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Ring-Fencing Guideline
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1 Nature and authority

1.1 Application of this Guideline

1.1.1 Background and summary

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

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

The objective of this Guideline is to:

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

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

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

1.1.2 Commencement

This Guideline commences on 1 December 2016.

1.2 Confidentiality

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

1.3 Interpretation

In this Guideline, unless the contrary intention appears:

- A term in bold type that is expressly defined in clause 1.4 of this Guideline has the meaning set out in that clause.
• A term in bold type that is not expressly defined in clause 1.4 of this Guideline has the same meaning it has in the NEL or the NER.

• The words ‘shall’ and ‘must’ indicate mandatory requirements.

• The singular includes the plural, and vice versa.

• A reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as in force from time to time.

• Explanations in this Guideline about why certain information is required are provided for guidance only. They do not limit in any way the AER’s objectives, functions or powers.

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

1.4 Definitions

In this Guideline:

• affiliated entity, in relation to a DNSP, means a legal entity:
  (a) which is a direct or indirect shareholder in the DNSP or otherwise has a direct or indirect legal or equitable interest in the DNSP;
  (b) in which the DNSP is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or
  (c) in which a legal entity referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest.

• contestable electricity services means:
  (a) other distribution services; and
  (b) other electricity services.

• electricity information means information about electricity networks, electricity customers or electricity services, other than:
  (a) aggregated financial information; or
  (b) other service performance information;
  that does not relate to an identifiable customer or class of customer.

• existing service, in relation to a DNSP, means a type of service that the DNSP was providing on 1 December 2016.

• information register means the register a DNSP must establish, maintain and keep under clause 4.3.5(a).

• law means any law, rule, regulation or other legal obligation (however described and whether statutory or otherwise).
- **legal entity** means a natural person, a body corporate (including a statutory corporation or public authority), a partnership, or a trustee of a trust, but excludes **staff** in their capacity as such.

- **NEL** means, for the purposes of the application of this **Guideline** in a **participating jurisdiction**, the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA), as applied by the participating jurisdiction and subject to any modification made to the National Electricity Law by that jurisdiction.

- **NER** means, for the purposes of the application of this **Guideline** in a **participating jurisdiction**, the rules called the National Electricity Rules made under Part 7 of the National Electricity Law, subject to any modification made to the National Electricity Rules by that jurisdiction.

- **non-distribution services** means:
  (a) **transmission services**; and
  (b) **other services**.

- **office** means, as the case may be:
  (a) a building;
  (b) an entire floor of a building; or
  (c) a part of a building that has separate and secure access requirements, such that staff from elsewhere in the building do not have unescorted access to it.

- **officer**, in relation to a **legal entity** (such as a **DNSP**) means:
  (a) a director or company secretary of the **legal entity**;
  (b) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **legal entity**; or
  (c) a person who has the capacity to affect significantly the **legal entity**'s financial standing;

- **other distribution services** means **distribution services** other than **direct control services**.
  [Note: This definition includes **negotiated distribution services** and **distribution services** that are not classified.]

- **other electricity services** means services for the supply of electricity or that are necessary or incidental to the supply of electricity, other than:
  (a) **transmission services**; or
  (b) **distribution services**.

- **other services** means services other than:
  (a) **transmission services**; or
  (b) **distribution services**.
• **regional office** means an **office** that has less than 25,000 connection points within a 100 kilometre radius of that **office**.

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

• **service provider**, in relation to a **DNSP**, means a provider of services to the **DNSP**.

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

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

### 1.5 Process for revisions

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

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

(a) The decision in the AER's **distribution determination** on the classification of the **distribution services** to be provided by a DNSP in a **regulatory control period**, in accordance with clauses 6.2 and 6.12.1(1) of the **NER**;

(b) Clause 6.15 of the **NER**, the **Cost Allocation Guidelines** and the AER-approved **Cost Allocation Method** (CAM);

(c) Clause 6.4.4 of the **NER** and the **Shared Asset Guidelines**; and

(d) any **regulatory information instrument** served on a DNSP by the AER, or made by the AER, under section 28F of the **NEL**.

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

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

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

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

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

3.1 Legal separation

(a) A DNSP must be a legal entity.

(b) Subject to this clause 3.1, a DNSP may provide distribution services and transmission services, but must not provide other services.

(c) This clause 3.1 does not prevent:
   i. an affiliated entity of a DNSP from providing other services;
   ii. a DNSP and a TNSP from being the same legal entity.

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

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

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

3.2 Establish and maintain accounts

3.2.1 Separate accounts

(a) A DNSP must establish and maintain appropriate internal accounting procedures to ensure that it can demonstrate the extent and nature of transactions between the DNSP and its affiliated entities.
[Note: The AER may include a requirement in a regulatory information instrument for a DNSP to:

i. provide its internal accounting procedures to the AER; and / or

ii. report on transactions between the DNSP and its affiliated entities.]

(b) A DNSP cannot apply for a waiver of the obligations set out in this clause 3.2.1.

3.2.2 Cost allocation and attribution

(a) A DNSP must allocate or attribute costs to distribution services in a manner that is consistent with the Cost Allocation Principles and its approved CAM, as if the Cost Allocation Principles and CAM otherwise applied to the allocation and attribution of costs between distribution services and non-distribution services.

(b) A DNSP must only allocate or attribute costs to distribution services in accordance with clause 3.2.2(a), and must not allocate or attribute other costs to the distribution services it provides.

(c) A DNSP must establish, maintain and keep records that demonstrate how it meets the obligations in clauses 3.2.2(a) and 3.2.2(b).

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

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

4.1 Obligation to not discriminate

(a) For the purposes of this clause 4.1:
   i. a related electricity service provider includes a customer, or potential customer, of the related electricity service provider or of the DNSP;
   ii. a competitor (or potential competitor) of a related electricity service provider includes a customer, or potential customer, of the competitor (or potential competitor) of the related electricity service provider; and
   iii. dealing, or offering to deal, includes dealing or offering to deal in relation to the provision of goods or services, or the grant of rights, by the DNSP or to the DNSP.

(b) A DNSP must not discriminate (either directly or indirectly) between a related electricity service provider and a competitor (or potential competitor) of a related electricity service provider in connection with the provision of:
   i. direct control services by the DNSP (whether to itself or to any other legal entity); and / or
   ii. contestable electricity services by any other legal entity.

(c) Without limiting its scope, clause 4.1(b) requires a DNSP to:
   i. in dealing or offering to deal with a related electricity service provider, treat the related electricity service provider as if it were not a related electricity service provider (that is, as if it had no connection or affiliation with the DNSP);
   ii. in like circumstances, deal or offer to deal with a related electricity service provider and a competitor (or potential competitor) of the related electricity service provider on substantially the same terms and conditions;
   iii. in like circumstances, provide substantially the same quality, reliability and timeliness of service to a related electricity service provider and a competitor (or potential competitor) of the related electricity service provider;
   iv. subject to clause 4.3.3(b), not disclose to a related electricity service provider information the DNSP has obtained through its dealings with a competitor (or potential competitor) of the related electricity service provider where the disclosure would, or would be likely to, provide an advantage to the related electricity service provider.

(d) A DNSP cannot apply for a waiver of the obligations set out in this clause 4.1.
4.2 Offices, staff, branding and promotions

4.2.1 Physical separation/co-location

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

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

i. offices for staff who, in the course of their duties:
   a. do not have access to electricity information;
   b. have access to electricity information but do not have, in performing the roles, functions or duties of their staff position, any opportunity to use that electricity information to engage in conduct that is contrary to the DNSP’s obligations under clause 4.1; or
   c. only have access to electricity information to the extent necessary to perform services that are not electricity services (such as general administration, accounting, payroll, human resources, legal, or information technology support services).

ii. providing assistance to another Network Service Provider in response to an event (such as an emergency) that is beyond the other Network Service Provider’s reasonable control;

iii. regional offices, except to the extent that this exemption has been varied or revoked under clause 5.6; or

iv. any arrangements authorised in accordance with the waiver process set out in clause 5 of this Guideline.

4.2.2 Staff sharing

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

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

i. a member of staff who, in the course of their duties:
   a. does not have access to electricity information;
   b. has access to electricity information but does not have, in performing the roles, functions or duties of their staff position, any opportunity to use that electricity information to engage in conduct that is contrary to the DNSP’s obligations under clause 4.1; or
c. only has access to electricity information to the extent necessary to perform services that are not electricity services (such as general administration, accounting, payroll, human resources, legal, or information technology support services);

ii. providing assistance to another Network Service Provider in response to an event (such as an emergency) that is beyond the other Network Service Provider’s reasonable control;

iii. staff located at a regional office, except to the extent that this exemption has been varied or revoked under clause 5.6; or

iv. any arrangements authorised in accordance with the waiver process set out in clause 5 of this Guideline.

(c) The remuneration, incentives and other benefits (financial or otherwise) a DNSP provides to a member of its staff must not give the member of staff an incentive to act in manner that is contrary to the DNSP’s obligations under this Guideline.

(d) Clause 4.2.2(a) does not apply in respect of a member of the staff of a DNSP where the member of staff is an officer both of the DNSP and of a related electricity service provider.

4.2.3 Branding and cross-promotion

(a) A DNSP:

i. must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

ii. must not advertise or promote its direct control services and its contestable electricity services that are not direct control services together (including by way of cross-advertisement or cross-promotion).

iii. must not advertise or promote services provided by a related electricity service provider.

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

i. a regional office, if clause 4.2.1(a) does not apply to that office by reason of clause 4.2.1(b)(iii); or to

ii. staff located at a regional office, if clause 4.2.2(a) does not apply to that office by reason of clause 4.2.2(b)(iii).

4.2.4 Office and staff registers

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

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

and must make the register publicly available on its website.

4.2.5 Waiver

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

4.3 Information access and disclosure

4.3.1 Meaning of confidential information

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

(a) that the DNSP derives from that information; or

(b) provided to the DNSP by or in relation to a customer or prospective customer of direct control services.

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

4.3.2 Protection of confidential information

Subject to this clause 4.3, a DNSP must:

(a) keep confidential information confidential; and

(b) only use confidential information for the purpose for which it was acquired or generated.

4.3.3 Disclosure of information

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

(a) the DNSP has first obtained the explicit informed consent of the relevant customer, or prospective customer, to whom the confidential information relates;

(b) the disclosure is required by, or for the purpose of complying with any law,

(c) the disclosure is necessary to enable the DNSP to provide its distribution services, its transmission services or its other services (including by acquiring services from other legal entities); or

(d) the DNSP complies with clause 4.3.4 in relation to that confidential information.
4.3.4 Sharing of information

(a) Subject to clause 4.1(c)(iv) and to this clause 4.3.4, where a DNSP shares confidential information with a related electricity service provider, it must provide access to that confidential information (including the derived information) to other legal entities on an equal basis.

(b) A DNSP is only required by clause 4.3.4(a) to provide information to a legal entity where:

   i. the legal entity has requested that it be included on the information register in respect of information of that kind; and

   ii. the legal entity is competing, or is seeking to compete, with the DNSP or a related electricity service provider of the DNSP in relation to the provision of contestable electricity services.

(c) A DNSP is not required by clause 4.3.4(a) to provide information to a legal entity where the DNSP has disclosed the information to a related electricity service provider in the circumstances set out in clauses 4.3.3(a) to (c).

(d) Without limiting clause 4.3.4(a), a DNSP must establish an information sharing protocol that sets how and when it will make the information referred to in clause 4.3.4(a) available to legal entities, and must make that protocol publicly available on its website.

(e) Where a DNSP discloses information referred to clause 4.3.4(a) to any other legal entity under this clause 4.3.4, it must do so on terms and conditions that require the other legal entity to comply with clause 4.3.2 and 4.3.3(a) to (c) in relation to that information as if the other legal entity was a DNSP.

4.3.5 Information register

(a) A DNSP must establish, maintain and keep a register of all legal entities (including related electricity service providers) who request access to information identified in clause 4.3.4(a), and must make the register publicly available on its website.

(b) For each legal entity that has requested that a DNSP provide access to information identified in clause 4.3.4(a), the DNSP’s information register must:

   i. identify the kind of information requested by the legal entity; and

   ii. describe the kind of information requested by the legal entity in sufficient detail to enable other legal entities to make an informed decision about whether to request that kind of information from the DNSP.

(c) A legal entity may request that the DNSP include it on the information register in relation to some or all of the kinds of information that the DNSP is required to provide under clause 4.3.4(a), and the DNSP must comply with that request.
4.3.6 No waiver
A DNSP cannot apply for a waiver of the obligations set out in this clause 4.3.

4.4 Service providers

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

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

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

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

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

5.3 AER’s consideration of a waiver application

5.3.1 Requirement to consider a waiver and make a decision
The AER must consider an application made under clause 5.2, and may, subject to this clause 5.3:

(a) grant the waiver subject to any conditions the AER considers appropriate; or
(b) grant the waiver as an interim waiver subject to any conditions the AER considers appropriate; or
(c) refuse to grant the waiver.
5.3.2 The AER’s assessment of the waiver application

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

(a) subject to clause 5.3.3(a), must have regard to:
   i. the National Electricity Objective;
   ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
   iii. whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation (including any benefit, or likely benefit, from increased competition) would be outweighed by the cost to the DNSP of complying with that obligation; and

(b) may:
   i. have regard to any other matter it considers relevant;
   ii. request from the DNSP any further information the AER considers appropriate;
   iii. invite public submissions on the application; and
   iv. otherwise conduct such consultation as it considers appropriate with any person.

5.3.3 Interim waiver

(a) The AER may, in its absolute discretion, grant an interim waiver, without having regard to any of the matters specified in clause 5.3.2.

(b) An interim waiver ceases to have effect:
   i. when the AER makes a further decision to grant or refuse to grant the waiver; or
   ii. on the expiry date (if any) specified by the AER when granting the interim waiver; whichever occurs first.

5.3.4 Form of waiver

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

(a) to one or more of the DNSPs that are the subject of the waiver application;

(b) for a term that coincides with the DNSP’s current regulatory control period, next regulatory control period, or both periods; and

(c) subject to such conditions as the AER considers appropriate.

5.3.5 Trivial or vexatious applications

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

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

5.5 Reviewing a waiver

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

(b) In deciding whether to revoke a waiver or vary of a waiver, the AER:
   i. must have regard to the matters specified in clause 5.3.2(a); and
   ii. may do the things, or otherwise have regard to the matters, specified in clause 5.3.2(b).

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

5.6 Reviewing a regional office exemption

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

(b) In deciding whether to vary or revoke an exemption under this clause 5.6, the AER:
   i. must have regard to the matters specified in clause 5.3.2(a); and
   ii. may do the things, or otherwise have regard to the matters, specified in clause 5.3.2(b).

5.7 Waiver register

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

(b) The register established under clause 5.7(a) must include:
   i. the description of the conduct to which the waiver or interim waiver applies; and
   ii. the terms and conditions of the waiver or interim waiver;

   as set out in the AER’s written decision, provided by the AER to the DNSP, to grant (or vary) the waiver or interim waiver.
6 Compliance and enforcement

6.1 Maintaining compliance

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

6.2 Compliance reporting

6.2.1 Annual compliance report

(a) A DNSP must prepare an annual ring–fencing compliance report each regulatory year in accordance with this clause 6.2.1, and submit it to the AER in accordance with clause 6.2.2.

(b) The annual compliance report must identify and describe, in respect of the regulatory year to which the report relates:

i. the measures the DNSP has taken to ensure compliance with its obligations under this Guideline;

ii. any breaches of this Guideline by the DNSP, or which otherwise relate to the DNSP;

iii. all other services provided by the DNSP in accordance with clause 3.1; and

iv. the purpose of all transactions between the DNSP and an affiliated entity.

(c) The annual compliance report must be accompanied by an assessment of compliance by a suitably qualified independent authority.

(d) Annual compliance reports may be made publicly available by the AER.

6.2.2 Timing of annual compliance reporting

(a) Subject to clause 6.2.2(b), a DNSP must submit its annual compliance report to the AER within 4 months of the end of the regulatory year to which the compliance report relates.

(b) A DNSP is not required to submit an annual compliance report for its regulatory year in which this Guideline commences.

6.2.3 Reporting by the AER

The AER may publish reports from time to time about DNSPs’ compliance with this Guideline on the basis of information provided to it under this clause 6.2.
6.3 Compliance breaches

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

6.4 Complaints and investigations

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

7.1. Despite clause 1.1.2 of this Guideline:

(a) a DNSP must fully comply each of the obligations in clauses 3 and 4 of this Guideline in respect of its existing services as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018;

(b) where a distribution determination applicable to a DNSP results in a change in the classification of a distribution service provided by the DNSP, and that change puts the DNSP in breach of an obligation under this Guideline, the DNSP must comply with that obligation within 12 months of the commencement date of the distribution determination.

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

7.3. Clause 7.2 does not apply:

(a) to any transitional guidelines in force in Victoria or (for the avoidance of doubt) the Northern Territory; or

(b) to the extent that the transitional guidelines apply to gas distribution.