

ANNUAL COMPLIANCE REPORT ON THE ELECTRICITY DISTRIBUTION RING-FENCING GUIDELINE

2017-18

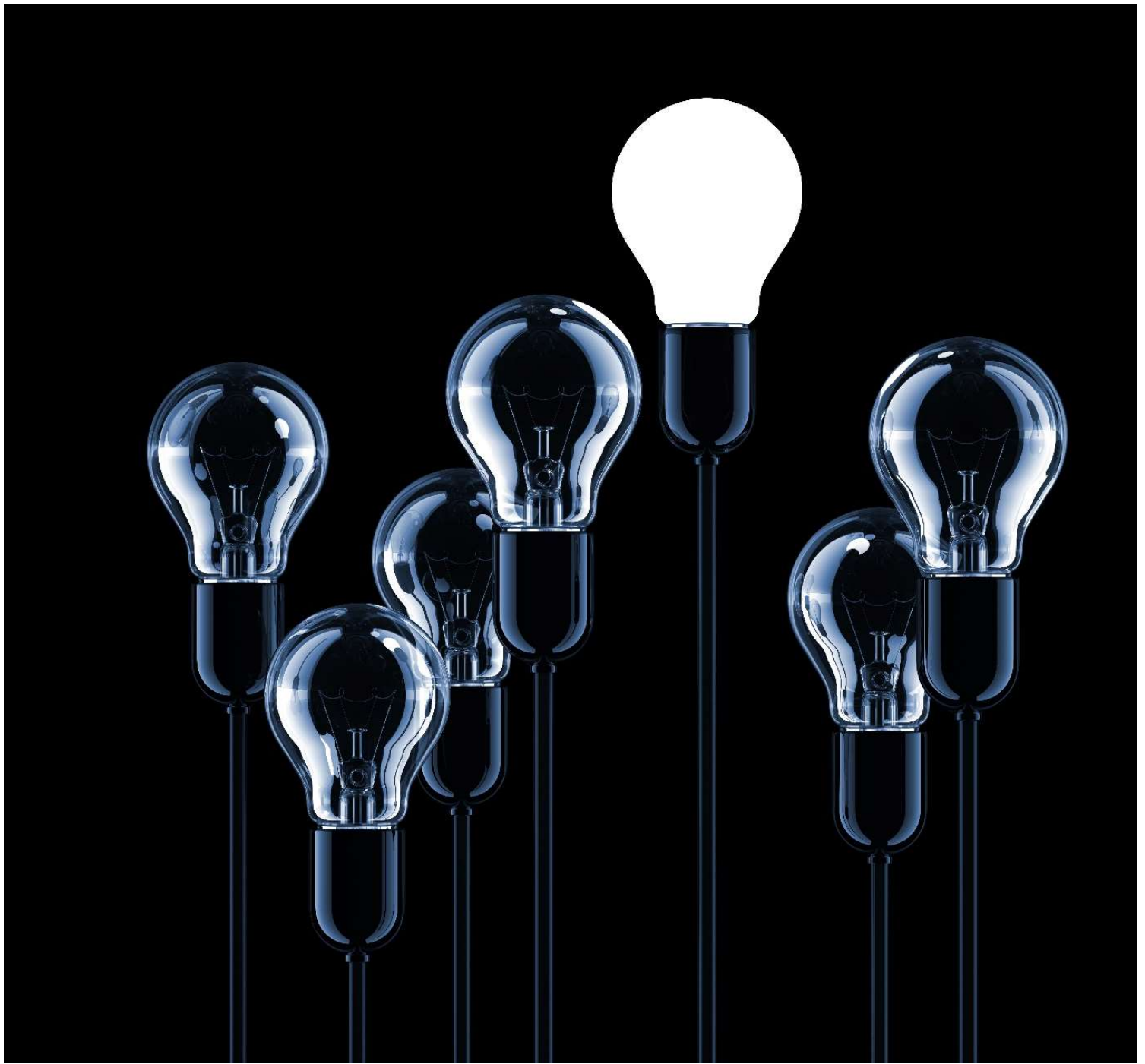


Table of Contents

| | |
|--|----|
| Foreword | 2 |
| 1. Introduction | 5 |
| Our compliance approach..... | 5 |
| 2. A snapshot of 2018 | 7 |
| Distributors' compliance reporting | 7 |
| Role of the independent assessors | 8 |
| Ring-fencing non-compliance in 2017-18..... | 8 |
| Physical separation obligations | 9 |
| Other ring-fencing issues | 10 |
| Staff sharing and access to 'electricity information' | 11 |
| Issues addressed during the compliance year | 11 |
| 3. Key Priorities for 2019 | 14 |
| 3.1 Building a Strong Culture of Compliance | 14 |
| 3.2 Reinforcing staff separation, office separation and information protection obligations | 15 |
| 3.3 Enhancing compliance monitoring | 15 |
| 3.4 Continue adapting to the needs of customers | 15 |
| 3.5 Supporting innovation for an energy sector in transition | 17 |
| Appendices | 18 |
| A: About the Ring-fencing Guideline..... | 18 |
| B: 2017-18: Waivers | 24 |

Foreword

This is the first annual compliance report prepared under the AER's Electricity Distribution Ring-fencing Guideline (the Guideline). Distributors were required to comply with the Guideline from 1 January 2018. This followed a transitional year (2017) that allowed distributors time to prepare for, and ensure their compliance with, the Guideline once it took effect.

This report provides an overview of distributors' compliance, and areas of non-compliance, with the Guideline during 2017-18. Overall, whilst we have seen a lot of structural change to accommodate ring-fencing requirements, several distributors were not fully compliant with the Guideline during this period. In some instances we have been dissatisfied with how distributors have responded to identified breaches and the time taken to rectify these. We are concerned that some of these issues have continued into the 2019 period. This report also outlines the steps we will take and how we will strengthen our compliance monitoring and enforcement in the coming period.

Effective ring-fencing arrangements are vitally important—promoting good consumer outcomes by creating better conditions for contestable markets to emerge and develop, to deliver new services to customers. In recent years, regulated distribution businesses and their affiliates have increasingly sought to compete in contestable markets for electricity services. At the same time, technology change and regulatory reform means that customers can source more services in contestable markets rather than from their electricity distributor. For example, in some jurisdictions electricity contestable providers offer metering services instead of regulated distribution businesses.

Ring-fencing aims to promote competition in the provision of electricity services, by providing a level playing field for third party providers in contestable markets. Ring-fencing aims to prevent monopoly distribution businesses from cross subsidising or discriminating in favour of their own business affiliates operating in competitive markets. Following the introduction of the Guideline, many distributors restructured their businesses to create functionally and legally separate affiliates that now compete in these contestable markets for electricity services. It is important that when doing so, they are compliant with their ring-fencing obligations.

In forming our assessment of distributors' compliance with the Guideline, we undertake our own analysis and use a range of information sources to gather intelligence. This includes breaches self-reported by distributors as well as complaints we receive and our own proactive monitoring of the distributors' conduct. Throughout 2018 we received numerous ring-fencing related complaints, generally from businesses that operate in competition with distributors and their affiliates. Subsequent investigation of these complaints found numerous breaches of the Guideline by several of the distributors. This report details how the distributors and the AER have responded to the breaches, including the actions we have required the distributors to take address these breaches.

This first year of operation under the Guideline has helped to clarify how these obligations work in practice and our expectations of compliance. We take instances of non-compliance seriously and are expecting greater levels of compliance in future. In 2019, we will be pursuing breaches of the Guideline even more forcefully. We are considering refinements to the Guideline where appropriate. We also intend to seek an amendment to the regulatory framework so that civil penalties can be imposed for breaches of the Guideline. We think these steps will further strengthen the ring-fencing arrangements to drive competition and promote better consumer outcomes.

I would like to thank those who have reported ring-fencing compliance issues to us since the Guideline commenced operation. This information is vital in helping us identify distributors' ring-fencing breaches. If you think you have observed a breach, or have questions about the Guideline, please email us at ringfencing@ aer.gov.au.

Paula Conboy

AER Chair

Glossary - Acronyms

| ACRONYM | NAME |
|---------------|---|
| AEMO | Australian Energy Market Operator |
| ASP | Accredited Services Provider |
| CAM | Cost Allocation Method |
| DER | Distributed Energy Resources |
| distributor | Distribution Network Service Providers |
| FRMPs | Financially Responsible Market Participants |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NER | National Electricity Rules |
| RESP | Related Electricity Services Provider |
| SAPN | South Australia Power Networks |
| the Guideline | Electricity Distribution Ring-fencing Guideline |

Glossary – Distributors' Affiliated Entities

| Distributor | Affiliates (related electricity service providers) |
|--------------------------|---|
| Ausgrid | Plus ES |
| SA Power Networks | Enerven |
| Endeavour Energy | Ausconnex |
| Ausnet Services | Mondo |
| Energex and Ergon Energy | Energy Queensland Ergon Energy Retail Metering Dynamics Yurika |
| Evoenergy | Commercial business unit |
| TasNetworks | 42/24 |
| Jemena | Zinfra |



1. Introduction

The Annual Ring-fencing Compliance Report provides an overview of ring-fencing compliance across the National Electricity Market (**NEM**) in 2017-18.¹ This report covers all Distribution Network Service Providers (**distributors**) to whom the Guideline applies—including distributors from New South Wales, Australian Capital Territory, Victoria, Queensland, South Australia and Tasmania.

Clause 6.1.17 of the National Electricity Rules (**NER**) requires that distributors comply with the Guideline. Compliance with the Guideline has been mandatory since 1 January 2018, following the 2017 transitional year. Distributors must provide annual compliance reports, along with an assessment of compliance prepared by an independent third party. The distributors' annual compliance reports and independent assessments are available on our website.

This annual report has three purposes:

- it provides our assessment of distributors' compliance with the Guideline,
- it informs competitors of the distributors' affiliates regarding the measures we are taking to protect a level playing field for competition, and
- it informs wider stakeholders regarding the operation of the Guideline.

Our compliance approach

The Ring-fencing Guideline places clear obligations on distributors to prevent them from using their monopoly position and regulated revenue to provide affiliates with unfair competitive advantages.

We expect distributors to have appropriate systems, processes and policies in place to be compliant with the Guideline. Distributors report on these systems, and must have them independently assessed, annually. We also expect distributors to proactively detect, report, correct and remediate any breaches of the Guideline throughout

¹ Power and Water Corporation in the Northern Territory is exempt from ring-fencing compliance until 1 July 2019.

the year. Distributors must report material breaches to the AER within five days of becoming aware of the breach.

We also engage in our own monitoring, by reviewing distributors' media releases, websites and published register. We receive complaints, reports and information from the public, some of which lead to investigations. Where we identify ring-fencing breaches we require distributors to respond quickly and transparently, taking appropriate action to address the issues and conduct identified.

The specific nature of the compliance and enforcement action we take, which potentially includes taking court action and/or seeking court-enforceable undertakings in relation to particular conduct, will be guided by the factors in our [Compliance and Enforcement Statement of Approach](#) and our [Electricity Distribution Ring-fencing – Compliance Reporting Best Practice Manual](#).

We will examine all relevant circumstances of the conduct, including:

- whether the breach has harmed the competitiveness of markets for contestable services and whether the breach has resulted in a significant or ongoing cross-subsidy of a contestable affiliate by a regulated business,
- the actions already taken by the distributor to rectify the breach and to prevent re-occurrence,
- the seniority of those involved in the conduct,
- whether the distributor's compliance practices were appropriate, and
- whether the distributor's corporate culture was conducive to compliance.

Section two of this report summarises the key issues and Guideline breaches in 2017-18. It also discusses a number of Guideline implementation and interpretation issues.

Based on our experience to date, it appears that too many distributors have treated non-compliance as unfortunate but acceptable. Non-compliance with the Guideline is unacceptable. Section three of this report outlines the actions we are taking to strengthen our compliance monitoring and enforcement in the coming period and sets out our priorities for the current and future years.

You can find further information including background of the Guideline, history and the importance of key guideline sections in [Appendix A](#).



2. A snapshot of 2018

All distributors were required to be fully compliant with the new Ring-fencing Guideline on 1 January 2018, a year after the first publication of the Guideline in December 2016. We received compliance reports from Victorian distributors in April 2018 covering compliance in the transitional 2017 calendar year, and from all other distributors in October 2018 covering the 2017-18 financial year.² We also received breach reports during the year from Ausgrid, Energy Queensland, and SAPN.

Ring-fencing establishes the rules under which distributors can provide unregulated or contestable services. This includes measures that prevent a distributor from using regulated revenues to cross-subsidise contestable activities and measures that prevent a distributor from using its monopoly position to negatively impact the competitiveness of contestable markets. Ring-fencing restricts the ability of regulated businesses to confer unfair advantages to affiliates. The Guideline accomplishes this by imposing staff, office and information sharing restrictions, while also barring distributors from discriminating in favour of, or cross subsidising, their affiliates. The Guideline also imposes a range of reporting measures to give the AER oversight of distributor compliance.

Our assessment of 2017-18 reports found that some distributors had not taken the steps necessary to comply with the Guideline. While some distributors have now rectified breaches, the extent of breaches identified is unacceptable and of significant concern.

Distributors' compliance reporting

Distributors' annual compliance reports describe the business structures, systems and administrative arrangements they have in place to meet their ring-fencing obligations. They must provide an annual report on their compliance and an independent assessment of their annual compliance report.³

The Guideline requires each distributor to engage a suitably qualified independent assessor to examine their compliance with the Guideline. The assessor is also required to examine the systems which underpin

² Victorian DNSPs operate on a calendar year basis while distributors in other jurisdictions operate on a financial year basis.

³ AER, *Electricity Distribution Ring-fencing Guideline*, October 2017, clause 6.4.

distributors' compliance. Using information gathered from these reports and our own compliance monitoring, we have made our own assessment of the compliance status of each distributor in relation to their first reporting periods.

Role of the independent assessors

Independent assessors have, to date, been effective at identifying breaches and compliance issues. This includes weaknesses in the distributors' ring-fencing compliance systems and processes. Distributors engage and pay independent assessors. However, we require the assessors to be professionally independent, as defined in the relevant Australian Standards. Detailed, long-form assessor reports, such as those submitted by AusNet Services, Evoenergy and Ausgrid, show that these reports can be rigorous, critical and independent. The independent assessors help distributors understand where they need to improve, and should give confidence to stakeholders that non-compliance by distributors will be identified. We have used these independent assessment reports as a tool that provides deep insight into businesses' compliance. This kind of oversight is vital to the success of ring-fencing promoting effective arrangements in each of the businesses.

Short-form independent assessor reports of the kind submitted by Jemena, CitiPower/Powercor, and others met the requirements of the Guideline. However, these did not provide the same level of confidence and transparency. We will strengthen the requirements of the *Compliance Reporting Best Practice Manual* to require long-form reports (see section 3). This report highlights a number of cases where the independent assessor's findings have prompted action by distributors to address compliance issues.

Ring-fencing non-compliance in 2017-18

Evoenergy

Evoenergy's independent assessor found that the distributor had not complied with various aspects of the Guideline.⁴ In particular, Evoenergy:

- did not publish staff sharing, office sharing, waiver, and information sharing registers on their website⁵
- did not have a process for handling confidential information, and
- did not have non-discrimination procedures for dealing with its "Commercial Business Unit" (Evoenergy's affiliate).

According to the independent assessor's report, Evoenergy also did not have appropriate internal compliance monitoring mechanisms in place. As a result, between 1 January and 30 June 2018, Evoenergy would have been unaware of any ring-fencing non-compliance. Evoenergy reported these instances of non-compliance with the Guideline only as a result of the mandatory independent assessment. In our view, this conduct was serious and demonstrated that Evoenergy had not appropriately considered its Ring-fencing obligations or put measures in place to comply with those obligations.

In response to the independent assessor's report, Evoenergy developed an action plan to achieve compliance by early 2019 and submitted this to us. In addition, Evoenergy has reported monthly on its implementation of the action plan. These reports indicate Evoenergy was compliant by the end of January 2019. Evoenergy will obtain a further compliance assessment to confirm it is compliant. We are continuing to closely monitor Evoenergy's compliance with the Guideline.

SA Power Networks

SA Power Networks' (SAPN) independent assessment found that SAPN applied an incorrect definition of 'confidential information' when it set up information access and control systems ahead of the Guideline compliance deadline.⁶ SAPN implemented its systems on the basis that 'confidential information' referred only to

⁴ Ernst and Young, *Evoenergy Annual Ring-fencing Independent Assessment Report*, October 2018, 33.

⁵ As required by Clause 4.2.4 of the Guideline

⁶ Deloitte, *SA Power Networks Ring-fencing Guideline Compliance Report*, 30 October 2018, 15.

customer specific information. The Guideline definition of confidential information includes all electricity information that is not publicly available.⁷ For more information on the definitions of electricity information and confidential information see figure 4 and figure 5 in **Appendix 1**.

The independent assessment observed no instances of actual breaches of the Guideline's information access and disclosure obligations. However, SAPN did not have appropriate compliance controls to prevent a breach of its obligations, which is itself a breach of clause 6.1 of the Guideline. Following the independent assessor's findings, SAPN reviewed its information access controls against the correct definition of confidential information and adjusted their treatment of information accordingly.

We have additional concerns with SAPN's handling of confidential information in relation to staff it shares with its affiliate. We explore these under Other Ring-fencing Issues below.

The Guideline also prohibits distributors from cross-promoting contestable electricity services provided by an affiliate or sharing the same brand. This can prevent an affiliate from gaining an unfair advantage due to customer trust in the distributor's brand, and it helps customers clearly identify what services should be provided on a monopoly or contestable basis.

SAPN's independent assessor found that the distributor had call centre scripts that directed customers seeking contestable services to "SAPN's sister company, Enerven". The independent assessment did not identify any instances in which the script was deployed.⁸ In our view, if a call centre operator had actually used the script for a customer enquiry, this would have amounted to cross promotion of the affiliate's service by the distributor and would be in breach of the Guideline. We raised these concerns with SAPN following submission of its compliance report and they removed the reference from its script.

Ausgrid

The Guideline imposes physical separation obligations to reduce or eliminate work related contact between a distributor and parts of the business or affiliated entities operating in competitive markets. It does this by mandating that certain kinds of distribution staff (staff with access to 'electricity information') must work in separate offices to those of an affiliate.⁹ Distributors must also not share these staff.

Ausgrid has established physically separate workspaces but distributor and affiliate staff continue to share common amenities, such as kitchens and meeting rooms, in many locations.¹⁰ We consider that this means that Ausgrid has not housed the staff in separate offices, as required by the Guideline. In order for staff to share offices, they must either not have access to electricity information, or not have an opportunity to use that information to benefit the affiliate. It does not matter which parts of the office are shared. We raised these concerns with Ausgrid and were not satisfied with Ausgrid's response. We are concerned that staff housed in these arrangements did have access to electricity information and/or an opportunity to use that information to discriminate in favour of the affiliate.

Our view is that Ausgrid's current arrangement of sharing offices with Plus ES staff is in breach of the Guideline. We will be seeking appropriate assurance from Ausgrid that it will take action to address these concerns to comply with the Guideline requirements and will consider further action if this conduct persists.

Physical separation obligations

- Staff of the distributor that have access to electricity information should not share an office with staff of the affiliate. This includes amenities such as kitchens and meeting rooms.

⁷ AER, *Electricity Distribution Ring-fencing Guideline*, October 2017, cl. 4.3.1.

⁸ Deloitte, *SA Power Networks Ring-fencing Guideline Compliance Report*, 30 October 2018, 17.

⁹ In the draft Ring-fencing Guideline we proposed to prevent distributors from locating a ring-fenced affiliate at the same physical location. Following our consultation, we permitted the sharing of buildings in the final Guideline.

¹⁰ Ausgrid, *Electricity Ring-fencing Annual Compliance Report*, November 2018, 4.

Other ring-fencing issues

Information Access and Disclosure

Some independent assessors' reports indicated that some distributors did not have robust information access and information sharing controls in place. The Guideline requires that distributors not disclose confidential information, including electricity information, to their affiliate unless they meet certain conditions.

SAPN allows certain Enerven staff access to some IT systems that the independent assessor identified as containing confidential information.¹¹ Based on the information contained in the independent assessor report, the employees have the ability to view this information, without gaining access to any additional passwords or systems. None of the exemptions in Clause 4.3.3 of the Guideline allow for this disclosure.

Ausgrid allows staff of their affiliated entity, Plus ES, unmonitored access to some IT systems to perform regulated distribution services under a service agreement where Plus ES acts as a contractor to Ausgrid.¹² Clause 4.3.3(c) of the Guideline permits distributors to disclose information to an affiliate, where that information is necessary to enable the distributor to provide its distribution services. These systems contain some information that is necessary for Plus ES to provide inputs to Ausgrid's direct control services, but also contain significant amounts of other information. We consider that, based on the information provided in the annual compliance report, this access is more than is necessary to enable Ausgrid to provide its distribution services (with Plus ES' assistance). Access to information covered by this exemption should be strictly limited to the information necessary to provide distribution services.

In our view the information access and disclosure arrangements put in place by some distributors are not appropriate to ensure compliance with the Guideline, and are therefore in breach of clause 6.1 of the Guideline. We will be seeking appropriate assurance from these distributors that they will make the changes necessary to comply with these obligations. We will consider taking further action if this conduct persists.

Staff Sharing

The Guideline prohibits a distributor from sharing staff with an affiliate if the staff have access to 'electricity information' and the opportunity to use that information in a way that would provide a discriminatory advantage to the affiliated entity in connection with the provision of electricity services.¹³ Further, non-compliance with the staff sharing requirements of the Guideline creates a high likelihood of a breach of the distributors' obligation not to discriminate in favour of their affiliates.

In some cases, distributors have relied on 'soft controls', such as training staff regarding appropriate use of the sensitive information they have access to. We consider this is insufficient. Distributors cannot share their staff with an affiliate if the staff have access to electricity information and an *opportunity* to use it in a way that might advantage the affiliate. In our view this requires 'hard controls', such as restricting staff's ability to obtain to information or not sharing affected staff. Some examples where certain distributors have, in our view, not demonstrated that they have complied with the Guideline are:

- Procurement staff. Ausgrid, SAPN, and Endeavour Energy share procurement staff with their affiliates, which might give those related electricity services providers an advantage when tendering to do work for the distributor or otherwise competing against other tenderers who have provided information to the distributor during the tender process. The distributors do not permit the same staff to operate a tender for the distributor and the affiliate, which reduces opportunities for discrimination, but does not entirely eliminate them. Staff still have access to systems which contain sensitive tender information. As such, these staff still have an opportunity to discriminate in favour of the affiliate using electricity information in their possession. The existence of contractual obligations or staff guidelines does not alter the fundamental access level or opportunity of these staff.

¹¹ Deloitte, *SA Power Networks Ring-fencing Guideline Compliance Report*, 30 October 2018, 12.

¹² Deloitte, *Ausgrid Annual Ring-fencing Independent Assessment Report*, November 2018, 19.

¹³ AER, *Electricity Distribution Ring-fencing Guideline*, October 2017, cl. 4.2.2(b). This does not apply to staff assisting an NSP during an emergency or staff in a regional office.

- **Staff Secondments.** Ausgrid's independent assessment report observed that Ausgrid had implemented a process of seconding staff on a short-term basis. This secondment process allows employees of the distributor to assist the affiliate on certain tasks on a short term basis, with relaxed controls regarding on-boarding and security access. If employee access is not correctly restricted, they may have information and be in a position to provide that information to the affiliate. Distributors cannot share such employees with their affiliate. In August 2018 we became aware of an issue at a specific Ausgrid depot, where staff from the distributor were assisting Plus ES with the provision of contestable services. This issue evidences many of the problems with an approach that so aggressively blurs the lines between the distributor and the affiliate. While Ausgrid has undertaken some rectification measures in response to this incident, we consider that continuing to allow short-term secondments remains an issue likely to result in further breaches.

We provided distributors with an opportunity to respond to our assessment of compliance in this area, but these responses did not address the information to which staff had access and the opportunities those staff had to misuse that information. Distributors pointed to controls which might deter staff from accessing information, such as disciplinary action, but such controls do not change the access level of staff. Distributors must remedy these situations to bring their arrangements into compliance with the Guideline. We will be seeking appropriate assurance from distributors that they will make their systems compliant and will consider taking further action if this conduct persists.

Staff sharing and access to 'electricity information'

- Staff who have electricity information must not have the opportunity to use that information to benefit the affiliate in the provision of contestable electricity services.
- Staff training regarding when to use certain information does not control the opportunity to use that information.

Issues addressed during the compliance year

Some distributors were not adequately prepared for Guideline commencement

Some distributors had compliance issues throughout the year, related to a lack of appropriate preparation for the commencement of the Guideline.

In January 2018, Energy Queensland reported to the AER that Energex and Ergon Energy continued to act as the metering provider for approximately 1,500 contestable meters, in breach of staff and office separation obligations.¹⁴ Since reporting the breach, Energy Queensland has reported to the AER on a regular basis, and worked with the Australian Energy Market Operator (**AEMO**) and financially responsible market participants (**FRMPs**), who must initiate the meter transfer to a contestable meter provider under the Rules. Energex and Ergon Energy could have avoided this breach by either transferring the meters, or applying for a waiver prior to the compliance deadline. In December 2017, we granted several other distributors waivers to allow them additional time to transfer contestable meters to new metering providers.¹⁵

In June 2018 Ausgrid reported that, over the course of January, February and March a number of customers contacted former Ausgrid employees who had been transferred to an affiliate, Plus ES, via the employees @ausgrid.com.au email addresses, seeking contestable services.¹⁶ These employees responded to the customer requests and Plus ES then made offers for contestable work. We consider that this conduct breached Ausgrid's obligations not to discriminate in favour of, or cross-promote, Plus ES, as the customers intended to

¹⁴ For more information, see: AER, *Quarterly Compliance Report – January-March 2018*, 29 May 2018, p. 9.

¹⁵ AER, *Decision – DNSP application for waivers from the Electricity Distribution Ring-fencing Guideline*, December 2017, pp. 44-58.

¹⁶ For more information, see AER, *Quarterly Compliance Report – April – June 2018*, 10 September 2018, section 1.4.1.

contact Ausgrid and then received a contestable offer from Plus ES. In response, Ausgrid restricted access to @ausgrid addresses in May, after the AER requested that Ausgrid investigate the issue.

In June 2018, Ausgrid reported to us that it had provided contestable services under 15 contracts. Ausgrid had signed the contracts prior to 2018 and decided not to transfer them to its contestable affiliated entity due to resourcing constraints.¹⁷ By contrast, other distributors who were aware that they may experience difficulties novating contracts to affiliated entities sought ring-fencing waivers in 2017.¹⁸ Following this incident, Ausgrid completed a review of all contractual obligations, and undertook additional staff training.

In both of these cases, it took several months before we were able to obtain a clear understanding of the non-compliant conduct; and a report acknowledging the potential breach from Ausgrid; and for Ausgrid to take action to address the cause of the breach. It is evident that Ausgrid did not have adequate systems in place for identifying, reporting, and responding to breaches of the Guideline and that some of these issues have persisted beyond the period covered by this report.

We will be closely monitoring distributors to ensure they have rigorous systems and processes to detect and report non-compliance.

Interrelationships between distributors and affiliates

We also investigated complaints that Ausgrid's affiliated entity, Plus ES, was offering contracts to perform contestable asset relocations for customers that the distributor had previously provided.¹⁹ We found that Ausgrid was in fact using Plus ES as a contractor assisting in the provision of some direct control services. While Ausgrid is entitled to contract any party to provide direct control services, the use of an affiliated entity increases the risk of non-compliance with ring-fencing obligations. Ausgrid advised us all work was cost-allocated correctly and no discrimination occurred, as Ausgrid chose Plus ES as its service provider via a non-discriminatory internal process.²⁰ While not a breach of the Guideline, the conduct had the potential to create confusion between the brands, which may have ultimately made Ausgrid non-compliant. Ausgrid responded by undertaking extra staff training. We are continuing to monitor the relationship between Ausgrid and Plus ES to understand how the relationship functions and to ensure it complies with the ring-fencing obligations. This activity has improved clarity for customers seeking to engage with Ausgrid or Plus ES to obtain services.

Energex and Ergon Energy have the same staff perform regulated 'front of meter' connections for the distributor, and unregulated 'behind the meter' contestable metering installations for the affiliate, for the same customer at the same time. In early 2018 we received complaints that this allowed the affiliate, Yurika, to complete installations more quickly and inexpensively than competitors. As part of its Power of Choice implementation program, Energy Queensland has worked extensively to reduce the times for all parties to install meters. These measures appear to have also reduced the potential for discrimination.

Issues associated with ring-fencing waivers

In September 2018, SAPN applied for an extension of a waiver we granted in December 2017. The original waiver allowed SAPN to act as the legal counterparty to 20 construction and maintenance contracts.²¹ In the process of applying to extend this waiver, SAPN discovered that it remained the legal counterparty for five additional contracts not originally subject to the waiver. Functionally separate staff of the affiliate (Enerven) were delivering these contracts and no cost allocation issues emerged. However, the oversight indicates that SAPN did not have sufficient internal monitoring systems to understand its contractual obligations, and the impact of those obligations on its ring-fencing compliance. In response to this breach, SAPN sought (and was granted) a

¹⁷ For more information, see: AER, *Quarterly Compliance Report – April – June 2018*, 10 September 2018, p. 14.

¹⁸ AER, *Decision – DNSP application for waivers from the Electricity Distribution Ring-fencing Guideline*, December 2017, pp. 44-58.

¹⁹ AER, *Quarterly Compliance Report – April – June 2018*, 10 September 2018, 14.

²⁰ Deloitte, *Ausgrid Annual Ring-fencing Independent Assessment Report*, November 2018, 12-13.

²¹ AER, *Ring-fencing waiver final decision – SA Power Networks – Construction and Maintenance Contracts*, 28 September 2018.

new waiver that included all relevant contracts and created a centralised register of contracts to ensure appropriate future oversight.

We also investigated complaints that Ergon Energy Retail staff were promoting contestable behind-the-meter services to customers.²² The Guideline does not apply to retailers. However, in December 2017 we granted a waiver to Ergon Energy Distribution to allow use of the 'Ergon Energy' brand by its affiliated entity (the retailer), on the condition that Ergon Energy Retail only use the brand to market standard retail contracts under regulated retail prices and not to provide any behind-the-meter services.²³ Our investigation found that customers were led to believe that Ergon Energy Retail would provide behind the meter services, when in fact they were to be provided by another affiliate of the distributor, Yurika. We advised Ergon Energy Distribution of our concerns, and Ergon Energy Retail have informed us that they implemented additional staff training to avoid this sort of confusion for customers in the future. If we receive further complaints on this issue we would consider what further action may be necessary to address these concerns. This could include changing the terms of the waiver or revoking it. If Ergon Energy Retail was to engage in conduct that is outside the scope or terms of the waiver, which requires that it only use the brand in relation to standard retail contracts, Ergon Energy would be in breach of its obligations under the Ring-fencing Guideline.

²² Ergon Energy Retail are a retailer wholly owned by the Queensland Government. They provide price regulated electricity retailing services to customers outside of South-east Queensland.

²³ AER, *Ring-fencing Waiver Applications Final Decision*, December 2017, 67.



3. Key Priorities for 2019



Focus areas for 2019:

1. Obtain a greater range of compliance tools
2. Reinforcing key terms of the guideline
3. Detailed independent assessor's reasonable assurance report
4. Continue adapting to the needs of customers
5. Support innovation for an energy sector in transition

3.1 Building a Strong Culture of Compliance

In the first ring-fencing compliance year we focused on further clarifying our expectations, explaining to distributors how to properly interpret and apply the Guideline in the context of their operations, and developing a strong culture of compliance across industry. Distributors have had a significant period of time to comply with the Guideline and they have had the benefit of an external independent assessment. Despite this, our assessment has identified several areas of non-compliance.

Our continuing focus for 2019 is to improve compliance levels beyond those observed in 2018. The AER's *Compliance and Enforcement Statement of Approach*, outlines the factors we will consider when examining compliance activities. We will examine all relevant circumstances of the conduct, including harms, steps taken to rectify the breach and to prevent re-occurrence, and whether the corporate culture was conducive to compliance.

We can enforce the Guideline by seeking court declarations and injunctions, accepting court-enforceable undertakings from distributors, or by voluntary commitments implemented by distributors to remedy and report on compliance issues.

We consider the AER should have access to the full suite of compliance and enforcement tools that would permit us to take a more proportionate approach to enforcing compliance with the Guideline. To that end we will be seeking an amendment to the regulatory framework to specify the relevant Rules clause as a civil penalty provision. This means that when a distributor breaches the Guideline, we would have the discretion to impose financial penalties in addition to other current measures.

3.2 Reinforcing staff separation, office separation and information protection obligations

The annual reports for 2018 indicated that some distributors had implemented procedures which, in our view are not compliant with key Guideline obligations. Some distributors also took an inappropriate approach to staff separation, office separation and information protection. Compliance with these obligations will be a key focus area for the AER in 2019.

Following the annual reporting process, the AER will seek more information from those distributors where we have identified non-compliance with the Guideline. We will use this information to issue compliance checks throughout 2019, which will provide a more detailed AER view of how staff separation, office separation, and information protection requirements should be implemented across the businesses to comply with the Guideline requirements.

3.3 Enhancing compliance monitoring

A detailed and critical independent assessor's report adds a great deal of transparency to the ring-fencing regime by providing information regarding distributors' compliance. Independent assessors examine the veracity of self-reporting and of the claimed effectiveness of their compliance systems.

Our expectations in respect of independent assessor reports are set out in the *Electricity Distribution Ring-fencing Guideline – Compliance Reporting Best Practice Manual*.²⁴ In 2018, we found that the most useful reports are long-form, or internal audit style reports, rather than short-form reports. In 2019 we will update the *Best Practice Manual* to specifically require long-form assessor reports, and to provide example templates that includes testing examples, testing results and suggested mitigation strategies. We will also review cost-allocation methodologies and take steps where necessary to ensure that they remain a useful ring-fencing tool.

We may also require distributors to undertake interim independent assessments of compliance in order to address serious compliance issues, or as part of our investigations into serious complaints.

3.4 Continue adapting to the needs of customers

Ring-fencing aims to promote the long-term interests of consumers by protecting customers of the regulated network from inefficient and inappropriate use of regulated revenue by the distributor, and by giving customers more choice and competitive offerings in markets for contestable services. That said, there are some circumstances where relying only on contestable service providers can have impractical outcomes for customers.

Service delivery for customers in remote areas

In remote and rural areas, effective competition for the delivery of contestable services can be limited, because there are often limited contestable providers competing to serve remote customers. In this case, distributors can still have a role to play, to ensure that customers continue to have access to electricity as an essential service. The Guideline exempts distributors from office, staff, and branding separation for 'regional offices' that have less

²⁴ AER, *Electricity Distribution Ring-fencing Guideline – Compliance Reporting Best Practice Manual - Version 1*, June 2018, p. 15. Note that Victorian distributors were permitted to submit independent assessor reports on the basis of limited assurance as they were reporting on the transition year.

than 25,000 connection points within a 100 km radius of a distributor's office or depot.²⁵ But this definition does not capture all regional areas where a customer's ability to source services from contestable service providers is limited due to remoteness. In 2017, we granted a range of ring-fencing waivers to Ergon Energy and Essential Energy to ensure that regional customers can still get essential electricity services in cases where they cannot acquire those services from contestable providers.²⁶ Through 2018, we worked with Essential Energy to monitor the impact of implementing Essential Energy's 'provider of last resort' initiatives. We also made changes to the service classification list as part of our Draft Decision on Essential Energy's Determination to reflect the flexibility that Essential Energy needs to serve customers in remote areas where there is limited practical competition for some services.

Through 2019, we will continue to monitor the impact of ring-fencing on regional customers to ensure that we strike the right balance between promoting the competitiveness of markets for contestable services, and ensuring that regional customers can access the electricity services that they need.

Minor works to restore customer power supply in New South Wales

Over 2018, we have worked to ensure that customers who experience a power outage can have their power supply restored as quickly and easily as possible. In NSW, we encountered some cases where a customer called a distributor out to investigate a suspected fault on the network, and an onsite investigation revealed that the fault came from an issue on the customer side of the connection point. Repairing customer-owned assets would normally be contestable under the NSW framework for contestable connections, and therefore a distributor cannot make these repairs. Before the introduction of the Guideline, distributors tended to do these minor repairs to get a customer's power restored quickly in certain situations.

We recognise that distributors offering these repairs provides clear benefits to customers in cases where the distributor is already onsite, as part of their normal regulated activities. Harm to the contestable market is likely to be limited in cases where the cost of the repairs (in terms of time and materials) is very low. Through 2018, we allowed NSW distributors to perform minor repairs for customers where they were already onsite, and required that the distributors report these as breaches of the Guideline. Ausgrid developed a 'vulnerable customer protocol' to guide this kind of work and reported eight breaches between March and June 2018. Essential and Endeavour Energy have also reported a smaller number of similar breaches.

In our draft decisions on NSW distribution determinations, we proposed a change to NSW distributor service classification (which determines what services are regulated and ring-fenced) that would allow NSW distributors to restore safe power supply to all customers without breaching the Guideline. Distributors are not permitted to charge individual customers for providing this service. Under the new service classification approach, distributors can repair customer assets when:

- the need for supply rectification work is discovered by the distributor in the course of providing other distribution services (for example, where the field crew is already onsite to investigate a suspected network outage),
- the distributor only performs the minimum level of work required to restore safe power supply to the customer, and
- the work can be performed within 20 minutes and does not usually require a second visit.²⁷

Stakeholder submissions on the NSW Distribution Determinations were due on 5 February 2019. We received no submissions on this change.²⁸

²⁵ AER, *Electricity Distribution Ring-fencing Guideline*, October 2017, cl. 1.4.

²⁶ AER, *Ring-fencing Waiver Applications Final Decision*, December 2017, 67.

²⁷ See Attachment 12 – classification of services for the Draft Decision on NSW distributor distribution determinations.

²⁸ See Ausgrid: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausgrid-determination-2019-24>, Endeavour Energy: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/endeavour-energy-determination-2019-24>, Essential Energy: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/essential-energy-determination-2019-24>.

3.5 Support innovation for an energy sector in transition

Ring-fencing does not prevent distributors from engaging in new and emerging areas of energy innovation by undertaking trials. But it does place regulatory obligations on them to either:

- limit their trial so that it only involves regulated services, or
- work with other organisations or entities that can provide contestable services as part of the trial, or
- seek a waiver from the AER, subject to stakeholder consultation, in cases where the distributor believes that a trial cannot proceed unless contestable services are provided in-house by the distributor itself.

These requirements aim to promote the development of competitive markets for new and emerging energy services.

In 2018 a number of distributors approached us for advice on trials covering areas such as electric vehicle charging, distributed energy resources (**DER**) integration, and stand-alone power systems (**SAPS**). In many cases these trials were able to proceed without the need for a ring-fencing waiver, as the distributor chose to partner with an affiliate or another contestable service provider, or limited the scope of their trial to provide only regulated distribution services.

The Guideline also imposes obligations on a distributor to ensure that electricity information that it shares through a trial does not provide a discriminatory advantage to any contestable service providers who are partners in the trial. If a distributor partners with its affiliate or another contestable service provider, the distributor may share confidential information about the network or network customers. This would trigger an information sharing process under the Guideline to ensure that competitors or potential competitors of the affiliate can also access that information. The Guideline requires that the distributor establish and maintain a public register of all legal entities (including affiliates) that request confidential information. The register must describe the information requests by the legal entity in enough detail, so that other legal entities can decide whether they wish to also request that information from the distributor.²⁹



Ring-fencing and R&D trial design

- Ring-fencing does not prevent distributors from undertaking innovative trials. But it does place boundaries on how trials can be designed and executed.
- Where a trial involves provision of both contestable and regulated services, distributors should consider partnering with a contestable service provider.
- We will only consider waiver applications for R&D trials when we can see that the distributor has first fully explored trial design options that would comply with the Guideline.
- We encourage distributors to engage with us on trial design if they are unsure of ring-fencing treatment of the trial.

²⁹ AER, *Electricity Distribution Ring-fencing Guideline*, cl. 4.3.3(f).

Appendices

A: About the Ring-fencing Guideline

Background

The AER determines the revenues that distributors may earn from providing regulated electricity services or 'direct control services' on a monopoly basis. Direct control services relate to the electricity distribution network operated by the distributor. Aside from direct control services, distributors may also provide other services that are offered on a competitive basis—we refer to these as 'contestable' services.

Ring-fencing establishes the rules under which distributors can provide unregulated or contestable services. This includes measures that prevent a distributor from using regulated revenues to cross-subsidise contestable activities and measures that prevent a distributor from using its monopoly position to negatively impact the competitiveness of contestable markets.

Ring-fencing interacts with other parts of the economic regulatory framework, including service classification, restricted assets, cost allocation, and shared assets. These are all concerned with defining and regulating the boundaries between distribution services and other services and assets that a distributor may use to provide distribution services. For example, service classification determines what services will be regulated and how (and therefore which ring-fencing obligations apply). Cost allocation determines how a distributor allocates costs between different types of distribution services (including contestable distribution services). The interactions between the different guidelines and regulatory elements are detailed in figure 1.

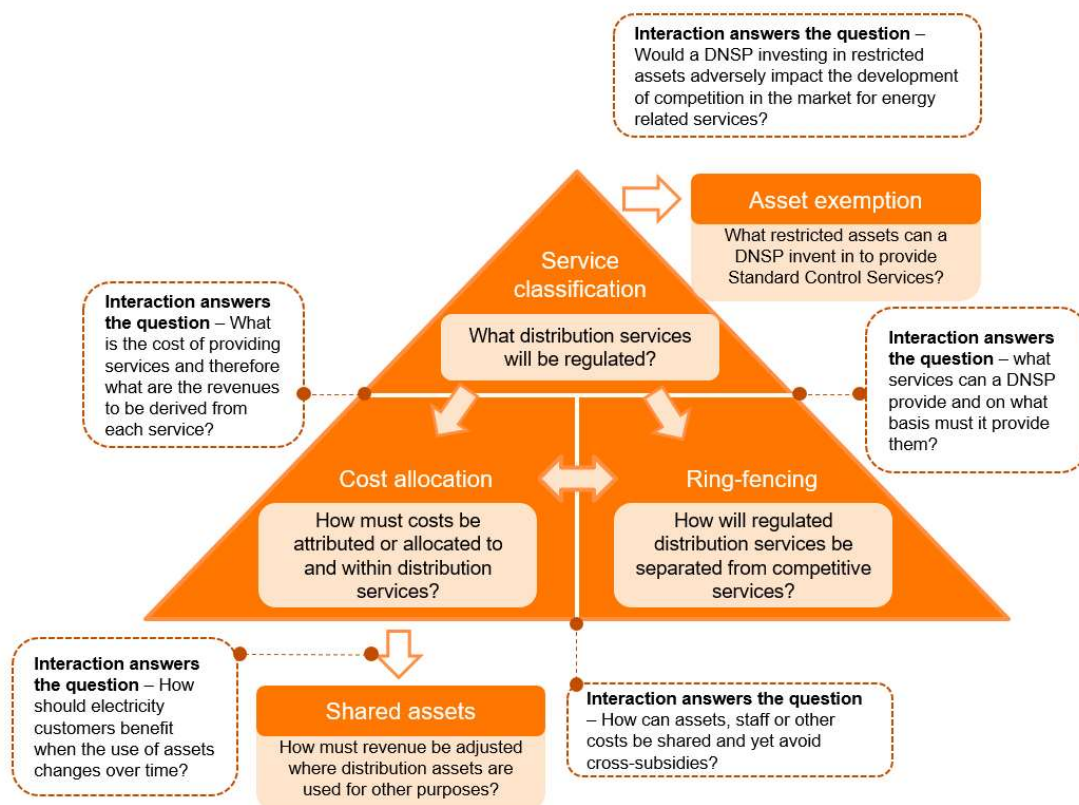


Figure 1: Interaction between elements of the regulatory framework.

The Guideline imposes obligations on distributors to separate monopoly from contestable business activities. The obligations set out in the Guideline include functional, accounting and legal separation. The obligations applicable to a distributor largely depend on the types of services offered by a distributor or one of its legally separated affiliated entities (see figure 2).

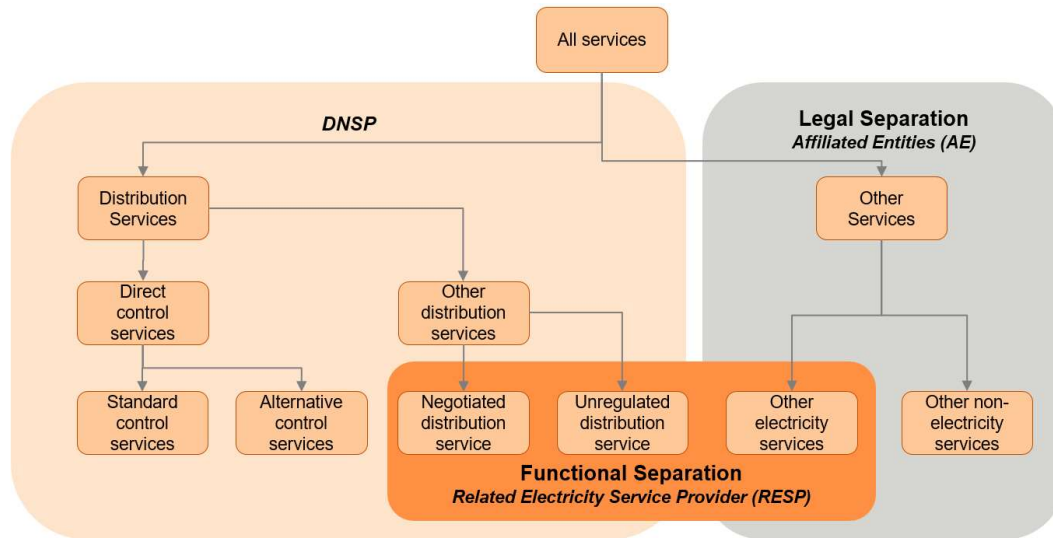


Figure 2: Distribution services obligations and linkage to ring-fencing

From 1 January 2018, distributors were required to be compliant with the Guideline, and to report to us on compliance with the Guideline each year.

The National Electricity Rules provide a framework for implementing a national approach to electricity ring-fencing. The Guideline is legally binding, meaning distributors *must* comply with the Guideline. The NER sets out mechanisms through which we can establish a 'ring-fence' around a distributor and separate out its other business activities. The mechanisms referred to in the NER include legal, accounting and functional separation to limit information flows.

The objective of the Guideline is to:

- promote the National Electricity Objective by providing for the accounting and functional separation of the provision of direct control services by distributors from the provision of other services by them, or by their affiliated entities.
- promote competition in the provision of electricity services.³⁰

What is ring-fencing?

Ring-fencing refers to the separation of monopoly services and contestable services where a regulated business also offers services in a competitive market. The obligations in the Guideline target two potential harms that can occur if a distributor decides to offer services in a contestable market. First, the Guideline addresses the risk of distributors **cross-subsidising** contestable services with revenue earned from their provision of regulated distribution (and transmission) services.

Second, the Guideline addresses the risk of distributors **discriminating** in contestable markets in favour of its own business units providing contestable distribution services or through one of its affiliated entities providing

³⁰ AER, *Electricity Distribution Ring-fencing Guideline*, October 2017, cl. 1.1.1.

contestable electricity services. A distributor has a significant amount of information about its electricity network and customers, and this information could provide it with an unfair advantage in a competitive market. Ring-fencing is designed to enable a distributor or its affiliates to participate in a contestable market on a fair basis.

History

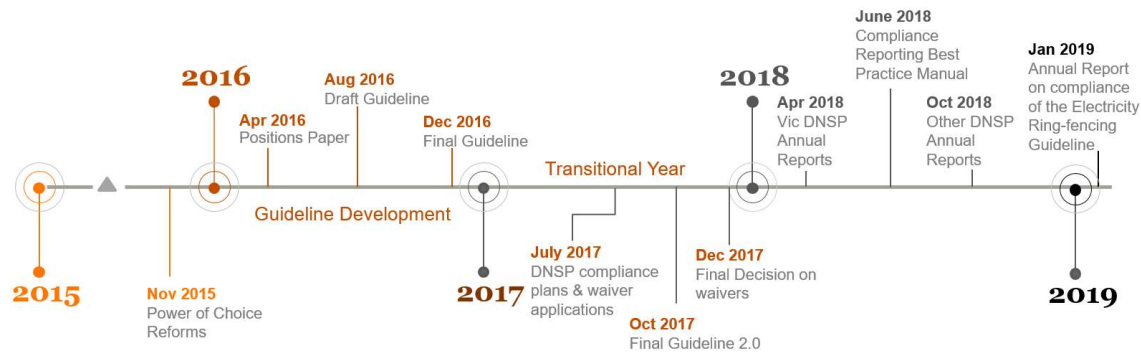


Figure 3: Ring-fencing timeline

The 2015 Power of Choice reforms required the AER to develop a ring fencing guideline. The first version of the Guideline was released in 2016, following stakeholder consultation on a positions paper and draft guideline. It was subsequently updated, and version 2 of the Guideline (the current version) was released in October 2017.

The first version of the Guideline was published in December 2016. The first year, 2017, was a transitional year during which the distributors were required to implement the guideline where practicable to do so. This time was to allow distributors to change business structures and operating arrangements to comply with the Guideline. For example, some distributors established new legally separate businesses to offer services including tower construction and electrical contracting. Distributors were required to apply for waivers if they were unable to comply with the Guideline by 1 January 2018. A list of all current waivers is at Appendix D.

2018 was the first full compliance year for the Guideline, and the first year that distributors underwent independent assessments and submitted compliance reports to the AER. Victorian distributors submitted their reports in May 2018 and the remaining states and territories in October 2018.³¹

Decreasing harms from cross subsidisation

Cross-subsidies increase the cost to consumers of regulated services and undermine the development of competitive markets. One of the key objectives of ring-fencing is to avoid the harm created by cross-subsidies. The Guideline restricts a distributor to the provision of distribution services.³² Non-distribution services can be provided, but only through a legally separate affiliate. This separation provides a means through which we can require a distributor to establish and maintain separate accounts specifically for the provision of distribution services to the exclusion of costs relating to other services, thereby reducing the risk of cross-subsidies.

Typically, distributors are large businesses involved in a wide range of activities, many of which are regulated but some of which may be unregulated. A distributor's people and equipment are often shared across these different activities. To avoid cross-subsidies, costs that relate to the provision of regulated activities must be kept separate from those incurred to provide unregulated activities. This is because regulated costs are often spread across all customers, rather than being user specific, due to the shared nature of many network costs. The presence of a

³¹ Victorian distributors must report on ring-fencing compliance by 31 May, four months after the end of the regulatory (calendar) year. All other distributors must report on ring-fencing compliance by 31 October, four months after the end of their regulatory (financial) year.

³² Unless a waiver has been obtained. Waivers from legal separation are uncommon and only likely to be provided where the non-distribution service is also a regulated service.

cross subsidy could give a distributor (or its affiliate) a competitive advantage if cost allocation is not applied correctly.

Cost allocation must be in accordance with a distributor's cost allocation method (**CAM**), which also must be approved by the AER. The correct application of the CAM by a distributor is assured by professionally independent auditors. In addition, the Guideline requires a distributor to set up procedures for tracking and reporting financial flows with its affiliated entities.

The requirements for legal separation, the CAMs, independent assessments and reporting requirements give us a reasonable assurance that the risk cross-subsidy is minimised.

Decreasing harms from discrimination

The Guideline includes a general obligation on distributors not to discriminate in favour of an affiliate that provides contestable electricity services. The distributor must keep the affiliate at arms' length by:

- treating the affiliate as though it were not related to the distributor
- dealing with the affiliate on the same terms and conditions as a competitor or potential competitor of the affiliate
- providing the same quality, reliability and timeliness of service to an affiliate and a competitor or potential competitor of the affiliate, and
- not disclosing information to the affiliate that the distributor has obtained through its dealings with a competitor or potential competitor of the affiliate, where doing so might provide an advantage to the affiliate.

The Guideline establishes functional separation obligations (such as separation of staff, offices and branding), to reduce the opportunities that an affiliated entity might have to gain a discriminatory advantage in contestable markets.

The Guideline creates a class of information called 'electricity information'. Electricity information is information about electricity networks, customers or services, other than aggregated financial information, or other service performance information that does not relate to an identifiable customer or class as illustrated by figure 4. Examples of electricity information include information about the network that is not already publicly available, or information about specific customers on the network. Opportunities to share this type of information are to be prevented by complying with the functional separation obligations under the Guideline. Confidential information is a subset of electricity information. This type of information can only be disclosed in limited circumstances (see further below).

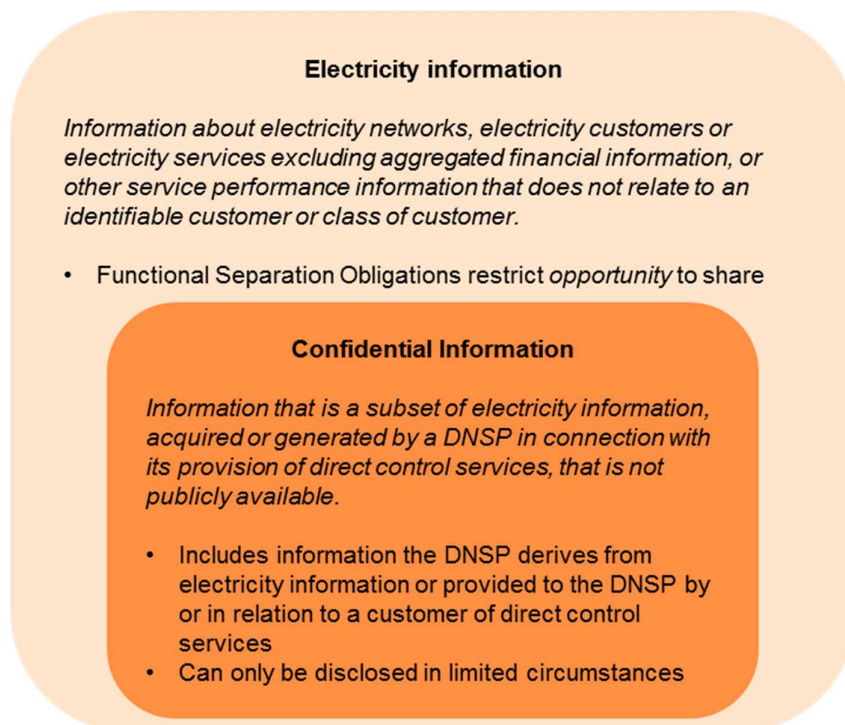


Figure 4: Distinguishing between electricity information and confidential information.

To support these non-discrimination obligations, the Guideline requires distributors to have separate staff from an affiliate, and to physically separate staff into separate offices. With few exceptions, if staff have access to electricity information and an ability to use it in a way that would give a discriminatory advantage to the affiliate, the staff cannot be shared or located together. The factors that determine whether staff can be shared are illustrated in the flow chart in figure 5.

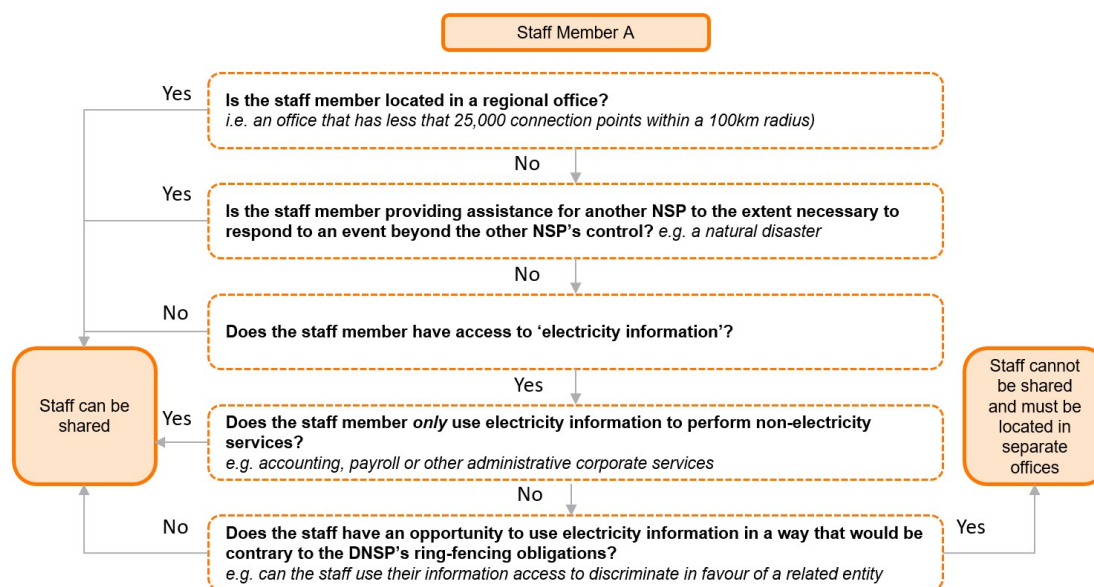


Figure 5: Guideline factors that determine staff and office separation obligations

Distributors are also required to use branding for direct control services (i.e. regulated distribution services) that is separate to branding used to provide contestable electricity services by an affiliate. The distributor cannot advertise or cross-promote contestable electricity services provided by an affiliate. Branding obligations support non-discrimination in two ways:

- it prevents the affiliate from leveraging the distributor's brand recognition and trust amongst customers
- it reduces the risk that customers will mistake a contestable electricity service for a regulated network service provided on a monopoly basis.

Decreasing the harms from information access, disclosure and sharing

The Guideline establishes requirements on the distributor to:

- keep confidential information confidential
- only use confidential information for the purpose for which it was acquired or generated
- not disclose confidential information to any person including an affiliate (except under a specific set of circumstances)
- where the distributor provides confidential information to an affiliate, provide access to other legal entities on an equal basis, and
- establish an information sharing register and information sharing protocol, to facilitate that access.

In the absence of these provisions there is a risk that a distributor's affiliate could gain an advantage over their competitors in contestable markets for energy-related services by reason of their relationship with the distributor.

B: 2017-18: Waivers

New waivers in 2018

The AER granted a ring-fencing waiver, effective on 1 October 2018, to allow SAPN to continue to perform contestable construction and maintenance services under 21 existing contracts as in force on 28 September 2018. The waiver is subject to a condition that SAPN must give the AER 30 days' written notice before entering into an extension of any of those contracts.

Table 1: Active ring-fencing waivers

| Distributor | # of waivers | Waiver | Clause | Reason | Conditions | Expiry |
|----------------------|--------------|---|--------------------------|---|------------|------------|
| Evoenergy | 2 | Legal separation | 3.1(b) | Continue operating ACT Gas Network and its Nowra Gas Network. | Yes | 30/06/2024 |
| | | Legal separation | 3.1(b) | Continue operating CNG Refuelling Facility | | 31/12/2019 |
| Ausgrid | 1 | Legal separation Functional separation | 3.1, 4.2.1, 4.2.2, 4.2.3 | Continue providing a range of non-distribution services | | 30/06/2019 |
| AusNet | 2 | Legal separation Functional separation | 3.1, 4.2.1, 4.2.2, 4.2.3 | Continue providing a range of non-distribution services | | 31/12/2018 |
| | | Legal separation Functional separation | 3.1(b), 4.2.3(a)i | Provision of electricity services to Mt Baw Baw | | 15/05/2020 |
| CitiPower & Powercor | 2 | Functional separation | 4.2.1, 4.2.2, 4.2.3 | Prospective reclassification of a range of services | | 31/12/2020 |
| | | Functional separation | 4.2.3(a)i | Allow additional time to transition to brand separation | Yes | 31/12/2019 |
| Endeavour Energy | 1 | Legal separation | 3.1, 4.2.1, 4.2.2, 4.2.3 | Prospective reclassification of a range of services | | 30/06/2019 |
| Energex | 2 | Legal separation Functional separation | 3.1, 4.2.1, 4.2.2, 4.2.3 | Prospective reclassification of a range of services | | 30/06/2020 |

| Distributor | # of waivers | Waiver | Clause | Reason | Conditions | Expiry |
|-------------------------|--------------|---|---|--|------------|------------|
| | | Functional separation | 4.2.3 | Allow Energex to continue to use Energex branding on uniforms and fleet used in the provision of the some specified 'Other Services' | | 31/12/2019 |
| Ergon Energy | 6 | Legal separation Functional separation | 3.1; 4.2.1; 4.2.2; 4.2.3 | Prospective reclassification of a range of services | | 30/06/2020 |
| | | Functional separation | 4.2.3 | Allow Ergon to continue to use the Ergon Energy brand for its retailer, Ergon Energy Queensland | Yes | 30/06/2025 |
| | | Functional separation | 4.2.1(a); 4.2.2(a); 4.2.3(a) | Allow the offices at Mareeba and Charters Towers to be classified as regional offices for the purposes of the Guideline | | 30/06/2025 |
| | | Legal separation Functional separation | 3.1(b); 4.2.1(a), 4.2.2(a); 4.2.3(a) | Allow Ergon to continue to offer generation, distribution and retail services, using its own brand and distribution staff in remote areas of Queensland | | 30/06/2025 |
| | | Functional separation | 4.2.3 | Allow it to continue to use Ergon branding on uniforms and fleet used in the provision of specified 'other services' and unregulated distribution services | Yes | 31/12/2019 |
| | | Functional separation | 4.2.3 | Allow Ergon to continue to provide a connection service under long-term contract to Hayman Island. | | 30/06/2025 |
| | | | | | | |
| Essential Energy | 6 | Legal separation | 3.1; 4.2.1; 4.2.2; | Prospective reclassification of a range of services | | 1/07/2019 |

| Distributor | # of waivers | Waiver | Clause | Reason | Conditions | Expiry |
|-------------|--------------|--|--|---|------------|------------|
| | | Functional separation Service providers | 4.2.3; 4.2.4; 4.4.1(a) | | | |
| | | Legal separation Functional separation Service providers | 3.1; 4.2.1; 4.2.2; 4.2.3; 4.2.4; 4.4.1(a) | Allow Essential Energy to continue to use its water licence in its maintenance cost sharing arrangement between Essential Energy and the Clarence Valley Council. | | 30/06/2024 |
| | | Legal separation Functional separation Service providers | 3.1; 4.2.1; 4.2.2; 4.2.3; 4.2.4; 4.4.1(a) | Allow Essential Energy to continue to own and operate Essential Water in far west NSW. | | 30/06/2024 |
| | | Legal separation Functional separation Service providers | 3.1; 4.2.1; 4.2.2; 4.2.3; 4.2.4; 4.4.1(a) | Allow Essential Energy to continue to provide type 1-4 metering services until such time as they can completely exit the market. | | 30/06/2019 |
| | | Legal separation Functional separation Service providers | 3.1; 4.2.1; 4.2.2; 4.2.3; 4.2.4; 4.4.1(a) | Allow Essential Energy to continue providing services as if they are classified ACS. | | 1/07/2019 |
| | | Functional separation | 4.2.1; | Allow Essential Energy to continue to provide | Yes | 30/06/2024 |

| Distributor | # of waivers | Waiver | Clause | Reason | Conditions | Expiry |
|----------------------|--------------|--|--|--|------------|------------|
| | | | 4.2.2; 4.2.3; 4.2.4 | Accredited Service Provider Initial & Refresher Training, Work Near Overhead Powerlines (WNP) Initial & Refresher Training and Safe Work Practices Initial & Refresher Training to Accredited Service Providers on a very limited basis. | | |
| Jemena | 1 | Functional separation | 4.2.1; 4.2.2 | Allow Jemena to continue to provide some services | | 31/12/2020 |
| SAPN | 1 | Functional separation Service providers | 4.2; 4.4.1(a); | Prospective reclassification of a range of services, currently classified as negotiated services. | | 30/06/2020 |
| TasNetworks | 2 | Functional separation Service providers | 4.2.1; 4.2.2; 4.2.3; 4.2.4; 4.4.1(a) | Not Specified | | 30/06/2019 |
| | | Functional separation Service providers | 4.2.1; 4.2.2; 4.2.3; 4.2.4; 4.4.1(a) | To continue to provide type 1-4 metering services until such time as TasNetworks can completely exit the market. | | 30/06/2019 |
| United Energy | 1 | Functional separation Service providers | 4.2.1; 4.2.2; 4.2.3; 4.4.1(a) | Continue providing a range of non-distribution services | | 31/12/2020 |