



## **Ausgrid Submission**

AER distribution ring fencing guideline review

September 2019



23 September 2019



Attn: Ms Sarah Proudfoot  
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Dear Ms Proudfoot

Ausgrid is pleased to provide this submission to the Australian Energy Regulator (AER) review of the Ring-Fencing Guideline for Electricity Distribution (Version 2) (the Guideline). We support the AER in its review of the Guideline and measures that increase competition in energy services and provide customers with greater choice and control.

While we recognise the important role played by the Guideline in preventing cross subsidies and discriminatory behaviour by distributors, the current drafting has resulted in networks and other stakeholders interpreting the Guideline in different ways. The uncertainty that this creates is leading to additional compliance costs and increases the likelihood of inadvertent breaches occurring. It also puts at risk the likelihood that the Guideline is currently achieving its policy intent. We therefore support the AER clarifying and improving the Guideline where appropriate.

If the AER intends to tighten ring-fencing obligations in certain areas of the Guideline, we encourage the AER to clearly demonstrate the actual harm it is intending to address and how the customer experience will be improved as a result of any changes. While still relatively new, the introduction of the Guideline has not resulted in positive outcomes for all customers. The AER should therefore demonstrate that the benefits to customers from any new arrangements outweigh the costs of any expanded ring-fencing obligations. This is because any increase in Ausgrid's costs from implementing Guideline changes will ultimately be borne by our customers.

Our submission addresses a number of issues including, most importantly, functional separation. As suggested by the AER at its preliminary workshop on 28 August 2019 (Sydney workshop), our submission outlines a new approach to defining electricity information, which can then be used to identify a smaller group of staff that will be subject to functional separation requirements. We also propose a new definition of office, which would result in more pragmatic and consistent obligations.

We would welcome the opportunity to discuss this approach with the AER prior to publication of a draft guideline in November 2019. Should the AER have any questions in relation to this submission, please contact John Skinner, Regulatory Policy Manager on 02 9269 4357.

Yours sincerely

A handwritten signature in black ink, appearing to read "Iftekhar Omar", written in a cursive style.

Iftekhar Omar  
Head of Regulation

## Submission

Ausgrid's network is a shared asset that will play a key role in the transition to a more distributed energy market and a lower carbon economy. This transition has the potential to deliver significant benefits for customers. We believe that many of these benefits will be unlocked by the development of new markets and greater competition in the energy sector. Like the telecommunications network before us, our electricity distribution network will be the platform on which new technologies and services are based.

We recognise that preventing cross subsidies and discriminatory behaviour in favour of our affiliated business, PLUS ES, is important to help facilitate competition in energy services. In the relatively short time the guideline has been in operation, networks and other stakeholders have interpreted the Guideline in different ways. This will not promote the development of competition and the AER should therefore focus its attention on clarifying the operation of the Guideline in these areas.

It is important that the AER consider the impact on customer outcomes when reviewing the Guideline. Implementation of the Guideline resulted in a poor customer experience for many of our residential customers, leaving them confused, frustrated and without power. As a result, the AER expanded its service classification to allow for the rectification of simple customer faults on the customer side of the meter.

Where the AER is intending on extending the operation of the Guideline, such as through more onerous office sharing obligations, that AER should initially:

- quantify the actual harm to competition in contestable services that the new obligations are intending to address
- identify the real benefits to competition that would result from the new obligations, and
- ensure that the competition benefits are not outweighed by the implementation costs.

Preventing staff from sharing amenities like kitchens, bathrooms and car parks is likely to result in distributors incurring additional costs, costs that will ultimately be borne by our end customers. This outcome may not be in the long-term interests of our customers and the overall community.

Our submission provides views on several key issues raised in the AER's Sydney workshop, where the AER suggested that certain Guideline concepts, such as 'electricity information' and what constitutes an 'office', may need to be revised. Our submission provides suggested approaches for these concepts, but we are concerned about the risk of introducing new levels of prescription and complexity in the Guideline. In our view, the Guideline should not impose prescriptive regulation but should adopt a principles-based approach that prevents distributors from engaging in anti-competitive

behaviour. This approach would support the view that the Guideline should be supplementary to the *Competition and Consumer Act*, rather than the primary means for protecting customers against the effects of anti-competitive behaviour.

## Cost allocation

Ausgrid's cost allocation methodology outlines the way in which Ausgrid allocates costs to the different services it provides. This prevents cross-subsidisation between distribution services and other services provided by Ausgrid, as well as cross-subsidisation between Ausgrid and its related affiliate, PLUS ES. The *National Electricity Rules* specifically prescribe that the approach we use to allocate costs must be consistent with the distribution ring fencing guidelines.

The AER is concerned that some independent assessors are not testing the requirement for distributors to account for how costs are allocated between their distribution business and any affiliate businesses. We consider it reasonable for the AER to clarify that independent assessors should test this requirement in their audit.

## Functional separation

Existing functional separation obligations (staff and office sharing and information access and disclosure) are based on a definition of 'electricity information' that does not clearly distinguish between:

- information about networks, customers or services that is of commercial value and potentially harmful to competition when shared
- information about networks, customers or services that is of no commercial value and will not harm competition if shared, and
- other types of information which may get caught in the current definition of 'electricity information' but have no commercial value and will not harm competition if shared.

At the Sydney workshop, the AER sought views on how to narrow the definition of 'electricity information' which will be used as the basis for staff and office sharing. This approach recognises that in many staff and office sharing arrangements there will be no risk to competition from regulated staff being co-located with unregulated staff.

We have collaborated with Energy Networks Australia (ENA) and other networks to develop an approach to functional separation that meets the AER's objective of preventing regulated staff with access to commercially valuable information from having any opportunity to share such information with unregulated staff of its affiliate, thereby discriminating in favour of the affiliate.

## Electricity information

Recognising that not all information about networks, customers or services is potentially harmful to competition, we suggest taking the AER's existing definition of 'electricity information' and replacing the term with two new terms: 'sensitive electricity information' (SEI) and 'non-sensitive electricity information' (NSEI). Functional separation requirements would apply to staff with 'sensitive electricity information', but not to staff with 'non-sensitive electricity information'. We see this as a two-step process:

**Step 1:** define both SEI and NSEI and determine what sort of information is SEI/NSEI

**Step 2:** determine what sort of roles/positions have access to SEI and an opportunity to discriminate in favour of an affiliate. Only these roles will therefore be subject to functional separation obligations.

### Step 1: Define SEI and NSEI

It is possible to define SEI and NSEI in such a way as to provide more certainty about what sort of information is commercially valuable and could provide an advantage to an affiliate if shared, and what sort of information could not. Proposed definitions for SEI and NSEI are outlined in the table below:

Proposed definition	Type of information
<p><b>sensitive electricity information</b> means information about electricity networks, electricity customers or electricity services, other than:</p> <p>(a) aggregated financial information; or</p> <p>(b) other service performance information; or</p> <p>(c) non-sensitive electricity information that does not relate to an identifiable customer or <b>class of customer</b>.</p>	<p>Customer specific information* such as:</p> <ul style="list-style-type: none"> <li>• future usage and connection point information</li> <li>• expansion plans</li> </ul> <p>*Customer specific information would generally not include information about <i>existing</i> usage or connection information</p> <p>General customer information</p> <ul style="list-style-type: none"> <li>• forward looking modelling</li> <li>• trends or forecasts</li> </ul> <p>Distribution system information:</p> <ul style="list-style-type: none"> <li>• network design and evaluation information (that is not related to the physical security, cyber security or electrical and mechanical equipment required to operate, maintain and repair the network in the course of providing electrical services)</li> <li>• reliability or operational data</li> <li>• expansion or connection plans</li> </ul>

<p><b>non-sensitive electricity information</b> means information about electricity networks, electricity customers or electricity services that is:</p> <p>(a) technical information:</p> <p>i. relating to the physical security or cyber security of the network; or</p> <p>ii. about the electrical or mechanical equipment of the network that is required to operate, maintain and repair the network in the course of providing electrical services; or</p> <p>(b) created or used to achieve individual job specific outcomes and does not provide information on future plans or expectations of a network; or</p> <p>(c) not publicly available information; or</p> <p>(d) not sensitive electricity information.</p>	<p>Publicly available information, materials and diagrams including:</p> <ul style="list-style-type: none"> <li>• Regulatory Information Notices (RINs)</li> <li>• Distribution Regulatory Investment Tests (RIT-Ds)</li> <li>• Distribution Annual Planning Report (DAPRs)</li> </ul> <p>Technical, task-based information that does not comprise any information on network planning or strategy such as</p> <ul style="list-style-type: none"> <li>• Maintenance and installation plans</li> <li>• Equipment operation instructions</li> <li>• Testing and calibration information</li> <li>• Individual work plans</li> </ul> <p>Information related solely to asset composition</p>
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To assist with the interpretation of the above terms, it would be useful if the Explanatory Memorandum contains examples of the types of information which fall within the definitions of SEI and NSEI.

***Step 2: Determine those roles/positions which have access to SEI and an opportunity to discriminate***

In order to determine which roles have access to SEI and will therefore be subject to functional separation, a comprehensive review of role and job types needs to be undertaken. This approach was suggested by the AER at the Sydney workshop.

Energex has recently undertaken a similar process to inform its ring-fencing staff sharing arrangements. We consider the Energex job classifications and role descriptions to be a useful starting point for classifying roles. While we agree with the view that roles can be generally clustered and identified as needing to be ring-fenced or not, certain exceptions apply given the breadth of areas of work that are involved in providing distribution or transmission services.

Using the Energex classification approach and the definition of SEI and NSEI outlined above, it is possible to assess what type of positions will have access to SEI and which will not. Once each role has been categorised as having SEI or not, a further assessment can be undertaken to determine which roles can be shared or co-located. This involves a case by case assessment of whether a specific position that has access to SEI also has an opportunity to discriminate in favour of the affiliate. This is in line with AER’s current approach.

The table below provides an example of how this process might work. A case by case assessment of each role will be undertaken to determine which has access to SEI and which does not. Given the wide scope of services a distributor may provide, there are various classifications where some roles will have access to SEI and some will not. For example, while most engineers are likely to have access to SEI, engineers in some fields of work would not, particularly those whose work involves public information.

Classification	High level description of role	Examples of roles	Access to SEI (Yes/No)	Opportunity to discriminate (Yes/No)
General skilled worker/ Trade skilled worker	Maintaining and constructing network infrastructure and components. Maintain, test, calibrate and manage tools and equipment to approved standards	Power worker Fitter Sheet metal worker Warehouse operator	No	No
Electrical technician/ Technical officer	Construction, repair and maintenance of power supply and telecommunications components. Primarily work in the field traveling to different locations to construct, troubleshoot, diagnose, and resolve problems. Maintain, Test and Calibrate Equipment to approved Standards	Connection officer Cable jointer Linesperson Technical service person	No	No
Engineer/ Other technical professional	Evaluates, estimates, designs, develops and maintains electrical control systems and components to specifications	Engineer Surveyor Distribution property officer Customer projects officers	Yes	Yes
Engineer/ Other technical professional	Develops and maintains public network diagrams.	Engineer Surveyor Distribution property officer Customer projects officers	No	No
Electrical designers/ design officers	Support engineers with design requirements and drawings which document the type and arrangement of	Designer Planner	Yes	No

	circuits, transformers, circuit breakers, power lines and other equipment			
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The assessment process above is likely to result in different outcomes for different roles, depending on whether they have access to SEI and an opportunity to discriminate. This process informs functional separation obligations in a way similar to the current Guideline:

Classification	SEI	Opportunity to discriminate	Staff sharing	Office sharing
Linesperson	No	No	Yes	Yes
Power worker	No	No	Yes	Yes
Engineer 1	Yes	Yes	No	No
Engineer 2	No	No	Yes	Yes
Designer 1	Yes	No	Yes	Yes
Designer 2	Yes	Yes	No	No

As indicated in the example above, our expectation is that the existing exceptions in the Guideline will remain. That is, a role that has access to SEI but has no opportunity to discriminate in favour of an affiliate could be shared or co-located. Similarly, the existing exception for the disclosure of confidential electricity information to an affiliate for the purposes of providing distribution, transmission or other services will remain.

### Staff sharing

In our view, a revised guideline should permit staff sharing on the basis noted above; i.e. staff should be permitted to be shared when they do not have access to 'sensitive electricity information', or no opportunity to discriminate in favour of an affiliate. Secondments should be permitted with 'soft' and 'hard' controls in place such as appropriate inductions and changeover of branding materials and equipment with relevant information access controls.

### Procurement

We agree with the AER that procurement staff with access to sensitive tendering information should not be shared with an affiliate. To appropriately address this issue, a revised guideline should introduce similar concepts as noted in staff sharing and office sharing obligations, such that procurement staff should not be shared if they have access to SEI and the opportunity to use such information to the advantage of an affiliate.



It is important to note that while some information which shared staff can access may be classified as SEI, that information may be irrelevant or ineffectual to the affiliate. This could be due to the affiliate not providing services in that specific line of work, removing any opportunity to harm competition.

### **Office sharing**

The existing definition of 'office' is broad and being interpreted by distributors in different ways. At the Sydney workshop, the AER indicated that its intention when developing the guideline was to 'restrict regulated staff with 'electricity information' from mixing with unregulated staff during the course of a normal working day'. The AER also raised the possibility of revising the definition of 'office' to clarify office sharing arrangements.

We agree with the AER that a revised definition of 'office' would be beneficial and have therefore suggested an alternative. Our proposed approach to physical separation relies on a new definition of 'office' that distinguishes between parts of a building where 'work' is performed, and those parts of a building where work is not performed. This approach is not contrary to the way the current definition of 'office' reads in the Guideline. It emphasises and focuses on the key issue; which is preventing regulated staff with commercially valuable information from working in the same workspace as unregulated staff from an affiliate. It also avoids unnecessary, and potentially costly, obligations, around the physical separation of staff in areas where work is not carried out, such as kitchens, bathrooms, and car parks.

In its March 2019 Annual Ring-fencing Compliance Report, the AER indicated that it views amenities such as kitchens and meeting rooms as part of an 'office'. Given 'work' is not generally performed in a kitchen or lunchroom, we do not see the benefit in specifically imposing physical separation controls in these areas, any more than we would for car parks, shower facilities, and bathrooms. A clear customer benefit should be demonstrated by the AER should distributors be required to build new kitchens or lunchrooms in order to comply with ring fencing obligations. We would suggest that this customer benefit is demonstrated in terms of a financial cost benefit analysis.

External stakeholder remarks at the Sydney public workshop on 28 August 2019 demonstrate that Ausgrid staff are very aware of their ring-fencing obligations. Annual training undertaken by Ausgrid staff reinforces the required behaviours. The AER should carefully consider the issue of office sharing in this context.

In our view, shared amenities pose no greater risk of sensitive electricity information being shared than public spaces such as a train station or a café adjacent to an Ausgrid depot. Not even the

highest level of physical separation will prevent an employee who wants to use sensitive electricity information in a manner contrary to the Guideline from doing so.

A proposed definition of 'office' that reflects our suggested approach is shown below:

Proposed definition of office	
office means:	
(a)	any part of a building from where either: i. distribution services; or ii. contestable electricity services are carried out; and
(b)	that has separate and secure access requirements such that members from the public or staff from elsewhere in the building do not have unescorted access to it.
[Note: Electricity services are carried out in work areas, laboratories, workshops, warehouses and meeting rooms. Offices will generally not include kitchens, bathrooms, or car parks.]	

## Compliance reporting

We support the AER's suggestion to update the Best Practice Manual to include a template for the AER's preferred long-form assessor's report. This will promote consistency in annual reporting and increase stakeholder confidence in the reporting regime. Ausgrid has previously submitted a long-form assessor's report that the AER has acknowledged is rigorous, critical and independent.

Reporting breaches of our ring fencing obligations is a time-consuming process and we therefore support a clarification of what constitutes a 'material' breach of the guideline. The AER should ensure that it adopts an approach which balances the need to protect against harm to competition with the administrative burden and cost of reporting breaches which have no impact on competition.

## Registers

We support the AER proposal that staff sharing and office sharing registers should be updated on a regular basis. This will promote stakeholder confidence in ring-fencing arrangements and increase transparency in how businesses meet their ring-fencing obligations.

A scenic landscape at sunset. A paved road with a white dashed line runs through the center, flanked by large, dark trees. In the distance, a utility pole with power lines stands against a bright orange and yellow sky. The overall mood is peaceful and serene.

**Thank you**

