



Position paper

**Electricity Distribution
Ring-fencing Guidelines**

September 2012

© Commonwealth of Australia 2012

This work is copyright. Apart from any use permitted by the Copyright Act 1968, no part may be reproduced without permission of the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601.

AER reference: 46484/D12/101727

Table of Contents

1	Background.....	1
2	Assessment of jurisdictional guidelines	4
2.1	Assessment criteria	4
2.2	Assessment	4
2.3	Conclusion	7
3	AER preferred position	9
4	Next steps	13
Attachment A:	Assessment of jurisdictional guidelines against criteria	14
Attachment B:	Summary of jurisdictional ring-fencing guidelines.....	18

1 Background

In December 2011 the AER commenced its review of electricity distribution ring-fencing arrangements, as permitted under the National Electricity Rules. At that time the AER issued a *Discussion Paper* and sought the views of stakeholders about:¹

- the adequacy of current ring fencing arrangements and whether a nationally consistent set of Distribution Ring-Fencing Guidelines is appropriate and/or desirable
- the appropriate content of any Distribution Ring-Fencing Guidelines
- how any Distribution Ring-Fencing Guidelines should deal with emerging industry trends
- the application of the guidelines to dual function assets.

The AER considered the submissions to the discussion paper. In response this paper addresses the fundamental issue of whether the existing jurisdictional ring-fencing guidelines place adequate obligations on distribution network service providers (DNSPs) in the National Electricity Market (NEM). In doing so, we assess the existing jurisdictional ring-fencing guidelines against a number of criteria. The criteria reflect the underlying purposes of ring-fencing, in particular the need to serve the interests of consumers of both regulated and unregulated services that may be provided by DNSPs.

Based on the assessment, the AER comes to a preferred position as to whether it should update the jurisdictional guidelines or develop a national distribution ring-fencing guideline. Responses to this position paper will assist the AER in the next steps to the review of distribution ring-fencing arrangements.

Ring-fencing

Ring-fencing is the identification and separation of business activities, costs, revenues and decision making within an integrated entity that are associated with a monopoly element, from those that are associated with providing services in a competitive market. Ring-fencing obligations that apply to distribution network service providers (DNSPs) generally require the separation of the accounting and functional aspects of regulated distribution services from other services provided by a DNSP. Ring fencing arrangements may also be required to address situations where two or more DNSPs have the same ownership.

Ring-fencing protects the long term interests of consumers by ensuring efficient costs for regulated services provided by DNSPs. This aligns with the National Electricity Objective. Ring-fencing also limits the ability of DNSPs to discriminate against upstream and downstream competitors. Ring-fencing therefore protects the long term interests of consumers more broadly by promoting competition in contestable markets. For example, a DNSP may be able to provide non-regulated services, and possibly gain an advantage over other service providers through its provision of regulated services. Ring-fencing aims to prevent this. Ring-fencing levels the playing field in markets for contestable services, by

¹ AER, *Electricity Distribution Ring-fencing Guidelines Review*, December 2011.

eliminating the advantage that a DNSP may otherwise have in providing that service, and facilitating competition in the provision of contestable services.

Ring-fencing is currently applied to the DNSPs in the NEM through jurisdictional ring-fencing guidelines. The ring-fencing guidelines that currently apply were developed by jurisdictional regulators in accordance with the then National Electricity Code (NEC) and appear to have been informed by national competition principles. The guidelines were developed to deal with the industry structure at the time with emphasis on separation of distribution and retail functions. Under the National Electricity Rules (NER), the ring-fencing guidelines in force in a participating jurisdiction before the AER assumed regulatory responsibility continue to apply in that jurisdiction unless the AER amends, revokes or replaces the guidelines.²

The ring-fencing guidelines that currently apply in each jurisdiction are listed in table 1.1.

Table 1.1 Current electricity distribution ring-fencing guidelines

Queensland	<i>Electricity Distribution: Ring-Fencing Guidelines</i> , developed by the Queensland Competition Authority (QCA) in September 2000 (Queensland Guidelines)
Australian Capital Territory	<i>Ring-Fencing Guidelines for Gas and Electricity Network Service Operators in the ACT</i> developed by the Independent Competition and Regulatory Commission (ICRC) in November 2002 (ACT Guidelines)
New South Wales	<i>Distribution Ring-Fencing Guidelines</i> , developed by the Independent Pricing and Regulatory Tribunal (IPART) in February 2003 (NSW Guidelines)
South Australia	<i>Operational Ring Fencing Requirements for the SA Electricity Supply Industry: Electricity Guideline No. 9</i> , developed by the Essential Services Commission of South Australia (ESCOSA) in June 2003 (South Australian Guidelines)
Victoria	<i>Electricity Industry Guideline No. 17: Electricity Ring-fencing Issue 1</i> , developed by the Essential Services Commission (ESC) in October 2004 (Victorian Guidelines)
Tasmania	<i>Functional Ring-fencing Guidelines</i> (Tasmanian Functional Guidelines) issued by OTTER in October 2004, and <i>Electricity Distribution and Retail Accounting Ring fencing Guidelines: Electricity Industry Guideline No. 2.2, Issue No 5</i> , issued by OTTER in 2002 and most recently updated in March 2011 (Tasmanian Accounting Guidelines)

Rule requirements

The NER allows the AER to develop distribution ring-fencing guidelines.³ The NER does not require the same guidelines to be applied in each jurisdiction, although such an outcome is allowed. The NER provides that the distribution ring-fencing guidelines may include provisions for legal separation, accounting arrangements, cost allocation, information flows and

² NER, cl 11.14.5.

³ NER, cl. 6.17.2(a).

amendment or waiver provisions. If the AER develops or amends distribution ring-fencing guidelines the NER also requires the AER to consider the need for consistency with the Transmission Ring-fencing Guidelines.⁴

AER ring-fencing discussion paper

In December 2011 the AER published a *Discussion Paper* seeking stakeholder views on whether it should develop a nationally consistent set of distribution ring-fencing guidelines.⁵ The AER received 13 submissions in response to the discussion paper.⁶ There was general support for a move to more consistent ring-fencing arrangements, however there were a range of views about the required application and content of ring-fencing guidelines.

After reviewing submissions, the AER considered that it was important to test the need for a national ring-fencing guideline against a clear set of criteria. In particular, in order to form a view about the need for new ring-fencing guidelines it would review the existing jurisdictional ring-fencing arrangements, and only if the existing arrangements were deficient in some material respect would it amend or replace those guidelines.

Chapter 2 sets out the criteria used by the AER to assess the existing ring-fencing arrangements, and the AER's assessment and conclusion regarding the adequacy of existing ring-fencing arrangements. Chapter 3 discusses the implication of the AER's assessment, and next steps and process information is in chapter 4.

⁴ NER, cl. 6.17.2.

⁵ AER, *Electricity Distribution Ring-fencing Guidelines Review*, December 2011.

⁶ All submissions are available on the AER website www.aer.gov.au.

2 Assessment of jurisdictional guidelines

2.1 Assessment criteria

In order to assess whether the jurisdictional ring-fencing guidelines should be maintained or national guidelines developed the AER developed a set of criteria. The criteria reflect key principles underpinning effective ring-fencing arrangements in the context of the NEM. Ring-fencing should promote efficient pricing of regulated services, promote competition in contestable markets and be flexible enough to accommodate changes in the market.

The criteria applied by the AER are:

- Do the guidelines include the ring-fencing components listed in clause 6.17.2(b) of the NER?
- Is the terminology in the guidelines consistent with the NER?
- Do the guidelines clearly identify which services are ring-fenced?
- Are the guidelines able to be applied in emerging markets?
- Are the guidelines flexible enough to take into account particular or changing circumstances (for example, provide for amendment, variation and/or waiver)?
- Do the guidelines specify compliance obligations for the DNSPs?

The electricity transmission ring-fencing guidelines have also been reviewed against the same criteria. In developing or amending the distribution ring-fencing guidelines the AER must consider, the need for consistency between the distribution ring-fencing guidelines and the transmission ring-fencing guidelines.⁷

A summary of the assessment against the criteria for each jurisdiction and the ACCC electricity transmission ring-fencing guidelines is in Attachment A.

2.2 Assessment

2.2.1 Ring-fencing provisions

The AER notes a number of ring-fencing requirements or obligations are specified in existing guidelines, including those listed in clause 6.17.2 of the NER. These are as follows:

- legal separation— Legal separation requires standard control services and other specified services to be provided by separate legal entities. However, entities may be owned by a holding company or subsidiary of the DNSP. Legal separation creates clear boundaries between providers of prescribed distribution services and providers of other services.

⁷ NER cl. 6.17.2.

- accounting separation— Accounting separation requires DNSPs to establish and maintain consolidated and separate accounts for the provision of distribution services and its other businesses. Accounting separation differentiates the costs of providing services, assets, liabilities and revenues between the providers of prescribed distribution services and providers of other specified services.
- allocation of costs— Cost allocation methods require DNSPs to identify and allocate costs between their regulated and other services in accordance with an agreed method that limits the ability to subsidise non-regulated services by allocating costs associated with providing non-regulated services to regulated services.
- limitations on the flow of information— Restrictions on information sharing are considered necessary to prevent the inappropriate access to and the use of information which may result in a related business gaining a competitive advantage through information obtained by the affiliated DNSP.
- physical, staffing and functional separation— Physical, staffing and functional separation addresses inappropriate sharing of facilities and information and inadvertent discriminatory behaviour in the provision of unregulated services.
- waiving ring-fencing obligations— Waiver or variation provisions allow for flexibility in the application of ring-fencing arrangements in particular circumstances.
- non-discrimination— Non-discrimination provisions require that a DNSP shall not deal with a related business on more favourable terms than it deals with another.⁸

There are currently significant differences in the ring-fencing obligations on DNSPs in different jurisdictions. The main differences are in the areas of legal and accounting separation, allocation of costs and the treatment of waiver applications. For example, legal separation of a distribution business from retail and/or generation activities is required in Queensland, ACT and South Australia, but not in NSW, Victoria or Tasmania.

Distribution ring-fencing guidelines may include but are not limited to the provisions identified above.⁹ A summary of the electricity distribution ring-fencing guidelines in each jurisdiction and the electricity transmission ring-fencing guidelines applied by the AER is contained in Attachment B.

2.2.2 Terminology

Most of the jurisdictional guidelines were issued before the replacement of the National Electricity Code (NEC) by the NER in 2005, and they include terminology and definitions that are inconsistent with the NER. For instance, a DNSP's regulated services are described as 'prescribed distribution services' in most of the guidelines (consistent with the NEC) and 'standard control services' in the NER. Similarly, a DNSP's distribution services excluded from the revenue or price cap are referred to as 'excluded distribution services' in some guidelines and the NEC; but these services may be referred to as 'alternative control', 'negotiated' or

⁸ See ACT Guidelines, clause 3.1(s); NSW Guidelines, clause 2.1; Queensland Guidelines, clause 1(h); South Australian Guidelines, clause 3.3; Tasmanian Functional Guidelines, clause 3(a); Victorian Guidelines, clause 2.1; Transmission Ring-fencing Guidelines, clause 7.2(b).

⁹ NER, cl. 6.17.2.

'unregulated' services under the NER, depending on the AER's service classification decisions.

2.2.3 Ring-fenced services

Each jurisdictional guideline clearly identifies which services are ring-fenced, but how these services are defined differs between jurisdictions. For example, the South Australian guidelines define the term 'related business' as 'any business carried out by the DNSP which is subject to effective competition'. The Queensland and ACT guidelines define a related business as 'the business of producing, purchasing or selling electricity'.¹⁰

The AER also notes differences in terminology can impact on the interpretation of the services covered by the jurisdictional ring-fencing guidelines. For example, the NER defines services provided on a competitive basis as 'contestable' while the NSW guidelines define 'contestable services' more narrowly; referring to those services subject to particular jurisdictional requirements, such as customer connections¹¹ or works relating to the an 'extension' or 'increase in capacity' of a DNSP's network.

2.2.4 Emerging markets

The existing jurisdictional ring-fencing guidelines were primarily designed to address cases of distributor and retailer integration. Consequently, not all jurisdictional guidelines adequately address the issues arising from emerging technologies, such as smart metering and 'web portal' services and other emerging services which enable demand side responses by customers. Advanced meter services, commonly referred to as 'smart meters', send electricity usage data to electricity suppliers at regular intervals, thus eliminating the need for manual meter readings. Used in conjunction with a web portal or in-home display, advanced meter services are able to provide consumers with detailed information about electricity consumption, including in relation to particular appliances.¹² Further, they may be used to facilitate communication between electricity businesses and consumers, such as in relation to power outages and restorations.

Limitations in the types of services covered by existing ring fencing obligations is evident in the Victorian guidelines, which address the separation of distribution and retail businesses only. Similarly, the Queensland and ACT guidelines limit ring-fencing to related businesses within the entity, defining related business as one which produces, purchases or sells electricity. In these instances, it is not clear if a DNSP providing advanced meter services would be required to be ring fenced from its other regulated services.

This issue was raised in submissions. AGL Energy stated there was now greater scope for all existing and new entrants to expand the range of services offered to include services that were not envisaged at the time the current jurisdictional guidelines were made.¹³ The Energy

¹⁰ ACT Guidelines, p. 17 and Queensland Guidelines, p. 26.

¹¹ Division 4, Part 3 of the *Electricity Supply Act 1995* (NSW).

¹² There are also other mechanisms, such as direct control which can be used to switch appliances on and off in different periods which do not rely on smart meter technologies.

¹³ AGL Energy submission, 23 February 2012.

Retailers Association of Australia was also concerned the current jurisdictional guidelines did not adequately address the issues posed by the introduction of new technologies, particularly transfer pricing and cross subsidisation.¹⁴

There also appears to be an emerging trend for DNSPs to engage in generation activities to relieve network congestion and to offset electricity consumption. The extent that such activity is permitted varies across jurisdictions. ActewAGL and United Energy indicated that an arrangement similar to transmission ring-fencing guidelines would also be appropriate for DNSPs.¹⁵ In the transmission ring-fencing guidelines, the restriction on carrying out a related business does not apply if that business earns revenue of less than or equal to 5 per cent of the TNSPs annual revenue. Submissions received by the AER supported DNSPs being allowed to own and operate electricity generation for the purpose of relieving network congestion and offsetting their own energy consumption.¹⁶

2.2.5 Amendment, variation or waiver

All jurisdictions, with the exception of the ACT and Victoria, allow a DNSP to apply for a waiver from ring-fencing obligations. In all jurisdictions the test for waiver is whether the costs of complying with the ring-fencing obligations outweigh the benefit to the public. The ability to waive ring-fencing obligations is important to allow particular circumstances to be taken into account. ActewAGL and Essential Energy submitted if national guidelines were adopted it is critical to provide for flexibility through the inclusion of waivers, or variations at the request of the DNSP.¹⁷

2.2.6 Compliance

The issue of compliance is not directly addressed within the NSW, ACT or Victorian guidelines. The remaining jurisdictional guidelines have varied compliance requirements. For example, the Tasmanian guidelines are monitored through existing compliance mechanisms whereas the Queensland guidelines require the DNSPs to provide a report on compliance at 'reasonable intervals'.

2.3 Conclusion

The assessment of the jurisdictional ring-fencing guidelines demonstrates no current guideline meets all the criteria developed by the AER. The jurisdictional guidelines in their present form do not completely capture the key elements of effective ring-fencing arrangements.

¹⁴ Energy Retailers Association of Australia submission, 24 February 2012.

¹⁵ ActewAGL submission, February 2012 and United Energy submission, 5 March 2012.

¹⁶ ActewAGL submission, February 2012; Ausgrid submission, February 2012; AGL Energy submission, 23 February 2012; Energy Retailers Association of Australia submission, 24 February 2012; Essential Energy submission, 1 March 2012; Ergon Energy submission, 24 February 2012 and United Energy submission, 5 March 2012.

¹⁷ ActewAGL submission, February 2012 and Essential Energy submission, 1 March 2012.

The AER has given significant weight to the criteria which assesses whether the guidelines clearly identify the services to be ring-fenced and whether they are flexible enough to apply in emerging markets. The issue of emerging markets was one of the more significant issues raised in submissions. Concerns were raised about the incentives for DNSPs to pursue opportunities in emerging markets, and entrench competitive advantages arising from access to the information or other aspects of the regulated DNSP. Changes to the electricity industry, in particular around the development of advanced meter services means most of the existing jurisdictional guidelines may not provide an effective ring-fencing regime.

Issues around terminology and interpretation are also of concern for the AER, as such matters can undermine the effectiveness of the ring-fencing guidelines, and also impose greater costs on DNSPs, potential competitors and stakeholders more generally in trying to understand the regulatory regime. Most of the current jurisdictional guidelines use outdated terms and definitions, which increases the difficulty in interpreting the guidelines, and reduces the effectiveness of the ring-fencing regime.

In a number of jurisdictions waiver or variation provisions are not included in the ring-fencing guidelines, potentially limiting the effectiveness of the arrangements by imposing costs on DNSPs that may not be justified by any offsetting benefits to electricity consumers.

Overall, the AER considers the current jurisdictional ring-fencing arrangements are not adequate for either the current environment or into the future.

3 AER preferred position

Based on the assessment in Chapter 2, the AER considers there are three main issues with the current jurisdictional guidelines:

1. the content and application of the guidelines vary significantly. The significant differences between the jurisdictional guidelines make it difficult for the AER to develop a consistent approach for monitoring compliance with ring-fencing obligations
2. there has been limited review of most of the jurisdictional guidelines since their implementation, meaning that their continuing relevance and adequacy has not been examined
3. changes to the current ring-fencing obligations need to be made to ensure the arrangements are appropriate for emerging contestable markets.

The AER does not consider maintaining the existing ring-fencing guidelines without amendment to be a viable option. Issues arising with coverage, interpretation and the treatment of DNSPs in emerging markets need to be addressed before suboptimal outcomes become entrenched. The AER's options to address these issues are limited to developing ring-fencing guidelines to apply to all NEM DNSPs, or amending each of the existing jurisdictional ring-fencing guidelines. Both options are permitted under the NER.¹⁸

The AER considers that there are a number of benefits gained from implementing NEM wide distribution ring-fencing guidelines. It would provide DNSPs with clear obligations in national markets, overcoming definitional issues and ensuring a consistent approach in assessing compliance. As a retailer with national coverage, AGL Energy submitted a national guideline would provide consistency of application and improve effectiveness of the regulatory outcome.¹⁹ Origin agreed that there would be general efficiencies gained from harmonisation of the guidelines across all jurisdictions.²⁰ Essential Energy also considered that in the long term it would be economically efficient for the one regulatory body to administer nationally consistent guidelines.²¹

While most DNSPs are no longer vertically integrated with retailers, there are a number of other markets, and emerging markets, in which DNSPs can compete to provide unregulated services. Examples of such markets include metering provision, and services related to smart meters, the scope of which is increasing as the capability of smart meters becomes more fully developed and understood. The nature of these markets is such that participants may compete in multiple jurisdictions, and/or the markets cover more than one jurisdiction. In such an environment, the AER considers there is a need to have effective ring-fencing arrangements in place. Under the current arrangements, the ring-fencing guidelines would potentially lead to different outcomes in each jurisdiction. A NEM wide distribution ring-fencing guideline would enable the AER to address the issues arising from emerging technologies in a consistent manner. Effective ring-fencing of regulated businesses choosing

¹⁸ NER, cl. 6.17.2.

¹⁹ AGL Energy submission, 23 February 2012.

²⁰ Origin submission, 24 February 2012.

²¹ Essential Energy submission, 1 March 2012.

to participate in emerging contestable markets will be essential if the markets are to operate efficiently and effectively in the long term.

Energex, Australian Power and Gas, and AGL Energy also considered the move towards a national guideline would provide an opportunity for ring-fencing requirements to more accurately reflect the current regulatory framework.²²

Maintaining the jurisdictional guidelines would require a review of each guideline, to clarify matters of interpretation under the NER. This would have to be done either at the time that an issue or waiver application was brought to the AER, resulting in considerable uncertainty for DNSPs and other contestable service providers; or through an overall review process. The AER considers there are significant administrative efficiencies to it, market participants and all DNSPs in running a single review process for a NEM wide distribution ring-fencing guideline, rather than six separate state based processes.

The AER recognises that any changes to existing distribution ring-fencing guidelines will require the implementation of new arrangements by the DNSPs. The AER will allow an appropriate time to facilitate the transition of existing services to new arrangements. The transition period will provide DNSPs time to restructure business arrangements to comply with the ring-fencing guidelines, or apply for a waiver or variation, in circumstances it can demonstrate these are appropriate. The transition period would not apply to new services, which will be subject to the ring-fencing guidelines from commencement.

Possible ring-fencing obligations and their application

As noted in section 2.2.1 above, there are a number of possible obligations that could be applied to regulated entities, including operational, accounting, functional, structural and legal forms of separation. In applying ring-fencing obligations, the AER will need to consider the costs of compliance, as well as the purpose of ring-fencing to address the identified issue. For example, legal separation of a DNSP from an entity providing unregulated services is likely to negate the need for accounting separation between the two entities. However, depending on the market for the unregulated service and ownership structure, it may still be necessary to apply ring-fencing obligations around staffing, information flows and non-discrimination.

In section 2.2.1 the purposes of specific forms of ring-fencing obligation were outlined. Each of these will have cost implications, and varying degrees of effectiveness, depending on the circumstances to be addressed. Responses to the *Discussion Paper* also addressed the matter of content of any ring-fencing guideline, and raised issues such as inclusion of waiver provisions, the need for legal separation, cost allocation and accounting separation.²³

There are two broad approaches that can be taken to the operation of the ring-fencing guidelines. Under a more prescriptive approach, the guidelines would set out the particular ring-fencing obligation (functional separation, structural separation, legal separation etc) that would apply to address relevant market concerns. For example, to establish or maintain

²² Energex submission, 24 February 2012; Australian Power and Gas, 24 February 2012; and AGL Energy submission, 23 February 2012.

²³ See for example, Energex submission, 24 February 2012; Australian Power and Gas, 24 February 2012; ActewAGL submission, February 2012; and United Energy submission, 5 March 2012.

effective separation of distribution and retail activities, a relatively strong form of separation may be mandated, such as legal or structural separation. Other ring-fencing obligations would similarly be classified against the particular market issue needing to be addressed. This approach, however, presupposes that particular ring-fencing obligations are uniquely and always suited to address a particular market concern. While waiver and variation provisions could be applied to deal with individual circumstances, arguably this approach would still make for a more rigid and less effective regulatory requirement than is necessary.

Given the variety of circumstances that may need to be addressed, both in terms of the nature of the market concerns and the jurisdiction involved, it may be preferable for the guidelines to operate in a more flexible way. This could mean, for example, the guidelines applying any of the possible ring-fencing obligations, on a case-by-case basis. In addition, to provide further flexibility, the guidelines would incorporate waiver and variation provisions to allow for appropriate application of specific obligations. In that way, the guidelines will be able to effectively address a variety of circumstances that currently exist in the NEM and upstream or downstream markets, and remain relevant into the future.

The AER is interested in the views of interested parties on how prescriptive the ring-fencing guidelines should be in specifying the application of particular ring-fencing obligations to address particular concerns.

The AER notes that there are currently situations in the NEM where an entity owns multiple regulated businesses (for example, CitiPower and Powercor have the same ownership). The AER is interested in the views of interested parties as to whether any other requirements, in addition to accounting separation supported by approved cost allocation methodologies, are necessary in these circumstances.

Conclusion

The AER has reviewed the current jurisdictional electricity distribution ring-fencing guidelines and responses to the *Discussion paper* issued in December 2011.²⁴ The AER's preferred position is to develop a national ring-fencing guideline to apply to electricity distributors in the NEM.

The AER considers a NEM-wide guideline is appropriate as the markets for provision of many unregulated services are not limited by state borders, and participants in those markets will be better served by consistent ring-fencing arrangements across the NEM. In particular barriers to participation arising from varied regulatory arrangements can be reduced, enhancing contestability in those markets. However, we recognise that flexibility will be required, in the short term to facilitate the transition to NEM-wide arrangements, and in the longer term to deal with exceptional circumstances that may impact on some DNSPs.

As noted above, a number of ring-fencing obligations can be applied to DNSPs. The AER's preliminary view is the distribution ring-fencing guidelines should allow for the following obligations to be imposed:

²⁴ *Electricity Distribution Ring-fencing Guidelines Review*, December 2011.

- legal separation
- accounting separation
- allocation of costs
- limitations on the flow of information
- physical, staffing and functional separation
- non-discrimination
- waiving ring-fencing obligations
- compliance and reporting.

4 Next steps

Draft distribution ring-fencing guideline

The AER will develop a draft distribution ring-fencing guideline. The distribution consultation procedures specified in clause 6.16 of the NER will apply. Accordingly the final distribution ring-fencing guideline will be published by the AER within 80 business days of the draft guideline being published. The AER currently intends to publish a draft guideline in November 2012 and a final guideline in March 2013.

Submission on Position paper

Interested parties may make submissions on the AER's criteria, assessment and conclusions as set out in this position paper. The AER will take into account previous submissions on the discussion paper, and any further submissions provided on this position paper in developing the draft ring-fencing guideline.

Submissions can be sent to AERinquiry@aer.gov.au. Alternatively, written submission can be sent to:

Chris Pattas
General Manager, Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

The AER prefers to receive submissions in electronic form, either in PDF or Microsoft Word format which allows the submission text to be searched. Submissions should be received by 28 September 2012. Submissions received after this time may not be considered.

All submissions will be considered public and posted on the AER's website. If stakeholders wish to submit commercial-in-confidence material to the AER they should submit a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or '[c-i-c]'.

The 'ACCC-AER information policy: the collection, use and disclosure of information' sets out the general policy of the Australian Competition and Consumer Commission and the AER on the collection, use and disclosure of information. A copy of the guideline can be downloaded from the AER website at www.aer.gov.au.

Attachment A: Assessment of jurisdictional guidelines against criteria

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission Guidelines
Is the terminology and language consistent with the NER?	<p>Guidelines refer to the National Electricity Code.</p> <p>Contestable services is defined as in the <i>Electricity Supply (General) Regulation 2001</i> (NSW) not NER.</p> <p>Refers to prescribed distribution service.</p>	<p>Guidelines refer to the Independent Competition and Regulatory Commission.</p> <p>Refers to utilities which are licensed to provide electricity distribution services under <i>Utilities Act 2000</i>.</p>	<p>Guidelines refer to the National Electricity Code, NECA and NEMMCO.</p> <p>Refers to prescribed distribution services.</p> <p>The Queensland Competition Authority is referred to as the regulator throughout the guideline.</p>	<p>Licensed business means business of providing prescribed distribution services.</p> <p>Guideline refers to the Essential Services Commission of South Australia and the <i>Essential Services Commission Act 2002</i>.</p>	<p>Refers to regulated distribution services.</p> <p>Term and definition of contestable electrical services differs from term contestable services in NER.</p>	<p>Refers to distribution business.</p> <p>Guidelines refer to the Essential Services Commission as the regulator.</p>	<p>Guidelines refer to the National Electricity Code.</p> <p>Ring-fenced services means prescribed services.</p>

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission Guidelines
Do the guidelines clearly identify which services are ring-fenced?	<p>Prescribed distribution services are ring-fenced from contestable services.</p> <p>Contestable services defined as work relating to extension of distributor's service or increase in capacity of distributor's service</p>	<p>Related businesses are ring-fenced.</p> <p>Related business defined as producing, purchasing or selling electricity.</p>	<p>Related businesses are ring-fenced. Related business defined as producing, purchasing, selling electricity.</p> <p>Also refers to excluded services in relation to account separation, services which are not prescribed distribution services therefore excluded from revenue or price cap.</p>	<p>Ring-fences related business, which is defined as business carried on or activities undertaken in electricity supply industry which is subject to effective competition.</p>	<p>Ring-fences contestable electrical services undertaken by DNSP and related business.</p> <p>Contestable electrical services defined as retailing of electricity services, any electrical service comprising work funded or partly funded by customer contributions for extension of distributor's system or an increase in capacity of a service, also contestable services as determined by regulator.</p>	<p>Retail businesses are ring-fenced.</p> <p>Retail business defined as business carried on by a retailer under the retailer's retail licence.</p>	<p>Ring-fences related business. Related business defined as activities of generation, distribution and electricity retail supply.</p> <p>Requires separate accounts for unregulated activities, defined as activities other than the supply of ring-fenced services.</p>

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission Guidelines
Do the guidelines allow for flexibility in emerging markets?	Guidelines do not allow for flexibility in emerging markets. Definition of contestable services does not capture emerging technologies. Permitted to own generator, no legal separation required.	Whether the guidelines provide flexibility in emerging markets depends on the definition of electricity service. Guidelines prevent DNSPs from engaging in generation	Only the accounting ring-fencing obligations allow for flexibility in emerging markets. Guidelines prevent DNSPs from engaging in generation.	Related business defined as business or activities subject to effective competition as determined by the Commission from time to time. There is ambiguity around the term effective competition. DNSP permitted to own generator if no revenue earned.	The guidelines refer to electrical services, but that term is not defined. It is uncertain whether the term 'electrical services' could include emerging markets. DNSP permitted to own generator, no legal separation required.	Guidelines concerned with separation of distribution and retail only. DNSP permitted to own generator, no legal separation required	The accounting ring-fencing obligations allow for flexibility in emerging markets. Whether other ring-fencing obligations allow for flexibility is dependent on the definition of electricity retail supply. Guidelines permit TNSP to carry on related business if business does not attract more than 5% of the TNSPs total annual revenue.
Are the guidelines flexible enough to take into account particular circumstances?	Guidelines provide for waiver and allow for the regulator to amend the guidelines.	No provision for waiver. Guidelines allow regulator to amend guidelines.	Guidelines provide for additions, amendments and waivers.	Provision for waiver and amendments to guidelines by regulator.	Guidelines provide for amendment by regulator and waiver.	Not addressed.	Provision for waiver and amendments to guidelines.

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission Guidelines
Compliance	Not addressed.	Not addressed.	<p>DNSP must establish internal compliance procedures.</p> <p>DNSP must provide report at reasonable intervals determined by QCA describing measures taken to ensure compliance.</p>	<p>Distribution Licensee must establish and maintain appropriate internal compliance procedures.</p> <p>DNSP must notify ESCOSA if it commits breach of any of its obligations under guidelines within 5 business days of becoming aware of that breach.</p>	Compliance monitored through existing compliance mechanisms.	Not addressed.	<p>TNSPs must establish and maintain internal compliance procedures.</p> <p>TNSP must provide accounting documents to ACCC once a year or at reasonable intervals determined by ACCC.</p> <p>TNSP must provide report at reasonable intervals determined by the ACCC describing measures taken to ensure compliance.</p>

Attachment B: Summary of jurisdictional ring-fencing guidelines

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission guidelines
Legal separation	Not addressed.	DNSP must not carry on a related business.	DNSP must not carry on a related business within that legal entity.	DNSP must not hold a retail licence or a generation licence (except when generation is carried out for network support purposes and where no revenue is earned from such generation).	Not addressed.	Not addressed.	TNSP that supplies ring-fenced services must be a legal entity and must not carry on a related business, unless related business does not attract total revenue of less than or equal to 5% of the TNSP's total annual revenue.
Accounting separation	Not addressed.	DNSP must establish and maintain consolidated and separate accounts for the provision of distribution services and its other businesses.	DNSP must establish and maintain consolidated and separate accounts for the provision of prescribed distribution services and excluded services.	Not addressed.	Separate accounting ring-fencing guidelines covering how DNSP should present accounting reports and disaggregation statements where they provide contestable services.	Not addressed.	TNSP must establish and maintain separate set of accounts for provision of ring-fenced services and separate amalgamated accounts for entire business.

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission guidelines
Allocation of costs	DNSP must ensure costs relating to a distribution service are fully allocated to either prescribed distribution services or excluded distribution services on a causation basis.	DNSP must not cross-subsidise a related business.	DNSP must allocate any costs that are shared between prescribed distribution services, excluded services and other activities in a manner that ensures there is no cross subsidy and according to a methodology approved by the QCA.	Not addressed.	Separate accounting ring-fencing guidelines covering how DNSP should present accounting reports and disaggregation statements where they provide contestable services.	Not addressed.	TNSP that provides ring-fenced service must allocate costs that are shared between any ring-fenced services and any other activity.
Access to information	DNSP must provide information relating to the provision of prescribed distribution services to an independent accredited service provider on terms that are no less favourable than the terms on which that information is made available to that part of the DNSP's business that provides contestable services.	DNSP must ensure that, where commercially valuable information is made available to a related business it is also made available to similarly situated entities.	DNSP must not provide distribution network access to a related business on more favourable terms than those it provides to any other customer or Code participant.	DNSP must ensure that any information obtained in the course of conducting a licensed business which might reasonably be expected to affect materially the commercial interests of a related business or provide a related business an advantage over its competitors is disclosed the related business and its competitors in a non-discriminatory manner.	DNSP must establish access controls so that users of DNSP's information systems do not have access to information concerning the distribution service if the user is providing a contestable service.	DNSP must ensure that distribution information it provides to any retail business is available to all retail businesses.	TNSP that provides ring-fenced services must ensure that information it provides to any associate that takes part in a related business is available to any other party, and that preferential treatment is not given to an associate that takes part in a related business.

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission guidelines
Customer information	Not addressed.	DNSP must ensure that information obtained by conducting its business and which might reasonably be expected to affect materially the interests of an existing or prospective customer is not disclosed to any other person without the approval of the existing or prospective customer to whom that information pertains. Exceptional circumstances given in guidelines.	DNSP must ensure that all confidential information provided by a customer or prospective customer is used only for the purpose for which that information was provided and not disclosed without the approval of the customer or prospective customer. Exceptional circumstances given in guidelines.	DNSP must ensure any information obtained in conducting a licensed business is used only for the purpose for which that information was provided or obtained.	Not addressed. However, guidelines provide that when communicating with a customer, DNSP must not communicate in a way that would favour the distribution or related business over another service provider in provision of contestable services, and where appropriate, DNSP must communicate to customer that contestable services may also be obtained from independent service provider.	Not addressed. However, guidelines provide that when DNSP is communicating with a customer, it must make clear that it is a distributor carrying on distribution business, and when retail business communicating with customer, it must make clear that it is a retailer carrying on retail business.	Not addressed.

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission guidelines
Waivers	Tribunal may grant DNSP waiver from provision of guidelines upon request and after considering factors including costs of compliance, DNSP's ability to achieve economies of scale, the effect of the waiver on competition, and after public consultation (if relevant).	Not addressed.	QCA may waive DNSP's ring-fencing obligations if satisfied that cost of complying outweighs benefit or likely benefit to public. QCA to ask for and consider any submissions it receives.	Commission may grant waiver from ring-fencing obligations if satisfied that the benefit or likely benefit of compliance will be outweighed by administrative cost to Distribution Licensee.	Regulator may grant waiver at request of distributor of any obligation under guidelines after undertaking consultation process and if satisfied that costs of compliance outweigh benefits.	Not addressed.	ACCC may waive TNSP's ring-fencing obligations if satisfied that the benefit to the public is outweighed by the administrative cost to the TNSP of compliance.
Physical and functional separation	DNSP must ensure that the offices from which DNSP staff provide specified services are separate from the offices from which DNSP staff provide contestable services.	DNSP must ensure office space is physically separate from that of related businesses. DNSP must ensure that operational staff involved in providing commercially sensitive services (such as customer connection and meter reading) are not also staff of a related business.	DNSP must ensure that its marketing staff are not also staff of a related business.	DNSP must ensure that any marketing staff involved in the DNSP's licensed business are not also involved in a related business; and any operations staff involved in both the DNSP's licensed business and a related business are shared between the two businesses on a non-discriminatory arm's length commercial basis.	DNSP must ensure that parts of business providing or marketing regulated distribution services operate independently and have separate work areas from parts of business providing contestable services. Also, DNSP must ensure that its employees are not staff of related business providing contestable services.	DNSP must ensure that units marketing or providing distribution services and units within retail business operate independently and have separate work areas with access controls that prevent staff of either unit entering into work area of other unit. Also, DNSP staff must not also be staff of retail business.	TNSP must ensure that its marketing staff are not also servants/consultants of an associate that takes part in a related business, or that its servants/consultants are marketing staff of an associate that takes part in a related business.

	IPART (NSW)	ICRC (ACT)	QCA (Queensland)	ESCOSA (SA)	OTTER (Tasmania)	ESC (Victoria)	ACCC Transmission guidelines
Non-discrimination	<p>A DNSP must provide a prescribed distribution service to an independent accredited service provider on terms that are no less favourable than the terms on which it provides that prescribed distribution service to that part of the DNSP's business which provides contestable services.</p>	<p>DNSP must conduct business with Related Business at arm's length and in a competitively neutral manner. In particular, where utilities have network use of systems agreements with a Related Business the arrangements:</p> <ul style="list-style-type: none"> - should be on a contract basis with terms and costs clearly defined - should be transparent - should be on terms no more favourable than would be offered to a third party in the same commercial circumstances; and - must be to the ICRC's satisfaction. 	<p>A DNSP that provides prescribed distribution services in Queensland must not provide distribution network access to a related business on more favourable terms than those it provides to any other customer or Code participant.</p>	<p>The Distribution Licensee must ensure that, in providing goods or services for which the Licensed Business is the monopoly supplier to a Related Business or a competitor of the Related Business, those goods and services are provided on a non-discriminatory, commercial basis.</p>	<p>A distributor must not, in conducting its regulated distribution services business, make decisions or act in a manner that unreasonably discriminates either against or in favour of any business providing contestable electrical services or against or in favour of the customers of any business providing contestable electrical services.</p>	<p>In conducting its distribution business, a distributor must not make decisions or act in a manner that unreasonably discriminates in favour of any electricity business or in favour of the customers of any electricity business.</p>	<p>A TNSP that provides ring-fenced services must not make decisions or act in a manner that discriminates in favour of an associate in relation to the terms or conditions on which those services are provided. To avoid doubt, a TNSP providing ring-fenced services must offer those services to its customers on terms and conditions no less favourable than it provides to itself or its associates.</p>