Draft electricity distribution Ring-fencing Guideline

Explanatory statement

Draft Guideline – Version 3

May 2021

AUSTRALIAN ENERGY REGULATOR

AER Reference: 65292 - #12158725v3

Shortened forms

Shortened Form	Extended Form
ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AEC	Australian Energy Council
AER	Australian Energy Regulator
ASP	Accredited Service Provider
CEC	Clean Energy Council
CESS	Capital Expenditure Sharing Scheme
current guideline	Ring-fencing guideline – Electricity distribution (version 2), October 2017
DAPR	Distribution Annual Planning Report
DMIA	Demand Management Innovation Allowance
DMIS	Demand Management Incentive Scheme
DNSP	distribution network service provider
DUoS	Distribution Use of System
ECA	Energy Consumers Australia
ENA	Energy Networks Australia
ESB	Energy Security Board
FCAS	frequency control ancillary services
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER, NERR or the rules	National Electricity Rules and National Energy Retail Rules
PIAC	Public Interest Advocacy Centre
RAB	Regulatory Asset Base
RESP	related electricity service provider
RINs	Regulatory Information Notices

Shortened Form	Extended Form
RIT-D	Regulatory Investment Test for Distribution
SAPS	Stand-alone Power System
TSS	Tariff Structure Statement

Contents

Request for submissions

Interested parties are invited to make written submissions to the Australian Energy Regulator (AER) regarding this paper and our draft ring-fencing guideline for electricity DNSPs (version 3) by **close of business, 8 July 2021**.

Submissions should be sent electronically to AERringfencing@aer.gov.au.

Alternatively, submissions can be mailed to:

General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information are requested to:

- Clearly identify the information that is the subject of the confidentiality claim; and
- Provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on the AER's website at www.aer.gov.au. For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014 available of the AER's website.

Enquiries about this paper, our draft guideline, or about lodging submissions, should be directed to the Strategic Policy and Energy Systems Innovation branch of the AER on 1300 585 165 or AERringfencing@aer.gov.au.

1 Executive summary

The Australian Energy Regulator (AER) is the economic regulator for transmission and distribution of electricity in Australia's National Electricity Market (NEM). We are an independent statutory authority. Our powers and functions are set in the National Electricity Law (NEL) and National Electricity Rules (NER) and National Energy Retail Rules (NERR).

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

What is ring-fencing?

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

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

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

Updating the guideline

Ring-fencing obligations should evolve to remain a targeted, proportionate and effective regulatory response to the potential harm consumers may face. With this in mind, we commenced a review of the current guideline to address the changing nature of services offered by DNSPs, including generation services related to stand-alone power systems (SAPS) and contestable services from batteries[3]. In some cases, these emerging technologies operate at the boundary between regulated monopolies and contestable markets. Consequently, we are proposing a number of amendments to the current guideline.

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

---

1 For any unaltered clauses of the previous guideline or for the meaning and intent of the previous guideline please refer to the AER, *Ring-fencing Guideline Version 2 Explanatory Statement – October 2017*.

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

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

- DNSPs providing generation services to provide electricity to a consumer (or group of consumers), without being physically connected to the national electricity system;
- the use of batteries to provide contestable services (including DNSPs supplying excess battery capacity to third party providers of contestable services, or using such capacity to provide other contestable services themselves)
- Clarifying and improving relevant obligations to make the guideline clearer and simpler to understand and apply.

A list of current guideline clauses that have been amended or deleted, and proposed new clauses, is at Appendix A. To assist stakeholders, we have also published a 'clean' and marked-up copy of our draft guideline for easy identification of our proposed amendments.

Generation services associated with DNSP-led SAPS

Recent amendments to the NEL include changes to the definition and regulatory treatment of 'distribution system' to allow DNSPs to deploy SAPS.[4] There are opt-in arrangements for jurisdictions to apply the whole framework or part of the framework in their jurisdiction.

The Australian Energy Market Commission (AEMC) published a final report on the consequential changes to the NER and NERR that would be required for DNSP-led SAPS.[5] Energy Ministers recently consulted on these proposed changes. We understand that a final rule change package will go to Energy Minsters for approval in mid-2021.[6]

Our proposed changes to the current guideline include:

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

We consider that our proposed changes will accommodate the timely and efficient deployment of SAPS by DNSPs in situations where there is likely to be limited third party providers of SAPS generation services. This will enable consumers to realise the benefits of lower cost and higher reliability supply, while also providing information and the scope for third party providers to enter the market. Our position is intended to promote efficient deployment of SAPS in the early stages of market development. As SAPS deployment progresses, we will review the exemption framework to consider if it remains appropriate. We consider this outcome will be in the long-term interest of consumers.

---

4 Following consultation by Energy Ministers on amendments to the National Electricity Law and National Energy Retail Law in July 2020, the South Australian Parliament passed amendments in March 2021. South Australia, *Statutes Amendment (National Energy Laws) (Stand-Alone Power Systems) Act 2021*, assented on 11.03.2021.

5 See: https://www.aemc.gov.au/market-reviews-advice/updating-regulatory-frameworks-distributor-led-stand-alone-power-systems

6 See: https://energyministers.gov.au/publications/stand-alone-power-systems-legislative-amendments-%E2%80%93-consultation-revised-national

Contestable services using batteries

Batteries and other energy storage devices (referred throughout as batteries)[7] are set to play a key role in the energy system; facilitating more renewables onto the grid,[8] supporting system security and reducing pressure on electricity prices by meeting peaks in consumer demand.[9]

Batteries can provide many different services, including buying and selling energy at different price points, balancing the supply and demand of energy (providing frequency control ancillary services (FCAS)), and providing network services (or inputs to services). As such they are an important emerging technology that can meet both regulated network needs and provide a range of contestable services.

The regulatory framework currently focusses on the services DNSPs provide through their regulated networks, with ring-fencing separating regulated and contestable services. Batteries challenge this model. There will be economies of scale and scope in the operation of batteries. That is, there is likely to be value in using a single battery to provide regulated network services (or inputs to regulated network services) and contestable services.

Throughout the consultation process, we heard from both DNSPs and other potential providers of batteries about the importance of the regulatory framework encouraging efficient investment in and deployment of batteries, and the potential benefits for consumers. For DNSPs, we understand that a clear pathway to realise the full benefits from batteries, where appropriate, is needed. For other providers of batteries, there needs to be robust safeguards in place to mitigate the risks from DNSP discrimination and cross-subsidisation in order to encourage competition.

In balancing these considerations, our draft position on ring-fencing of batteries is as follows:

- DNSPs are prohibited from providing contestable services with a battery (whether the service consists of the supply of excess capacity to third parties, or the provision of other contestable services themselves with the battery).
- However, a DNSP may apply to us for a waiver in situations where a DNSP wants to supply excess capacity of a battery to a third party in circumstances where it considers the benefits outweigh the harm.

We consider that this approach strikes an appropriate balance in allowing DNSPs and third parties to explore the use and benefits of batteries.

In some situations where a DNSP wants to supply the excess capacity of a battery to a third party, we recognise that the benefits of doing so may outweigh the harm. This might occur where there are clear consumer benefits of DNSP ownership of the battery, and demonstrable mitigation of the risks to competition. To facilitate this, we propose to establish

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

8 ARENA, *How are big batteries helping to transition to renewables*, 2 February 2021.

9 Technology Investment Roadmap: First low emissions technology statement – 2020.

a waiver process that is robust and timely in meeting the needs of stakeholders, including by providing additional guidance on the factors we may consider when assessing a waiver application in relation to batteries.

We consider that this approach will provide greater certainty for DNSPs and other stakeholders and will promote competition in this emerging technology, leading to the achievement of the NEO and the long-term interest of electricity consumers.

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

Improving the guideline

We propose amending a number of specific provisions to make the current guideline clear and less administratively complex. Specifically, we have reviewed provisions on:

- Staff and office sharing – there is insufficient transparency regarding a DNSP's decision to share staff with its related electricity service provider (RESP). We therefore propose to strengthen guideline requirements in relation to DNSP staff and office registers, and to require the registers to be updated quarterly.
- Information access and disclosure – there has been reported confusion between the term 'confidential information' as defined under the current guideline and the use of the term 'confidential' in other contexts. We therefore propose changing the term 'confidential information' to 'ring-fenced information', and clarifying that a DNSP may share ring-fenced information with an unaffiliated legal entity that has requested disclosure of the information.
- Materiality of breaches – potentially serious breaches of the guideline are not being reported to us until a DNSP submits its annual ring-fencing compliance report. We propose amending the current guideline to require all breaches (except breaches of certain administrative provisions) be reported to us within 15 business days.
- Timing of annual compliance reports – DNSPs' annual compliance reports are due at the same time as other regulatory reporting obligations imposed on a DNSP. We propose to change the timing of annual compliance reporting from a financial year to calendar year basis.
- Branding – there is an increased risk of a DNSP conferring an unfair advantage on its RESP over competitors if the branding obligations under the current guideline are relaxed. We therefore propose to retain the approach to branding and cross promotion obligations under the current guideline.

Stakeholder consultation

We have undertaken a robust consultation process in reviewing our guideline. The following sections outline stakeholder engagement undertaken since initiating this review. This review was paused to address other work priorities in response to the COVID-19 pandemic.

Our website contains our issues paper and presentations along with all material that stakeholders have submitted as part of this review.[10]

- This review initially commenced in 2019, with stakeholder workshops in Sydney and Melbourne. The workshops were attended by DNSPs, retailers, independent auditors engaged by DNSPs and other industry bodies to scope key concerns with the current guideline.
- Stakeholder submissions in response to the initial workshop were invited by 23 September 2019. We received 11 submissions.
- We published an issues paper in November 2020, at which time the issues of the review had narrowed to DNSPs providing generation services for DNSP-led SAPS, batteries and minor guideline improvements.
- We received 24 submissions in response to our issues paper. A summary of all stakeholder submissions is at appendix B.
- In February and March 2021, we held two stakeholder workshops targeting SAPS and batteries. Combined we had approximately 70 attendees from across the sector.
- Throughout the review process we have had regular meetings with key stakeholders and responded to requests for ad hoc meetings from a range of stakeholders including retailers and third party providers.

Next steps

Following release of our draft guideline and this explanatory statement, we will undertake further consultation before releasing our final guideline. Indicative timing follows.

Indicative date	Project milestone/action
27 May 2021	AER publishes draft guideline and explanatory statement
9 June 2021	AER public forum on its draft guideline and explanatory statement
8 July 2021	Submissions on draft guideline and explanatory statement close
Week commencing 2 August 2021	Further stakeholder forums on specific issues if required
September/October 2021	AER publishes final guideline and explanatory statement
Publication	AER Electricity distribution ring-fencing guideline (version 3) takes effect
3 months post publication	AER Electricity distribution ring-fencing guideline (version 3) compliance

10 See: https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review

2 Generation services for DNSP-led SAPS

This chapter examines proposed changes to the current guideline to allow DNSPs to provide generation services as part of a DNSP-led SAPS.

A SAPS is an electricity system that is not physically connected to the national grid.[11] As SAPS are not physically connected to the grid, they are not captured currently by the economic regulatory framework in the NER and NERR. The AEMC developed a regulatory framework for DNSP-led SAPS (called Priority 1) so that the benefits to consumers, including improved reliability and lower costs, can be realized.[12] The associated changes to the NER to support this framework are expected to be in place later this year.[13]

DNSP-led SAPS are permanent SAPS that are split into the provision of two service groups:

- distribution services, and
- generation services (provided by a SAPS resource provider, generally a third party).

The former will be regarded as a distribution service and regulated as such under the NER. The current guideline allows DNSPs to provide distribution services, but does not allow them to provide non-distribution services.[14] Accordingly, the focus of our proposed changes to the current guideline is on the circumstances in which a DNSP can provide generation services on a DNSP-led SAPS. Figure 1, provides an illustration of the four delivery models for electricity supply in the NEM.

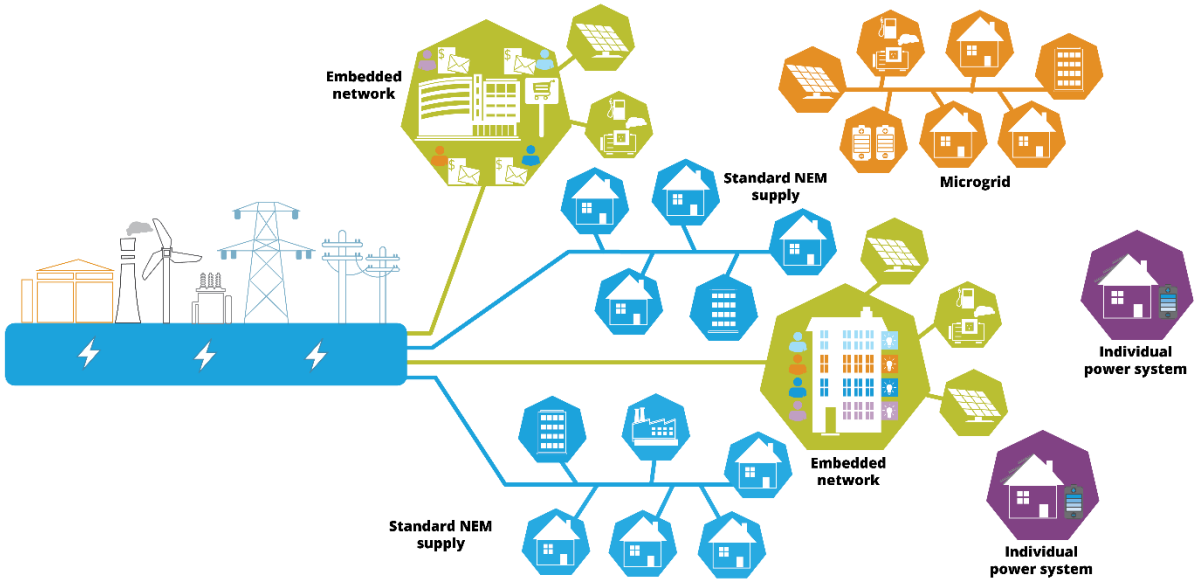
11 Australian Energy Market Commission, *Updating the regulatory framework for distributor-led stand-alone power systems*, May 2020, p. i.

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

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

14 Such as under waivers and exceptions identified in clause 4 of the current guideline.

Figure 1: Four delivery models of electricity supply in NEM



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

There are some instances in which a DNSP may not be able to find a third party SAPS resource provider of generation services, including that:

- A third party provider is not available or willing to offer services,[15]
- The SAPS may be too small to make outsourcing the generation services economical,[16]
- A third party may not be able to offer the ongoing operating and maintenance required to meet NER technical and performance standards.[17]

In these circumstances, a DNSP may be best placed to act as the SAPS resource provider. However the current guideline prevents DNSPs from performing this role. This could result in consumers not being switched to a SAPS, even though it is the most economical option for DNSPs and in consumers' long-term interest to do so.

Based on evidence provided to date, we consider there are a number of scenarios where there is likely to be no competition in the delivery of generation services. We consider this factor requires us to amend our current guideline to better promote the long-term interest of consumers to access SAPS.

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

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

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

2.1 Draft position

We propose to allow DNSPs to act as the SAPS resource provider (i.e. provide generation services) for DNSP-led SAPS under an exemption framework.

Our proposed changes to the current guideline include:

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

Specifically, we propose to achieve this by:

- Inserting a definition of "generation revenue cap" (clause 1.4);
- Inserting a definition of Category 1, Category 2 and Category 3 DNSPs (clause 1.4), to allow DNSPs to provide generation services;
- Inserting an exemption from legal separation (clauses 3.1(d) vii – viii) to allow DNSPs to provide SAPS generation services up to a generation revenue cap of 0.2 per cent for Category 1 DNSPs, 0.07 per cent for Category 2 DNSPs and 0.001 per cent for Category 3 DNSPs;
- Allowing SAPS waivers to be granted for a term which could cover the life of the asset (clause 5.3.4 (c)); and
- Inserting new requirements (clauses 6.2.3 (a)–(b)) for DNSPs to maintain a register of instances where they provide SAPS generation services.

Our reasons and responses to stakeholder submissions and our proposed amendments to the current guideline are outlined below.

2.2 What stakeholders said to us

2.2.1 DNSP-led SAPS

Energy Networks Australian (ENA) submitted that it expects approximately 4000 DNSP-led SAPS to be rolled out across the NEM over the next five to ten years – see Figure 2.[18] We understand that these estimates are network planning estimates based on the economics of network installation and maintenance and are the best available estimates at this time. These SAPS are expected to primarily be small to medium systems in areas of high network maintenance costs, difficult to access sites or low network resilience.[19] Rural NSW and QLD

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

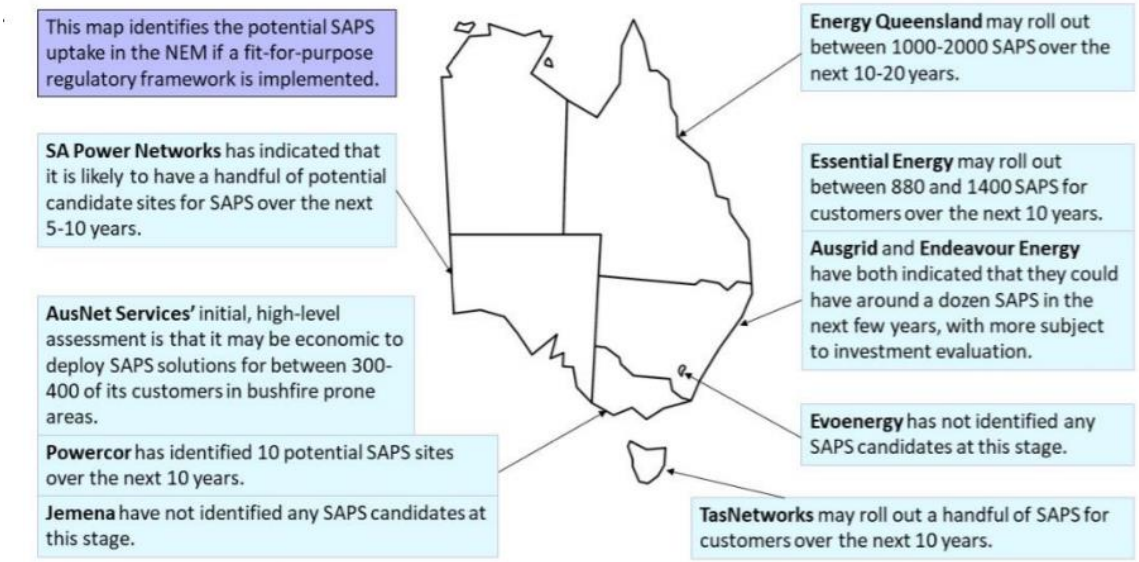
19 Energy Networks Australia, *Feedback on AER forum on Electricity Distribution Guideline Update,* 16 March 2021, p. 2.

are likely to have the highest deployment levels because of these DNSPs' respective network characteristics and the cost savings of SAPS.[20]

Currently, nearly half of the NEM's DNSPs have not identified any SAPS sites. While some stakeholders at our forums indicated that there could be exponential growth in the deployment of SAPS in the future, the only specific estimates we received were those provided by the ENA and DNSPs.[21]

Under the proposed DNSP-led SAPS rules, the DNSP will be responsible for identifying the sites, engaging with consumers, providing the distribution service and procuring generation services from a third party provider.[22]

Figure 2: Potential uptake of DNSP-led SAPS



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

2.2.2 Should a DNSP be able to provide SAPS generation services?

In developing the DNSP-led SAPS framework, the AEMC noted that strict adherence to the ring-fencing rules might, in some circumstances, result in outcomes that are not in consumers' interests.[23] Under the current guideline, a DNSP cannot provide SAPS generation services.[24] However, the AEMC noted that we have flexibility to relax the current

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

21 This was discussed at stakeholder forums between the AER and stakeholders at the end of February and early March 2021.

22 Energy Ministers, *Stand-Alone Power Systems Legislative Amendments – Consultation on Revised National Electricity Rules and National Energy Retail Rules*, March 2021.

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

24 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 3.1(b) requires legal separation of services. Note that DNSPs can apply for a waiver of this clause.

guideline's restrictions, if appropriate, to allow a DNSP to provide generation services for DNSP-led SAPS.[25]

Energy Consumers Australia (ECA) submitted that competition in remote locations remains unverified and a matter of speculation.[26] The Public Interest Advocacy Centre (PIAC) submitted that the harm from DNSPs providing generation services is trivial compared to not switching consumers to SAPS.[27] We agree that there may be a delay in realising the benefit of SAPS if DNSPs are not permitted additional flexibility (through an exemption) to offer SAPS generation services.

SA Power Networks submitted that DNSP-led SAPS would require a NEM-level standard for quality, reliability and safety, which private SAPS providers are unlikely to meet.[28] In discussions held in March 2021, Essential Energy indicated that market testing to provide SAPS during the bushfire season resulted in some offers to supply the assets, but no ability to meet the fault and emergency and operation and maintenance needed to meet the DNSP's requisite technical and performance standards.[29] This suggests that the operation and maintenance of small SAPS is likely to be a key issue and could limit the deployment of SAPS in situations where it is otherwise economical to do so.

The Australian Energy Council (AEC) and Energy Democracy did not support DNSPs providing generation services on a large scale.[30] The AEC argued DNSPs providing generation services would hinder competition and efficiency in the long run by preventing market development for these services. Both AEC and Firm Power submitted that a waiver framework is adequate to handle the discrete number of cases where third party generation services may not be available.[31] The AEC noted that, while the competitive market is in its infancy, the regulatory framework should foster competition.[32] Firm Power submitted that DNSPs should be testing the market for the provision of generation services.[33]

While we share these concerns, we received limited evidence that third party providers are currently willing or able to offer SAPS services. Endeavour Energy submitted that DNSPs will play a leading role in developing a competitive market for SAPS assets and services.[34] We expect that this will likely be the case. We also note that although a DNSP may provide generation services, there is scope for a DNSP to outsource the provision of the relevant assets, and elements of service provision (such as repairs) to third parties.

---

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

26 Energy Consumers Australia and Strategen, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 12.

27 Public Interest Advocacy Centre, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 1.

28 SA Power Networks, *Electricity Distribution Guideline Update submission*, 21 December 2020, p. 2.

29 Energy Networks Australia, *Feedback on AER forum on Electricity Distribution Guideline Update*, 16 March 2021, p. 4.

30 Australian Energy Council, *Electricity Distribution Guideline Issues Paper submission,* 22 December, p. 1; Energy Democracy*, Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 2.

31 Australian Energy Council, *Electricity Distribution Guideline Issues Paper submission,* 22 December 2020, p. 1; Firm Power, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 8.

32 Australian Energy Council, *Electricity Distribution Guideline Issues Paper submission,* 22 December 2020, p. 1.

33 Firm Power, *Democracy Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 8.

34 Endeavour Energy, *Electricity Distribution Guideline Issues Paper submission,* 17 December 2020, p. 1.

Based on the available information, we consider that the market for third party generation services is not sufficiently developed to support the expected SAPS rollout in all identified locations. We expect that third parties will be able to provide generation services for some of the 4000 identified SAPS, however it is difficult to predict the extent of third party provision in these potential sites. Given this factor, for this draft decision we have set a generation revenue cap based on 75 per cent of the forecast SAPS proposed for deployment by DNSPs. By setting the generation revenue cap below the expected deployment we expect that DNSPs will be incentivised to test the market. We consider that this strikes an appropriate balance between facilitating the timely and efficient deployment of SAPS by DNSPs in situations where it is in the long-term interest of consumers, while also providing some scope for third party providers of SAPS generation services to enter the market.

Through submissions, we are interested to understand stakeholders' views on what percentage of the 4000 SAPS are likely to attract third party generation service providers, and the extent of the role that these providers are likely to want or be able to play.

2.2.3 Appropriate regulatory approach to allow a DNSP to provide generation services

In our previous consultation on this issue, we raised the possibility of allowing DNSPs to provide generation services, either through continuing with a waiver approach or amending the current guideline by including exemptions for DNSPs to provide the generation service. Exemptions would allow a DNSP to provide the generation service without seeking approval from us. Energy Networks Australia (ENA) and the Electrical Trades Union supported this approach.[35]

The AEC, Energy Democracy and Firm Power supported continuing with the current waiver approach.[36] Given our estimate that around 3000 SAPS could require an adjustment of the framework in the next 5 to 10 years, we disagree that waivers are more efficient. A large number of waiver applications could also delay SAPS deployment and therefore the delivery of the benefits of SAPS to consumers. We do not consider this scenario to be in the long-term interest of consumers.

After reviewing stakeholder submissions, we consider that an exemption framework is most appropriate for DNSPs to provide the SAPS generation service. In the immediate term, an exemption framework will allow DNSPs to meet the existing need for SAPS in a timely and efficient manner. The competitive outlook for meeting that need may change in the future as the market for the supply, deployment and ongoing operation of SAPS develops.

35 Energy Networks Australia, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p. 3; Electrical Trades Union, *Electricity Distribution Guideline Issues Paper submission*, 21 December 2020, p. 2.

36 Australian Energy Council, *Electricity Distribution Guideline Issues Paper submission,* 22 December 2020, p. 1; Energy Democracy, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020. p. 2; Firm Power, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020. p. 8.

2.2.4 Which type of exemption is most appropriate?

In our issues paper we explored whether a broad exemption or a range of exemptions for specific or limited circumstances would be preferable.[37] The latter would require individual thresholds and criteria.

Our issues paper included a list of potential specific exemptions.[38] In responding to our issues paper, stakeholders raised issues with the operation of exemptions based on specific factors such as remoteness and population density.[39] However, EnergyAustralia and AGL supported specific exemptions around factors that require a market test to be undertaken, such as "absence of other providers".[40] This, they stated, would promote competition and provide opportunities for third parties. At our stakeholder forums, AGL and Red Energy said DNSPs should be required to demonstrate that they have made significant efforts to procure SAPS generation services from the market before proceeding as the SAPS resource provider.[41]

We agree that, ideally, a minimum tendering requirement to demonstrate that there is no economical third party provider would best meet the objective of ring-fencing where a contestable market is reasonably established. However, given the limited level of third party suppliers observed to date, such a measure would not necessarily encourage or accelerate the provision of generation services by third parties, but would have the potential to delay SAPS deployment in cases where there are clear benefits to consumers.

ECA suggested taking a broad approach to begin with and then potentially refining the exemption framework when further information is available.[42] A broad exemption will allow DNSPs flexibility to provide generation services to DNSP-led SAPS when required. There was general support for DNSP provision of generation services "up to a specified cap". The ENA, PIAC, Endeavour Energy, AusNet Services and SA Power Networks suggested an annual revenue cap earned from the provision of generation services.[43] We consider that an exemption for DNSPs to provide generation services up to a specified revenue cap is appropriate. An exemption will support the deployment of DNSP-led SAPS without the requirement for waivers. This will limit the amount of revenue a DNSP can earn from Australian Energy Market Operator (AEMO) administered settlement prices up to a

37 AER, *Issues Paper on Ring-fencing Electricity Distribution Guideline Update*, November 2020, p. 19.

38 AER, *Issues Paper on Ring-fencing Electricity Distribution Guideline Update*, November 2020, pp. 20-21.

39 Energy Queensland, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, pp. 5-7; Essential Energy*, Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, pp. 5-15.

40 EnergyAustralia, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 2; AGL*, Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 4.

41 This was discussed at forums between the AER and stakeholders at the end of February and early March 2021.

42 Energy Consumers Australia and Strategen, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 16.

43 Energy Networks Australia, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p. 9; Public Interest Advocacy Centre, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2; SA Power Networks, *Electricity Distribution Guideline Update submission*, 21 December 2020, p. 3; Endeavour Energy, *Electricity Distribution Guideline Issues Paper submission,* 17 December 2020, p. 6; AusNet Services, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 2.

percentage of the annual revenue requirement. We refer to this mechanism as a generation revenue cap.

Appendix B includes a summary of stakeholder submissions on specific exemptions.

2.2.5 Should all DNSPs have the same generation revenue cap?

Essential Energy supported a revenue cap, but noted that regional DNSPs would need a higher allowance given the larger rollout of SAPS in these areas.[44] DNSPs have divergent expectations about the rollout of SAPS in their respective distribution areas. Further, the geographical areas in which significant numbers of SAPS are currently expected to be deployed (including high bushfire risk areas in Victoria) are likely to be relatively less attractive to potential third party providers.

We consider that the exemption framework should allow DNSPs to provide generation services where it is not able to source them from the market. As DNSPs have different expectations about the level of SAPS deployment, and the potential for third party provision of SAPS generation services is likely to vary between different geographic areas, applying a single revenue cap for all DNSPs would not be appropriate.

A higher cap for DNSPs who are currently planning to deploy a low number of SAPS would mean that they are not sufficiently incentivised to test the market. A lower cap for DNSPs who are currently planning to deploy a high number of SAPS would potentially limit their ability to deploy SAPS even when they are able to find third party providers to meet some of the required needs. We consider that a tiered approach is appropriate as takes account of the different levels of forecast rollout across different geographic areas, while also incentivising DNSPs to seek out third party SAPS resource providers.

The table below divides DNSPs into three categories: those with high, medium and low expected deployment, based on numbers received in submissions.

Table 1: High, medium and low level of SAPS deployment

Category	DNSP	Licensee Name	Potential SAPS sites
1: High	Ergon Energy	Ergon Energy Corporation Ltd	1000-2000
	Essential Energy	Essential Energy	880-1400
2: Medium	AusNet Services	AusNet Services Ltd	300-400
2: Low	Ausgrid	Ausgrid Operator Partnership	12
	Endeavour Energy	Endeavour Company Ltd	12
	Powercor	Powercor Australia Ltd	10
	SA Power Networks	CKI Utilities Development Ltd	5
	TasNetworks	Tasmanian Networks	5

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

Category	DNSP	Licensee Name	Potential SAPS sites
		Pty Ltd	
	CitiPower	CitiPower Pty Ltd	Unknown
	United Energy	United Energy Distribution Pty Ltd	Unknown
	Evoenergy	ActewAGL Distribution	Unknown
	Jemena	Jemena Ltd	Unknown
	Energex	Energex Ltd	Unknown
	PWC	Power and Water Corporation	Unknown

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

2.2.6 Setting the generation revenue caps

Setting a generation revenue cap that sends the right signals to DNSPs is important. DNSPs and the ENA proposed a generation revenue cap based on AEMO's administered settlement price, up to 1 per cent of annual revenue.[45] Stakeholders had different views on what type of revenue should be used to define the cap. Energy Queensland submitted a percentage of the distribution use of service charge (DUoS) annual revenue and the ENA submitted a percentage of a DNSP's revenue cap.[46] We consider that the proposed 1 per cent caps are too high and would not promote competition or be in the interest of consumers.

We propose a conservative approach to set the generation revenue cap to balance the risk of negatively impacting the potential market for SAPS generation services. We have calculated this cap on the basis of revenue that would support 75 per cent provision of SAPS generation services by Category 1, 2 and 3 DNSPs, based on the projected deployment outlined in Table 1. Where a DNSP installs larger SAPS, it would reach the cap sooner. We consider that a low cap will likely support the provision of DNSP generation services in situations where there is a small system.

To estimate the percentage of annual revenue requirement we have estimated the revenue from the number of SAPS expected,[47] earning 80 per cent of the average regional price. This is the settlement arrangement established in the draft rules for SAPS.[48] Based on this, table 2 sets out the generation revenue cap of annual revenue requirement for each category of DNSPs, assuming DNSPs provide generation services for 75 per cent of SAPS deployed.

45 Energy Networks Australia, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p. 9; Public Interest Advocacy Centre, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2; SA Power Networks, *Electricity Distribution Guideline Update submission*, 21 December 2020, p. 3, Endeavour Energy, *Electricity Distribution Guideline Issues Paper submission,* 17 December 2020, p. 6.

46 Energy Queensland, *Electricity Distribution Guideline Update submission*, 21 December 2020, p. 3; Energy Networks Australia, *Electricity Distribution Guideline Issues Paper submission*, 18 December 2020, p. 9.

47 We have assumed small SAPS around 20kw in size.

48 NER, cl. 3.21.2 for DNSP SAPS March 2021 circulated 15 March 2021.

Table 2: Proposed generation revenue cap of annual revenue requirement

Category	Revenue Cap of annual revenue requirement
1	0.2 per cent
2	0.07 per cent
3	0.001 per cent

Appendix C provides further details on our calculation of the proposed generation revenue caps for category 1, 2 and 3 DNSPs.

2.2.7 Exceeding the generation revenue caps

In circumstances where a DNSP expects to exceed the generation revenue cap for provision of SAPS generation services, a DNSP will be able, under the guideline's existing waiver process, to seek a waiver to the generation revenue cap exemption. In these cases we will revise the revenue cap based on specified needs. This approach was supported at our stakeholder forums and by the ENA.[49]

We expect that a DNSP would submit a waiver application, including clearly identifying its reasons and providing reasonable evidence for its need for the waiver. This would include the number and size of additional SAPS sites and an indication of any market testing to procure services from third party providers. We may determine that the waiver application requires consultation with stakeholders. If we grant the waiver, we will set a revised generation revenue cap for the DNSP.

2.2.8 Certainty for SAPS assets

Ausgrid, CitiPower, Powercor, the ENA, Energy Queensland, Essential Energy and SA Power Networks submitted that the regulatory framework should accommodate the life of the SAPS asset.[50] This was to provide more certainty to DNSPs on SAPS investments.

We propose through the exemption framework (at 3.1(d)(vii) of the guideline) to allow a DNSP to provide SAPS generation services up to the generation revenue cap. Where a SAPS has been deployed, we propose to allow the DNSP to continue to provide generation services using that SAPS, even if the annual generation revenue cap subsequently changes. Accordingly, the DNSP does not need to re-evaluate the deployment of these SAPS at the time its regulatory determination expires.

---

49 Energy Networks Australia, *Feedback on forum on Electricity Distribution Guideline Issues Paper*, 16 March 2021, p. 1.

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

We also propose to amend the guideline to allow us to grant a SAPS waiver (i.e. to exceed the initial revenue cap) for a term that is not linked to the DNSP's current or next regulatory control period. This will provide the flexibility for us to set longer waiver terms, including:

- for an ongoing increase in the initial revenue cap, a waiver term that extends beyond the end of the next regulatory control period; and
- for each individual SAPS, a waiver term that aligns with the life of the SAPS.

2.2.9 Transparency and safeguards

2.2.9.1 Reporting requirements

PIAC supported DNSPs publishing a register of when and why SAPS exemptions are used to provide a useful record of installations and any relevant conditions or arrangements.[51] DNSPs supported publishing registers on their websites.[52] The Clean Energy Council (CEC) identified a number of items that would be useful to report on, including:

- Number of SAPS, value and average cost per system
- Criteria used to identify location
- Procurement process used (including information about the number of bids).[53]

It is important that there is transparency about the extent to which DNSPs are providing SAPS generation services under the guideline, and about the locations in which those SAPS are being deployed. Therefore, we propose that DNSPs produce a register with location information.

Some stakeholders noted that the DNSPs' Distribution Annual Planning Report (DAPR), which captures forward planning of DNSPs' projects, requires DNSPs to include information on DNSP-led SAPS.[54] Energy Queensland also suggested that the reporting could occur through the annual Regulatory Information Notices (RINs) process.[55] In addition, Firm Power submitted that it would be challenging to establish transparency mechanisms that would seek to address harms.[56] CitiPower, Powercor and United Energy submitted that we consolidate a register for all SAPS in the NEM.[57]

---

51 Public Interest Advocacy Centre, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 1.

52 CitiPower, Powercor and United Energy, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 8; ENA, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 4; Endeavour Energy, *Electricity Distribution Guideline Issues Paper submission,* 17 December 2020, pp. 1-2; Essential Energy, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 4; SA Power Networks, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 3.

53 Clean Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 December 2020, p. 2.

54 Ausgrid, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 9.

55 Energy Queensland, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 8.

56 Firm Power, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 9.

57 CitiPower, Powercor and United Energy, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 2.

Endeavour Energy and Ausgrid raised concerns about commercially sensitive or private material being included in public registers.[58] We do not consider the proposed information for inclusion in the SAPS register will involve publishing commercially sensitive information or raise privacy concerns for SAPS consumers.

We propose to amend the current guideline so that DNSPs must provide a register reporting each instance a DNSP provides generation services for a DNSP-led SAPS with the following information:

- The local government area in which the SAPS was deployed. This will allow stakeholders to understand where SAPS have been deployed. Third party providers who are looking to understand the potential market where they could offer services will be able to use this information to identify local demand.
- The number of premises served by the SAPS. This will allow stakeholders to understand the demand for SAPS.
- The estimated maximum demand in kW served by the SAPS. This will allow stakeholders to understand the size of the system.
- The aggregated annual average energy consumption in kWh. This will assist stakeholders to understand how the design of the SAPS is appropriate for customers' needs.
- The revenue earned by the DNSP for providing other services by means of the SAPS. This information will allow stakeholders to understand the demand for those services. The revenue earned in a calendar year will be published quarterly, with the quarter 1 update reporting the entire previous calendar year's revenue earned.
- A statement of whether the DNSP has requested the supply of other services by one or more unaffiliated third parties. This will provide an indication to stakeholders of whether market testing has occurred, and will help them to understand where further demand for those services may exist. The extent to which third party supply is (or is not) occurring, and the reasons for this, will also be relevant to our future consideration of the continued appropriateness of the exemption framework. A request may take various forms, including but not limited to a request for offers or for expressions or indications of interest.

In addition, we are interested to understand whether it would be beneficial to include further information that would indicate the capacity and capability of the SAPS generation system. Such information could include the nameplate rating of the SAPS generating system.

Alternatively, more detailed reporting on the capacity of each asset (such as the rated capacity of the PV solar panels and inverter, battery capacity and maximum load and output of backup generator), could be required. This information may give third party providers additional information about the potential size of the market. It may be particularly useful for third parties seeking to understand the design and economics of the systems being offered by DNSPs and the potential for them to offer these services in the future. As such, the

58 Ausgrid, *Electricity Distribution Guideline Issues Paper submission,* 18 December 2020, p. 9; Endeavour Energy, *Electricity Distribution Guideline Issues Paper submission,* 17 December 2020, p. 7.

availability of this information could potentially promote competition for the provision of generation services.

It would also be beneficial for us to understand where competition has developed. We are interested to understand from stakeholders if, and which particular elements, of the capacity and capability of the SAPS would be relevant to promote competition, without being significantly burdensome for DNSPs to provide.

We propose that the SAPS register be updated quarterly and must be published on each DNSP's website. This includes requiring this information to be current to the end of the previous calendar month. For example, where a DNSP is required to update its SAPS register on 15 January 2022, the information published in this updated version must be current as at 31 December 2021.

In addition to the SAPS register, any waivers relating to SAPS that we grant must also be published on the DNSP's website. This will allow third parties to access SAPS information for each DNSP in a central location (i.e. the DNSP's website). We will also publish waiver applications and our decisions on our website.

2.2.9.2 Future reviews of the Guideline

In submissions to our issues paper and in stakeholder forums held in February and March 2021, some stakeholders requested that we indicate when we will review our approach to DNSP-led SAPS providing generation services.

PIAC submitted its support for a review after two years, or earlier if there is an unforeseen issue or unintended consequences.[59] AGL submitted that we should conduct a formal review, as it is concerned the roll out of DNSP-led SAPS will occur in a short timeframe.[60] Red Energy and AusNet Services supported a review in three years.[61] In discussions at our stakeholder forums, the ENA, Essential Energy, SA Power Networks, TasNetworks and ECA's consultant, Strategen, submitted that a review of the guideline in three years is insufficient time for the SAPS market to develop and become sufficiently established for us to consider whether our proposed guideline amendments are supporting the development of the competitive market.[62] The ENA, Essential Energy, SA Power Networks, Strategen and TasNetworks submitted that SAPS deployment will involve training staff, generating supply contracts with third parties and a change in resourcing.[63] Therefore, a number of DNSPs proposed a review in a minimum of five years.[64]

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

59 PIAC, *Electricity Distribution Guideline Issues Paper late submission,* 22 December 2020, p. 3.

60 AGL, *Electricity Distribution Guideline Issues Paper submission,* 21 December 2020, p. 3.

61 AusNet Services and Red Energy from comments made at our stakeholder forums on the update to the Distribution Ring-fencing Guideline in February 2021 and March 2021.

62 ECA, ENA, Essential, SA Power Networks, TasNetworks from comments made at our stakeholder forums on the update to the Distribution Ring-fencing Guideline in February 2021 and March 2021.

63 ENA, Essential Energy, SA Power Networks, Strategen and TasNetworks from comments made at our stakeholder forums on the update to the Distribution Ring-fencing Guideline in February 2021 and March 2021.

64 ENA, Essential Energy, SA Power Networks, Strategen and TasNetworks from comments made at our stakeholder forums on the update to the Distribution Ring-fencing Guideline in February 2021 and March 2021.

do not consider that it is appropriate to specify a timeframe. Further, it is difficult to indicate a timeframe for a review when the Energy Minsters are yet to approve the rule change package, and timing of implementation of the rules amendments insofar as they relate to SAPS is unknown. We note that the guideline permits us to initiate a review of the guideline at any time.[65]

2.2.9.3 Other safeguards

EnergyAustralia submitted that an additional clause should be inserted into the guideline to allow a third party provider to challenge a DNSP's provision of generation services.[66] We consider that this would create uncertainty for DNSPs under an exemption framework (subject to a generation revenue cap) and may delay the provision of SAPS to consumers. As such we do not consider this would achieve the desired outcome.

Similarly, Origin submitted that DNSPs should be required to obtain pre-approval from us before it offers generation services.[67] We consider that this would also add additional costs and time to DNSPs' deployment processes that are disproportionate to the potential benefits to consumers from switching to SAPS.

2.2.10 Natural disasters and other emergencies

A number of stakeholders supported a specific exemption for DNSPs to provide SAPS services in natural disasters and other emergencies.[68]

We consider that temporary SAPS – that is, SAPS that are used to provide assistance to the extent necessary to respond to an event that is 'beyond a DNSPs reasonable control' – should not be included in the DNSP's revenue cap. To clarify this, we propose to amend clauses 3.1(d)v, 4.2.1(b)ii, 4.2.2(b)ii, 4.2.3(b)iv and 4.3.2(e) to allow DNSPs to respond to emergency events, (including on their own network) with a temporary SAPS, if appropriate.[69]

However, we consider that the deployment of permanent or ongoing SAPS in response to an emergency should be subject to the generation revenue cap and waiver provisions consistent with other permanent SAPS deployments. We consider that any SAPS deployments that are 'necessary' to respond to such an event will inevitably be temporary in nature. Therefore if a permanent SAPS is installed as part of a response to an emergency

65 AER, *Ring-fencing Electricity Distribution Guideline (version 2),* October 2017, cl. 1.5.

66 EnergyAustralia. *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2.

67 Origin, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

68 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, pp. 4-5; Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 8; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 10; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 9-10; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2; TasNetworks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

69 AER, *Ring-fencing Electricity Distribution Guideline (version 2),* October 2017, cl. 3.1(d)v, 4.2.1(b)ii, 4.2.2(b)ii, 4.2.3(b)iv and 4.3.2(e).

event (i.e. an event beyond a DNSP's reasonable control), the SAPS must be included as part of the revenue cap.

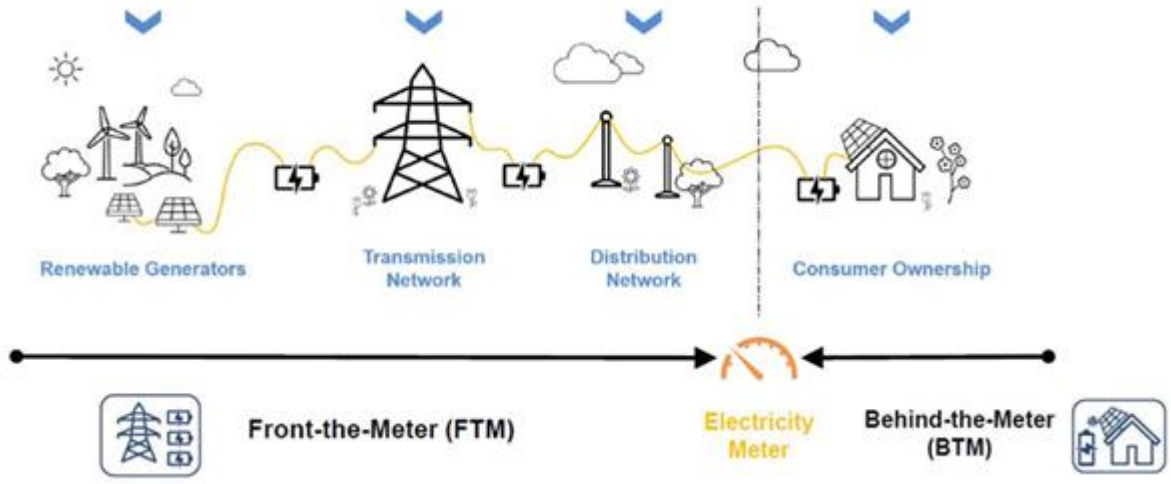
3 Contestable services from batteries

Australia's energy system is rapidly changing and affecting how energy networks are used. Technological developments and consumer preferences are leading us away from a supply-side orientated system to one that needs to support two-way flows of electricity, and away from centralised generation to distributed generation.[70]

Batteries [71] are set to play a key role in the energy system; facilitating more renewables onto the grid,[72] supporting system security and reducing pressure on electricity prices by meeting peaks in consumer demand.[73]

Batteries can provide many different services, including buying and selling energy at different price points, balancing the supply and demand of energy (providing FCAS)), and providing regulated network services (or inputs to services). As such they are an emerging technology that can meet both regulated network needs and provide a range of contestable services. Utilising batteries throughout the system could realise multiple benefits and value and there are a range of ownership and control models that could be used in to extract the full value from batteries.

Figure 3: Schematic representation of the electricity grid, showing the separation of front-of-meter and behind-the-meter.



Source: *Schematic representation of the electricity grid, showing the separation of front-of-meter and behind-the-meter. IDTechEx,* www.IDTechEx.com/redox

Our objective is not to slow down or direct the deployment of batteries in any particular direction, but rather to guard against the risk that opportunities for new entry and competition in these emerging markets could be foreclosed if DNSPs are permitted to use batteries to

70 AER Strategic Plan 2020-25, https://www.aer.gov.au/system/files/AER-Strategic-Plan_2020-2025.pdf

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

72 ARENA, *How are big batteries helping to transition to renewables*, 2 February 2021.

73 Technology Investment Roadmap: First low emissions technology statement – 2020.

provide contestable services without a process to ensure that the costs of such activities are outweighed by the benefits.

3.1 Draft position

Given the significant potential of batteries and benefits to consumers, our aim is to develop a ring-fencing framework for batteries that promotes the competitive provision of contestable services using batteries.

The regulatory framework currently focusses on the services DNSPs provide through their regulated networks, with ring-fencing separating regulated and contestable services. Batteries challenge this model. There will be economies of scale and scope in the operation of batteries. That is, there is likely to be value in using a single battery to provide regulated network services (or inputs to regulated network services) and contestable services.

Throughout the consultation process, we heard from both DNSPs and other potential providers of batteries about the importance of the regulatory framework encouraging efficient investment in and deployment of batteries, and the potential benefits for consumers. For DNSPs, we understand that a clear pathway to realise the full benefits from batteries, where appropriate, is needed. For other providers of batteries, there needs to be robust safeguards in place to mitigate the risks from DNSP discrimination and cross-subsidisation in order to encourage competition.

In balancing these considerations and appreciating that batteries can be operated through a range of complex ownership and operating models, our draft position on ring-fencing of batteries is as follows:

- DNSPs are prohibited from providing contestable services with a battery (whether the service consists of the supply of excess capacity to third parties, or the provision of other contestable services themselves with the battery).
- However, a DNSP may apply to us for a waiver in situations where a DNSP wants to supply excess capacity of a battery to a third party in circumstances where it considers the benefits outweigh the harm.

We consider that our proposed ring-fencing approach strikes an appropriate balance in allowing DNSPs to explore the use and benefits of batteries, while at the same time guarding against the potential threats to competition in these emerging markets. We propose clear guidance, as set out below, about the availability of waivers for DNSPs. We also note that there are no barriers, in terms of ring-fencing, to third parties providing a range of services from their own batteries, including to DNSPs.

The current guideline already generally prevents DNSPs from providing services other than distribution services, but allows DNSPs to grant other parties the right to use DNSPs' assets in certain circumstances.[74] To achieve our draft approach, we propose amending the current guideline to make it clear, by removing batteries from the scope of this exception that a DNSP is not allowed to supply excess battery capacity to third parties.

74 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cll. 3.1(b), 3.1(d)i.

In some situations where a DNSP wants to supply the excess capacity of a battery to a third party, we recognise that the benefits of doing so may outweigh the harm. This might occur where there are clear consumer benefits of DNSP ownership of the battery, and demonstrable mitigation of the risks to competition. We are therefore seeking to establish a waiver process that is robust and timely in meeting the needs of stakeholders, including by providing additional guidance on the factors we may consider when assessing a waiver application in relation to batteries. These factors include evidence of:

(a) Benefits from DNSPs owning the battery.

    I. The circumstances and arrangements that will lead to DNSP ownership of the battery and the efficiency benefits of a DNSP providing contestable services with the battery.

(b) Risks to competition from the DNSP supplying excess capacity of a battery to a third party can be effectively mitigated. For example, this might be demonstrated through:

    I. A demonstrated commitment to deal with the battery in an arms-length, transparent and non-discriminatory manner; and

    II. Clear, reasonable, and transparent process for allocating a proportion of the costs of the battery to the provision of regulated services.

In addition, we would consider the information transparency arrangements that will be established to share learnings and reduce information asymmetry for the public.

We consider that this approach will provide greater certainty for DNSPs and other stakeholders and will promote competition in this emerging technology, leading to the achievement of the NEO and the long-term interests of consumers.

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

In formulating our proposed guideline amendments and our approach to waivers, we have carefully considered the potential benefits and harms of a DNSP providing contestable services with a battery, as raised by stakeholders through our consultation process. These are outlined below.

3.2 Harms and benefits

3.2.1 Potential harms from DNSPs providing contestable services using batteries

There is a perception that DNSPs may leverage their monopoly role and access to information to dominate batteries. This section examines four potential harms that stakeholders raised as possible impacts on the competitive market. Each of these harms may arise regardless of who is using the battery capacity in the contestable market – whether the service consists of the supply of excess capacity to third parties by the DNSP, or the provision of contestable services by the DNSP with the battery.

3.2.1.1 Access agreements

Origin, AGL, CEC and Firm Power raised concerns about conflicts in access agreements.[75] As the network owner, a DNSP sets its network access requirements. Stakeholders stated that potential conflicts could arise where a DNSP provides itself with preferential access to its network. This could give the DNSP's battery a competitive advantage.[76]

At each reset determination, we assess each DNSP's connection policy that will apply over the forthcoming regulatory period (typically 5 years). We also administer a connection charge guideline.[77] The DNSPs' connection policies must set out how different types of connections are classified, the circumstances in which connection charges are payable, and the basis for determining the amount of these charges.

As the DNSPs' connection policies are assessed during the determination reset, there is an opportunity for interested parties to provide input on these policies as part of the public consultation process for network revenue determinations.

We note that the AEMC is considering a potential integrated energy storage systems rule change. Broader concerns about the differential regulatory treatment of storage devices were also raised in this process. This process will continue over the coming months.[78] We consider that this review process is the appropriate forum to address other aspects of the use of batteries under the NEL/NER framework.

3.2.1.2 Tariffs and charges

Origin, AGL, CEC and Firm Power are concerned about tariffs and pricing.[79] As the owner of the network, a DNSP sets its system charges. Potential conflicts could arise where a DNSP provides itself with preferential DUoS charges for use of its network. These benefits could reduce trading costs and, could in turn, give the battery a competitive advantage.[80]

In our recent Victorian Tariff Structure Statement (TSS) final decision, we determined that ownership of batteries should not be the basis for differential tariff treatment.[81] In their initial TSS, all Victorian DNSPs proposed that any grid-scale battery they owned be exempt from network tariffs. However, in our final determination we stated that the capital investment and operational decisions for these assets should be based on a cost-reflective price signal, determined by the underlying use of network services, connection arrangements and the relevant approved tariff class structure. That is, if the asset falls into a particular tariff class, it should be exposed to the same network tariffs as other consumers in that tariff class,

---

75 Origin Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 1.

76 Monash Energy Institute, *National Electricity Amendment (Integrating Energy Storage Systems into the NEM) Rule – Submission*, 9 October 2020.

77 See: AER, National electricity *connection charge guidelines*, July 2012 at https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/national-electricity-connection-charge-guideline-2012

78 Australian Energy Market Commission, *Options Paper: National Electricity Amendment (Integrating Energy Storage Systems into the NEM) Rule 2021*, 17 December 2020, p. 35.

79 Origin Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 1.

80 Monash Energy Institute, *National Electricity Amendment (Integrating Energy Storage Systems into the NEM) Rule – Submission*, 9 October 2020.

81 https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausnet-services-determination-2021-26

whether owned by a DNSP, its affiliate or a third party.[82] We note that batteries owned and operated for network only purposes, are not registered and do not pay tariffs.

3.2.1.3 Preferential network use

Batteries, and other distributed energy resources, create new challenges for the ongoing operation of the network. As these devices can send and receive electricity there is the issue of how much each device is allowed to operate in the market. In order to coordinate the different participants and devices in the market, 'dynamic operating envelopes' are being developed. These envelopes will provide signals and limits on when a device can be used and by how much. DNSPs can set and control these envelopes. This raises a potential conflict where a DNSP could have incentives to improve access to its own battery, thereby adding value to its battery, and/or limit access to third party batteries.[83]

DNSPs have discretion to set export capacity limits for consumers. This impacts devices such as batteries, electric vehicles and solar panels installed at consumer premises. This may result in a DNSP reducing capacity allocated to consumers, in favour of the DNSP's battery. There is currently no oversight or assurance of a fair allocation of capacity.

The CEC raised conflicts with DNSP batteries competing with household batteries.[84] This could give the DNSP's battery an unfair advantage as the DNSP set the operating terms for household batteries, which could reduce household batteries ability to compete. Stakeholders at our discussions also raised concerns about a DNSP's ability to provide the party using its battery with preferential network access.[85] AGL submitted that DNSPs involvement would negatively impact the growth of emerging solar battery products and other services.[86]

We agree that these potential conflicts, if acted on, could provide the DNSP-owned battery with an advantage. These potential conflicts could have a significant impact on the level of competition and investment in batteries.

3.2.1.4 Cost allocation and cross-subsidisation concerns

Another source of harm is potential cross-subsidisation of contestable services with revenue from regulated services. EnergyAustralia submitted that this has the potential to distort competitive markets.[87] AGL is concerned that cross-subsidisation cannot be prevented easily.[88] It is concerned that DNSPs may push commercial risk onto consumers of regulated networks. Additionally, the AEC submitted that there is no way to verify the costs allocated

82 Clauses 6.18.4(a)(2) and (3) of the NER require all retail consumers with similar load profiles be treated the same, regardless of the presence of microgeneration. We consider that this requirement extends to treating batteries in a manner consistent with their use of the network.

83 This was discussed at forums between the AER and stakeholders at the end of February and early March 2021.

84 Clean Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 December 2020, p. 3.

85 This was discussed at forums between the AER and stakeholders at the end of February and early March 2021.

86 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5.

87 EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2.

88 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7.

between regulated and contestable services are accurate.[89] We share the concerns of EnergyAustralia, AGL and the AEC. There is a potential that consumers of regulated services may see less of the benefit from the revenue that is generated because it may be cross-subsidising contestable services.

3.2.2 Potential benefits from DNSPs providing contestable services using batteries

Some stakeholders argued that a DNSP, as owner of the network, would deliver greater benefits to consumers by using a battery to provide contestable services. Endeavour Energy also stated that DNSPs are best placed to deploy and utilise batteries.[90] Essential Energy submitted that it is often best placed to install the asset.[91] It also commented that there are many benefits of DNSPs playing a role in deploying batteries, including the ability to leverage synergies with existing network assets, overcome cost barriers to reduce network pressure and best manage network issues.[92] Further, CitiPower, Powercor and United Energy stated that if DNSPs are not involved then the roll out of batteries will be slower and at a higher cost to consumers.[93]

ECA suggested a number of consumer-centric principles that, if adopted, should allow battery deployment by DNSPs.[94] For example, achieving equal or better total expenditure, reliability, outage management and protections for consumers when compared to traditional network delivery.[95] We consider that these principles align with good regulatory practice in the long-term interest of consumers, provided that competitive conditions in these emerging markets are also protected. The regulatory framework should be designed to encourage the use of batteries in this way. We consider that these principles apply regardless of ownership or management of the battery. That is, either a DNSP or third party can provide contestable services (DNSP requires a ring-fencing waiver) and support network services while meeting these principles.

Additionally, stakeholders argued that DNSPs are the primary beneficiaries of batteries. CitiPower stated that the primary purpose and gain from grid-scale batteries is network use.[96] The ENA identified a number of network specific services that batteries provide (voltage support, peak demand management to defer network upgrades, managing fault levels in areas with high levels of solar generation, phase balancing etc.).[97]

---

89 Australian Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 22 December 2020, p. 2.

90 Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 2.

91 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 16.

92 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p.16.

93 CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5.

94 Energy Consumers Australia and Strategen, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 14.

95 Energy Consumers Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 14-15.

96 CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

97 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020,

However, Origin submitted that these benefits could be realised by DNSPs through competitive tender.[98] AGL also submitted that DNSPs are not best placed to realise value stacking due to contestable services not aligning with network needs and additional costs to create contractual arrangements.[99]

Currently, we do not have evidence that vertical integration of batteries would necessarily support efficient investment in, and use of, assets in the long-term interest of consumers. Independent studies suggest that regardless of who owns the batteries, they can meet different needs and be optimised to provide benefits to different users.[100] We do not consider that achieving the greatest benefit requires DNSP ownership of the battery.

TasNetworks submitted that by forcing DNSPs to source services from third party battery providers assumes that competition in the provision of services will be sufficiently mature to both drive down costs and guarantee access to the service when required, particularly in specific locations where the need is greatest.[101] The ENA also submitted that as the market is immature it would benefit from DNSP-led initiatives.[102] However, stakeholders that attended our forums indicated that third parties would be available and capable of meeting any DNSP need.[103]

3.3 Realising value from batteries

In many cases, there is likely to be value in using one battery to provide multiple services. Therefore it is important that the ring-fencing framework provides an opportunity, where appropriate, to optimise the value a battery may provide.

As a first consideration, it is important that the value that batteries can provide to distribution networks is clear. Knowing this information allows third party battery providers to consider if it can meet the needs of the distribution network and the potential benefit to the network. It is worth noting that DNSPs and third parties are able to provide services to meet this need.

In considering if a DNSP should be permitted to provide contestable services with a battery, there are two distinct scenarios that may arise:

- where the DNSP wishes to supply excess capacity to third parties so that those third parties can provide other contestable services;
- the DNSP wishes to supply other contestable services itself.

---

p. 11.

98 Origin Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

99 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission,* 23 March 2021.

100 Australian National University, *Implementing Community-Scale Batteries – Final report for the ARENA-funded Community Models for Deploying and Operating DER project*, December 2020, p. 6.

101 TasNetworks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

102 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 16.

103 This was discussed at workshops between the AER and stakeholders at the end of February and early March 2021.

3.3.1 Providing network services using batteries

Providing services to support the distribution network are an important use of batteries that can realise cost savings for consumers. Research indicates that supporting network services is a part of the value of a battery.[104] DNSPs can provide these services with their own battery or by seeking services from third party providers.

A number of stakeholders submitted that economies of scale and scope can be realised by third party providers of batteries. Submissions to the issues paper sought additional regulation and incentives to further encourage DNSPs to seek third party providers to provide network services using batteries.[105] This ranged from some stakeholders submitting that DNSPs should be prohibited from owning batteries,[106] greater requirements and incentives on DNSPs to seek "non-network" alternatives and/or third party providers.[107]

We note that other countries have chosen to restrict network ownership, control and management of batteries. In the European Union the directive is that batteries should be market-based and competitive. As such there is a restriction on distribution system operators from owning batteries to prevent "distortion of competition, to eliminate the risk of discrimination and to ensure fair access to energy storage services to all market participants and to foster the effective and efficient use of energy storage facilities, beyond the operation of the distribution or transmission systems".[108]

Stakeholders suggested amending the incentive schemes (such as the efficiency benefit sharing scheme and demand management incentive scheme or DMIS) so that non-network solutions are attractive to DNSPs and help promote competition in the market.[109]

AGL suggested that DNSPs should publish low voltage requirements (not required under DAPR) and provide parties with a 12 week consultation period to realise opportunities.[110] We understand that some networks, for example United Energy, are seeking to provide third parties with further information.[111]

---

104 ARENA, *Implementing community-scale batteries*, December 2020.

105 See for example AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

106 See for example AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

107 There are currently a number of regulatory mechanisms in place to encourage and support DNSPs testing the market for the competitive supply of services. These include:

- Distribution Annual Planning Report (DAPR) to identify DNSP needs and assist non-network providers to propose solutions;
- Regulatory investment test for distribution (RIT-D) to identify the most economical investment project for projects above $6 million; and
- Incentive schemes, such as the demand management incentive scheme (DMIS), demand management innovation allowance (DMIA), capital expenditure sharing scheme (CESS) and efficiency benefit sharing scheme (EBSS) to incentivise DNSPs to undertake efficient expenditure on non-network options.

108 Article 36, Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (text with EEA relevance.).

109 This was discussed at workshops between the AER and stakeholders at the end of February and early March 2021. See also: Firm Power, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 5-7.

110 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 23 March 2021.

111 CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 4 March 2021.

CitiPower, Powercor and United Energy submitted that the current incentives encourage DNSPs to seek efficient solutions. They stated that they do not have a commercial incentive to prefer any ownership structure or block access to other market participants.[112]

We recognise that the incentives to procure services from the market plays a key role in deployment of batteries and to realise the value from batteries throughout the energy system. The National Electricity Rules set out network planning requirements and a regulatory regime that is designed to encourage and reward non-network solutions where they are the most efficient way of addressing network requirements. This includes where they are proposed by a third party who seeks to realise economies of scale through 'value stacking'. Beyond this, however, the suggested improvements to the different incentive schemes are beyond the scope of the ring-fencing guideline, and therefore this review. Future reviews of the relevant incentive schemes will explore if improvements could be made to better align those schemes with changes in the energy sector.

3.3.2 DNSPs providing contestable services (other than excess battery capacity) using batteries

The current guideline generally prevents a DNSP from providing 'other services' (that is, services other than distribution services and transmission services).[113] A DNSP is therefore unable to provide non-distribution services through a battery, unless a specific exception applies.

SA Power Networks submitted that DNSPs might provide non-distribution services (other than supplying excess battery capacity) for two reasons:

- Prohibitive transaction costs in entering into and monitoring contracts with a third party
- Material inefficiencies in providing non-distribution services via a ring-fenced affiliate.[114]

Ausgrid stated that the different types of uses would have different types and levels of harm.[115] In particular, it stated that community-scale battery services raise lower concerns.[116] This service is where a consumer's excess solar is 'stored' and available for the consumer to 'extract' during other periods. Ausgrid suggested that community-scale battery services be treated as a distribution service. This would allow a DNSP to offer this service without interacting with ring-fencing requirements.

We note, however, that, a 'community-scale battery service' would see the DNSP interacting directly with consumers. In our stakeholder discussions, this was described as akin to

---

112 CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

113 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 3.1(b).

114 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 6.

115 Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 10.

116 We refer to this storage as 'community-scale storage', leaving the term 'community battery' for the specific scenario where the battery is either owned by the community, operated for the community (as virtual storage) or operated to benefit the community indirectly (e.g. through profits flowing back).

retailing as a vertically integrated provider.[117] Origin disagreed with DNSPs selling services directly to consumers.[118]

We note that the AEMC's *2020 Economic regulatory framework review* identified emerging issues with community-scale batteries and will consider them as part of a broader review on regulatory framework issues.[119] We understand the AEMC will commence this review in mid-2021.

PIAC submitted that allowing a DNSP to provide other services will help accelerate roll-out and share benefits across more consumers, lowering network costs resulting in lower consumer bills.[120] ECA cautioned against assessing and determining if batteries should be allowed based on all potential uses. Rather, it suggested allowing the uses of excess capacity to develop.[121] We consider that retrospectively determining that DNSPs can provide to resolve harm caused to the competitive market could be difficult and could cause long term damage to the competitive market.

Energy Queensland, Endeavour Energy and the ENA stated that DNSPs should require a waiver where the DNSP uses a battery to provide 'other services'.[122] We agree that any proposed use by a DNSP of excess capacity to provide other contestable services would raise concerns. We currently do not support further changes to the ring-fencing framework to allow a DNSP to provide other contestable services using battery excess capacity. We consider that the current approach that prevents a DNSP from offering these services is appropriate, and that a waiver should be required for any deviation from this approach.

3.3.3 DNSP supply of excess battery capacity to third parties

DNSP submissions indicated an interest in supplying excess capacity of batteries to third parties.[123] They stated that this would help to realise economic benefits from the use of batteries.

A number of stakeholders submitted that DNSPs should be permitted to supply excess capacity to other parties for use in contestable markets under the guideline. Further, DNSPs (such as Energy Queensland, AusNet Services and Essential Energy) submitted that DNSPs should be able to supply excess capacity to realise additional benefits without a waiver.[124]

---

117 This was discussed at forums between the AER and stakeholders at the end of February and early March 2021.

118 Origin Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 1.

119 AEMC, *Electricity network economic regulatory framework review 2020*, October 2020.

120 Public Interest Advocacy Centre, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

121 Energy Consumers Australia and Strategen, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 14.

122 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020.

123 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020; AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020.

124 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020; AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020; Essential Energy,

Origin Energy agreed that DNSPs should be able to supply excess capacity, but only where the asset purpose was based on regulated distribution services.[125] DNSPs, including Ausgrid, supported allowing the excess capacity to be 'leased' to third parties through the guideline.[126]

Origin Energy stated that the ability to supply excess capacity should not provide DNSPs with an indirect avenue for DNSPs to enter a competitive market.[127] Firm Power did not support using an exemption framework.[128] Firm Power indicated that waivers created a perception of asymmetric information risk, discriminatory and pre-emptive advantage for DNSPs and did not support their use.[129]

AGL did not support distinguishing between DNSPs providing contestable services or 'leasing' capacity to others to provide contestable services, and therefore did not support flexibility in the guideline to support DNSPs leasing capacity.[130] Firm Power also did not support DNSPs operating in this market.[131] CEC submitted that concerns about the impact on competition remain regardless of the DNSP 'leasing' excess capacity to third parties or offering contestable services itself.[132] We agree that there is the potential for harm if a DNSP supplies excess capacity to third parties. We consider the benefits identified by the DNSPs could equally be achieved where DNSPs procure battery network support services from third parties, and the third parties then re-directed excess capacity to other contestable markets.

3.4 Amending the guideline

3.4.1 Clarifying the supply of excess capacity to third parties

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

> *granting another legal entity the right to use assets of the DNSP in providing transmission services, distribution services or other services, where those assets are also used by the DNSP to provide distribution services or other services, but only where doing so does not materially prejudice the provision of direct control services by the DNSP* (right to use assets exception).[133]

The original intention of this exception to legal separation was to facilitate the 'shared asset' rules introduced in 2012.[134] This was to facilitate assets (such as poles) that were fully cost

---

Electricity Distribution Ring-fencing Guideline Issues Paper submission, 21 December 2020.

125 Origin Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 1.

126 Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 10.

127 Origin Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4.

128 Firm Power, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 10.

129 Firm Power, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

130 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7.

131 Firm Power, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 10.

132 Clean Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 December 2020, p. 4.

133 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 3.1(d)i.

134 NER, cl. 6.4.4.

allocated for the provision of electricity services to be used for other purposes (such as to support telecommunication cables).

As the above consideration indicates, we have identified that this exception is not appropriate for batteries and therefore, should be amended. This involves making it clear in the guideline that the exception does not apply to batteries (or energy storage devices as defined in the guideline). We proposed to amend the exception to read:

> *granting another legal entity the right to use assets **(other than energy storage devices)** of the DNSP in providing transmission services, distribution services or other services, where those assets are also used by the DNSP to provide distribution services or other services, but only where doing so does not materially prejudice the provision of direct control services by the DNSP (right to use assets exception).*[135]

And to include the following definition of energy storage devices:

> ***energy storage device*** means plant that has the capacity to both:
>
> (a) consume electricity to convert into stored energy; and
>
> (b) convert stored energy to produce electricity
>
> together with all related equipment essential to its functioning as a single entity.

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

3.4.2 Discrimination

The current guideline is focused on discrimination in favour of a DNSP's affiliate, and against non-affiliates. However, increased third party use of a DNSP's batteries (and other assets) also increases the potential for DNSPs to discriminate between non-affiliates who are using the DNSPs batteries and those that are not. SA Power Networks submitted including new provisions in the guideline requiring DNSPs to not discriminate against competitive storage service providers.[136] There are non-discrimination restrictions on monopolies in other markets. For example, Telstra and NBN are prevented from discriminating where they are providing telecommunication access and supply of network services.[137]

As such we propose to insert a new clause, in addition to the current non-discrimination requirements, to prevent a DNSP from discriminating between two parties where it owns the asset. The proposed clause is as follows:

(a) A **DNSP** must not discriminate (either directly or indirectly) between any two legal entities, in connection with the supply of **contestable electricity services** by those legal

135 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 3.1(d)i.
136 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 5-6.
137 *Competition and Consumer Act 2010* (Cth), part XIC.

entities, on the basis of the use by one or both of those legal entities of assets owned, operated or otherwise controlled (in whole or in part) by the **DNSP**.

3.4.3 Reducing the administrative burden of the waiver process when a DNSP supplies excess capacity

The ENA submitted that the waiver process is lengthy and costly, and not proportionate with the potential harm.[138] PIAC, Ausgrid and Simply Energy (jointly) submitted that it adds uncertainty to community-scale storage projects.[139]

The guideline currently requires us to have regard to the following when considering a waiver:[140]

- The National Electricity Objective (NEO);
- The potential for cross-subsidisation and discrimination if the waiver is granted or refused; and
- 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.

We may also have regard to any other matters we consider relevant.

We consider the waiver process is an important mechanism by which we can promote competition and mitigate potential harms. Under the current guideline, we have flexibility in how we manage the waiver application process.

In assessing an application for the waiver of legal separation obligations in the guideline, we will seek evidence including:

(a) Benefits from DNSPs owning the battery.

   I. The circumstances and arrangements that will lead to DNSP ownership of the battery and the efficiency benefits of a DNSP providing contestable services with the battery.

(b) Risks to competition from the DNSP supplying excess capacity of a battery to a third party can be effectively mitigated. For example, this might be demonstrated through:

   I. A demonstrated commitment to deal with the battery in an arms-length, transparent and non-discriminatory manner; and

   II. Clear, reasonable, and transparent process for allocating a proportion of the costs of the battery to the provision of regulated services.

We consider that the inclusion of this information, which is detailed further below, in a DNSP's waiver application is likely to assist us in considering whether the benefits of

138 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 13.

139 PIAC/Ausgrid/Simply Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission,* 16 March 2021.

140 AER, *Ring-fencing Guideline Electricity Distribution - Version 2, October 2017*, cl. 5.3.2.

requiring the DNSP to comply with its ring-fencing obligation outweigh the costs. However, all waiver applications will be assessed on a case by case basis. We consider that this position will promote competition in this emerging technology, thus best achieving the NEO and outcomes that are in the long term interests of consumers.

a) Benefits –- The arrangements that lead to, and benefits from, DNSP ownership of the battery

In the context of any proposal by a DNSP to supply excess capacity on a battery to a third party, we are likely to be interested in understanding the reasons for the DNSP owning, or wanting to own, the battery. For example, one potential scenario might be that the DNSP has not been able to procure, from a third party, the relevant inputs to its distribution services. Those inputs may be services, or they may be assets. We would like to understand:

- the process that was followed to attempt to procure those inputs;
- what other alternatives, besides the battery, might be available to the DNSP in order to meet the distribution service need for the battery; and
- the reasons why the DNSP has not procured those other alternative services, and the process (if any) that the DNSP has followed in attempting to procure those alternatives.

We are also likely to be interested in understanding the need for, and the benefits of, a battery of the size proposed in the waiver application. Endeavour Energy submitted that there is limited opportunity for over investment in batteries.[141] However, it also stated that the battery could be limited to the size that is justified for the distribution service. EnergyAustralia supported limiting batteries size to be based on the required network service.[142] In a waiver application, we would be interested to understand the reasons for the size of the battery, and the benefits, if any, that would be obtained from the deployment of an battery that is larger than is required for the relevant distribution services.

We are likely to be interested in understanding whether there are benefits from DNSP ownership of the battery which cannot be captured if the DNSP does not own the battery.

We are also likely to be interested in understanding whether there are particular features of the DNSP's proposal (such as the location of the battery), which affect the economics of the placement of the battery and therefore the benefits and costs of the DNSP owning the battery.

b) Harms to competition mitigated –

I. Controls on discrimination

We are likely to be interested in understanding whether the DNSP will have an incentive or ability to engage in discriminatory conduct with respect to other providers of batteries.

Amongst other things, we would seek to understand:

---

141 Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 9.
142 EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 3.

- Whether the DNSP proposes to supply excess capacity of an battery to a third party – and whether or not that third party is an affiliate of the DNSP;
- What capacity is required to fulfil the network service and when that capacity is likely to be required and what the nature of excess capacity is likely to be (e.g. a constant volume);
- Whether or not the contractual arrangements under which that capacity is supplied gives the DNSP an interest in the commercial performance of that battery;
- Whether the arrangement between the DNSP and the third-party is at arms-length and on terms and conditions that are available to other providers of batteries; and
- Whether there is sufficient monitoring and reporting requirements for us or other third-parties to verify ex post that the DNSP is not favouring or giving preference to the battery it owns in its operational or investment decisions.

We will also be interested in understanding whether the excess capacity will be used to support a trial. Trials may be in the long-term interests of consumers by identifying and testing potential new uses and benefits of sharing capacity on these devices between DNSPs and third parties. In our view, consumers will benefit most from the trial where the information and knowledge gained is shared with the broader industry. As such we are interested to understand what information, results and outcomes will be shared from the trial and with whom. In turn, this is likely to inform our consideration of how this technology should be treated under the ring-fencing framework in the future.

II. Cost allocation

In assessing the costs and benefits of a waiver application, we would be interested to understand:

- how the impact on the regulatory asset base (RAB) (or, more generally, the cost of regulated services) will be minimised;
- how the costs of the battery are allocated, or will be allocated, and how this allocation might change over time; and
- how we, or third parties, will be able to verify that the cost impact on the regulated services is minimised.

There are also some potential interactions with the current cost allocation mechanisms worth noting.

If the battery is intended for network use only, then the costs will be fully allocated to the relevant distribution service that it supports. If at a later stage the DNSP realises that the asset has excess capacity then there is a mechanism to share unregulated revenue with consumers of the regulated network. This happens through our shared asset guideline.

However, in the case of batteries, we do not consider the shared asset guideline adequately provides a means to share the benefits with consumers. For example, if the shared asset guideline is applied to batteries, any unregulated revenue below one per cent of a DNSP's total annual revenue would not be returned to consumers. This would mean that consumers may see limited benefit, but bear some of the risk.

If a battery is not intended solely for network services then there is the issue of how much of the asset should be assigned to the RAB. There is currently no well-established approach for how this should be done. Moreover, batteries are a new technology where the potential split between use for network distribution services and other contestable services is currently unknown. The use of a particular battery may well change over time. This creates additional complexity, namely, the need for a mechanism to allocate costs and prevent cross-subsidisation that will adequately take account of future variations in use.

We currently do not have a preferred approach for dealing with these cost allocation issues as different circumstances may lend themselves to different methodologies. In a waiver application, we are interested to see how the proposal addresses potential cost allocation harms given the particular supply scenario.

Information/transparency

Ausgrid supported the disclosure of the extent to which DNSP-owned battery are used for non- distribution purposes.[143] In its subsequent submission with PIAC and Simply Energy, it elaborated that the register could include information on where batteries are being used by third parties, the percentage of costs allocated to the RAB and the network need being addressed.[144] Should we receive a waiver application, we would be interested, in addition, to understand how DNSPs plan to share such information publically and what commitments they are willing to make in this respect.

Example: Community-scale battery

A 'community-scale battery' often refers to one that is located within a local area. It is distinct from a 'community battery', which is generally either owned by the community, operated for the community (as virtual storage), or operated to benefit the community indirectly (e.g. through profits flowing back).[145]

There are a range of ownership and operating options for a community-scale battery, with no established model. The potential benefits, who they go to, and how the battery will be used will depend on a range of factors, including:

- who owns the battery (retailer, DNSP or third party (such as councils, government or aggregators);
- stakeholder participation (e.g. subscription model, modified network tariffs, or other incentives such as modified council rates);
- network tariffs (e.g. the appropriate price for transporting energy within a local area); and
- services provided (for example customer demand management, network support, arbitrage from the spot market of FCAS).[146]

143 Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 10.
144 PIAC/Ausgrid/Simply Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission,* 16 March 2021.
145 Australian National University, *Implementing Community-Scale Batteries – Final report for the ARENA-funded Community Models for Deploying and Operating DER project*, December 2020, p. 6.
146 Australian National University, *Implementing Community-Scale Batteries – Final report for the ARENA-funded Community*

Ring-fencing is only relevant for community-scale batteries where a DNSP owns or operates the battery. In scenarios like this, our proposed approach would require a DNSP to submit a waiver application to provide contestable services. The waver process seeks to ensure that the benefits outweigh the harms and cross subsidisation and discrimination risks are mitigated. This process will ensure that projects that are demonstrably in consumers benefit (such as reduce costs) can progress. A DSNP would be required to submit a waiver, providing information outlined in 3.4.3.

It is important to note that where a community-scale battery is owned and operated by an entity other than the DNSP that entity is not subject to ring-fencing. For example the Yarra Energy Foundation, have announced a community-scale battery storage project in the Melbourne CBD and inner-city suburbs.[147] The first battery is expected to be deployed in 2021.[148] The Yarra Energy Foundation are currently working with a number of stakeholders, such as local community and council, to participate and potentially invest in the project. One of the objectives of this project is to give consumers in the local area a stake in how the batteries are controlled and used and allow the local use of excess solar energy generated during the day at peak night times.

Models for Deploying and Operating DER project, December 2020, p. 16-18

147 Yarra Energy Foundation, *"Seeking Victoria's first "solar sponge" community battery network*", 27 January 2021

148 The batteries will be placed on the CitiPower network and will use software developed by Australian National University.

4 Improving the guideline – minor amendments

This chapter examines certain guideline obligations and how they can be made clearer and less administratively complex. Specifically, our issues paper consulted on possible amendments to:

- Improve the transparency of staff sharing arrangements between a DNSP and its affiliates;
- Address confusion associated with the term 'confidential information' as defined in the guideline;
- Improve the timeliness of DNSP breach reporting;
- Improve the practicality of DNSP annual compliance reporting; and
- The branding obligations in the guideline.

In addition to the proposed amendments we consulted on through our issues paper, this chapter outlines some further proposed discrete amendments.

While we have proposed a number of amendments to the guideline, we do not consider major changes to the operation of the guideline are required at this time. This is based on our experience in implementing the guideline and stakeholder feedback we have received to date.

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

4.1 Staff sharing

The guideline imposes staff sharing restrictions on a DNSP so it cannot confer a competitive advantage on its RESP providing contestable electricity services.[149] Information about a DNSP's network, consumers or services could provide a RESP with an unfair advantage in the market. The current guideline therefore requires that staff with:

- Access to information about the DNSP's network and its consumers ('electricity information'); and
- An opportunity to use that information in a way that would provide a discriminatory advantage to the DNSP's RESP,

not be shared with the DNSP's RESP providing contestable electricity services.[150]

We recognise that determining whether a staff member has an opportunity to use 'electricity information'[151] can be a complex, fact-specific and fact-intensive exercise. Through our

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

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

151 Electricity information means information means information about electricity networks, electricity consumers or electricity

ongoing ring-fencing compliance activities, issues have arisen when interpreting this requirement. In particular, we have observed issues and breaches in relation to staff secondments and sharing of procurement staff.[152]

Second, we consider there is insufficient transparency regarding a DNSP's decision to share staff with an affiliate. In particular, staff registers on DNSPs' websites do not provide adequate transparency of staff sharing arrangements.

4.1.1 Draft position

Our draft position is to retain the current approach under the guideline in terms of defining 'electricity information' and determining whether a staff member has an opportunity to use this information. However, we propose to amend the guideline to require more detailed reporting of staff sharing arrangements between the DNSPs and their RESPs. The guideline currently requires a DNSP to establish and maintain a staff register on its website.[153]

We propose to amend the guideline to require more detailed information (including about individual offices and individual staff positions) to be included on a DNSP's staff register. This includes identifying seconded staff positions on the register that have had access to electricity information in the last 12 months. For example:

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

We are particularly interested in stakeholder views on the 12 month time period identified in relation to identifying seconded staff positions on the register. We currently consider a period of 12 months balances the need for greater transparency with the administrative burden placed on DNSPs in identifying and reporting this information.

We further propose to amend the guideline to require DNSP staff registers be updated quarterly. This includes requiring this information to be current to the end of the previous calendar month. For example, where a DNSP is required to update its staff register on 15 January 2022, the information published in this updated version must be current as at 31 December 2021. We also propose updating our Ring-fencing Compliance Best Practice Manual (Best Practice Manual) to provide further guidance on the format and level of detail we expect DNSPs to provide in their staff registers.

---

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

152 See AER, *Electricity Distribution Ring-fencing Annual Report 2018-19*, 14 April 2020, p. 5.

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

4.1.2 What stakeholders said to us

To address issues with the current staff sharing requirements under the guideline we considered a number of options. In 2019, we considered narrowing the guideline definition of 'electricity information' to 'sensitive electricity information'. This was suggested by Ausgrid as a way of defining, more prescriptively, the staff that can and cannot be shared.[154] However, we consider that this approach raises similar issues to those associated with implementing the current requirement, as it would be difficult to prescriptively define the term 'sensitive electricity information'.

As an alternative, the ENA, on behalf of DNSPs, suggested using staff registers to provide greater transparency. We agree with the ENA's suggestion on this point and consider that more detailed staff registers would strike an appropriate balance between increased transparency for stakeholders and the administrative burden on DNSPs. We proposed this approach in our issues paper, which received broad stakeholder support, but stakeholders requested further clarity on the process and level of detail required on staff registers.[155]

For example, SA Power Networks submitted that we should:

- outline what we consider represents best practice among DNSPs and how this assists our role; and
- not require a level of detail that may need frequent updates to the registers when staff position titles or organisational restructures occur over time.[156]

We propose updating our Best Practice Manual to provide clearer guidance on what we expect DNSPs to include in its staff register.

Firm Power submitted that improving staff registers would not achieve the required outcome for the energy services market to develop.[157] It considered that DNSPs should be discouraged from seconding procurement staff to their RESP. This is because there would be a transfer of knowledge that creates a pre-emptive advantage for the DNSP. While this is a risk, we consider the guideline's current information access and disclosure provisions adequately mitigate the risk of confidential information/ring-fenced information being shared with a DNSP's RESP on an unequal basis.

NECA also submitted that there is a widespread belief that DNSPs are not charging their RESPs the true cost of their labour.[158] We consider this is a separate issue to staff sharing and raises concerns in relation to a DNSP discriminating in favour of its RESP. Under the current guideline, a DNSP is required to report on the purpose of all transactions between

---

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

155 The following stakeholders indicated overall support in their submissions to our issues paper: AGL, Ausgrid, AusNet Services, CitiPower, Powercor and United Energy, Clean Energy Council, Endeavour Energy, EnergyAustralia, Energy Networks Australia, Energy Queensland and SA Power Networks. See: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review/consultation>.

156 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 6.

157 Firm Power, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 11.

158 National Electrical and Communications Association, *Electricity Distribution Ring-fencing Guideline review submission*, 14 October 2019, p. 3.

the DNSP and an affiliated entity.[159] In addition, this reporting must be accompanied by an independent assessment of the DNSPs compliance with the guideline.[160] We consider this provides us with appropriate oversight to ensure a DNSP is not discriminating in favour of its RESP in this regard. To date, we have not observed DNSPs under-charging their RESPs in relation to the costs of labour.

4.2 Information access and disclosure

The current guideline requires a DNSP to keep 'confidential information' confidential, except in limited circumstances.[161] 'The current guideline defines 'confidential information' as 'electricity information' acquired or generated by a DNSP.[162] A DNSP creates, and has access to, a significant database of information about its network, some of which has commercial value to businesses operating in contestable electricity markets (e.g. load aggregation). A DNSP is able to share confidential information with its RESP as long as it provides access to that confidential information to other legal entities on an equitable basis.[163] This aims to prevent a DNSP from conferring a competitive advantage on its RESP.

However, there is confusion about the intent of the current guideline relating to information access and disclosure. This is highlighted by the enquiries we receive from accredited service providers (ASPs) or third party providers concerned about DNSPs withholding information on the basis of it being 'confidential information' under the guideline.[164] We also consider uncertainty is perpetuated, in part, by the general under-use of the information register process to share information.[165]

4.2.1 Draft position

We propose amending the guideline to replace the term 'confidential information' with the term 'ring-fenced information'. The definition of the term would remain unchanged. We consider renaming 'confidential information' to 'ring-fenced information' should remove the association of the term 'confidential' with its use in other contexts. The operation of information access and disclosure provisions of the guideline will remain substantively the same.

For clarity, as stated in 4.2 above, there are already a number of instances in which 'ring-fenced information' may be shared by a DNSP under the guideline.[166] In this instance, provided access to the information is provided to all legal entities equitably, the information may be shared. To give further effect to this clarification, we also propose amending the guideline to expressly allow a DNSP to share ring-fenced information with a legal entity

159 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 6.2.1(b)iv.
160 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 6.2.1(c).
161 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cll. 4.3.2, 4.3.3.
162 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 4.3.1.
163 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 4.3.4.
164 The majority of these enquiries have been received from accredited service providers (ASPs) under the NSW ASP Scheme, which requires a person providing contestable network services in NSW, be accredited.
165 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cll. 4.3.4, 4.3.5.
166 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 4.3.4.

where it has requested disclosure of the information. The current guideline allows a DNSP to share ring-fenced information with its RESP where requested (and provided it does so on an equal basis), but does not refer to sharing information with another legal entity. While we have not consulted on this proposed amendment to date, we consider it is necessary to give full effect to the purpose of this section of the guideline.

4.2.2 What stakeholders said to us

DNSPs indicated there has been confusion between the term 'confidential information' and the concept of personal information (such as information about individual employees). The information to which the guideline applies does not include personal information. Additionally, legislative protections that are applicable to personal information are unlikely to apply to the vast majority of 'confidential information' as currently defined in the guideline.[167]

Many stakeholders supported our preliminary view in our issues paper to amend the term 'confidential information' in the guideline.[168] In particular, Energy Queensland indicated that the term 'confidential information' may lead some to believe it captures more information than what the guideline defines.[169] It considered it may be helpful to use the term 'ring-fenced information' so that the definition in the guideline is checked prior to considering whether any prohibition on sharing applies.

The CEC considered simply changing the description of information from 'confidential' to 'ring-fenced' might make a small difference, but does not address the core issue.[170] It noted the concerns ASPs expressed about DNSPs withholding information on the basis that it is defined as confidential. It stated it would be more constructive for us to define:

- What information ASPs should expect to receive from DNSPs;
- The process for them to obtain the information; and
- How DNSPs will demonstrate that their affiliated entities have undertaken the same application process to obtain the same information.

The current guideline requires a DNSP to establish an information sharing protocol that is publically available to legal entities.[171] This protocol should set out how and when a DNSP will make information available to third parties. A DNSP must also establish and maintain an information register of all parties (including its RESP) who request access to confidential information.[172] We consider these mechanisms in the current guideline have not worked effectively due to DNSPs' confusion between 'confidential information' and the concept of personal information. We consider changing the term will provide clarity and encourage DNSPs to share ring-fenced information and provide equal access (through their information

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

168 The following stakeholders indicated overall support in their submissions to our issues paper: AGL, Ausgrid, AusNet Services, CitiPower, Powercor and United Energy, Endeavour Energy, EnergyAustralia, Energy Networks Australia, Energy Queensland and SA Power Networks. See: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review/consultation>.

169 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 10.

170 Clean Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 December 2020, p. 5.

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

172 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 4.3.5.

sharing protocols and information registers) to its RESPs and legal entities, thereby addressing the concerns raised by the CEC.

CitiPower, Powercor and United Energy queried whether changing the term 'confidential information' to 'ring-fenced information' would have any flow on effects to the operation of clause 4.3 of the current guideline.[173] As the definition will remain the same, we consider this section of the amended guideline will operate in the same way as the current guideline. We recognise however that there may be flow on effects for a DNSP in terms of renaming the term in its internal compliance systems and processes.

4.3 Materiality of breaches

The current guideline requires that a DNSP notify us within 5 business days of becoming aware of a material breach of its obligations under the guideline.[174] However, there are differing views among DNSPs, other stakeholders and us on the meaning of 'materiality' under the guideline. Our interpretation of 'material' in the context of a guideline breach is that it means 'something that is more than trivial'.[175] However, we have observed a number of non-trivial breaches that have not been reported within the required 5 business days, and have only been reported as part of a DNSP's annual compliance report. Some examples include:

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

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

4.3.1 Draft position

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

- Clause 6.2.2 – submitting annual compliance reports within the required timeframe; and
- Clause 6.3 – failure to report a breach of the guideline within the required timeframe.[176]

---

173 CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 9.

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

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

176 Note clause 6.3 of the current guideline also refers to the term 'material'. We are proposing to remove this reference.

4.3.2 What stakeholders said to us

In our early consultation in 2019, DNSPs submitted that the term 'materiality' lacks clarity. For example, TasNetworks sought clarity on the term and considered our current approach is still open to interpretation.[177] Previously, DNSPs also raised concerns about reporting material breaches within 5 business days. CitiPower, Powercor and United Energy stated that reporting breaches to us is not a simple process, and that it is difficult to take the necessary administrative and approval steps internally to report a breach within 5 business days.[178]

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

EnergyAustralia supported all breaches (material or not) being reported to the AER within 10 business days.[179] It also agreed with our preliminary view in our issues paper that clauses 6.2.2 and 6.3 of the current guideline should be administrative clauses (as stated in section 4.3.1 above).

The ENA and CitiPower, Powercor and United Energy submitted a timeframe of 15 business days would be reflective of the internal reporting processes required within DNSPs.[180] We agree that 15 business days will more closely reflect of the time required for DNSPs' internal reporting and approval processes.

However, the ENA, CitiPower, Powercor and United Energy stated that reporting all breaches would create unnecessary burden on DNSPs and impose costs on consumers.[181] The ENA considered immaterial breaches should continue to be reported to us through either the annual ring-fencing compliance reporting process, or via the introduction of quarterly reports.[182] We do not agree that reporting all breaches (aside from administrative clauses) unduly raises the administrative burden for DNSPs. We consider it is in the long-term interests of consumers to prevent harm arising, or continuing. We are better placed to respond to a breach and take any action to mitigate these harms where this is reported within 15 business days rather than quarterly or up to a year later as part of a DNSP's annual compliance reporting process.

---

177 TasNetworks, *Electricity Distribution Ring-fencing Guideline review submission*, 23 September 2019, p. 2.

178 CitiPower, Powercor and United Energy, Electricity Distribution Ring-fencing Guideline review submission, 23 September 2019, p. 2.

179 EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 3.

180 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 15; CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 10.

181 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 15; CitiPower, Powercor and United Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 10.

182 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 15.

Essential Energy submitted that further clarification of the definition of 'material' would be a better approach.[183] It submitted the following potential options:

- Defining a concept of actual or significant harm, with some assessment criteria or threshold to establish what is in fact material;
- Identifying specific examples of breaches that would or are likely to result in significant harm; and
- Identifying examples of breaches that clearly will not or are highly unlikely to result in actual harm.

Energy Queensland submitted that DNSPs should be entitled to establish and implement a methodology for assessing material breaches, which can be shared with us.[184] Ausgrid also supported an 'Energy Queensland styled' breach calculator to determine whether breaches are material.[185]

While this sort of guidance or methodology may assist DNSPs in assessing materiality, we consider breaches still need to be assessed by us on a case-by-case basis. We consider that these sorts of examples may cause DNSPs to examine a breach less closely where, on the face of it, the breach appears to be non-material.

SA Power Networks submitted that the administrative burden of reporting all breaches is disproportionate to the intended outcome.[186] However, most DNSPs report a limited number of non-material breaches through their annual compliance reports. We consider that the increased timeframe to report a breach (from 5 to 15 business days) enable DNSPs to better manage the administrative burden of reporting all breaches.

SA Power Networks also stated the term could be changed to 'notifiable breach' to reduce confusion surrounding the term 'material. It noted that all breaches are still required to be reported through annual ring-fencing compliance reporting and that the provision is only concerned with the time in which the breach needs to be reported.[187] It stated that a workable definition could be developed with reference to the nature of the breach and the severity of the breach. We do not agree with this view. We consider that using the term 'notifiable breach' would raise the same issues as interpreting the materiality of a breach. DNSPs would also still need to undertake an assessment of the breach to determine its nature and severity.

Endeavour Energy submitted that we should provide a written assessment for certain breaches, setting out the rationale for its materiality with particular reference to the potential harm.[188] It considered this could be limited to cases where a DNSP has a differing view on the materiality. We currently engage with a DNSP each time a breach is reported, and do not consider that a more formalised process for assessing materiality is needed. We also provide general feedback to each DNSP on their overall compliance processes and any

183 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 17.
184 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 11.
185 Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p 11.
186 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7.
187 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7.
188 Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 10.

reported breaches through the annual compliance reporting process in the guideline and at the time of reporting a breach.[189]

Overall, we consider that determining the materiality of a breach is a difficult and subjective process. In our view, attempting to provide further clarity on the definition of 'material' will not stop potentially significant breaches being only reported to us as part of the annual compliance process, rather than in a timelier manner. Where we receive breaches earlier, we are able to conduct an earlier assessment and take quicker action, where appropriate, to prevent harm to the market or consumers.

4.4 Timing of annual compliance reports

The timing of annual compliance report submissions for non-Victorian DNSPs is currently the same as other end of year reporting requirements imposed on those DNSPs, such as Regulatory Information Notice (RIN) audits. The ENA, on behalf of these DNSPs, has generally stated that this creates resourcing difficulties as the workloads of compliance staff are concentrated to one period of the year.[190] Currently, DNSPs must submit their annual compliance reports to us within 4 months of the end of the regulatory year to which the compliance report relates. For non-Victorian DNSPs, this date is currently 31 October.[191]

4.4.1 Draft position

We propose amending the current guideline so that annual compliance reports are due within four months of the end of the calendar year to which the compliance report relates. This means that all DNSPs would submit compliance reports on 30 April each year. We consider this change to the current guideline will reduce the burden created by other reporting requirements under the NER being due at the same time.

We also intend including a transitional arrangement in the guideline, extending the first annual compliance period under version 3 of the guideline by 6 months where required. This means DNSPs will submit their first compliance reports under version 3 of the guideline for an 18 month period.[192] In addition, DNSPs will be able to rely on information obtained from their most recent financial year audit in relation to their cost allocation obligations under clause 3.2 of the guideline. The effect of this amendment is that a DNSP's annual reporting obligations in relation to clause 3.2 of the guideline will cover a financial year period rather than a calendar year period in the rest of the report (for example, a DNSP reporting on its 2020–21 financial year data in its 2021 calendar year annual compliance report).

---

189 AER, *Ring-fencing Guideline Electricity Distribution - Version 2*, October 2017, cl. 6.2.1.

190 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 16.

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

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

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

- submit its first annual compliance report under version 3 of the guideline for a 6 month period; and
- complete a financial audit every 6 months.

4.4.2 What stakeholders said to us

Stakeholder submissions to our issues paper indicated broad support for proposed amendments on this matter.[193] In particular, the ENA indicated its support but considered there should be a transitional period for the next reporting period (i.e. a DNSP submitting one compliance report covering an 18 month period).[194]

The ENA also submitted that an independent assessor should be able to rely on the financial year audit (undertaken for the RINs) in assessing cost allocation compliance under the guideline.[195] It considered this would be an expensive cost to consumers if we expected another full audit of cost allocation six months after the last review. We agree with both points raised in ENA's submission on this matter.

Essential Energy considered the existing timing of compliance reporting works well and does not currently result in any negative administrative impact for its business.[196] It stated that any change may result in additional audit costs unless the audit of the cost allocation method from the previous regulatory reporting year could be relied upon. We agree with Essential Energy on this issue and have explicitly addressed this in our proposed amendments to the guideline.

4.5 Branding

Currently, a DNSP must use branding that is independent and separate from the branding used by its RESP. The branding must be sufficiently different that a reasonable person would not infer from the respective branding that the DNSP and its RESP are related.[197] The principal objective of the obligation is to avoid confusing consumers in regard to services offered by a DNSP that are regulated by us, and those offered by its RESP. Use of the DNSP brand could give a RESP of the DNSP an advantage over competitors of the RESP that is unfair and against consumers' interests.

---

193 The following stakeholders indicated overall support in their submissions to our issues paper: AGL, Ausgrid, AusNet Services, CitiPower, Powercor and United Energy, Endeavour Energy, EnergyAustralia, Energy Networks Australia, Energy Queensland, Essential Energy and SA Power Networks. See: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review/consultation>.

194 Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 16.

195 A Regulatory Information Notice is a legally binding notice served by us on a DNSP requiring it to provide information to us or prepare, maintain or keep information in a specific form for the purposes of carrying out our functions under the *National Electricity Law* or *National Electricity Rules*. See *National Electricity Law*, s. 28C.

196 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 18.

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

4.5.1 Draft position

Our draft position is to retain the approach under the current guideline. We consider revising or relaxing the branding obligations in the guideline increases the risk of potential harms, particularly where an affiliate leverages off the reputation of the DNSP. We consider the potential harms outweigh the administrative burden on DNSPs.

4.5.2 What stakeholders said to us

During consultation in 2019, some stakeholders suggested the branding and cross promotion obligations in the current guideline are disproportionate to the harms they seek to prevent.[198] Therefore, in our issues paper, we sought stakeholder feedback on whether the guideline's branding obligations are proportionate to the harms they aim to mitigate.[199]

In response to our issues paper, the CEC submitted that the current guideline obligations are proportionate to the harms.[200] The CEC stated (for example) – staff working for the DNSP and the affiliated company on the same day might need to change their uniform – is trivial and not a sufficient basis to revisit the branding and cross promotion obligations. It suggested DNSPs consider allowing staff to wear casual clothes if this is really a problem that is adding costs to consumers.[201]

In contrast, some DNSPs submitted that the current obligations are too restrictive. For example, Endeavour Energy submitted that greater emphasis should be placed on a 'reasonable person' (see clause 4.2.3(a)(i) of the current guideline).[202] It submitted the average reasonable consumer is not aware or interested in immaterial cross-branding issues and would be unlikely to infer anything from branded trucks, equipment or uniforms.

SA Power Networks submitted that 'branding' should be more clearly defined, including examples of material and uses that are and are not 'branding'.[203] It considered the current term suggests an intention to capture situations beyond 'advertising and 'promoting'. AusNet Services also submitted that a more proportionate approach would be for the branding restrictions to apply in circumstances involving purchasing decisions or active marketing of services and not interchangeable branding in the delivery phase of a project or service.[204]

Energy Queensland submitted that the administrative cost to comply with the current obligations is significant and outweighs the potential harm to consumers in some

198 This was discussed at a private roundtable between the AER and stakeholders in September and December 2019.
199 The following stakeholders indicated in their submissions that the branding obligations under the current guideline may be too restrictive or burdensome on DNSPs: AusNet Services, Endeavour Energy, Energy Queensland and SA Power networks. See: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review/consultation>.
200 Clean Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 December 2020, p. 5.
201 Clean Energy Council, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 16 December 2020, p. 5.
202 Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 10.
203 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7.
204 AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 9.

circumstances.[205] It did note however that it supported branding obligations remaining where there is the potential for cross-promotion or advertisement by DNSPs.

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

4.6 Other guideline amendments

This section explains and lists proposed amendments to the guideline which fall outside of the issues we specifically consulted on in our issues paper. .

4.6.1 Cost allocation

We propose to amend the guideline to make it clear that where a DNSP is required to allocate or attribute costs to distribution services, this includes costs allocated or attributed to the DNSP by a parent entity.

In workshops held between us and stakeholders in August 2019, we sought stakeholder views on the cost allocation obligations in the current guideline.[206] Stakeholders noted some confusion surrounding the intent of clause 3.2.2 of the guideline.[207] In particular, through the annual ring-fencing compliance process we have observed confusion where a DNSP has used or relied on inputs from its parent entity. We consider our proposed amendment clarifies that the cost allocation obligations extend to this circumstance.

4.6.2 Compliance reporting

We propose to amend the guideline to clarify that a DNSP's annual compliance report must be accompanied by an assessment of compliance with each provision of the guideline (except for clauses 6.2.2 and 6.3).

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

---

205 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 11.

206 AER, *Distribution Ring-fencing Guideline Update – Stakeholder workshop slides*, 28-29 August 2019, <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review/initiation >.

207 AER, *Distribution Ring-fencing Guideline Update – Workshop meeting notes*, 28-29 August 2019, <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/electricity-ring-fencing-guideline-review/initiation >.

4.6.3 Transitional arrangements

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

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

We also propose to remove the transitional arrangements under the current guideline.[208] These provisions were inserted in 2016 when the guideline was first made. We consider that these provisions are no longer relevant.

[208] AER, *Ring-fencing Guideline Electricity Distribution - Version 2, October 2017*, cl. 7.

Appendix A – List of proposed guideline amendments, deletions or additions

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

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

Appendix B – Summary of stakeholder submissions

Table B.1: SAPS

Issue	Stakeholder responses
Scope and examples of DNSP-led SAPS	Number of installations expected • **Energy Networks Australia**: Expect approximately 4000 SAPS installations, primarily in QLD and rural NSW. Mostly in remote areas .eg. Essential Energy's 0.5 per cent of consumer base requires 17 per cent of installed network. • **Energy Networks Australia (late submission)**: The majority of these SAPS will be small to medium. • **AusNet Services**: 300 – 400 potential connection point applications at the fringes of its distribution area in disparate locations and small installations. • **Essential Energy**: 800 – 1400 customers with potential savings of $120 million over 20 years of avoided network refurbishment and vegetation management. Potential benefits of reduced bushfire risk of $1m per annum, as well as expected reliability improvements for consumers. • **Endeavour Energy**: 5-10 years: dozen SAPS with the potential to increase to several dozen or a hundred SAPS deployed over the longer term.
General positions and arguments on DNSP-led SAPS	Pro-DNSP rollout of SAPS, competition is not likely to materialise or will be delayed • **Electrical Trades Union, TasNetworks, CitiPower, Powercor and United Energy** • **Public Interest Advocacy Centre (late submission)**: important to enable lower network prices for all consumers as well as improving the reliability and resilience of the consumers being transitioned. The potential harm arising from DNSPs providing the generation component of a SAPS is trivial compared to the potential harm of not deploying SAPS. • **Energy Queensland**: supported a program similar to Western Power where SAPS are procured from a competitive market and owned and operated by the DNSP. SAPS exhibit natural monopoly characteristics and the energy supply to the consumer is entirely dependent on the performance of the SAPS. • **SA Power Networks**: AEMC framework has strict requirements so there is no deterioration in current service levels to consumers. The willingness of third parties to comply with stringent technical requirements is unlikely to occur until the market is of sufficient size and scale. • **Clean Energy Council**: Delays in the development of the policy framework for third-party SAPS (priority 2) are preventing alternative providers of SAPS from being able to compete directly with DNSP-led SAPS. Long-term interest will be met when

Issue	Stakeholder responses
	demand for SAPS is met using a competitive, transparent process. • **Energy Consumers Australia**: the extent to which contestable retail and generation services are likely remains unverified and a matter of speculation. In general a 3 stage approach should be taken with new technologies: 1) initial flexibility to drive deployment, 2) scaling of applications through refinement of framework and 3) standardising the framework. • **Endeavour Energy, Energy Networks Australia:** DNSPs are incentivised to adopt lowest cost solutions, so pro-competitive and limited harm • **Energy Networks Australia (late submission):** Essential Energy recently completed an EOI for SAPS generation services and demonstrated that third parties will not be able to achieve the required NEM standards without higher costs. Caution should be applied but pro-DNSP exemptions: • **EnergyAustralia, Origin, AGL** Against DNSP involvement in SAPS rollout: • **Australian Energy Council (late submission)**: current regulatory regime is still adequate. DNSPs should use the waiver mechanism in discrete circumstances. Guideline should foster competition. The exemption framework would create harm by threatening competition and efficiency. • **Energy Democracy**: DNSPs should facilitate access and self-generation owned by the user. A DNSP should not inadvertently become a competitor with its residential consumers or a community as an owner of SAPS. Regulated industry should not gain an ability to stifle competition and then limit the digital transition in grid-edge locations as they create commercial value, potentially, and very likely, at the expense of edge-of-grid consumers. • **Firm Power**: waiver for limited circumstances where there is no viable competitive SAPS provider available. DNSPs should source network services from third parties. • **Energy Networks Australia (late submission):** supported a waiver that allows DNSPs to increase the level of a revenue cap, as it will be time and cost effective. • **Red Energy (late submission):** Do not support an exemption framework for DNSP- led SAPS.
Waivers only	**Firm Power:** exemptions do not support the need for DNSPs to “procure” the service from the private sector and incentivize a competitive market. A fundamental requirement should be to test the market to determine whether the given solution could be obtained as a service, rather than through capital expenditure on the network. **Australian Energy Council (late submission)**: discrete circumstances (such as exemptions for bushfire supply restorations and

Issue	Stakeholder responses
	recovery) can be readily addressed under the existing waiver arrangements.
Exemption categories	Supportive of broad exemption: • **Ausgrid:** specific exemptions may be required to deal with some situations not covered by broad exemption. • **Origin:** supported broad exemptions at the beginning of DNSP-led SAPS, but specific exemptions may be needed in the future. • **TasNetworks:** Broad exemptions acceptable, but there should be further discussion to determine the right one. • **Energy Networks Australia (late submission):** supported broad exemptions and against using a list of specific exemptions as it will be difficult to define each one, set an appropriate threshold and identify all circumstances where specific exemptions are needed. Supported of specific exemptions: **AGL** Different revenue caps for different DNSPs: **Energy Networks Australia (late submission)** is concerned about how to determine different cap for different DNSPs. Trying to split based on urban and rural is difficult as determining if a DNSP is in an urban or rural category requires further consideration on what these categories mean. **Appendix B** provides details on the specific exemptions stakeholders submitted including arguments for and against, where provided.
Length of the exemption	• Life of asset: **Ausgrid** (Waivers and exemptions should last for the life of the asset, such as SAPS, thereby providing greater investment certainty and avoiding the need to reapply for a ring-fencing waiver). Supported by **CitiPower, Powercor, United Energy, Energy Networks Australia , Energy Queensland, Essential Energy, SA Power Networks** • Regulatory period: **Energy Consumers Australia** (i.e. the current Guideline)

Register/other controls to achieve compliance under exemptions	Supported use of a register and auditor as control:
	• **Endeavour Energy, Energy Networks Australia, Energy Consumers Australia:** DNSPs should progressively report on program findings and outcomes**; Public Interest Advocacy Centre (late submission):** when and why any SAPS exemptions are used; **Origin, Ausgrid**: published on DNSPs' website with detail provided subject to privacy and critical infrastructure limitations;, **Essential Energy, CitiPower, Powercor and United Energy:** submitted a consolidated single register of all SAPS for consumer and stakeholder information, including SAPS run by DNSPs and other third parties), **SA Power Networks**.
	• **Clean Energy Council**: exemption thresholds are not important at this stage, focus on reporting to understand:
	  ○ How many SAPS installed, total value and average cost per system
	  ○ Selection criteria used to identify suitable locations for DNSP-led SAPS

Issue	Stakeholder responses
	○ Procurement processes used – what proportion awarded to DNSP affiliated entity? ○ Rationale for the selection procurement process ○ How competitive was the process and what plan are there to open the process to more competition? • **Energy Networks Australia (late submissions)**: supported the introduction of a publicly available SAPS exemption register maintained by each DNSP. Other safeguards suggestions and considerations • **EnergyAustralia**: suggested adding to the guideline: "Any exemption provided to a DNSP has a provision allowing a competitive service entity to request the AER to reassess the exemption, if the competitive service entity can demonstrate they are able to replace or purchase, and operate the SAPS at a reduced overall costs to consumers". • **Origin**: AER should approve that projects meet exemption before they can be undertaken. AER may need to review SAPS to ensure compliance. • **Endeavour Energy**: if location of SAPS is required, need to be mindful of consumer privacy • **Energy Queensland**: queried if the annual RIN process could accommodate the reporting of DNSP-led SAPS under a proposed broad exemption framework • **Red Energy (late submission)**: Should require evidence of market testing and prefer that this is done ex-ante. Otherwise the AER must evaluate this process after the event to ensure it was adequately undertaken. Potential interaction with AEMC framework and DAPR • **AusNet Services:** AEMC intends considerable rigour and transparency, including forecasting of opportunities to deploy SAPS in the DAPR. DAPR requirements should be amended and clarified to include a number of items specific to SAPS – opportunities over the forward planning period, committed for implementation and options considered in the past year. • **Ausgrid**: ○ DAPR is also required to include information on DNSP led SAPS projects. ○ AEMC SAPS reform package requires: SAPS customer engagement strategy for engaging with affected distribution users (clause 5.13B.2), develop and periodically review an industry engagement document setting out industry engagement strategy including assessment of SAPS options and negotiate with non-DNSP providers to develop SAPS options, identify in DAPR. • **Energy Networks Australia** : Noted AEMC SAPS framework requires DNSPs to undertake comprehensive consumer

Issue	Stakeholder responses
	engagement • **CitiPower, Powercor and United Energy (late submission)**: The DAPR includes constraint maps which outline the location and details of network constraints.
Future review of SAPS rule change package implementation	• **Public Interest Advocacy Centre (late submission)**: Two years after implementation, an unexpectedly high number of SAPS installations, unexpectedly low number of SAPS installations or the emergence of an unexpected issue that materially impacts outcomes for consumers. • **AGL**: formal mechanism for future review of active exemptions for SAPS. • **SA Power Networks**: to ensure the threshold remains commensurate with AER's view on the expected level of competition for SAPS services. • **Clean Energy Council, Endeavour Energy, and Origin**: an informal or formal review of exemptions should be undertaken sometime after implementation. • **Energy Networks Australia (late submissions)**: a mandated three year review is too short a timeframe for the review and will create regulatory and investment uncertainty. This will negatively impact the roll out of DNSP-led SAPS.

Table B.1.1: SAPS – specific exemptions

This table provides stakeholder views for and against a range of specific exemptions. It does not include where stakeholders were general in their views on a broad exemption or any or all specific exemptions.

Specific Exemption	Description	Arguments for	Arguments against
Remoteness	A consumer is located a set distance away from a population centre of a given size.	Simple to apply, but does have some issues. Useful if applied with other exemptions.[209]	Other specific exemption categories are better. Difficult to specify or too broad. It is inflexible. Distance to a population centre is not the major determining factor for ability to provide generation service.[210]

209 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5.

210 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper*

Specific Exemption	Description	Arguments for	Arguments against
Population Density	A consumer is located where there is are fewer than X consumers per square kilometre.	Simple to apply but may become outdated over time.[211]	Other specific exemption categories are better. Difficult to specify or too broad. It is inflexible. Population density is not the primary driver for cost of supply.[212]
Access	There are conditions that make it difficult to access a consumer (eg. land rights, terrain).	Challenging terrain and environmental protections are time consuming and complex. Difficult to access sites is one of the fundamental reasons for DNSP-led SAPS.[213]	Too broad and access issues do not appear relevant to determining competitiveness of a site.[214]
Cost	The SAPS assets are below a set cost.	It is flexible up to a point and is useful if combined with the efficiency exemption. It is easy to administer and monitor.[215]	The threshold for this exemption should be when the SAPS solution is cheaper than the traditional supply option. The potential

submission, 17 December 2020, p. 6; EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 6; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 3; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4.

211 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 12.

212 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 6; EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 6; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 3; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4.

213 Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, pp. 5-6; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 6; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 5-6.

214 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4.

215 CitiPower/Powercor, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 8; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7.

Specific Exemption	Description	Arguments for	Arguments against
			variation in expenditure that may be required over the SAPS assets' life cycle.[216]
Revenue cap	A DNSP has a limit to the generation revenue earned as a SAPS resource provider.	A simple and flexible exemption is preferable in the short term. Develop the SAPS market. Easy to enact. Ensure all SAPS that need to be DNSP-operated can be. Creates a simple protection for the market. It is reflective of the size of each distributor.[217]	Too broad.[218]
Type of SAPS	Certain types of SAPS would be allowed (e.g. streetlights, agricultural purposes).	This is simple to apply.[219]	Difficult to specify each type, as it would require an extensive list and is impractical. [220]
Absence of other providers	There are no legitimate tenders received after a set period of time, and the SAPS is below a threshold size.	The focus should be on SAPS being competitively provided. There may be concerns about the technical capabilities of	

216 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 6; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

217 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4; AusNet Services, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2; CitiPower/Powercor, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 8; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 6; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 9; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7-8; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

218 EnergyAustralia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 2.

219 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 8.

220 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 6; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4.

Specific Exemption	Description	Arguments for	Arguments against
		the third party. It will help with improved reliability outcomes for consumers.[221]	
Emergency response	In response to a natural disaster or fault that caused disruption of service, a DNSP could provide temporary support or simple fault repair.	A third party may not be able to provide adequate response times. A DNSP's staff may be the best option to provide unscheduled or emergency response in a timely manner. Energy supply should be restored as quickly as possible.[222]	While this may be necessary, a DNSP may then be required to take on the cost of repair or ownership to a system that it may not have exposure to. A DNSP's staff may not be authorised or trained to assist after natural disasters.[223]
Operator (Provider) of last resort	A third party SAPS resource provider ceases operation of a SAPS and there is a risk of a no supply to consumers.	DNSPs can provide continuity of supply for consumers. It would guarantee reliability for customers.[224]	

221 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 5; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 7; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 9; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

222 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, pp. 4-5; Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 8; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 10; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 9-10; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2; TasNetworks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 2.

223 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 6-7.

224 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 5; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 9; Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 5; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 11-12; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4.

Specific Exemption	Description	Arguments for	Arguments against
Efficiency	The DNSP's price for installing a SAPS is materially lower than anything available in the market.	The focus should be on SAPS being competitively provided. It would mitigate DNSPs discriminating against contestable market offers.[225]	It would be an inefficient and cumbersome process to determine whether the third party costs are excessively and prohibitively higher than the DNSP's. It would be impractical and costly as an exemption.[226]
Size	A DNSP can be the SAPS resource provider if the SAPS embedded generation units are below are set generation capacity.	Easy to administer, define and monitor.[227]	
Planned network outages	To allow a DNSP to maintain supply to consumers during planned network outages.	This would allow DNSPs more flexibility to plan and carry out network outages whilst minimising disruptions to consumers.[228]	
Number of connections points	A set maximum amount for the total number of consumers supplied by a single SAPS that is allowed.	A simple and flexible threshold that can be applied easily.[229]	

225 AGL, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 4; Endeavour Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 17 December 2020, p. 5; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 7; Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 11-12; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2.

226 Energy Queensland, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 7; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 3-4.

227 Ausgrid, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 8; CitiPower/Powercor, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 8; Energy Consumers Australia and Strategen, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 17; Energy Networks Australia, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 18 December 2020, p. 9.

228 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 14; PIAC, *Electricity Distribution Ring-fencing Guideline Issues Paper late submission*, 22 December 2020, p. 2.

229 Essential Energy, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, pp. 12-13; SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

Specific Exemption	Description	Arguments for	Arguments against
Energy capacity	A maximum level for the energy capacity of a single SAPS that is allowed.	The Essential Services Commission of South Australia use this approach.[230]	

Table B.1: Energy storage devices

Issue	Stakeholder responses
DNSP involvement in batteries	DNSP submissions: • **Energy Queensland**: where a DNSP installs a battery in a prudent and efficient manner, ring-fencing should allow appropriate additional value stacking such that benefits can be shared with consumers. Shared asset guideline already provides a mechanism to deliver batteries that require no waiver to indirectly extract additional value from batteries. A waiver is only required if providing 'other services'. DNSPs should be entitled to invest in any future assets that they deem appropriate for the provision of distribution services and rely on the shared asset mechanism to ensure that consumers share in the benefits of using regulated assets to provide contestable services. • **Endeavour Energy**: o DNSPs will play a critical role in establishing a competitive market and improve consumer outcomes. This does not mean DNSPs should be unable to realise natural competitive advantages or to participate in new markets. There are many benefits, such as scale and scope of economies and innovation capabilities, increase capacity, accelerate private investment and support competition. o Direct provision of contestable battery related services should be subject to a waiver process or allowed under an exemption framework, with shared asset guideline to provide controls. Limited opportunity for harm and over investment. Alternatively, limit to where the DNSP benefit alone justifies the investment in the battery and where the indirect use is not by an affiliate, otherwise a waiver is required. Should be for other circumstances in which third parties might use a DNSP's assets to provide other services. Unless the shared asset guideline is amended to encompass the indirect use of batteries. • **Energy Networks Australia**: focus should be on delivering positive consumer outcomes rather than the simple promotion of theoretical competition benefits. Through redefining 3.1(d)(i) of the current guideline, make it clearer that it also applies to other circumstances in which third parties might use a DNSP's assets to provide distribution services, transmission services or other

230 SA Power Networks, *Electricity Distribution Ring-fencing Guideline Issues Paper submission*, 21 December 2020, p. 3.

Issue	Stakeholder responses

	services.
	• **Energy Networks Australia (late submission)**: DNSPs would be unable to increase the viability of batteries by value stacking if a waiver process is required. An amendment to the current guideline should be made to allow DNSPs' indirect use of batteries. Any potential harms from DNSPs investing in batteries can be addressed directly. Potential additional measures are: a shared battery register, enhancement to the ring-fencing non-discrimination provisions or development of battery cost allocation arrangements.
	• **TasNetworks**: provide consumers with best outcome – noting that by forcing DNSPs to source services from third party battery providers assumes that competition in the provision of this service will be sufficiently mature as to both drive down costs and ensure access to the service when required.
	• **SA Power Networks**: permit DNSP ownership of batteries either in partnership with third parties or individually, where this can drive efficiency in the NEM. Amend clause 3.1(d)(i) of the current guideline to make clearer that this clause also applies to other circumstances in which third parties might use a DNSP's assets to provide distribution services, transmission services or other services.
	• **AusNet Services**: DNSPs should be able to participate in the market up to a defined cap on revenue earned of RAB invested and provide value stacking that incentivises the efficient operation of the battery. DNSP participation will be instrumental in advancing the development of the market in a timely way. DNSPs should be able to pursue non-network solutions that may be uneconomic absent the ability to earn unregulated revenues that offset the cost of the storage or other devices. This would lower barriers of entry for third parties seeking to bring new products and services to market and encourage innovation, particularly on a smaller scale.
	• **Ausgrid**: restricting the activities that DNSPs can undertake can have unintended and adverse consequences and does not always lead to the best consumer outcomes. E.g. Consumer benefit from use of a community battery rather than buying a potentially inefficient behind the meter battery, market benefits from additional resources participation in FCAS and wholesale markets. It is important to recognise that the type of service being offered influences the potential harm – e.g. the direct provision of wholesale energy services raises discrimination and inefficient behaviour. Whereas the direct provision of a consumer battery raises fewer concerns. Make it clearer that it applies beyond 'shared assets' to other circumstances in which third parties might use a DNSP's assets to provide distribution services, transmission services or other services.
	• **CitiPower, Powercor and United Energy**:
	  ○ DNSPs are best placed, highest net benefit but are incentivised to seek efficient solutions and do not have a commercial incentive to prefer any ownership structure or block access to other market participants.
	  ○ Opportunity for DNSPs to foster market and provide dynamic efficiencies.
	  ○ Grid-scale assets are primarily a network asset as they provide system security and network optimisation. Will replace traditional network assets over time.
	  ○ If DNSPs are not involved then roll out will be much longer and at a higher cost (example provided of smart meter rollout in

Issue	Stakeholder responses

	Victoria versus rest of NEM).
	• **CitiPower, Powercor and United Energy (late submission)**: In February 2021, United Energy conducted an annual public forum with non-network service providers (from demand side engagement register) to discuss opportunities – there was only one participant.
	• **Essential Energy**:
	  ○ Many benefits: ability to leverage synergies with existing distribution assets, overcome cost barriers to reduce network pressure, DNSPs can best manage network issues, increased competition in the market for the provision of battery services, access to economies of scale.
	  ○ Clause 3.1(d)(i) of the guideline should not be confined to shared assets. It should have a broader application, thereby allowing DNSPs to grant the right to use an battery to another party for the purposes of providing other services (irrespective of whether the battery is a shared asset).
	Other stakeholders
	• **Electrical Trades Union**: batteries must be exempt.
	• **Public Interest Advocacy Centre (late submission)**: DNSPs can make investments based on the potential to lower the overall costs of the supply chain. Lowering overall network and supply chain costs will be passed on through lower distribution tariffs and bills to all consumers and help share the benefits of battery use to many consumers who may not be able to invest in batteries or other DER themselves.
	• **Public Interest Advocacy Centre/Simply Energy/Ausgrid (late submission)**: DNSP-owned batteries can play an important role in the current transition occurring in electricity networks towards a more distributed energy system. They will help lower costs in the supply chain and share value across a stakeholders. They will help maintain retail contestability in the provision of innovative energy services to consumers. There are potential harms from DNSP-owned batteries, so indirect use with appropriate control measures is reasonable. There are additional measures that could be put in: shared battery register, enhancement to the ring-fencing non-discrimination provisions, amendments to the cost allocation guideline, a public procurement process, a review of battery sharing.
	• **Energy Consumers Australia**: unduly complicated to require every battery application to be assessed against every potential use of benefit that device can technically provide. Deploy batteries if economical for DNSPs – if technology is deployed and associated markets mature, then second order benefits and application may then be investigated further.
	  ○ Energy Consumers Australia proposed customer-centric principles to determine when grid-connected batteries should occur (e.g. reliability, total expenditure, customer protections), community storage (e.g. benefit – outcome analysis, service levels) and generally (e.g. network improvements).
	  ○ Provided international examples where utilities are allowed to deploy utility-owned batteries – California (CAISO) [stalled],

Issue	Stakeholder responses
	New Hampshire (behind the meter batteries) and European Union (must demonstrate every 5 years that no third party). • **EnergyAustralia**: a fundamental consideration is how the use of regulated investment to provide competitive market services has the potential to distort competitive markets, resulting in worse outcomes for consumer. • **Australian Energy Council (late submission)**: greater net economic benefits will always be achieved by having competitive markets solving the economics of battery services rather than DNSPs directly investing because of the DNSP's potential to cross subsidise its contestable activities where a battery service is used to provide multiple services across the supply chain. DNSPs shifting commercial risks to consumers of their regulated businesses to give themselves a competitive advantage…crowd out potentially more efficient service providers from battery market in the short-term. • **Origin**: limited rationale for direct DNSP involvement. DNSPs have a conflict of interest since they set the rules for batteries behind the meter as a condition of network connection. Where a DNSP has influence over the competitive market, for example through setting the connection policy, it is inappropriate for the DNSP to act as a service provider in that market. This is because it is likely to compromise long-term consumer benefits. The potential for significant growth in the use of batteries means the AER needs to be mindful to develop the competitive market and encourage third party provision. DNSPs should only be allowed as defined in the shared asset guideline. I.e. only apply to assets that were acquired for regulated purposes, but that are subsequently found to have excess capacity. Should not provide an indirect avenue for the provision of batteries in competitive markets by DNSPs. ○ Agree with United Energy trial, disagree with Ausgrid approach to sell services direct to consumers. • **AGL**: ○ DNSPs should procure batteries through an open tender process, where an appropriately ring-fenced affiliate competes with other market participants to secure the provision of batteries. Allowing DNSPs to offer these solutions through their regulated asset base presents unacceptable risks of DNSPs undertaking inefficient cross-subsidised investments in infrastructure and negatively impact on the growth of emerging solar battery products and behind the meter services, the cost of which would be borne by the broader consumer base. ○ Prohibit direct ownership by DNSPs. ○ "…do not believe that DNSPs as owners of batteries would best support access on a neutral basis with the network evolving towards a platform provider". ○ Supports potential risks and harms of DNSP involvement in batteries including: cross subsidisation not being easily accounted for through an appropriate methodology, DNSPs pushing commercial risk onto consumers of the network and DNSPs potentially benefitting from commercially sensitive information about the network and competitors. ○ Substantial risk if DNSPs discriminated against non-DNSP solutions that could severely impact competitive solutions, deferring investment by third parties in front-of-the-meter technologies and behind-the-meter solutions.

Issue	Stakeholder responses

	• **AGL (late submission)**: DNSPs should not be allowed to own batteries for non-network purposes. However, if DNSPs are allowed to use batteries for non-regulated purposes then stringent controls should be added. There should be a requirement in the waiver process and controls in place to maximise cost-competitive solutions.
	• **Firm Power**:
	  ○ if DNSPs can waive network use of system charges for their network solutions they should be compelled to waive those charges for third party projects.
	  ○ amend guideline to clarify that it only applies to the use of shared assets under the shared asset guideline
	• **Clean Energy Council**: conflict of interest as DNSPs set rules for batteries behind the meter as a condition of grid connection. E.g. one DNSP issued special operating conditions that prevented consumers using their battery to serve household energy needs between 10am and 3pm.
	• **Energy Democracy**: a solution to grid stability has the potential to become a new regulated profit centre for the DNSP.
	• **Red Energy (late submission)**: Do not support a reduction in the threshold applied to waivers that would make it easier for DNSPs to offer services other than distribution services from batteries. It is not obvious that the potential benefits would ever exceed the costs. The market for batteries is still in early stages of development and an incorrect decision on access by the AER could have serious consequences on long-term competition. Hence, the AER needs to continue to apply a high threshold under the waiver framework. DNSPs could potentially cross subsidise their contestable activities where an battery is used to provide multiple services across the supply chain

Transparency /other protections if DNSPs are allowed to own batteries	Strengthen ring-fencing obligations • **Energy Networks Australia**: further strengthen the discriminatory behaviour obligations by introducing an explicit non-discriminatory provision between DNSPs and other third party providers and further collaboration with stakeholders to determine appropriate principles for allocating battery costs. • **Ausgrid**: In the short term, extend the controls (non-discrimination, staff-sharing, cost allocation and compliance reports) to the use of batteries. Broader regulatory controls • **EnergyAustralia**: Limit battery size based on the required network service, allocate the costs through their RAB and operate the batteries for distribution (or contestable) services. • **Ausgrid**: In the medium term – consumers may benefit from some of the services being classified as distribution services. They are provided ‘by means of, or in connection with’ a distribution system and there are greater economic benefits from these services being provided through a shared DNSP verse through contestable markets.

Issue	Stakeholder responses
	Other AER guidelines and roles that need to be reviewed • **Endeavour Energy**: service classifications, shared asset guideline and ring-fencing framework are not well suited to the emergence of certain innovative battery services. • **Essential Energy:** The AER should consider allowing batteries in the RAB, but where the value of any earnings from supplying excess capacity are offset against regulated revenue. Reporting • **CitiPower, Powercor and United Energy (late submission)**: The DAPR includes constraint maps which outline the location and details of network constraints. United Energy currently publishes Request for Proposals for HV augmentation projects and LV augmentation projects. • **Ausgrid**: DNSPs could be required to disclose the extent to which distribution batteries are being used for non-distribution purposes. Cost allocation • **Endeavour Energy, Australian Energy Council, and Energy Queensland:** Updating shared asset guideline and cost allocation guideline and could directly solve this issue. • **Australian Energy Council (late submission)**: concerned that the cost allocation principles outlined in the NER are broad, and offer little guidance beyond high level, generic principles. Compulsory information gathering powers do not extend to other services. There is no way to verify if the cost allocations were fair and reasonable. • **Ausgrid**: The AER should design a method for allocating costs between the different services an battery, at the time of installation, is expected to deliver over its useful life. The amount of costs allocated to contestable services reflects the present value of all future contract payments. (E.g. $1m battery with present value of all future contract payments is $0.5m, then only 50 per cent of the capital cost of the battery would be rolled into the RAB). This is consistent with the 'direct attribution' method adopted by ElectraNet for the ESCRI project, with AER agreement. • **SA Power Networks**: should solve the harm rather than disallow DNSP involvement. Cost allocation – should define principles e.g. ElectraNet's ESCRI-SA project
Broader policy considerations and measures to increase battery penetration	• **Firm Power**: o amend the Efficiency Benefit Sharing Scheme (EBSS) to obtain efficiencies across capital and operative expenditure (capex and opex): a. Incentivize DNSPs to increase their opex in support of Network Service Agreements with third parties, and

Issue	Stakeholder responses
	b. Establish Network Service Agreements as capex, able to be incorporated into a DNSP's RAB. ○ Amending the demand management incentive scheme to provide a pre-approval process for DNSPs to secure funding for their projects and encourage an opex approach to provision of distribution services. • **EnergyAustralia**: submitted that DNSPs should explore and exploit non-network alternatives. Improvements in this area, such as timely and transparent sharing of network infrastructure needs, demand curtailment or additional loads are required. DNSPs should publish historical and forecast 12 month network constraints to competitive service entities (similar to but with more detail that currently captured in DAPR). • **AGL**: DNSPs should openly and transparently procure network services and provide relevant data and information about the system and voltage constraints. This would promote competitive tension in the provision of both behind and front of the meter services. ○ UK – open market procurement, better and more transparent price signals for flexible action, and provision of transparent DNSP data has enhanced visibility on opportunities to provide non-network solutions. ○ Oakley Greenwood study for TEC – majority of the services provided by an battery are offered for sale in a competitive market; batteries do not exhibit any natural monopoly features; a DNSP is conferred a monopoly right to provide batteries. ○ A broader review of front-of-the-meter batteries should consider: ▪ Whether contestability should extend to front-of-the-meter distribution connected batteries. This could be achieved by prohibiting direct ownership by DNSPs to enable efficient deployment for the benefit of all consumers; and ▪ Whether DNSPs are appropriately incentivised to provide clear data, information and price signals for the provision of services from distribution connected front-of-the-meter assets. • **Origin**: (although opposed to DNSPs owning batteries, if to go ahead) responsibilities to set aspects of network connection policy and other points of conflict should be relinquished to AER. • **Clean Energy Council:** review DNSP's power to set prescriptive rules on DER behind the meter. Core principle should be that where DNSPs can participate in competitive markets, they are prevented from regulating their competition. • **SA Power Networks:** strengthen the non-discrimination provisions of the current guideline to refer to interactions between the DNSP and competitors. Such provisions would provide a threat of AER undertaking compliance investigations particularly if a complaint is raised by a third party.

Table B.2: Guideline Improvements

Issue	Stakeholder responses

Issue	Stakeholder responses
Improvements to staff & office sharing register	Agree**: Endeavour Energy, EnergyAustralia, Energy Networks Australia, AGL, Energy Queensland, AusNet Services, Ausgrid, CitiPower, Powercor and United Energy, SA Power Networks, Clean Energy Council** **Energy Queensland, SA Power Networks:** Requested clarity on how the registers would look and that it is only as detailed as needed to address the harm. Disagree**: Firm Power**: clear barrier to discourage DNSP procurement staff being seconded to an affiliate especially after an battery tender or RIT process.
Are branding obligations proportionate?	No, too restrictive**: Endeavour Energy, Energy Queensland, SA Power Networks, AusNet Services**: there is limited harm, obligation costs outweigh the benefits in situations such as dealing with industry stakeholders, bulletins, documents or circulars and where personnel and vehicles are required to be simultaneously on project sites. More important is cross-promotion during a tendering process, advertising campaign or on a website or social media. Yes, branding obligations are proportionate**: Clean Energy Council:** the example of changing a uniform is trivial and not a sufficient basis to revisit the branding and cross promotional obligations. DNSPs can allow staff to where casual clothes if this is really a problem. Should consumers be footing the bill for branded uniforms?
Change 'Confidential information' to 'ring-fenced information'	Agree**: Endeavour Energy, EnergyAustralia, Energy Networks Australia, AGL, Energy Queensland, AusNet Services, Ausgrid, CitiPower, Powercor and United Energy, SA Power Networks.** Disagree**: Clean Energy Council**: Changing the name does not address the core issue. The AER should define what information the accredited service providers or third parties should expect to be able to receive from DNSPs, the process for them to obtain the information and how DNSPs will demonstrate that their affiliated entities must undertake the same application process to obtain the same information.
Changes to reporting breaches – all breaches within 10 business days	Our issues paper proposed DNSPs report all material breaches in 10 business days • **EnergyAustralia:** DNSPs should report all breaches except for annual compliance reporting timeframe breaches and timeframe breaches on reporting another material breach • **CitiPower, Powercor and United Energy, Energy Networks Australia:** do not support required reporting of trivial breaches. • **Essential Energy**: further clarification on definition of 'material' is preferred. • **SA Power Networks:** report all 'notifiable breaches'. The definition should be developed with reference to the 'nature' and 'severity' of the breach. For example, "Notifiable breach means a breach of the Guidelines other than a breach of sections X, Y, Z" and

Issue	Stakeholder responses
	"means a breach of the Guidelines that caused or was likely to cause significant harm". • **Energy Networks Australia, CitiPower, Powercor and United Energy:** 15 business days (not 10 business as proposed) • **Ausgrid, AusNet Services:** Quarterly breach reporting for non-material breaches. • **Energy Queensland**: share methodology for assessing material breaches with the AER. Non-material breaches should be through the annual report. • **Ausgrid:** support Energy Queensland style breach calculator to determine whether breaches are material.
Move to calendar year reporting (from financial year)	Agree**: Endeavour Energy, EnergyAustralia, Energy Networks Australia, AGL, Energy Queensland, AusNet Services, Ausgrid, CitiPower, Powercor and United Energy, SA Power Networks; Energy Networks Australia, Essential Energy, Endeavour Energy:** subject to using cost allocation method data provided as part of a Regulatory Information Notice for the most recent financial year

Table B.3: General Comments

Issue	Stakeholder responses
AER stakeholder engagement	• **Energy Networks Australia**, **Public Interest Advocacy Centre (late submission)**, **TasNetworks, Energy Consumers Australia:** sought additional consultation with the AER. • **Red Energy (late submission):** Stakeholder forums should be evenly balanced in terms of stakeholder participation with opposing interests. The AER must ensure that the poor representation from the consumers groups and the retailers as was the case in its recent ring fencing online forums does not occur again.
Ring-fencing as a policy/ regulatory tool	Ring-fencing is not consistent with the NEO and should be reviewed and abolished • **Electrical Trades Union**: Stated that the guideline creates inefficiencies in the way work is performed, drives unsafe work practices, increases costs to consumers and imposes unnecessary regulatory burden on DNSPs. Asked for a cost benefit analysis or regulatory cost impact analysis. Requested that workers should be consulted. Ring-fencing as a potential barrier to competition • **Energy Consumers Australia**: Prescriptive regulatory processes may unintentionally slow or limit the emergence of competition. The current waiver process is administratively complex, time consuming and uncertain for all involved, with the result of delaying and/or increasing the costs of services to consumers. • **Ausgrid:** Ring-fencing is only as agile as the classification of services established in a DNSP's five yearly revenue determination. The guideline should be amended to allow DNSPs to trial services.

Issue	Stakeholder responses
	• **AusNet Services:** Proposed a number of overarching ring-fencing related principles: technological neutrality, regulatory intervention is justified only to the extent there is an actual or probable harm to competition, the existing consumer and competition protections under the energy regulatory framework and competition laws are adequate, exemptions from the guideline will have pro-competitive benefits and are better for consumers. Consumer principles that should be considered • **Energy Consumers Australia**: consumers want cheaper, more abundant clean energy, where the decisions they make are simpler and enabled by smart technology. They also want a say in the energy transition and reliability is important. • **Ausgrid**: seamless consumer experience must be a priority. Restricting DNSP activities (such as simple behind the meter fixes) can and has caused consumer frustration. Review of the effectiveness of guideline • **AGL**: encouraged continued review of the effectiveness of the guideline. Support for ring fencing • **Red Energy** (late submission): support for the current policy settings which are based on the view that competition will deliver efficient outcomes and maximise customer benefits. The Guideline was developed to drive effective competition and protect against DNSPs cross subsidising their competitive services and discriminating in favour of affiliates.
Review Transmission guideline	**Endeavour Energy**: expedite the review of the transmission guideline if possible. It is materially different and relatively lax compared to the distribution guideline. It does not appropriately protect against the potential abuse of monopoly power and allows for the arbitraging of regulatory inconsistencies. Transmission network services providers are potentially engaging in the provision of distribution services, therefore is an inefficient bypass of the DNSP in the absence of a level playing field and appropriate level of regulation.

Appendix C – SAPS Generation revenue cap calculation

	DNSP	Potential SAPS sites from submissions (a)	Generation revenue from one SAPS each year* (b)	Average Annual Revenue for DNSP (c)	Generation revenue as percentage of annual revenue if DNSP provides 75% generation service	Proposed revenue cap as a percentage of annual revenue cap
Category 1	Ergon	1000-2000	$1,498	$1,117,837,797	0.201%	**0.2%**
	Essential	880-1400	$2,018	$969,823,857	0.219%	
Category 2	AusNet Services	300-400	$1,681	$652,724,842	0.077%	**0.07%**
Category 3	Ausgrid	12	$1,766	$1,386,488,156	0.001%	**0.001%**
	Endeavour	12	$1,640	$802,082,232	0.002%	
	Powercor	10	$1,767	$650,130,165	0.002%	
	SAPN	5	$1,523	$738,290,011	0.001%	
	TasNetworks	5	$1,126	$243,344,904	0.002%	
	CitiPower	0	$1,551	$280,705,112	0.000%	
	Evoenergy	0	$1,766	$135,299,431	0.000%	
	Jemena	0	$1,551	$251,733,606	0.000%	
	PWC	0	$1,373***	$144,871,672	0.000%	
	United Energy	0	$1,551	$392,722,305	0.000%	
	Energex	0	$1,311	$1,133,406,526	0.000%	

*calculated based on 80% of average regional price for MWH for region for Q3 and Q4 2020 and assuming that all SAPS are using a 20kw solar system

** ((.75 x a) x b) / c

*** assuming QLD prices for NT

(a) ENA, Updating Electricity Ring-fencing Distribution Guideline Issues Paper submission, 18 December 2020.

(b) Data used to determine individual SAPS revenue:

- Price data obtained from: AEMO, NEM Data Dashboard Annual Average Price - 2020, accessed 30 March 2021, https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/data-nem/data-dashboard-nem;
- Generation system adjusted for irradiance, data from: LG Energy, Solar System Output Calculator, accessed 30 March 2020, https://www.lgenergy.com.au/calculator/suburb/burnley-vic/3121;
- Settlement calculation used from draft National Electricity Rules, r 3.21.2 for DNSP SAPS March 2021 circulated 15 March 2021.

(c) AER, Determinations and Access Arrangements - Current Determinations, accessed 30 March 2021, https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements.