



Ring-fencing Guideline

Electricity Distribution

Version 2

Explanatory Statement

October 2017

© Commonwealth of Australia 2017

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication. The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
or publishing.unit@acc.gov.au.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Tel: 1300 585165

Email: AERInquiry@aer.gov.au
AER Reference: 61887, D17/113172

Contents

Shortened forms.....	4
Definitions	5
1 About the 2017 Ring-fencing Guideline amendment.....	8
1.1 Background to the Ring-fencing Guideline	8
1.2 Rule Requirements.....	9
1.3 Timetable	9
2 Consultation and submissions	10
2.1 Definition of a 'related electricity service provider'	10
2.2 Definition of a 'regional office'	11
2.3 Separation of 'regulatory' services.....	12
2.4 Transmission services.....	14
2.5 Emergency response	15
2.6 Branding.....	16
2.7 Waiver duration	18
2.8 Information disclosure	18
2.9 Sharing of information and information register	20
2.10 Conduct of service providers	21
2.11 Compliance and enforcement.....	22
2.12 Typographical amendments	23
2.13 Matters out of scope.....	24
Attachment – Summary of amendments.....	27

Shortened forms

Shortened Form	Extended Form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DNSP	distribution network service provider
Guideline	Electricity Distribution Ring-Fencing Guideline
NER or the rules	National Electricity Rules
RESP	related electricity service provider

Definitions

Terms	Definitions
affiliated entity	<p>in relation to a DNSP, means a legal entity:</p> <p>(a) which is a direct or indirect shareholder in the DNSP or otherwise has a direct or indirect legal or equitable interest in the DNSP;</p> <p>(b) in which the DNSP is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or</p> <p>(c) in which a legal entity referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest.</p>
contestable electricity services	<p>means:</p> <p>(a) other distribution services; and</p> <p>(b) other electricity services.</p>
electricity information	<p>means information about electricity networks, electricity customers or electricity services, other than:</p> <p>(a) aggregated financial information; or</p> <p>(b) other service performance information;</p> <p>that does not relate to an identifiable customer or class of customer.</p>
existing service	<p>in relation to a DNSP, means a type of service that the DNSP was providing on 1 December 2016.</p>
information register	<p>means the register a DNSP must establish, maintain and keep under clause 4.3.5(a) of the Guideline.</p>
law	<p>means any law, rule, regulation or other legal obligation (however described and whether statutory or otherwise).</p>
legal entity	<p>means a natural person, a body corporate (including a statutory corporation or public authority), a partnership, or a trustee of a trust, but excludes staff in their capacity as such.</p>
NEL	<p>means, for the purposes of the application of this Guideline in a participating jurisdiction, the National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996 (SA)</i>, as applied by the participating jurisdiction and subject to any modification made to the National Electricity Law by that</p>

	jurisdiction.
NER	means, for the purposes of the application of this Guideline in a participating jurisdiction, the rules called the National Electricity Rules made under Part 7 of the National Electricity Law, subject to any modification made to the National Electricity Rules by that jurisdiction.
non-distribution services	means: (a) transmission services; and (b) other services.
office	means, as the case may be: (a) a building; (b) an entire floor of a building; or (c) a part of a building that has separate and secure access requirements, such that staff from elsewhere in the building do not have unescorted access to it.
office register	means the register a DNSP must establish, maintain and keep under clause 4.2.4(a) of the Guideline.
officer	in relation to a legal entity (such as a DNSP) means: (a) a director or company secretary of the legal entity; (b) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the legal entity; or (c) a person who has the capacity to affect significantly the legal entity's financial standing.
other distribution services	means distribution services other than direct control services. Note: this includes negotiated distribution services and distribution services that are not classified.
other electricity services	means services for the supply of electricity or that are necessary or incidental to the supply of electricity, other than: (a) transmission services; or (b) distribution services.
other services	means services other than: (a) transmission services; or (b) distribution services.

regional office means an office that has less than 25,000 customer connection points within a 100 kilometre radius of that office.

related electricity service provider in relation to a DNSP, includes:
(a) an affiliated entity of the DNSP; and
(b) the part of the DNSP;
that provides contestable electricity services, but excludes a part of an affiliated entity that provides direct control services.

staff of an entity (such as a DNSP), includes:
(a) employees of the entity;
(b) direct or indirect contractors to the entity (whether the contractors are individuals or corporate or other entities);
(c) employees of direct or indirect contractors to the entity; and
(d) individuals (including secondees) otherwise made available to the entity by another entity.

staff position in relation to a DNSP or a related electricity service provider, means a position within the organisational staffing structure of the DNSP or related electricity service provider (as the case may be) that involves the performance of particular roles, functions or duties.

staff register means the register a DNSP must establish, maintain and keep under clause 4.2.4(b) of the Guideline.

1 About the 2017 Ring-fencing Guideline amendment

We published our Electricity Distribution Ring-fencing Guideline (**Guideline**) on 30 November 2016. Distribution Network Service Providers (**DNSPs**) have until 1 January 2018 to transition to full compliance with the Guideline, subject to any waivers. During the transition period, DNSPs have had the opportunity to test the Guideline's practicability, identify any concerns and bring them to our attention. Through the 2017 Ring-fencing Guideline amendment process, we have considered these concerns, consulted and made appropriate amendments to the Guideline. With the publication of the October 2017 amended version of the Guideline, Version 2, we expect that all DNSPs will now be able to fully comply with the Guideline from 1 January 2018.

The purpose of the Guideline amendment process was to clarify some aspects of the Guideline and address unintended consequences stemming from the way the Guideline was drafted. Since little time has passed since the Guideline was first drafted, we did not intend to revisit more substantive matters. This Explanatory Statement discusses our consideration of the submissions we received in response to the Draft Amended Ring-fencing Guideline, and sets out our reasons for making further minor clarificatory amendments, largely as a result of considering those submissions. For an explanation of the amendments proposed at the draft amendment stage, or of the Guideline as a whole, please refer to the relevant explanatory statements on our website.¹

The amended Guideline contains a few minor changes from the Draft Amended Ring-fencing Guideline, published on 4 July 2017. A summary of these amendments is set out in the Attachment to this Explanatory Statement. A version of the amended Guideline showing all changes from the original and draft amended versions of the Guideline is available on our website, alongside a clean version of the Guideline.

1.1 Background to the Ring-fencing Guideline

Ring-fencing is the identification and separation of regulated monopoly business activities, costs and revenues from those associated with providing services in a contestable market. Ring-fencing obligations that apply to DNSPs generally require the separation of the legal, accounting and functional aspects of regulated distribution services from other services provided by the DNSP.

As noted by the Australian Energy Market Commission (**AEMC**), ring-fencing aims to prevent the harm that would be likely to result from the following types of DNSP behaviours:²

- cross-subsidising an affiliate's services in contestable markets with revenue derived from its regulated services
- discrimination in favour of a DNSP's related electricity service provider operating in a contestable market

¹ Please see <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/ring-fencing-guideline-electricity-distribution> and <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-2017-amendment>.

² AEMC, *National Electricity Amendment (Expanding competition in metering and related services) Rule 2015*, December 2015, p. 399.

- providing related electricity service providers with access to commercially sensitive information acquired through provision of regulated services
- restricting access of other participants in contestable markets to infrastructure services provided by the DNSP, or providing access on less favourable terms than to its related electricity service providers.

The Guideline sets out the obligations a DNSP must meet to separate its regulated monopoly services from any services it may seek to offer to contestable markets. We expect the Guideline will aid development of competitive markets where competition is feasible and support efficient, incentive-based regulation of monopoly networks where competition is not feasible.

1.2 Rule Requirements

The Guideline is made and amended under clause 6.17.2 of the National Electricity Rules (NER). Clause 6.17.2(d) of the NER states that:

In developing or amending the Distribution Ring-Fencing Guidelines, the AER must consult with participating jurisdictions, Registered Participants, AEMO and other interested parties, and such consultation must be otherwise in accordance with the distribution consultation procedures.

The distribution consultation procedures at clause 6.16 of the rules state we must publish the amended Guideline, an explanatory statement and an invitation for written submissions, allowing no less than 30 business days for submissions to be provided. Within 80 business days of commencing consultation, we must publish our decision with reasons, and the amended Guideline itself.

1.3 Timetable

Event	Date
AER published the Draft Amended Ring-fencing Guideline and Explanatory Statement, and invited written submissions	4 July 2017
Submissions closed (30 business days after invitation)	15 August 2017
AER published the final amended Guideline and Explanatory Statement	17 October 2017
NER deadline for publishing the final amended Guideline (80 business days from commencement of consultation process)	24 October 2017

2 Consultation and submissions

The Guideline amendment process was conducted in accordance with the NER distribution consultation procedures. We published our Draft Amended Ring-fencing Guideline on 4 July 2017 and invited interested parties to make submissions by 15 August 2017.

We received submissions from the following 16 interested parties. These submissions are available on our website.

Interested party	Date received
ActewAGL	15 August 2017
AGL Energy	15 August 2017
All Round Supplies	14 August 2017
AusNet Services	15 August 2017
Budget Fasteners and Tools	14 August 2017
CitiPower and Powercor	3 August 2017
Electrical Trades Union of Australia	15 August 2017
Energex and Ergon Energy	15 August 2017
Essential Energy	15 August 2017
Jemena	14 August 2017
MV Technology Solutions	15 August 2017
National Electrical and Communications Association	15 August 2017
Nexans Olex	15 August 2017
Public Interest Advocacy Centre	9 August 2017
Red Energy and Lumo Energy	15 August 2017
Sicame Australia	15 August 2017

In this section, we discuss the submissions received and our responses.

2.1 Definition of a 'related electricity service provider'

In the Draft Amended Ring-fencing Guideline, we proposed to amend the definition of a 'related electricity service provider' (**RESP**) at clause 1.4 to make it clear that a RESP is not intended to include an affiliated entity that does not provide contestable electricity services. We received six submissions from interested parties supporting our proposed amendment.

Five of these were from DNSPs³ and one was from Red Energy and Lumo Energy⁴. We did not receive any submissions opposing the amendment.

2.2 Definition of a 'regional office'

The Guideline contains exemptions from the office sharing, staff sharing and branding obligations for offices that meet the definition of a 'regional office' as described at clause 1.4. Energex, Ergon Energy and Essential Energy made submissions seeking an alternative definition of a 'regional office'.

Energex and Ergon Energy submitted⁵ that there may be circumstances, particularly in some parts of regional Queensland, where there are no or limited alternative service providers who can meet customer needs in a timely manner. They submitted that the definition should be extended to allow DNSPs to assist customers where there is a market failure resulting in no alternative locally located service provider. Energex and Ergon Energy proposed the following alternative definition of a 'regional office':

an **office** that has less than 25,000 **connection points** within a 100 kilometre radius of that office, or where there is no locally located alternative service provision resources able to meet customer requirements.

Essential Energy submitted it was concerned about the possibility of reduced services to communities in regional locations where there is limited or no existing competition. Specifically, Essential Energy submitted there may be a lack of access to affordable services and/or a lack of access to timely services. It proposed the following alternative definition of a 'regional office'⁶:

An **office** that has less than 25,000 **connection points** within a 100 kilometre radius of that office or where there is no locally located alternative service provider or where services can't be provided by an alternative service provider within a reasonable timeframe given the nature of the services.

We note that these proposed alternative definitions are broader than the original definition of a 'regional office'. This means that additional offices would be likely to fall under the definition of a 'regional office' and be exempted from the office sharing, staff sharing and branding obligations of the Guideline. We also note that, unlike the original definition, the alternative definitions proposed by the three DNSPs are subjective.

Under the Guideline, the exemptions apply automatically, and there is no requirement to list 'regional offices' on a public register or identify them to the AER until annual compliance reports are due. Additionally, review of any office deemed by the DNSP to be a 'regional office' would need to be initiated by the AER and conducted under clause 5.6 of the

³ ActewAGL, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.1; AusNet Services, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.1; CitiPower and Powercor, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1; Energex and Ergon Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.1; Jemena, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.1.

⁴ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.1.

⁵ Energex and Ergon Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.2.

⁶ Essential Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp.1-2.

Guideline. In practice, therefore, it initially would be up to each DNSP to apply its own interpretation of terms such as “locally located” and “reasonable timeframe”.

Given the potential for discrimination concerns to arise from most circumstances in which a DNSP shares offices, staff and/or branding with a RESP, we take the view that it is preferable to have a clear and absolute up-front definition that is not subject to judgement by the DNSP.

To the extent that there are offices that do not meet the definition of a ‘regional office’ but merit being treated like regional offices, they can be handled via the waiver application process. In that case, the decision of whether to make an exception from the Guideline would be made by the AER. Further, the finite nature of waivers means that, if the DNSP wishes to retain the exemption for a regional office after a waiver expires, the waiver will need to be renewed. In this way, non-standard regional office exemptions will be reviewed periodically and will not continue to be exempted if it is no longer appropriate. The DNSP will be required to publish any waiver it is granted on its waiver register, pursuant to clause 5.7 of the Guideline.

2.3 Separation of ‘regulatory’ services

We received a number of submissions opposing our proposed amendments to list ‘regulatory’ services as a corporate service that may not need to be separated. The proposed amendments appear in three clauses of the Guideline:

- clause 3.1(d)ii. states that clause 3.1’s legal separation obligation does not prevent a DNSP providing corporate services to a RESP or other legal entity as long as the DNSP complies with clause 3.2 in relation to those arrangements.
- clause 4.2.1(b)i.c. states that clause 4.2.1(a)’s branding separation obligation does not apply in respect of offices for staff who, in the course of their duties, only have access to electricity information to the extent necessary to perform services that are not electricity services.
- clause 4.2.2(b)i.c. states that clause 4.2.1(a)’s office separation obligation does not apply in respect of offices for staff who, in the course of their duties, only have access to electricity information to the extent necessary to perform services that are not electricity services.

Each of these clauses lists examples of possible corporate services / services that are not electricity services, to which the clauses may relate. In the Draft Amended Ring-fencing Guideline, we proposed to add ‘regulatory’ services to the examples:

(such as general administration, accounting, payroll, human resources, legal or regulatory, or information technology support services)

Clause 4.2.4(b) also requires a DNSP to maintain and keep a register that identifies the nature of positions of its staff members to which it has not applied the separation of staff obligation by way of exemption. In the Draft Amended Ring-fencing Guideline, we proposed to remove the obligation to identify the positions of corporate staff, including ‘regulatory’ services staff, on this register.

AGL Energy opposed the changes to all of the above clauses.⁷ It submitted that regulatory services often inform a network business' strategy and therefore exempting regulatory services from the Guideline's obligations would be a conflict of interest. AGL Energy also disagreed that the types of corporate positions that may be shared between a network business and its ring-fenced entity are relatively intuitive, as suggested in the Explanatory Statement to the Draft Amended Ring-fencing Guideline. AGL Energy submitted that 'corporate staff' may include staff who provide strategic advice (relating to operational, product, pricing, financing or resourcing decisions), who should not be shared. It submitted that a range of corporate functions, including regulatory affairs, fit into this category and, therefore, all exempted staff should be listed on the staff register.

The Public Interest Advocacy Centre (**PIAC**) submitted that the proposed amendment at clause 3.1(d)ii. may be appropriate for regulatory compliance services such as providing advice and ensuring compliance with obligations under the National Electricity Law (**NEL**) or other jurisdictional conditions. However, PIAC submitted it is not appropriate for a DNSP to provide other regulatory services, such as contributing to policy and regulatory reforms or preparing regulatory proposals, to a related entity. PIAC submitted that many of the regulatory reforms currently under way involve opening up a regulated entity to contestability. Without greater independence, this clause may enable the DNSP to provide the RESP with an unfair advantage over other potential contestable service providers. PIAC proposed amending the Guideline by replacing 'regulatory services' with 'regulatory compliance services' at the relevant clauses.⁸

The National Electrical and Communications Association opposed the proposed exemption from the staff separation requirement for corporate staff, including regulatory staff. It submitted that a RESP must be required to separate all staff and systems to maintain a truly ring-fenced commercial business and to promote fair competition with commercial accredited service providers.⁹

Red Energy and Lumo Energy objected to the proposed amendment to the staff register obligation. They submitted that, in order for regulatory staff to be highly effective, they must understand the business implications and commercial objectives in line with the regulatory instruments of the issue. Red Energy and Lumo Energy also disagreed that the types of corporate positions that may be shared between a network business and its ring-fenced entity are well understood.¹⁰

We note that interested parties have expressed concerns that there may be regulatory services or regulatory services staff that should not be exempt from the above clauses. One interested party has also submitted that it may be appropriate for at least some regulatory services or regulatory services staff to be shared. Several interested parties have submitted that the types of corporate positions that may be shared are not particularly intuitive.

The exemptions in clauses 3.1(d)ii., 4.2.1(b)i.c. and 4.2.2(b)i.c., including 'regulatory' services, apply to staff who only have access to electricity information to the extent

⁷ AGL Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.2, p.3.

⁸ Public Interest Advocacy Centre, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 1-2.

⁹ National Electrical and Communications Association, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p.10.

¹⁰ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 3-4.

necessary to perform services that are not electricity services. The specific types of services identified in those clauses are included as examples, for guidance only, and do not expand the scope of the clause. To be clear, any 'regulatory' staff or other staff who have access to electricity information and could be considered to be performing services that are electricity services are not afforded any exemption from the Guideline. The inclusion of these examples does not constitute a blanket approval for 'regulatory' services staff or offices for those staff to be shared.

All DNSPs also remain subject to clause 4.1's obligation to not discriminate and must separate accounts and allocate or attribute costs in accordance with clause 3.2 of the Guideline. We note that the onus is on each DNSP to ensure that it is fully compliant with all obligations of the Guideline and demonstrate this in its annual ring-fencing compliance report, to be provided to the AER in accordance with clause 6 of the Guideline.

Energex and Ergon Energy supported the proposed amendment to 4.2.4(b) (regarding staff registers) and proposed a similar amendment to clause 4.2.4(a) (regarding office registers) so that a DNSP would not be required to identify the classes of offices it has chosen not to separate because staff at those offices are considered corporate staff.¹¹

We note that we proposed to remove the obligation to identify corporate staff positions on the staff register because it was likely to be disproportionately onerous. We consider the obligation for a DNSP to identify classes of offices to which it has not applied the separation obligation has benefit and that, given the number of offices is likely to be much lower than the number of staff, it is not likely to be disproportionately onerous. We consider the obligation to identify exempted offices on the register remains appropriate.

2.4 Transmission services

AGL Energy opposed our proposed amendment to add exemption from legal separation for transmission services. It submitted that it was not necessary for the Guideline to address transmission services when this is likely to be addressed in a separate transmission ring-fencing guideline.¹²

We note that the current transmission ring-fencing guideline was published by the ACCC in 2002 and that we intend to develop an updated guideline within the next two years. Two DNSPs, TasNetworks and AusNet, provide transmission services. It has been suggested that the current version of the Guideline requires the transmission and distribution businesses to be separated. This is not correct. The Guideline allows a DNSP to provide transmission services, and does not require separation of direct control services and transmission services. The revised definition of 'related electricity service provider' excludes affiliates that only provide transmission services.

The focus of clause 6.17.2 of the Rules, and the equivalent provision in respect of transmission services,¹³ is on separating contestable electricity services from non-contestable electricity services. Non-contestable transmission services are regulated and subject to cost allocation methodologies. There is not likely to be competition for the

¹¹ Energex and Ergon Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 2-3.

¹² AGL Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

¹³ NER, clause 6A.21.2.

provision of transmission services and the joint provision of distribution and transmission services is not likely to harm competition, or potential competition, for contestable electricity services. Requiring a DNSP to separate its transmission business will impose significant costs on the DNSP, which may be passed on to consumers. It may also reduce the efficiencies a DNSP can achieve from economies of scale. In this case, we consider it is appropriate for transmission services to be exempted from the separation obligations in this distribution ring-fencing Guideline, and for issues relating to the separation of contestable and non-contestable transmission services to be addressed in the proposed transmission ring-fencing guideline.

2.5 Emergency response

In the Draft Amended Ring-fencing Guideline, we proposed amendments to accommodate arrangements for response to emergency events. These proposed amendments were to clauses 4.2.3(b)iv. and 4.3.3(e), which relate to separation of branding and information sharing between a DNSP and a RESP.

Red Energy and Lumo Energy supported the proposed amendment to add clause 4.2.3(b)iv. They submitted that they did not wish to constrain DNSPs from supporting each other and customers during emergency scenarios or at times of significant network outages.¹⁴

Energex and Ergon Energy supported the proposed amendment to clause 4.3.3(e). They submitted that the staff sharing exemption at clause 4.2.2(b)i.c. should be extended to enable a DNSP to share staff with a RESP as well as another DNSP. They submitted that this would also allow for more staff to be at the DNSP's disposal in the event of an emergency, since many of the DNSP's staff may be prevented from reaching their workplace to assist.¹⁵

To the extent that a DNSP seeks to be able to share offices, staff and branding when providing emergency assistance to another network service provider, this is already permitted by the Guideline. Where a DNSP seeks to provide services to a RESP in the event of an emergency, this has the potential to provide an anti-competitive advantage to the RESP and is not permitted. We note that the requirement to comply with clause 4.1 (obligation to not discriminate) applies in all circumstances. We also note that clause 4.3.3(c) allows a DNSP needing assistance in an emergency event to disclose confidential information where doing so is necessary to enable the DNSP to continue to provide its distribution services or other permitted services.

AGL Energy submitted¹⁶ that the proposed amendments at clause 4.2.3(b)iv., which are intended to provide for contingency emergency response, could be relied upon by businesses in the provision of services in relation to non-emergency events. It proposed the following alternatives to clauses 4.2.3(b)iv. (branding) and 4.3.3(e) (information sharing):

- 4.2.3(b) iv. Clause 4.2.3(a)i. does not apply to... providing assistance to another **Network Service Provider** in response to ~~an event (such as an emergency)~~

¹⁴ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 4.

¹⁵ Energex and Ergon Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 1-2.

¹⁶ AGL Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 2-3.

an emergency event, such as a flood that is beyond the other **Network Service Provider's** reasonable control.

- 4.3.3(e) A **DNBP** must not disclose **confidential information** to any person, including a **related electricity service provider**, unless... the disclosure is solely for the purposes of providing assistance to another **Network Service Provider** in response to ~~an event (such as an emergency)~~an emergency event (such as a flood) that is beyond the other **Network Service Provider's** reasonable control.

We note that not all events that might give rise to a legitimate need for assistance would necessarily be considered to be emergencies, and that the boundaries of the term 'emergency' are themselves somewhat unclear. We note that 'beyond reasonable control' is a commonly understood term referring to force majeure events more broadly, including such things as: the acts or omissions of third parties; fire, earthquake, or other acts of God; war, civil disobedience, or sabotage; criminal acts, etc. On this basis, we consider the current description of 'an event (such as an emergency)' is suitable.

After considering the submissions received in response to the Draft Amended Ring-fencing Guideline, however, we consider it is appropriate to make an amendment to the clauses of the Guideline that provide exemption for 'an event (such as an emergency)' to make clear that the assistance that the DNBP can provide is limited to assistance that is necessary in order to respond to the event, not just to any kind of assistance. That is, the assistance is limited to circumstances where there is no other alternative reasonably available to the DNBP. This means that, in most cases, the assistance permitted by the exception is likely to be limited to assistance provided in the immediate aftermath of the event, rather than ongoing network recovery or reconstruction activities.

We have therefore amended the following clauses of the Guideline

at 3.1(d)v., 4.2.1(b)ii., 4.2.2(b)ii. and 4.2.3(b)iv.:

providing assistance to another **Network Service Provider** ~~in response to~~the extent necessary to respond to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control.

and at 4.3.3(e):

the disclosure is solely for the purposes of providing assistance to another **Network Service Provider** ~~in response to~~the extent necessary to respond to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control.

2.6 Branding

AusNet Services, Energex and Ergon Energy supported the proposed amendments to clause 4.2.3 of the Guideline, relating to branding and cross-promotion.¹⁷

¹⁷ AusNet Services, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1; Energex and Ergon Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1.

National Electrical and Communications Association submitted that the Guideline should include requirements such as separate phone number, website, email address and switchboard between the DNSP and RESP to avoid inadvertent or intentional transfers between the businesses.

We note that the Guideline requires a DNSP to separate the branding of its direct control services from branding for contestable electricity services, regardless of the platform through which the services are provided. For example, if services provided under a RESP's brand were advertised on a DNSP's website, this would be a breach of the obligation for a DNSP to use branding that is independent and separate from the branding used by a RESP. The same rule would apply for communications channels such as phone and switchboard if these services were provided such that a reasonable person would infer from the branding communicated in those services that the DNSP and the RESP were related. We will expect each DNSP and their independent assessor to show that they meet all obligations of the Guideline, including branding obligations, in their compliance reports. We will also monitor intelligence and take action where appropriate.

Red Energy and Lumo Energy objected to the proposal to revise clause 4.2.3(a) of the Guideline by adding additional references to 'contestable electricity services'. They submitted that allowing an affiliate to supply services other than direct control services or contestable electricity services using the DNSP's regulated branding has the potential to give that affiliate a tacit advantage in supplying contestable electricity services by associating itself with the DNSP in their supply of the other services.¹⁸

We note that the Guideline permits an affiliate and/or RESP to use branding that is not independent and separate from the DNSP's for the provision of other non-electricity services. However, even if an affiliate is a RESP and provides other non-electricity services using the DNSP's brand, it must still use independent and separate branding for its contestable electricity services such that a reasonable person would not infer the two were related. We consider that the scope of this restriction is adequate.

Red Energy and Lumo Energy also objected to the proposed amendment to add clause 4.2.3(b)ii. to enable a DNSP to use branding on a shared asset that is not independent and separate from a RESP. They submitted that the current practice of allowing a DNSP to use shared assets to earn both regulated and unregulated revenues must not be permitted and the Cost Allocation Guideline and Shared Asset Guideline should be reviewed and revised accordingly. They submitted that the Shared Asset Guideline and the Cost Allocation Guideline do not currently work as intended and there is therefore risk that contestable electricity services may be cross-subsidised as a result of a DNSP using a shared asset.¹⁹

Shared assets are distribution assets that enable DNSPs to create new revenues and pass on some of the savings to consumers of direct control services. We note that we have limited the proposed amendment so that the branding exemption only applies for assets that are used for both direct control and contestable electricity services simultaneously. We note that the DNSP's direct control and contestable electricity services are otherwise subject to the Guideline's legal and functional separation obligations. We consider that our proposed

¹⁸ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

¹⁹ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

amendment is sufficiently limited and remains appropriate in its existing form. To the extent that there are broader concerns with the Shared Asset Guideline and/or the Cost Allocation Guideline, these cannot be reviewed within the scope of the Guideline.

2.7 Waiver duration

Clause 5.3.4 sets out obligations around the form of a waiver. Following assessment of DNSPs' waiver applications, we have amended this clause to clarify that a DNSP may apply, and a waiver or interim waiver may be granted, for part of a regulatory control period, not just a whole regulatory control period (or periods).

Clause 5.3.4:

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

(b) for a term that coincides with part or all of the DNSP's current regulatory control period, next **regulatory control period**, or both periods.

2.8 Information disclosure

Clause 4.3.3 says that a DNSP must not disclose confidential information to any person, including a related electricity service provider, unless specific conditions are met. We proposed to add four additional circumstances to the clause.

CitiPower and Powercor supported the proposed amendment to clause 4.3.3(f).²⁰

Red Energy and Lumo Energy objected to the proposed amendments, particularly in relation to release of confidential information for the purposes of contestable services, emergency services or research purposes.²¹ They submitted that they would only support the disclosure of confidential information from an intermediary or a developer to a DNSP to facilitate that DNSP in providing its services where the customer had consented to the release of that information to the DNSP. Red Energy and Lumo Energy submitted that it is not clear in what circumstances it would be necessary to release confidential information to a RESP or any other person for the purposes of an emergency. They also asked for clarification of why confidential information would be needed for research purposes.

PIAC submitted that the proposed addition of clause 4.3.3(f) would be appropriate for non-market research but it would be inappropriate for this information sharing to include market research linked to profit, or to provide a competitive advantage. PIAC proposed that that the exemption for research purposes should be limited to non-market research.²²

AGL Energy submitted that clause 4.3.3(d) should be amended to clarify that the clause does not apply to the disclosure of information to affiliates.²³

²⁰ CitiPower and Powercor, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1.

²¹ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 3.

²² Public Interest Advocacy Centre, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

²³ AGL Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

We consider our proposed amendments provide flexibility to ensure that ring-fencing does not undermine consumers' rights and interests (including their longer term interest in product and service innovation).

We consider that circumstances in which disclosure to an affiliate would be appropriate exist but are very limited, and are narrowly confined to customer-driven circumstances. We consider that clause 4.3.3 of the Draft Amended Ring-fencing Guideline reflects this in an appropriate and targeted manner.

We consider that there may be few circumstances where a DNSP may need to disclose confidential information in order to be able to provide assistance to another Network Service Provider in an emergency event. For example, where a DNSP's network is connected to the network of another Network Service Provider, a DNSP may need to provide confidential information about its network to that other network service provider to assist in the restoration of that other network service provider's network.

We consider there are circumstances in which confidential information would be needed for research purposes. Further, it is our view that there is likely to be benefit from research, whether market or non-market. For example, we note that the Australian Renewable Energy Agency is currently conducting a research and development program led by the Australian National University. The project aims to improve DNSPs' ability to manage solar PV integration challenges that can cause problems on networks. The university seeks to collect from DNSPs detailed solar PV system information and information about electrical networks. The information will enable researchers to produce solar PV power output simulations mapped directly to distribution networks.²⁴

AGL Energy also submitted that clause 4.3.3(f) (research purposes) should make it explicit that the information being disclosed for research purposes should not be subsequently disclosed to a RESP. It proposed adding the following amendment:

the disclosure is solely for the purposes of research by a legal entity other than a **related electricity service provider** of the **DNSP**, provided that the person or entity doing the research does not then disclose the information to a **related electricity service provider** of the **DNSP**.

We agree that the Guideline could benefit from amendments to ensure that a DNSP cannot simply use an intermediary such as a researcher to disclose confidential information to a RESP that is not available to its competitors.

We note that clause 4.3.3(f) allows a DNSP to disclose confidential information for the purposes of research. However, clause 4.3.4(a) of the Draft Amended Ring-fencing Guideline says that if the researchers disclose the information to a RESP, the DNSP must also provide it to other legal entities on an equal basis.

We consider it is appropriate to make a minor amendment to ensure that clause 4.3.4(a) applies even where a RESP receives indirectly (i.e. from another intermediate source such as a researcher, or another legal entity to whom the researcher may have disclosed the

²⁴ See <https://arena.gov.au/projects/real-time-operational-pv-simulations-for-distribution-network-service-providers/> for more information.

information) the information that was provided to the researcher. We have made the following amendments:

4.3.4 Sharing of information

- (a) Subject to clause 4.1(c)(iv) and to this clause 4.3.4, where a **DNSP** shares **confidential information** with a **related electricity service provider**, or where **confidential information** ~~that a legal entity to whom a DNSP has disclosed information under clause 4.3.3(f) is then disclosed by any person~~ ~~discloses that~~ **confidential information** to a **related electricity service provider** of the **DNSP**, the **DNSP** must provide access to that **confidential information** (including the derived information) to other **legal entities** on an equal basis.

We also consider it is appropriate to add new clause 4.3.3(g) to the Guideline to clarify that sharing of confidential information between affiliated DNSPs is acceptable in specific circumstances – namely, where the part of the DNSP to whom the information is disclosed is the part of that DNSP that is providing direct control services, rather than the part of the DNSP that is providing contestable electricity services. The wording of clause 4.3.3(g) is:

where another **DNSP** is an **affiliated entity** of the **DNSP**, the disclosure is to the part of that other **DNSP** that provides that other **DNSP's direct control services**; or

Accordingly, previous clause 4.3.3(g) is now clause 4.3.3(h).

2.9 Sharing of information and information register

Energex and Ergon Energy requested that we amend clause 4.3.4 (sharing of information) to clarify that the clause does not require a DNSP to share information where the disclosure would otherwise result in the DNSP breaching other legal or contractual obligations (e.g. under the NER or the Privacy Act 1988).²⁵

We consider that if a legal or contractual obligation prohibits a DNSP from disclosing information to a third party, then the DNSP should not be able to disclose that information to an affiliate either. Accordingly, we consider that this amendment is not appropriate.

Red Energy and Lumo Energy opposed the proposed amendments to clause 4.3.4 for the same reasons they opposed the amendments to the information disclosure obligations. That is, they considered the amendments unnecessary. In relation to clause 4.3.5 (information register), they argued the effect of the amendment would be to exclude affiliates of a DNSP who are legal entities but not RESPs and therefore do not provide contestable electricity services. Further, Red Energy and Lumo Energy submitted that the clause would only apply to DNSPs that are competing in relation to the provision of contestable electricity services and so the proposed amendment is not required.²⁶

As noted above in relation to branding, the Guideline is directed at separating direct control services from contestable electricity services. Accordingly, the information sharing provisions (including clause 4.3.5) are focused on the availability of information to parties who are providing contestable electricity services.

²⁵ Energex and Ergon Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

²⁶ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 3.

Clause 4.3.5 describes the legal entities that a DNSP must include on its information register. The entities listed on the information register must include RESPs, and other legal entities who provide contestable electricity services but who are not affiliates of the DNSP, that have requested access to information identified in clause 4.3.4(a). We consider our proposed amendment provides additional clarity in the Guideline about the parties who must be listed on the information register, and is useful for the avoidance of doubt.

2.10 Conduct of service providers

Clause 4.4.1(a) is intended to ensure that a DNSP cannot avoid functional separation obligations by outsourcing functions to a service provider. It requires a DNSP to ensure that their service provider complies with the Guideline when providing services for the DNSP the same as if those services were provided by the DNSP. We proposed to amend clause 4.4.1(a) so that only agreements for the provision of services to the DNSP that enable or assist the DNSP to supply direct control services would be required to comply with the Guideline. The reason was that we did not wish to capture agreements for services that are unrelated to the supply of direct control services, for example, security.

Essential Energy submitted that the interpretation of our proposed amendment was unclear and the clause could still be read too broadly. It submitted that the obligation should be confined to 'outsourcing' contracts, i.e. agreements with service providers to perform some of the functions of the DNSP. Essential Energy submitted this is consistent with similar clauses in jurisdictional guidelines. It also submitted that the clause should be restricted to include contracts where services are provided to both the DNSP and RESP because this is a more balanced approach that mitigates the greatest risks while also minimising costs.²⁷

Essential Energy proposed the following amendment:

A DNSP:

(a) must ensure that any new or varied agreement between the DNSP and a service provider who provides services to both the DNSP and a related electricity service provider of the DNSP, which provides for the service provider to perform any of the DNSP's functions in respect of direct control services, for the provision of services to the DNSP that enable or assist the DNSP to supply direct control services, requires the service provider to comply, in providing those services, with:

- i. clauses 4.1, 4.2.1, 4.2.2 and 4.3.2 of this Guideline; and
- ii. clause 4.2.3 of this Guideline in relation to the brands of the DNSP;

as if the service provider was the DNSP.

Red Energy and Lumo Energy objected to the proposed amendment to clause 4.4.1(a). They submitted that the proposed change is unnecessary, as it is obvious that the clause is intended to apply to contracts relating to the supply of direct control services.²⁸

²⁷ Essential Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 2-3.

²⁸ Red Energy and Lumo Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 4.

Electrical Trades Union of Australia submitted that this obligation should no longer be eligible for waiver under clause 4.4.2. It submitted that the added detail at 4.4.1(a) clarifies the specific scope of where new or varied agreements are captured by the Guideline's requirements and a waiver is no longer necessary.²⁹

We consider it is useful to amend clause 4.4.1(a) to ensure there can be no misinterpretation of the clause. There may be agreements that relate to services where the provider does not perform any of the DNSP's functions but nonetheless facilitates the DNSP's provision of direct control services. For example, where a contractor is engaged by a DNSP to undertake vegetation management.

We consider our proposed amendment is sufficient to exclude non-distribution services (such as cleaning services or security services) from being caught by the clause. For the avoidance of doubt, the Guideline should be read in conjunction with the relevant explanatory statements.

We consider that the possibility of waiver from this clause provides us with flexibility for potentially unforeseen circumstances, for example where other waivers have been granted.

In the course of our discussions with interested parties, we were questioned whether clause 4.4.1 could be interpreted to mean that if an affiliate/contractor is providing a SCS service under contractual arrangements for a DNSP, the affiliate may be required to use the brand of the DNSP. This stems from how 4.4.1(a)ii links to 4.2.3(a)i., i.e. a contractor providing services on behalf of the DNSP is acting as if it was the DNSP and therefore must use the brand of the DNSP in order to satisfy the requirements the brand be independent and separate from the brand of a RESP. We consider this interpretation is incorrect. The Guideline does not require a service provider to use the DNSP's branding. The service provider, depending on their circumstances, could choose to use its own brand, or an independent third party brand, or no brand at all.

2.11 Compliance and enforcement

Several interested parties made submissions about the Guideline's compliance and enforcement arrangements.

AGL Energy submitted that AER compliance reports should be regular and mandated and that the AER should publish reports about DNSPs' compliance with the Guideline.³⁰

Electrical Trades Union of Australia submitted that random spot auditing of the DNSP's compliance should be embedded in the Guideline. It submitted that this would enhance transparency and confidence for consumers and make DNSPs less susceptible to non-compliance.³¹

National Electrical and Communications Association sought clarification on how the court system would be used as a mechanism of enforcement in the event of a breach, specifically:

- whether the Guideline carries the same weight as the rules in terms of legal enforcement

²⁹ Electrical Trades Union of Australia, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 3.

³⁰ AGL Energy, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 3-4.

³¹ Electrical Trades Union of Australia, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 3.

- whether a breach could be brought to court by anyone, or only the AER
- whether the AER would have resources and funding to proactively investigate and prosecute breaches, and
- how damages would be applied by the court and AER, with reference to unfair conduct.

National Electrical and Communications Association submitted that, if there was a lack of clarity around enforcement, damages would be difficult to quantify and the court process may result in higher costs for all. It submitted that the AER should consider introducing a penalty mechanism.³²

The Guideline was made and is amended under provisions of the NER. Clause 6.3 of the Guideline states, and the law provides, that the AER may seek enforcement of the Guideline under the National Electricity Law.

In parallel with the Guideline, we are developing an appropriately rigorous ring-fencing compliance approach, which we will publish on our website. Further details about compliance will be available at that time. We will seek to apply a regime that is consistent with our approach to compliance for other AER functions.

The AER welcomes intelligence from market participants and interested parties. As implied by clause 6.4, interested parties are able to provide complaints or concerns to us and we may investigate those complaints or concerns, including by requiring a DNSP to provide written responses.

The Guideline does not limit the investigation and compliance actions we may take. We consider it is appropriate for our compliance approach to retain a degree of flexibility to allow us to be responsive to changing circumstances.

In administering the Guideline, we seek to facilitate compliance. However, we will consider all options at our disposal to ensure every DNSP complies with the Guideline on an ongoing basis. We may also review the Guideline from time to time and make such amendments as we determine are necessary. If it becomes clear that more rigid compliance and enforcement obligations are preferable then we will take appropriate actions at that time.

2.12 Typographical amendments

A number of minor typographical changes have been made to improve the Guideline. These changes are shown in a track changes version of the final amended Guideline on our website.

ActewAGL sought clarification of whether the term, 'other services', at the first and third bullet points at clause 1.1.1 of the Guideline, is a defined term or the generic term used in clause 6.17.2 of the NER. ActewAGL also asked whether 'electricity services' is intended to mean a defined or generic term. ActewAGL also submitted that the term, 'DNSP', should be in bold throughout the Guideline.³³

³² National Electrical and Communications Association, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 12.

³³ ActewAGL, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1.

The wording in clause 1.1.1 is intended to reflect clause 6.17 of the NER. The term 'other services' is not bolded in that NER clause. The terms 'Distribution Network Service Provider' and 'direct control services' are bolded in clause 6.17 of the NER. For clarity, we have bolded these terms, and the term 'national electricity objective' (which is defined in the NER), in clause 1.1.1 of the Guideline.

The term 'electricity services' is not used in clause 6.17 of the NER. Given that clause 1.1.1 of the Guideline is a statement of the Guideline's objectives, rather than a clause that creates substantive obligations, we consider it is appropriate that this term be left unbolded.

2.13 Matters out of scope

Interested parties raised a number of concerns related to matters out of scope of the Guideline, including competition matters, industrial relations matters and procurement matters.

A number of interested parties, representing manufacturers and suppliers of electrical components, sought clarification of whether the Guideline applied to the provision of goods by DNSPs as well as the provision of services.³⁴ Some of these interested parties expressed concern that if the Guideline did not apply to the provision of goods then DNSPs may be able to continue to on-sell products and cross-subsidise them to reduce competition in contestable markets. Many submitted that if the Guideline did not apply to goods/materials, then it should.

Our interpretation of the Rules is that the term 'services' has a very broad meaning, and that the Guideline applies to the full range of different services a DNSP might provide, including where they might sell or provide goods as well as services to consumers. We note that it is the way a service is classified that will determine whether or not the DNSP may provide the service and any ring-fencing obligations that might apply.

We note that all DNSPs remain subject to the obligation to not discriminate (clause 4.1). However, to the extent that interested parties' concerns relate to competition matters, they are best dealt with by the Australian Competition and Consumer Commission.

National Electrical and Communications Association submitted that the Guideline does not adequately address cross-subsidies that can occur through uncompetitive tendering practices. It proposed³⁵ adding obligations around tendering. Specifically, any works provided or payments made by the DNSP to the RESP should:

- Be no more than \$500,000 per annum as suggested in the Guideline
- Be in accordance with a written contract that has been openly and transparently tendered
- Have the same contract conditions imposed and enforced as if an alternative service provider provided such services

³⁴ All Round Supplies, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 2-3; Budget Fasteners and Tools, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1; MV Technology Solutions, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1; National Electrical and Communications Association, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 7-8; Nexans Olex, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 1; Sicame Australia, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 1-3.

³⁵ National Electrical and Communications Association, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 11.

- Be entered into a publicly available tender register, and
- Be subject to probity and third party audit with mandatory reporting to the AER.

We note that the Guideline is not designed to address procurement issues per se. As previously noted, the Guideline contains a provision obliging DNSPs to not discriminate between a RESP and a competitor or potential competitor of a RESP in connection with the provision of electricity services. There is no waiver available for this obligation.

National Electrical and Communications Association also proposed³⁶ that clause 4 be amended to ensure that:

- a RESP cannot take advantage of contracts negotiated by the DNSP
- a RESP cannot access the DNSP's good receiving facilities (e.g. warehousing)
- a RESP cannot access the DNSP's stock, and
- a DNSP must approve more than one supplier of a product wherever possible.

National Electrical and Communications Association submitted that the Guideline should require a RESP's accounting systems to capture the full costs of services and products provided to it by a DNSP, not merely incremental costs associated with providing them to the RESP in addition to the DNSP. National Electrical and Communications Association also submitted that this should be extended to include the full cost of labour utilised by the RESP being allocated to projects for which they are competing with accredited service providers. It submitted that this would ensure a RESP will not have an advantage over its competitors.³⁷

The Electrical Trades Union of Australia submitted³⁸ that DNSPs and RESPs should be able to engage employees under common terms and conditions of employment, in line with industrial relations legislation. It proposed to add a new clause to the Guideline to make this clear:

4.2 For the avoidance of doubt, nothing in clause 4.2 prevents a DNSP and a related electricity service provider from engaging staff under the same industrial terms, including staff from a DNSP and a related electricity service provider from being employed under the same industrial instrument.

We note that the Guideline can only place obligations on DNSPs, not RESPs. Further, we consider it is not the intention of the Guideline to remove all competitive advantage, only anti-competitive advantage. We note that we can only regulate DNSPs, not RESPs or other affiliated entities. The intention of the Guideline is to remove barriers to competition for the provision of contestable electricity services by requiring DNSPs to ring-fence this business from the provision of direct control services. In this way, ring-fencing prevents a RESP from gaining any anti-competitive advantage over a competitor or potential competitor by way of cross-subsidy or discrimination from a DNSP. The Guideline does not seek to remove any advantage a RESP may hold where that advantage is not achieved by cross-subsidy or discrimination from the DSNP, for example, economies of scale.

³⁶ National Electrical and Communications Association, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 8.

³⁷ National Electrical and Communications Association, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, pp. 5-6.

³⁸ Electrical Trades Union of Australia, *Submission to AER Draft Amended Ring-fencing Guideline*, August 2017, p. 2.

We consider the Cost Allocation Guideline and approved cost allocation methodologies are not matters that can be addressed under the Guideline. We note that competition matters are captured under other legislation and can be considered and investigated by the Australian Competition and Consumer Commission. We also note that industrial relations matters are outside the scope of the Guideline and cannot be addressed through this channel.

Attachment – Summary of amendments

In summary, we have made the following amendments to the initial (November 2016) version of the Guideline:

- Except as varied below, we have made all of the amendments proposed in the Draft Amended Ring-fencing Guideline.
- Every instance of the term 'DNSP' now appears in bold throughout the Guideline, as do the terms 'national electricity objective' and 'direct control services' in clause 1.1.1 of the Guideline.
- We have amended clauses 3.1(d)v., 4.2.1(b)ii., 4.2.2(b)ii. and 4.2.3(b)iv. in relation to emergency response as follows:

providing assistance to another **Network Service Provider** ~~in response to the extent necessary to respond~~ to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control.

We have made a similar amendment to clause 4.3.3(e):

4.3.3 Disclosure of information

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

...

- (e) the disclosure is solely for the purposes of providing assistance to another **Network Service Provider** ~~in response to the extent necessary to respond~~ to an event (such as an emergency) that is beyond the other **Network Service Provider's** reasonable control.

...

- (g) ~~where another **DNSP** is an **affiliated entity** of the **DNSP**, the disclosure is to the part of that other **DNSP** that provides that other **DNSP's direct control services**;~~
or
(h) a **related electricity service provider** of the **DNSP** has requested the disclosure and the **DNSP** complies with clause 4.3.4 in relation to that **confidential information**.

- We have amended clause 4.3.4(a), dealing with the sharing of confidential information, as follows:

4.3.4 Sharing of information

- (a) Subject to clause 4.1(c)(iv) and to this clause 4.3.4, where a **DNSP** shares **confidential information** with a **related electricity service provider**, or where ~~**confidential information** that a legal entity to whom a **DNSP** has disclosed information under clause 4.3.3(f) is then disclosed by any person~~ ~~discloses that **confidential information**~~ to a **related electricity service provider** of the

DNSP, the **DN**SP must provide access to that **confidential information** (including the derived information) to other **legal entities** on an equal basis.

- We have clarified the potential duration of a waiver in clause 5.3.4(b) as follows:

5.3.4 Form of waiver

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

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

The final amended Guideline (October 2017) is available on our website³⁹, together with a version showing all amendments made as a result of the 2017 Guideline amendment process.

³⁹ <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-2017-amendment>.