressing stakeholder concerns that DNSPs may overlook cost-effective third party SAPS generation services. A broad exemption works for small SAPS but a more sophisticated approach could be warranted for larger systems that service entire townships.

Topic	Feedback
<i>Emergency temporary SAPS</i>	<ul style="list-style-type: none"> • PIAC, CEC, ENA, AusNet Services – Supportive of draft position not to include temporary emergency SAPS in the revenue cap. • Energy Queensland – In circumstances where a grid-connection is not deemed economic and a SAPS is a more efficient outcome for the consumer and the DNSP, the SAPS should be excluded from the revenue cap threshold. If the AER is not supportive of such an approach, then a bulk waiver application in these circumstances would be an appropriate approach after two years has lapsed.
<i>Future reviews of the SAPS section of the guideline</i>	<ul style="list-style-type: none"> • Essential, Shell Energy, Energy Queensland, Origin Energy – Supportive of the AER's position. • Shell Energy - Future review of the Guideline is likely to be appropriate, given the relative immaturity of SAPS deployment. Agree also that it is difficult to assign a specific review timeframe given that Energy Ministers have not yet approved the relevant rule change package. Recommend that the AER closely monitor DNSPs' behaviour and instigates a review as soon as the Guideline appears to no longer achieve its intent, or 2-3years after the changes come into effect. • Origin Energy – It is difficult to predict when a review of the guideline may be required, however it necessary for the AER to routinely review information to ensure the framework is operating as intended. In particular, it is necessary for the AER to monitor the demand, the location, the time taken to install, the information provided to third parties, the market testing, the development of the market and participation of third-party providers. • AEC – Do not agree with the DNSPs that such a future review should be contingent upon the SAPS market becoming 'sufficiently established'. Rather, the lack of maturity in the market could be due to biases in the economic regulatory framework. Reviewing early will help to identify if this is the case and address it before it is too late (i.e., only ring-fenced entities bid and win SAP services). 3years is an appropriate milestone. • PIAC – AER should commit to a review of the guideline.
<i>Reporting requirements</i>	<ul style="list-style-type: none"> • SA Power Networks, ENA, Essential, NECA, Origin Energy, CEC – Supportive. • Origin Energy – DNSP reporting requirements should focus on providing sufficient information to allow stakeholders to understand how the SAPS market is developing and identify opportunities for third party involvement. • Energy Queensland – Supportive of a quarterly register. However instead of the number of premises served by the SAPS, it should be based on the number of connections. In providing consumer load in terms of maximum demand and aggregated annual average energy consumption, the information may not be shared because of privacy issues. • AGL – Supportive, in addition; tenders awarded by a DNSP to its affiliate should be subject to a higher level of regulatory oversight to ensure these proposals are efficient. This could be achieved by requiring the AER review all relevant information. • Firm Power – DNSPs hold significant knowledge about the nature, size, scale and timing of opportunities that exist in their respective networks to transition consumers to SAPS. As part of their Distribution Annual Planning Reports (DAPR) DNSPs

Topic	Feedback
Further clarifications	<p>should provide transparency of these opportunities over a 5year time horizon to better enable a planned and coordinated rollout of SAPS. This will be in the long-term interests of consumers.</p> <ul style="list-style-type: none"> • Shell Energy – DNSPs providing SAPS services would be required to meet all technical and performance standards stipulated in the National Electricity Rules (e.g., the reliability standard). When the AER delivers its final explanatory statement, it should confirm this interpretation to give stakeholders additional clarity around the type of SAPS that DNSPs are able to provide. • Energy Queensland – Supports the AER’s proposal to grant a SAPS waiver for a term that is not linked to the DNSP’s current or next regulatory control period. However, the flexibility as intended should also provide certainty when referring to a waiver period to the end of “asset life”. This is because the SAPS generation services may include a combination of solar and batteries. The batteries may have a 10 year asset life, while the solar panels may have a 25 year life. In addition, given the nature of some of the locations where DNSPs are seeking to deploy SAPS, these SAPS could be an ongoing permanent arrangement. As such, a DNSP should not be required to seek another waiver where, for example, the SAPS is installed in a very remote and hard to access location and in such circumstances, the waiver should be granted indefinitely. • ENA – Provide confirmation that currently installed SAPS will not be taken into account in a DNSP’s SAPS generation revenue cap.
Other approaches to regulating DNSP-led SAPS in the guideline	<ul style="list-style-type: none"> • Energy Australia – <ul style="list-style-type: none"> ○ A DNSP to apply for a waiver in all instances in which it seeks to provide the generation services for a SAPS, and the waiver should include a requirement for the DNSP to provide a ‘Statement of Opportunities’ that can be considered by the competitive market. This will ensure that competition can develop, as this will produce evidence for the AER to determine if the competitive market had been tested. This requirement should not be needed where the SAPS generation is temporary, such as those established after natural disasters. ○ Furthermore, where a SAPS is supplying less than 3 consumers it would be inappropriate for DNSP undergo a lengthy waiver process. We suggest the AER consider how it can create a reduced waiver requirement for SAPS generation that is only servicing one or two consumers. • AEC – <ul style="list-style-type: none"> ○ It is imperative that the regulatory framework requires DNSPs to effectively test the market for cost competitive solutions before any waiver is granted. ○ Encourage the AER to monitor its own expectation that rural New South Wales and Queensland will likely be the main SAPS deployment locations. • Firm Power – <ul style="list-style-type: none"> ○ The revenue cap should reduce over time to provide a signal to third party providers when the competitive market will open which allows third parties to plan for entering the market.

Topic	Feedback
Other issues raised	<ul style="list-style-type: none"> • Off-grid – <ul style="list-style-type: none"> ○ AER use the term ‘DNSP-led SAPS’ and make reference to only the most extreme potential SAPS ‘outliers’. Yet there are no proposed protections to prevent the DNSPs from expanding SAPS services beyond the most extreme examples used to help justify these changes. ○ Without the inclusion of explicit limitations, DNSP-led SAPS will not just be limited to ‘outliers’ identified in this draft but DNSPs will participate and distort the non-NEM SAPS market. ○ When consumers ‘weigh-up’ the cost of obtaining a DNSP supplied network connection to their homes vs the cost of a SAPS solution instead, they inevitably contact their local DNSP to seek a quotation for network connection. Whilst third party SAPS providers must invest heavily in sales and marketing to engage with and inform consumers of their options, DNSPs would have no need for such investment. ○ Unlikely that many consumers will realise they have the choice to engage a third-party provider independent of the DNSP. • PIAC – Certain circumstances should be subject to an exemption and that revenue earned in these circumstances should not contribute to the revenue cap. These are: <ul style="list-style-type: none"> ○ To allow a DNSP to act as a provider of last resort for DNSP-led transition to a SAPS where there are no third-party providers for the generating systems or where they are materially more expensive than what the DNSP can offer. ○ To allow a DNSP to take over a SAPS should the current owner leave the market. This is critical to ensure SAPS consumers continue to be supported and receive essential energy supply. We recommend this exemption should apply for the remaining life of the SAPS and not just for a limited period. ○ To allow a DNSP to maintain supply to consumers during planned network outages. ○ To allow a DNSP to perform emergency repairs on a SAPS generating system including, where necessary, replacing components. While third party SAPS providers will typically be able to conduct scheduled maintenance, the local DNSP’s field staff may be the best option to provide unscheduled or emergency response for remote consumers in a timely manner. • SA Power Networks – Important that the waiver assessment criteria allows the AER to consider not only if there is a third party tendering for a SAPS service, but also: the competitiveness of that tender, relative to what a DNSP can provide; price and non-price factors (following standard procurement practice); the best service outcome for consumers.

B.2 Batteries

Divided into:

1. DNSPs incentives skewed to own the battery
2. Disagrees with prohibit and waiver policy position for supplying excess capacity
3. Support prohibiting and waiver policy position
4. Views on our basis for position (harms and benefits)
5. Against a waiver (more lax approach) – alternatives
6. Pro approach/waiver - additions to the approach
7. Legal guideline drafting comments
8. Community Scale batteries
9. Other issues

1. DNSPs incentives skewed to own the battery

Topic	Feedback
<i>Networks not incentivised to use third parties</i>	<ul style="list-style-type: none"> • Energy Australia – Important to consider the underlying reasons why third parties may not be currently providing alternatives, before extending easier access or broader exemptions to DNSPs. A level playing field is unlikely to be achievable when DNSPs mainly operate under the protection of guaranteed returns and capped liability. Providing easier and greater access to required information, and ensuring DNSPs substantiate that no third parties offered a least cost solution to the DNSP's proposal (test the market).
<i>Value for procuring services is lower than residual value that can add to the RAB</i>	<ul style="list-style-type: none"> • ANU – DNSPs report that the market for acquiring third parties to pay for network services is underdevelopment and the purchase of these solution is currently too expensive. There is clearly a need to ensure that current mechanisms for acquiring these services are practical, affordable and attractive for all parties to engage with. The services must be properly valued so the battery is installed where its need on the network. There is plenty of enthusiasm and funding to support the development of payment mechanisms for battery services. New business entities are also emerging e.g. aggregators, to work together with DNSPs to manage batteries. AER should support these efforts.

2. Disagrees with prohibit and waiver policy position for supplying excess capacity

Topic	Feedback
<i>Reasons for disagreeing</i>	<p>Damage the market</p> <ul style="list-style-type: none"> • CitiPower/Powercor/United Energy/YEF, CitiPower/Powercor/United Energy/TEC, CEC/ENA – Slow down deployment and innovation, missed opportunities for technology development and learnings about battery projects, poor consumer outcomes, slower transition to renewables, not reduce pressure of peak demand. • PIAC/Simply Energy/Ausgrid – <ul style="list-style-type: none"> ○ Discouraging efficient DNSP investment in batteries may cause detriment in the form of higher network costs to consumers, less consumer benefit from ancillary services provided by batteries, and less wholesale market benefit. ○ Premature to overly regulate specific ownership and operational models until the costs and benefits can be properly assessed. • AusNet Services – Likely to slow down the deployment of batteries on the distribution network, hinder innovation and hinder the development of competition. Disincentive to consider batteries as a viable option. As generation sources are becoming increasingly sourced from non-registered generators, and DNSPs are becoming bidirectional, we urge the AER to retain flexibility in the framework so as to not constrain early market developments. • CitiPower/Powercor/United Energy – Will be detrimental to the future development of battery technology. • Blacktown Council, Northern Beaches Council, Western Sydney Regional Organisation of Councils – It is not clear that there is sufficient evidence to support this waiver requirement particularly if it will slow down the introduction of community batteries which are sustainable and innovative services that their consumers desire. It could hinder rather than facilitate competition. • SA Power Networks – Ban particular models for delivering battery services. <p>Networks most suitable / have a role to lead batteries</p> <ul style="list-style-type: none"> • CitiPower/Powercor/United Energy/YEF – DNSPs understand the nature and severity of constraints in their network, and any natural advantage can be negated by the constraint data being accessible to all third parties. If DNSPs are prohibited from providing batteries, it will prevent the fostering of long-term competition in the market. • Ergon & Energex – The competitive market for batteries at a grid utility-scale is not yet fully realised where DNSPs have the opportunity to use a battery for network purposes and lease excess capacity. • Ecojule – Needlessly removing a potentially competitive market participant. At this point in time DNSPs are often the most suitable, efficient and most likely party to deploy community batteries in a safe and sustainable manner. • PIAC/Simply Energy/Ausgrid – DNSPs have an important role in facilitating the transition to a more distributed energy system and a lower carbon economy. • ECA – Approach does not enable emerging opportunities in a manner that works in the long-term interests of consumers.

Topic	Feedback
	<ul style="list-style-type: none"> • Essential – Efficiently orchestrated and supporting competition, overcoming cost barriers to reduce network pressure, DNSPs can best manage network issues, DNSPs can offer other market services to optimise usage, access to economies of scale, solve coordination problems. <p>Retail competition</p> <ul style="list-style-type: none"> • Simply Energy – Expand retail market competition as smaller retailers cannot invest in community-scale batteries themselves will be provided opportunities to obtain battery capacity through these leasing arrangements. • PIAC - Help maintain retail contestability in the provision of innovative energy services to consumers. <p>Asset type regulation is not the right approach</p> <ul style="list-style-type: none"> • Endeavour Energy – Asset based approach to regulation rather than a service based approach. Networks should not be precluded from sharing assets where cost allocation has been applied in accordance with the Rules. <p>Waiver is not the right mechanism</p> <ul style="list-style-type: none"> • ENA – Lengthy and costly waiver process. • Ausgrid – 14 separate matters to the satisfaction of the AER. Further, waiver assessment timeframes are set at the sole discretion of the AER. • Ecojule – Should be lightweight and designed to support many thousands of installations. In this regard we view the 14 points required as unnecessarily onerous, particularly for LV connected battery. • TasNetworks – Likely add time, cost and uncertainty for DNSPs that would like to meet consumer needs by using batteries. • Simply Energy – Delay investments in community battery projects and significantly increase the regulatory uncertainty and costs for potential third parties that would lease the excess capacity. • Essential – Impose material application costs and administrative burdens on DNSPs that will reduce the commercial feasibility of projects. Time consuming and uncertain nature of waiver applications would undermine the investment certainty that DNSPs require to internally invest in activities such as training staff, generating supply contracts with battery third parties and generally upskilling functions in this area. • CitiPower/Powercor/United Energy – United Energy waiver cost \$100,000. • PIAC/Simply Energy/Ausgrid – Additional guidance will not materially reduce the uncertainty that the waiver process adds to community scale battery projects. • ECA – The AER should outline its proposed processes to describe how the proposed waiver process will avoid slowing the exploration of diverse battery applications which could delay valuable opportunities to transparently learn from a range of battery applications and programs.

Topic	Feedback
Concerns about any broader prohibition considered by AER	<ul style="list-style-type: none"> • CitiPower/Powercor/United Energy – <ul style="list-style-type: none"> ○ The AER Board is considering further amending the draft guideline to prohibit DNSPs owning or operating batteries. Strongly object to network asset ownership prohibitions for the purpose of providing distribution services. ○ Ring-fencing does not extend to eliminating DNSPs as potential competitors to new or emerging markets, determining the technologies that DNSPs may use in the provision of distribution services or as part of its distribution network, creating technology specific ring-fencing obligations that impede the development and use of those technologies for the provision of distribution services, duplicating and extending beyond the application of other legal and regulatory instruments such as the CCA. ○ CCA is the appropriate regulatory tool, but does not contain a prohibition on the existence or internal development of natural monopoly or significant market power. Analysis of the impact of specific market structures should include an assessment of the market in which batteries are supplied before regulation is applied, defining clear boundaries for the relevant product or service market, an analysis within that market to determine if a market player possesses significant market power.

3. Support prohibiting and waiver policy position

Topic	Feedback
Reasons to support	<p>Will prevent damage to the market</p> <ul style="list-style-type: none"> • Energy Australia – Supports the proposed information requirements and accepts that the AER's consideration via a waiver process will be the easiest solution to implement and will provide flexibility as the market develops. • Flow Power – <ul style="list-style-type: none"> ○ Allowing DNSPs direct or indirect access to contestable services, particularly as a market is emerging, risks undermining its development. The prospect of DNSPs providing contestable services creates an investment risk that can deter future product development. It introduces significant uncertainty regarding efficient cost allocation. ○ Does not support a conditional exemption framework given the complexity and significance of DNSPs' building and owning batteries with significant spare capacity. Waiver process appears to be robust and allow waiver in bespoke instances. • Enel X – Competitiveness of the battery market is threatened when DNSPs are allowed to leverage their monopoly role to crowd out third party providers. DNSPs have not provided strong reasons to justify an ability to offer contestable services with batteries. • Shell Energy – Agree with views relating to batteries - most efficient outcome to provide regulated and unregulated services, robust safeguards against discrimination and cross-subsidisation, DNSP ownership not required. However, proposes changes to the Guideline. • CEC –

Topic	Feedback
Other concerns / Is not a long term position	<ul style="list-style-type: none"> ○ Will enable the AER to arrive at a more informed understanding of the issues. ○ Allowing DNSPs to use batteries to provide contestable services under an exemption framework would be a significant change and would be more appropriately considered by AEMC as part of a broader review of the ring-fencing framework. ○ The waiver process should require disclosure of contractual arrangements with third parties. This is particularly important to ensure probity where there are contractual arrangements between a DNSP and its affiliates. • AEC & AGL – Oakley Greenwood study of Network Access Code review shows market damage in WA • ANU – Support position as it encourages a market for innovative battery projects that consumers will choose to participate in. • Reposit – Permitting DNSP-owned batteries to participate in energy services is inherently cross-subsidisation and may lead to anti-competitive behaviour. There are mature platforms that leverage existing and future DER assets to provide the same services as DNSP-owned batteries at a comparable and/or lower cost. <ul style="list-style-type: none"> ○ ISP – 13-22% of total underlying annual NEM energy consumption is expected to be met by behind-the-meter assets in 2040. ○ Consider: <ul style="list-style-type: none"> ▪ Impact of decentralised aggregation models and the ability to procure network services via existing commercial arrangements. ▪ Potential stifling impacts to innovation in the market if third parties have to compete with DNSPs to provide electricity services. • Firm Power – Role of DNSP is to act as a market enabler and facilitate the deployment of batteries by procuring services. DNSPs should be encouraged to commence and publish RIT-D processes at least 5years in advance of the identified need. • AGL – DER has potential to substitute expensive network assets, deliver value to owners and broader consumers, and provide alternative ways of meeting system security requirements.
	<ul style="list-style-type: none"> • CEC – It is unlikely to be an appropriate long term policy framework because of the time and delays involved in case by case consideration. This could be undertaken as a broad AEMC review or possibly as part of the Framework and Approach (F&A) stage of the forthcoming regulatory reset processes for DNSPs. • ENA/CEC – There is time, cost and uncertainty for a waiver process that evaluates batteries on a case-by-case basis. • Shell Energy – Current position might prevent the scenario where a third party could supply the battery and have a contractual arrangement to access the battery. • Northern Beaches Council – Should facilitate trials of community batteries, including by DNSPs. But need to ensure that councils are involved in the process. DNSPs could use the battery to manage the load on the networks better.

Topic	Feedback
<i>Would like stronger position – no waiver allowed</i>	<ul style="list-style-type: none"> • Origin Energy – Any exemption or waiver process should be considered a short-term initiative until such time as the competitive market is sufficiently developed. We are unable to conceive a situation where competitive provision is unavailable or where DNSP provision is preferable and would expect waiver applications only in exceptional circumstances. DNSPs will take advantage of the waiver process particularly given the information asymmetry that exists in favour of DNSPs. • Enel X – The waiver process is not robust enough and may rely on commitments from DNSPs that have no real weight and are not easily enforced.

4. Views on our basis for position (harms / benefits)

Topic	Feedback
<i>Question the harms raised</i>	<ul style="list-style-type: none"> • Endeavour Energy – The harms represent serious allegations of misconduct that are theoretical in nature and are not supported by specific cases or evidence. • ENA – On preferential network use – it's unrealistic to suggest that DNSPs would interfere with complex and dynamic automated processes based on real-time data to discriminate the use of a battery based on ownership. • Ergon & Energex – Operating envelopes are published on the internet, therefore the market has clear visibility of how these envelopes are controlled and when access is provided. • SA Power Networks – Existing safeguards, including AER assess regulated expenditure, DAPR, ACCC competition, RIT-D, open access framework. • CitiPower/Powercor/United Energy – <ul style="list-style-type: none"> ○ No batteries connected to the distribution LV network in EU. Flexible markets in other countries are far behind Australia. ○ There are fewer than 5batteries smaller than 1MW installed at community-scale and all are partially-owned and operated by DNSPs. They are different because of land access (mostly on council land) can be difficult, distribution charges, revenue streams – all batteries below 1MW would have to be aggregated to at least 1MW to participate in FCAS, asset management – operating and maintaining small electrical assets is a major obligation in terms of meeting legislated safety and reliability requirements. ○ Consumer Advisory Panel support DNSPs having a role. ○ It is unreasonable to suggest DNSPs will instruct software manufacturers to prioritise DNSP devices. ○ Regulatory Information Notices transparently present costs by regulatory segment and are independently audited by Deloitte. Therefore it is possible to demonstrate costs associate with certain services. • PIAC/Simply Energy/Ausgrid – No compelling evidence of potential detriment to consumers from the use of DNSPs by third parties accompanied by appropriate control measures.

*No benefit that
DNSPs would
realise*

- **Ergon & Energex** – Procuring and contracting behind the meter demand response via market mechanisms - Energex was only able to contract 8 consumers from a total consumer base of 16,120 (0.05% success rate).
- **Enel X** – DNSPs have not provided strong reasons to justify an ability to own batteries or offer contestable services with batteries. There is no evidence to suggest that DNSP involvement is required to make the battery market competitive.

*DNSPs not
being able to
procure services
from the market*

- **Endeavour Energy** –
 - Frustrations with aspects of the regulatory framework, such as timeliness and investment certainty provided by the RIT-D process and the application of NUOS to batteries are being conflated with the conduct of DNSPs and should be addressed directly.
 - Distributed energy resource management system provider examples: South Penrith network deferral, box hill, Albion Park.
 - RIT-D 'just in time' approach makes it difficult for new technologies and/or long lead time solutions to be developed, such that they can be offered as technically and financially acceptable alternate solutions.
 - Strongly supported third party owned batteries.
 - Box hill – did not agree to waive NUOS as would require re-opening of the Tariff Structure Statement.
- **ENA, CitiPower/Powercor/United Energy** –
 - CP example: 4 RIT-Ds received no formal proposals from third party battery providers.
 - UE example: 6 formal submissions but low network support payments based on the record low. AER allowed cost of capital and uncertainty of future payments due to uncertainty around the ongoing requirement for the solution. If the area has larger consumers then economic solutions are likely.
- **Ergon & Energex** –
 - Repeatedly tried to engage the market via mechanisms such as incentive maps and demand side engagement strategy and register where investment falls below the RIT-D threshold. Unable to contract any batteries due to a combination of lack of interest, commercial value, the targeted nature of the distribution needs and network requirements.
 - Energex: 6 RIT-D and Ergon eleven RIT-D – only two non-network options which may be competitive.
- **CitiPower/Powercor/United Energy** – AER is keen to blame complaints on the actions of DNSPs. Challenges faced by third parties:
 - Low returns – DNSP solutions are the most cost-effective solution for consumers.
 - Timeframe for proposals – mandated by the AER.
 - Volatile nature of demand forecasts – DNSP cannot provide assurance of revenue from network services many years in advance.

Further supporting the harms raised in draft position

- High reliability standards – proven difficult for third party providers to provide an equivalent level of service to the DNSP alternative. Consideration could be given to a STPIS holiday, however this would reward the third party provider to the detriment of the consumer.
- Land availability.

Tariffs

- **CEC** – Strongly support the AER’s position that batteries owned by a DNSP must be exposed to the same network tariffs as other batteries connected to the DNSP’s network. It would be hypocritical and anti-competitive for DNSPs to advocate export charges for household DER while also advocating that community-scale batteries they own should be exempt from network tariffs.
- **Enel X** – Only applies to Victorian DNSPs. DNSPs should also not be exempt to export charge tariff.

Access agreements

- **Enel X** – DNSPs should be required to provide evidence to the AER that they will apply the same connection policy, process and charges to a battery.

Costs / overinvestments

- **Enel X** – Not overinvest in the battery capacity at the consumers’ expense.
- **Red Lumo** – DNSP would be required to rely on their existing cost allocation manual to prevent cross subsidies. This provides DNSPs considerable flexibility in the manner they could allocate and be insufficient and have consequential impacts on competition.

Inefficiencies

- **Reposit Power**–
 - Cost inefficiencies:
 - Cheaper to acquire 1MW from a consumer owned asset using a Reposit solution than DNSP.
 - DNSP-owned batteries currently cost more than existing operation and/or planned community scale batteries.
 - DNSP ownership of batteries could create sunk cost fallacies for the future development of DER.
 - Workforce capabilities exist for consumer-owned storage.
 - DNSP-owned batteries will compete directly with consumer-owned batteries to deliver electrical services.
 - Inefficient operation & use of services:
 - Reposit has been operating residential solar and battery systems as market responsive DER. Delivered 121.4MWh in network dispatches. Reposit actively participates in all 6Contingency FCAS markets, currently with a registration of 10+ MW, under no relaxed rules or trial arrangements.

- DNSP-owned batteries may need new software to aggregate other services. Likely to be significant technical work involved in the development of such software, contributing to overall inefficiencies.
- NEM already supports effective investment and operation of capital to incentivise DER penetration.

5. Against a waiver – alternatives

Topic	Feedback
Size threshold with reporting	<p>1MW</p> <ul style="list-style-type: none"> • Ausgrid, ENA, AusNet Services, TasNetworks, SA Power Networks – Up to 1MW – effectively limiting the exemption to community-scale batteries that are unlikely to result in a size that would crowd-out competition for market services. <ul style="list-style-type: none"> ○ AER can vary or revoke with 90 business days' notice. ○ DNSP must publish information similar in scope to the AER's draft waiver assessment guidance as appropriate – provided an attachment with 12 points that should be included (procurement process, size, capacity for network, arrangement with third-party, cost allocation etc.). <p>1.5MW</p> <ul style="list-style-type: none"> • Endeavour Energy – Automatic exemptions to specific uses, for example where the DNSP's investment is below a certain level or the battery is below a certain size (for instance 1.5 MW). <ul style="list-style-type: none"> ○ Allow DNSP to proceed with joint venture battery projects in tandem with satisfying procurement and information disclosure requirements. Information including: <ul style="list-style-type: none"> ▪ Evidence external stakeholders have been notified of DNSP's needs, battery value, staking opportunities and locations. ▪ Responses / proposals from the market and reasons explaining the DNSP's investment decision. ▪ Cost benefit analysis and the expected benefits to consumers. ▪ Explanation of cost-allocation arrangements for the life of the project. ▪ Details on the access and operation protocols of the battery for network purposes. <p>5MW</p> <ul style="list-style-type: none"> • Essential – Up to 5MW. Placate any concerns that community scale battery may be overbuilt and thus crowd out competition in the competitive market. Also align with the 5MW thresholds for generator connection obligations. <p>Tiered approach</p> <ul style="list-style-type: none"> • CitiPower/Powercor/United Energy –

Topic	Feedback
	<ul style="list-style-type: none"> ○ No waiver – Less than 1MW and the DNSP can demonstrate the costs added to the RAB are equal to or less than the value of network services, auditor reviews terms and conditions and cost allocation in annual ring-fencing review. ○ Fast track waiver → 1MW and satisfies fast track requirements, AER has 20 days to object. ○ Full waiver → 1MW but does not satisfy fast track requirements, AER publicly consults on waiver application.
Reporting	<ul style="list-style-type: none"> • SA Power Networks – Publish information of similar scope to the AER draft waiver assessment guidance, published as soon as reasonably practical for each installation. • Essential – Alternatives investigated; cost benefit analysis; process undertaken; statement declaring that the commercial arrangements between the DNSP and the third party is at arms-length and on commercial terms and conditions available to all other competing parties; statement outlining the correspondence from the DNSP and the unaffiliated third parties; statement explaining the ultimate investment decision; statement outlining typical utilisation; cost allocation arrangements.
Cost allocation	<ul style="list-style-type: none"> • Ergon & Energex – Shared Asset Guideline (SAG) is still the appropriate mechanism and we would encourage the AER to conduct a review so as to ensure that DNSPs are not prevented from investing in batteries which can provide multiple services in the long term. The SAG should be a forward-looking document that captures and reflects the financial flows to ensure that regulated consumers are only paying for the services that the battery provides, while still allowing DNSPs to recover other costs related to under-utilisation of batteries. • CitiPower/Powercor/United Energy – AER should: <ul style="list-style-type: none"> ○ Confirm its confidence in the RIN process, audit and transparent sharing of data by DNSPs on costs and revenues of different services. ○ Consider developing guidelines for cost allocation for DNSP-led batteries that can be added to the CAM that is approved by the AER. ○ Provide consideration to the identifiable and measurable value of network benefits from battery.

6. Pro approach/waiver - additions to the approach

Topic	Feedback
Stronger arms length with affiliated entity	<ul style="list-style-type: none"> • Energy Australia – Remain concerned at the prospects of arrangements that allow DNSPs to favour their affiliates, with resulting detrimental impacts to consumers. DNSPs should not be able to contract out the competitive elements of network service batteries to its affiliate. <ul style="list-style-type: none"> ○ How does the operation of the battery in the competitive services market provide benefit to consumers? ○ Is the DNSP providing information to its affiliate that is not provided, or provided later to a competitive service provider?

Topic	Feedback
Stronger procurement and information sharing requirements	<ul style="list-style-type: none"> ○ Is there preferential access rights to the competitive service of a battery for the affiliate? ○ Is it constraining the ability of consumer's batteries? • AEC – Concern where an affiliate can monetise a benefit that a competitor cannot simply as a result of the regulatory framework. • AEC – DNSPs should be required to: <ul style="list-style-type: none"> ○ Publish all relevant data and forecasts for opportunities for the use of grid augmenting distributed generation technologies. ○ Conduct cost benefit analysis to demonstrate the value of the proposed investment. ○ Conduct a transparent competitive tender process to procure these services. ○ Recover through regulated revenues only the cost of the preferred option as identified by cost-benefit analysis. ○ Waiver test should have a proof of no harm test that examines and provides a hurdle for the distribution of compensations. • AEC, AGL – Publish network service opportunities, tender outcomes and the situations and an accompanying statement of reasons where DNSP-owned batteries have secured an AER waiver. Network service opportunities also be subject to a minimum 12 week market consultation. • Red and Lumo Energy – Should obtain battery services, contractually from the competitive market, which provides flexibility to both the DNSP and the battery owner, while also shielding consumers from potentially poor investment decisions particularly when network services are rolled into the regulated asset base. • NECA – The waiver needs to ensure that DNSPs are not drawn to providing these contestable services as an “easy option” where they can be completed by private enterprise as a contestable service or subcontracted service to the DNSP. • Origin Energy – DNSPs should be encouraged to procure the benefits of batteries as services from the contestable market. • AGL – <ul style="list-style-type: none"> ○ Facilitate the procurement of network services from market as a first order priority. ○ Prevent misuse of the proposed waiver process that could otherwise lead to economically inefficient outcomes. ○ Establish standardised network service procurement obligations, instead of considering on a case-by-case basis. Statement of Opportunity through an AER administered registry; include info on solution statement, modelling assumptions, access, DUOS charges, practical location information. ○ Waiver process – require that DNSPs: <ul style="list-style-type: none"> ▪ Demonstrate contractual arrangements with third parties above a certain investment grade

Topic	Feedback
	<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▪ Disclose any contractual arrangements for tenders entered with affiliated entities to ensure probity in procurement processes. ○ AER set a timeframe for a further review of the GL, following IESS and community scale battery review. • Enel X – Require DNSPs to proactively show evidence that it is complying with the obligations of the guideline and any waiver conditions. <ul style="list-style-type: none"> ○ ESB considering roles and responsibilities through Post 2025 and DER maturity plan. ○ A more appropriate approach may be to require the DNSP to provide ongoing evidence to the AER of its compliance with these matters after a waiver has been granted, rather than relying on commitments or self-reports of any breaches. • Shell Energy – Appears AER's draft position aims to encourage efficient outcomes by indirectly increasing the likelihood of DNSPs contracting with third parties to provide network services as part of an battery value stack. <ul style="list-style-type: none"> ○ Waiver requires significant discretion from the AER and DNSPs may be able to receive a waiver more easily than anticipated (e.g. install a battery for network only services and then can demonstrate there is benefits by supplying the additional benefits). ○ A minimum tendering requirement that there is no efficient third party provider for the battery project, as the market is established. ○ New process: <ul style="list-style-type: none"> ▪ Prior to installing a battery, require a DNSP to undertake a competitive process to procure the required network services. DNSP to release a well-defined problem statement with appropriate technical details and sufficient time for the market to respond. ▪ Require the DNSP to procure the services from the third party that offered the best value (unless the required network services could be delivered at a lower cost by the DNSP). ▪ Prohibit the DNSP from supplying excess capacity to a third party without first receiving a waiver. Require the DNSP to periodically disclose the value of the contestable and non-contestable service provided by the battery. • Origin Energy – Needs to be greater prescription in the means for allocating costs between different services. The process should focus on providing greater transparency over transactions between the different service providers. Typical materiality conditions applied in the CAMs are not appropriate when assessing cross subsidisation toward DNSPs competitive services. • ANU – <ul style="list-style-type: none"> ○ Waiver should be minimally onerous, particularly if the DNSP is only a part-owner. ○ Prior to applying for a waiver, the DNSP should be required to test the market for alternative solutions where the DNSP could procure network support services from a potential battery owner using existing mechanisms for doing so (DMIS/DMIA/RIT-D).

Topic	Feedback
	<ul style="list-style-type: none"> ○ AER should prioritise the simplification of mechanisms for DNSPs to procure battery from third parties. DMIS/DMIA and RIT-D payments seem to be too complex to be used in practice.

7. Legal guideline drafting comments

Topic	Feedback
<i>Shared asset requirement amendment</i>	<p>Not aligned with the role of ring-fencing in the regulatory framework</p> <ul style="list-style-type: none"> • Endeavour Energy – Presume these guideline amendments do not supersede these other elements of the regulatory framework. Further consideration is required of whether this clarity is aligned with the NER and/or best suited to the ring-fencing guideline or the service classification guideline. • ENA – Creating technology-specific obligations that impede the development and use of those technologies for the provision of distribution services. • Essential – Does not support the interpretation. • SA Power Networks – Asset specific regulation. • CitiPower/Powercor/United Energy – Batteries are no different to other shared assets, such as poles, communications, ducts, property, land, information technology etc. Do not agree to the update to the clause. <p>Support</p> <ul style="list-style-type: none"> • Origin Energy – The supply of excess battery capacity to third parties is inconsistent with the original intent of the shared asset rule.
<i>Discrimination clause</i>	<p>Support</p> <ul style="list-style-type: none"> • Endeavour Energy – 4.1(d) appropriately targets and prevents against preferential use of DNSP-owned or affiliate-owned battery. <ul style="list-style-type: none"> ○ Requiring DNSPs to provide transparency around the dispatch instructions and relevant data (upon AER request) to demonstrate prioritisation has not been unfairly re-arranged or skewed to favour DNSP batteries could help alleviate concerns further. • CEC – Support the proposal to insert a new clause, in addition to the current non-discrimination requirements, to prevent a DNSP from discriminating between two parties on the basis of the use by one or both of those legal entities of assets owned, operated or otherwise controlled (in whole or in part) by the DNSP. • Firm Power – Support. Does the AER intend to clarify the methodology and / or definition of discrimination? e.g. where an affiliate establishes a joint venture (Boundary Energy in WA), the effect of which is to distort the market and limit market access for third parties. • Origin Energy – Support the extension. Non-discrimination is essential to ensure that all participants can compete for the provision of services on a level playing field.

Topic	Feedback
	<ul style="list-style-type: none"> ○ Seek further information on how the AER intends to monitor compliance. • CitiPower/Powercor/United Energy – DNSPs cannot discriminate in terms of network access, and even if such conduct was possible, it could be prosecuted under the CCA. • ENA, AEC, Simply Energy
Clarification	<p>Installing market metering on new and existing DNSP-owned batteries or require waivers.</p> <ul style="list-style-type: none"> • ENA – Wholesale market revenue for the assigned Financial Responsible Market Participant (FRMP). The assignment of the net revenue from the battery to a FRMP may constitute a right to use. Confirm that the assignment of incidental revenue from metered batteries does not constitute the granting of a right to use the DNSP-owned battery to other legal entities. • AusNet Services – May cause DNSPs to refrain from installing market metering on new and existing DNSP-owned batteries. Recent rule changes to establish global settlements that require every connection point to have metering. The assignment of the net revenue from a battery to a FRMP may constitute a right of use in favour of the FRMP.

8. Community batteries

Topic	Feedback
Pro community batteries	<ul style="list-style-type: none"> • Southern Sydney Regional Organisation of Councils – The technology appears to offer a very effective and efficient mechanism for making better use of available renewable resources as well as of the existing grid infrastructure. Improve energy efficiency, support our council's efforts to achieve carbon emissions reduction and renewable energy targets. • Blacktown Council – Supports the use of community batteries on the grid. Partnered with Endeavour Energy for a community battery at Bungaribee. Commitment to reduce greenhouse gas emissions and build resilience to climate change. Privately owned batteries remain cost-prohibitive for most of our constituents, and a shared asset solution accelerates access to more efficient and more sustainable energy. • Inner West Council – Community batteries offer renewable energy access to residents who are renting, living in multi-unit dwellings or homeowners who cannot afford behind-the-meter storage devices and solar. Increase the current 7% of listed dwellings that have installed rooftop solar, due to 44% apartments and 40% renting. Supportive of providing an option for residents to store excess solar in a way that is more cost effective than purchasing their own battery outright. Encourages AER to ensure that policy outcomes encourage expanded access to community batteries for all metro communities. • Northern Beaches, Northern Sydney Regional Organisation of Councils – Fragmented approach to community batteries could see numerous smaller batteries being deployed that clutter streetscapes and require greater administration and oversight by Councils.

Topic	Feedback
Pro-distributor involvement / requires special consideration	<ul style="list-style-type: none"> • Northern Sydney – There is limited land for community infrastructure. Councils should be consulted about any community batteries. There should be a public register of community batteries. Less regulation on community batteries at this stage, but open to further regulation if there is not equity of access to batteries. • ECA – <ul style="list-style-type: none"> ○ Consumers are positively inclined to participate in shared battery concepts which appeal because of the relative low cost of these shared asset resources. However, fear giving up control of their energy management and remain unsure as to how this impacts their own energy costs. ○ Important questions of localised tariff arrangements and cost and benefit sharing that require further exploration to ensure consumers can realise the benefits of being connected to local resources and allow enhanced distributed generation utilisation for localised consumers. • Western Sydney Regional Organisation of Councils – DNSPs are best placed to deploy community batteries. <ul style="list-style-type: none"> ○ Lowering bills, network costs, supporting councils emissions targets and sustainability policies, providing support for rooftop solar and other emerging technologies. ○ DNSPs have financial stability, technical capability and knowledge of existing network constraints. • Southern Sydney Regional Organisation of Councils – Facilitate continuing trials of community batteries, and the establishment of more trials including by DNSPs. Enable these trials to demonstrate the validity of the propositions that they aim to substantiate. Ensure that councils have a decision-making role in the location of community batteries, to avoid uncontrolled proliferation, unsightly and unsafe locations, and to take into account local planning controls such as those relating to local character. Establish a register of community batteries to better track and record their installation, performance and outcomes. Ensure equity of access to batteries into the future, including regulating pricing if the market is not fully competitive. Ensure any regulation at this trial stage of the market is appropriately light-handed, with the option of tightening left open for future regulation if needed.
	<ul style="list-style-type: none"> • CitiPower/Powercor/United Energy/YEF – <ul style="list-style-type: none"> ○ Disagree that DNSPs should be prohibited from making contributions to the deployment at scale of community batteries because of its natural advantage. ○ Streamline the waiver process for community battery projects, particularly in cases where the DNSP can demonstrate strong support, or demand for partnerships, from community groups, and that this would be the lowest cost solution for electricity consumers across their network. • CitiPower/Powercor/United Energy/Total Environment Centre – <ul style="list-style-type: none"> ○ Special consideration for proposals driven and supported by local communities, councils and similar non-commercial entities that are seeking partnerships with DNSPs on community batteries.

Topic	Feedback
	<ul style="list-style-type: none"> ▪ Not require tender out the provision of the competitive services, as a partial owner of the battery. ▪ The project's cost benefit analysis should include the community and sustainability value to the specific community - which is not typically part of the AER's analysis. <ul style="list-style-type: none"> • PIAC/Simply Energy/Ausgrid – <ul style="list-style-type: none"> ○ Delay investment in community battery projects and significantly increase the regulatory uncertainty and costs for potential participants that would lease the excess battery capacity. ○ DNSP-owned batteries can help maintain retail contestability in the provision of innovative energy services to consumers. ○ Instead of waivers, having appropriate control measures for DNSP ownership of batteries will ensure a competitive market. • Endeavour Energy – <ul style="list-style-type: none"> ○ Should have greater regard for views of DNSPs, consumer advocacy groups, local councils and smaller retailers who collectively recognise the value of DNSP involvement. ○ Community batteries were the number one innovation nominated by the Endeavour Energy's Future Grid workshop on 10 June 2021. ○ Value of batteries could be more widely shared through DNSP operated community partnerships where open access arrangements encourage DNSP to provide more third-party providers fair access to batteries. ○ Community groups have expressed a preference to partner with their DNSP rather than third parties. • Ausgrid – <ul style="list-style-type: none"> ○ Enables multiple community members to access batteries at different times when they need it. Nascent market, characterised mainly by small-scale trials in a handful of locations across Australia. ○ Issues around land access, planning approvals and geographic diversity of retail consumers could result in the battery market becoming quickly dominated by large retailers. This would consolidate and grow the market share of large retailers on the feeders where they are offering a community battery. This would damage retail competition and would be extremely challenging to unwind. • Peter Youll – DNSPs are the only logical option for financing, installing and running community batteries in the medium term. Local councils or resident group could take over once the economic benefits to those who choose to participate in their use has been proved. Electricity retailers and other third parties should not be given the opportunity, unless the risk of monopolistic activity can be prevented. Strongly supported by environmentally aware members of the community. Ring-fencing must not be allowed to delay the rollout of a large number of community batteries. • Ecojoule – Community batteries at a low voltage level represents the optimal, lowest societal cost position for batteries.

Topic	Feedback
<i>Other models to deliver community batteries</i>	<ul style="list-style-type: none"> • CitiPower/Powercor/United Energy – <ul style="list-style-type: none"> ○ United Energy waiver - Partnership with a retailer on community batteries. ○ YEF and ANU. ○ Community groups – e.g. with councils and community groups. • ANU – <ul style="list-style-type: none"> ○ Householders are likely to be sceptical of community battery models that cannot clearly demonstrate that they will genuinely benefit the local community. A strong preference was shown for models that are simple to interact with, owned by local government and that are run as a not-for-profit entity. ○ Our analysis reveals some differences in expectations between the general public and energy sector professionals about future models of community batteries: centred around questions of ownership, in which the general public envision a minimal role for large retailers and DNSPs. ○ Householders are not simply concerned about energy affordability but have a range of values and expectations for future energy systems. ○ Energy users tend to not want to engage with industry incumbents. Trust levels are low. There is substantial public support for community energy models that are owned and operated by trusted local organisations. ○ There is interest from many third parties to own batteries, including councils, investors and community energy groups. In particular, councils may be in a financial position where they could buy community batteries to support their communities.

9. Other issues

Topic	Feedback
<i>Difference in treatment from TNSPs</i>	<ul style="list-style-type: none"> • CitiPower/Powercor/United Energy/YEF – Batteries providing market services connected at the transmission network is not charged transmission use of system (TUOS) while batteries providing market services connected at the distribution network is charged network use of system (NUOS). AER should re-consider its approach to NUOS. • Firm Power – Numerous TNSP led announcements where they intend to own and operate batteries either directly or via their unregulated business. Encourage re-engagement of TNSPs review. • CitiPower/Powercor/United Energy – Seriously distorted level playing field with transmission connected batteries not subject to any network tariff, versus distribution connected batteries subject to tariffs.

Topic	Feedback
<i>Further consultation and more targeted</i>	<ul style="list-style-type: none"> • ENA – Recommends that the AER undertakes further engagement with councils, small retailers and end-use consumers to ensure that the final decision integrates their feedback. We support an extension to the AER's final decision to enable this if necessary. • Ausgrid – More direct engagement with key stakeholders and consumers. Actively seek out a broader range of viewpoints before developing AER's final guideline. Newgate Research in July 2020 indicate that consumers have confidence in DNSPs being a provider of community scale batteries. • Southern Sydney Regional Organisation of Councils, Northern Sydney Regional Organisation of Councils – The lack of councils, council bodies and consumer bodies being engaged in this review. • Essential Energy – Commend the engaging approach undertaken by the AER demonstrated through multiple rounds of consultation.
<i>General ring-fencing</i>	<ul style="list-style-type: none"> • AEC – Neither compliance nor enforcement is mentioned in the AER's primary network regulation roles. DNSP discrimination and cross-subsidisation mentioned in most of the AER ring fencing guideline reviews and yet little has in practice been observed by industry in this regard. Positive assurances for compliance, such as "a demonstrated commitment to deal with the battery in an arms-length, transparent and non-discriminatory manner" do not in the AEC's view provide a plausible nor demonstrable enforcement compliance regime.
<i>Broader review required</i>	<ul style="list-style-type: none"> • CitiPower/Powercor/United Energy – A fulsome review by the Productivity Commission should be completed before stringent conditions are imposed on participants in this market. Such a review would look closely at many of the concerns identified in our submission and provide the opportunity for all stakeholders to participate in a transparent public hearing process based on evidence rather than presumption and perception.

B.3 Guideline Improvements

Topic	Feedback
<i>Improvements to the staff & office sharing register</i>	<ul style="list-style-type: none"> • Energy Queensland, Origin Energy, ENA, CitiPower/Powercor/United Energy, NECA – Supportive of registers being used for more detailed reporting. • CitiPower/Powercor/United Energy, SA Power Networks – Not supportive of quarterly reporting as its disproportionate to the value anticipated. Suggest half yearly instead. • CitiPower/Powercor/United Energy – Should not capture staff who have ceased to have access to electricity information for other reasons, or who have not been in a staff position for which the DNSP makes its ring-fenced electricity information available. • SA Power Networks – More detail on what should be included in the register such as a template register. • NECA – Measures do not go far enough.
<i>Change 'Confidential information' to 'ring-fenced information'</i>	<ul style="list-style-type: none"> • Energy Queensland, Origin Energy – Supportive of change to naming confidential information 'ring-fenced information'. • Energy Australia – Supportive of further restrictions - Restrictions on information sharing between DNSPs and their affiliates could be proactively reviewed, to establish how it procured the client and adhered to any ring-fencing guideline requirements during their relationship. • CitiPower/Powercor/United Energy – Clarification on whether the change to 'ring-fenced information' applies to staff and office sharing provisions. • CEC, Enel X – Third parties might are not aware of what information has been provided by a DNSP to its affiliate, and therefore what is available to them. The AER should define what information third parties should expect to receive from DNSPs and the process for obtaining it.
<i>Changes to reporting breaches – all breaches within 10 days</i>	<ul style="list-style-type: none"> • Origin Energy, NECA, Enel X, Flow Power – Supportive of the change. • NECA, ASP Assist Group – Should go further by making breaches public and requesting more AER powers. • TasNetworks, AusNet Services, Energy Queensland, ENA, CitiPower/Powercor/United Energy, SA Power Networks, Essential – Not supportive of non-material breaches being reported in 15 days as this will add extra reporting burden on the DNSPs/change of definition of materiality would be more suitable. • Energy Australia – Not supportive of self-reporting breaches.

<i>Move to calendar year reporting (over FY)</i>	<ul style="list-style-type: none"> • Energy Queensland, ENA, SA Power Networks, Essential – Supportive. • Energy Queensland, ENA – Seek clarity that they will have to submit the next report by April 2022.
<i>Branding</i>	<ul style="list-style-type: none"> • SA Power Networks – Not supportive that no changes were made to branding to reduce the burden on DNSPs and clarify the intent of branding.
<i>Strengthening of obligation not to discriminate</i>	<ul style="list-style-type: none"> • NECA, Simply Energy, AEC – Supports the AER’s proposed clause 4.1(d), as this would strengthen the requirements for DNSPs not to discriminate between parties in relation to contestable electricity services. • Energy Queensland – Seeks clarity on the term legal entity. • AEC – The proposed new non-discrimination clause reflects that confidence in DNSP compliance with ring-fencing requirements is low. Mitigating the risks from DNSP discrimination and cross-subsidisation has rated mention in most of the AER ring-fencing guideline reviews and yet little has in practice been observed by industry in this regard.
<i>Further changes</i>	<ul style="list-style-type: none"> • AEC – First remedies would require that all competitors of DNSP-owned commercial businesses should be granted the same access to data and access arrangements, and these requirements that should be enforced by annual audit and where required compliance penalties. Positive assurances for compliance, such as “a demonstrated commitment to deal with the battery in an arms-length, transparent and non-discriminatory manner” do not provide a plausible nor demonstrable enforceable compliance regime. The regulator and broader stakeholders need to be satisfied that no violations have occurred if we are to rebuild any confidence in the effectiveness of ring fencing-arrangements.

1. Further consultation note – released 31 August 2021

Topic	Feedback
<i>Clarification of information sharing register provision</i>	<ul style="list-style-type: none"> • Western Sydney Regional Organisation of Councils, Enel X, Evoenergy, ENA, AGL, AusNet Services, Red Energy – Supportive • AusNet Services - In addition noted that using the conjunction ‘or’ suggests a RESP is distinguishable from a legal entity. This risks creating confusion in other clauses of the guideline which only reference a legal entity, as it raises the possibility that a RESP is not captured by unless it is specifically identified. AusNet proposed that each reference to “legal entity or related electricity service provider” be amended to read “legal entity (including a related electricity service provider)”.
<i>Addition of class waivers</i>	<ul style="list-style-type: none"> • Western Sydney Regional Organisation of Councils, Enel X, Evoenergy, ENA, AGL, AusNet Services – Supportive • ENA – In addition suggested updating the current drafting of the waiver provisions to also allow for multiple non-affiliated DNSPs to submit waivers together, as this may be a simpler, more efficient solution.

- **Red Energy** – Not supportive. A new clause in this regard would not be in the long-term interests of consumers and detrimental to competition in the market. In addition it would set a concerning precedent. Red Energy consider the competition issues surrounding each waiver application are unique and the treatment of waivers en masse seriously increases the risk of regulatory error. Waivers should therefore be the exception not the norm.

B.4 General Comments

Topic	Feedback
<i>Northern Territory Power and Water suggested changes</i>	<ul style="list-style-type: none"> • Special situation for Northern Territory Power and Water– one size fits all does not work for Northern Territory. • Most services deemed ‘contestable’ by the Guideline do not have alternative service providers. • Different competitive pressures and market conditions exist in the Northern Territory relative to other jurisdictions. • Separate published version of the Guideline for the Northern Territory. • Allow Northern Territory Power and Water to seek waivers from all aspects of the GL. • Removing the need to report accounting and information flows at a transactional level. • The need for longer transitional timeframes. • <u>Amend the definition of ‘contestable electricity service’ for Northern Territory</u>: amending the definition of ‘contestable electricity service’ so that it places greater emphasis on the existence of, or the potential for, competition in the market for the provision of the good or service. Adopting this change would mean that unregulated distribution services currently provided by Power and Water, such as ‘other distribution services’ to remote communities and minor centres on our unregulated network and ‘other electricity services’ such as Power and Water’s Market Operator, System Control, and retail centre functions, would not be captured by the definition of the ‘contestable electricity services’ as competition for the provision of these services does not exist in the Northern Territory.
<i>GL overall</i>	<ul style="list-style-type: none"> • Northern Territory Power and Water – Overly prescriptive. • ASP Assist Group – Confidence is low that the guideline prevents what it is supposed to prevent. • Simply Energy – A key purpose of the guideline is to ensure that a DNSP does not give preferential treatment to its affiliates. The guideline already provides this protection without adding an additional barrier to the competitive market leasing the excess capacity of DNSP-owned batteries. Supports strong controls remaining in place to ensure that DNSPs provide equal opportunity and access to all parties. • AEC – Guideline should require DNSPs to publish: <ul style="list-style-type: none"> ○ All relevant data and forecasts for opportunities for the use of grid augmenting distributed generation technologies. ○ Cost benefit analysis to demonstrate the value of the proposed investment. ○ A transparent competitive tender process to procure these services. ○ The recovered amounts through regulated revenues, which should be only the cost of the preferred option as identified by cost-benefit analysis.
<i>Consultation process</i>	<ul style="list-style-type: none"> • Most stakeholders were happy with the consultation process.

<i>Topic</i>	Feedback
	<ul style="list-style-type: none"> • Some stakeholders requested more consultation post draft. • ASP Assist Group, Southern Sydney Regional Organisation of Councils – Unhappy with the consultation as they were not aware of the review process. • Off-grid – Noted that Off-grid, its consumers, nor other leading SAPS services providers were not engaged within consultation. The draft list of stakeholders appears not to include any major SAPS providers.

Appendix C – SAPS Generation revenue cap calculation

	DNSP	Potential SAPS sites from submissions (a)	Generation revenue from one SAPS each year* (b)	Average Annual Revenue, \$real (c)	Generation revenue as percentage of annual revenue if DNSP provides 75% generation service**	Revenue cap as a percentage of annual revenue cap
Category 1	Ergon	1000-2000	\$1,734	\$1,117,076,845	0.233%	0.2%
	Essential	880-1400	\$1,818	\$966,287,062	0.198%	
Category 2	AusNet Services	300-400	\$1,047	\$654,265,546	0.048%	0.07%
Category 3	Ausgrid	175-250	\$1,591	\$1,382,755,056	0.022%	0.02%
	Endeavour Energy	12	\$1,477	\$804,364,203	0.002%	
	Powercor	10	\$1,101	\$650,149,950	0.001%	
	SA Power Networks	5	\$1,100	\$738,145,946	0.001%	
	TasNetworks	5	\$894	\$242,597,151	0.001%	
	CitiPower	0	\$966	\$280,025,189	0.000%	
	Evoenergy	0	\$1,591	\$134,885,671	0.000%	
	Jemena	0	\$966	\$251,733,606	0.000%	
	Power and Water***	0	\$1,589	\$144,518,731	0.000%	
	United Energy	0	\$966	\$392,733,668	0.000%	
	Energex	0	\$1,517	\$1,132,563,229	0.000%	

*calculated based on 80% of average regional price for MWH for region for FY2021 and assuming that all SAPS are using a 20kw solar system

** $((.75 \times a) \times b) / c$

*** assuming Queensland prices for Northern Territory

(a) ENA, Updating Electricity Ring-fencing Distribution Guideline Issues Paper submission, 18 December 2020. Ausgrid, Submission on Draft Ring-fencing Guideline Update, 8 July 2021.

(b) Data used to determine individual SAPS revenue:

- Price data obtained from: AEMO, NEM Data Dashboard Annual Average Price - 2021, accessed 12 August 2021, www.aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/data-nem/data-dashboard-nem;
- Settlement calculation used from draft National Electricity Rules, r 3.21.2 for DNSP SAPS March 2021 circulated 15 March 2021.
- AER, Determinations and Access Arrangements - Current Determinations, accessed 30 March 2021, www.aer.gov.au/networks-pipelines/determinations-access-arrangements.

(c) Data used to determine average annual revenue figures as Smoothed Revenue Cap/5 in DNSP's PTRM.

- Average Annual Revenue figures were updated to include most recent PTRM for each DNSP after draft explanatory statement.
- Real \$2020-21 values based on ABS CPI data.