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Ring-Fencing Guideline

Electricity Distribution

August 2016

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# Nature and authority

## Application of this guideline

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

Under clause 6.17.1 of the **NER**, this **Guideline** is binding on all Distribution Network Service Providers (**DNSP**s).

The objectives of this **Guideline** are to promote the National Electricity Objective by providing for the accounting and functional separation of the provision of **direct control services** by **DNSP**s from other services provided by them, or by their **related bodies corporate**. It includes obligations on **DNSP**s targeted at:

* cross-subsidisation, with provisions that aim to prevent a **DNSP**:
* providing **non-network services** that could be cross-subsidised by its **network services**; or
* inefficiently inflating its prices for **direct control services** and regulated **transmission services**, and
* discrimination, with provisions that aim to:
* prevent a **DNSP** providing an inappropriate competitive advantage to its own service providers or **related bodies corporate** which provide competitive or contestable **energy-related** services; and
* ensure a **DNSP** treats and protects information it acquires appropriately.

This **Guideline** commences on 1 December 2016.

## Confidentiality

The **AER** will assess confidentiality claims by **DNSP**s arising under this **Guideline** in accordance with its **Confidentiality Guideline**, the **Competition and Consumer Act 2010** and the National Electricity Law (**NEL**).

## Definitions and interpretation

In this Guideline:

* The words, phrases and abbreviations presented in bold **such as this** have the meaning given to them in the **NER**:
* The words ‘shall’ and ‘must’ indicate mandatory requirements, unless the overall meaning of the phrase in which one of these words appears, is otherwise. Explanations in this Guideline about why certain information is required are provided for guidance only. They do not limit in any way the AER’s objectives, functions or powers.

## Process for revisions

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

# Relationship with other regulatory instruments

This Guideline should be read in conjunction with:

1. The decision in the AER's **distribution determination** on the classification of the services to be provided by a DNSP in a regulatory control period, in accordance with clauses 6.2 and 6.12.1(1) of the NER;
2. Clause 6.15 of the NER, the Cost Allocation Guideline and the AER-approved Cost Allocation Methods (CAM);
3. Clause 6.4.4 of the NER and the Shared Asset Guideline;
4. ARegulatory Information Instrument served on a DNSP by the AER under section 28F of the NEL.

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

The **AER**'s service classification decision determines the nature of the economic regulation, if any, applicable to a **DNSP**'s specific **distribution services**. The classification affects the application of obligations in clause 4.2 of this Guideline.

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

The **Shared Asset Guideline** enables the adjustment of a **DNSP's** revenues that it can recover from its **distribution services** where its **CAM** no longer accurately reflects how its assets are used. The shared asset mechanism therefore modifies the effect of the **CAM**.

The **Regulatory Information Instruments** can require a **DNSP** to provide information to the **AER** and to have this information certified and audited. This can include information that is subject to ring-fencing obligations under this Guideline.

# Prevention of cross subsidies

## Legal separation

1. A DNSP must be a legal entity and, subject to clause 3.1(b), must only provide network services.
2. A **DNSP** may incur costs of up to $500,000 (identified and allocated in accordance with clause 3.2.2) in any regulatory year for providing **non-network services**. A **DNSP** must not provide non-network services where doing so would involve the **DNSP** incurring such costs in excess of $500,000 in any regulatory year.
3. For the avoidance of doubt, clauses 3.1(a) and 3.1(b) do not prevent a related body corporate of a DNSP from providing non-network services.
4. For the avoidance of doubt, clauses 3.1(a) and 3.1(b) do not prevent a **DNSP** and a **TNSP** being the same legal entity.
5. A **DNSP** cannot apply for a waiver of the obligations set out in clauses 3.1(a) and 3.1(b).

## Establish and maintain accounts

### Separate accounts

1. A DNSP must establish and maintain appropriate internal accounting procedures to ensure that it can demonstrate the extent and nature of transactions between the DNSP and its related bodies corporate.
2. The AER may include a requirement in a regulatory information instrument for a DNSP to:

provide its internal accounting procedures to the **AER**;

report on transactions between it and its **related bodies corporate**.

1. A **DNSP** cannot apply for a waiver of the obligations set out in clauses 3.2.1(a).

### Cost allocation and attribution

1. A DNSP must not allocate or attribute to distribution servicesany costs that properly relate to non-distribution services.
2. A DNSP must allocate or attribute costs to distribution services in a manner that is consistent with the **cost allocation principles** and its approved **CAM**, as if those cost allocation principles and **CAM** otherwise applied to the allocation and attribution of costs between **distribution services** and **non-distribution services**.
3. A DNSP must demonstrate to the AER whenever it provides financial information to the AER in accordance with a regulatory information instrument how it meets the obligation in clauses 3.2.2(a) and 3.2.2(b).
4. A **DNSP** cannot apply for a waiver of the obligations set out in this clause 3.2.2.

# Non-discrimination

## General obligations to not discriminate

1. A **DNSP** must not discriminate (either directly or indirectly) between its **related body corporate** (including customers of its **related body corporate**) and competitors of its related body corporate (including customers of a competitor of its **related body corporate**) in connection with the supply of **distribution services** or **non-distribution services**.
2. Without limiting the scope of 4.1(a), this provision requires a **DNSP** to:
3. deal or offer to deal with its **related body corporate** as if its related body corporate was not a related body corporate of the **DNSP**;

deal or offer to deal with competitors of its **related body corporate** (including customers of those competitors) on substantially the same terms and conditions, as those for its **related body corporate** (including customers of its **related body corporate**);

provide substantially the same quality, reliability and timeliness of service to competitors of its **related body corporate** (including customers of its **related body corporate**), as it provides to its **related body corporate** (including customers of those competitors);

not provide information to its **related body corporate** that the **DNSP** has obtained through its dealings with a competitor of the **related body corporate** that may advantage the **related body corporate** in the provision of competitive or contestable **energy-related** services;

not advertise or promote the services provided by its **related body corporate**; and

have independent and separate branding for its **distribution services** from a **related body corporate** that provides **non-distribution services**.

1. A **DNSP** cannot apply for a waiver of the obligations set out in clause 4.1.

## Specific obligations for functional separation

### Physical separation/co-location

1. A **DNSP** must operate independent and separate offices for the provision of **direct control services** and regulated **transmission services** from the offices from which any of its separate service providers or **related bodies corporate** provides other **energy-related** services. For example, a **DNSP** must operate in a different building, and prevent staff from mixing in the normal course of undertaking work activities.
2. The obligation set out in clause 4.2.1(a) is subject to the following exceptions:
3. Office accommodation for staff of its separate service providers or **related bodies corporate** that do not provide **energy-related** services; or
4. Office accommodation for staff who are not directly involved in the provision of direct control servicesand regulated transmission services and who therefore do not have access to information about electricity customers and services, such as staff who exclusively perform corporate services, for example in payroll and human resources; or

Any arrangements agreed through the waiver process set out in Section 5 of this Guideline.

### Staff sharing

1. A **DNSP** must ensure that its staff directly involved in the provision of a **direct control service** or a regulated **transmission service** are not also involved in the provision or marketing of a competitive or contestable **energy-related** service by a **related body corporate**.
2. The restriction set out in clause 4.2.2(a) does not apply to:
3. A member of staff who is not involved in the provision of **energy-related** services; or
4. A member of staff who is a senior executive of both a **DNSP** and a **related body corporate**; or

A member of staff who is not directly involved in the provision of any **direct control services** or regulated **transmission services**,and who therefore do not have access to information about electricity customers and services, such as staff who exclusively perform corporate services, for example in payroll and human resources; or

A member of staff who is involved in the provision of a **DNSP**'s **negotiated distribution services** and **unregulated distribution services**; or

Any arrangements authorised through the waiver process set out in Section 5 of this Guideline.

1. A **DNSP** must not remunerate or otherwise incentivise its staff (other than a staff member who is a senior executive of both the **DNSP** and a **related body corporate**) based on the performance of a **related body corporate**.

## Information access and disclosure

### Protection of information

A **DNSP** must keep information provided by a customer, prospective customer or service provider for **direct control services** and/or regulated **transmission services** .confidential. The DNSP must only use this information for the purpose for which that information was provided.

### Sharing of information

Where a **DNSP** acquires information in providing **direct control services** and/or regulated **transmission services**, and shares that information (including information derived from that information) with a **related body corporate**, it must provide access to that information (including the derived information) on an equal basis with third parties competing with the **related body corporate**.

### Disclosure of information

A **DNSP** must not disclose information acquired in providing **direct control services** or regulated **transmission services** (including information derived from that information) to any party, including a **related body corporate,** without obtaining the explicit informed consent of the relevant customers or prospective customers to whom the information relates.

### No waiver

A **DNSP** cannot apply for a waiver of the obligations set out in this clause 4.3.

# Waivers

## DNSP's application for a waiver

A **DNSP** may apply in writing to the **AER** for a waiver of its obligations under clause 4.2 of this Guideline. An application for a waiver must include all information and materials necessary to support the **DNSP**'s application, including:

1. The service**, or** services**,** in relation to which the **DNSP** is requesting the waiver**;**
2. Whether the waiver being sought relates to the physical separation/co-location obligation in clause 4.2.1 and/or to the staff sharing obligation in clause 4.2.2 and the reason that the **DNSP** is requesting the waiver;
3. The costs associated with the **DNSP** complying with clause 4.2 if the waiver is refused and how these costs will vary if the waiver is granted;
4. Whether the **DNSP** seeks the waiver to apply to the current **regulatory control period,** the next **regulatory control period** or both;
5. Any additional measures that the **DNSP** proposes to undertake in conjunction with the waiver; and
6. The reasons why the **DNSP** considers the waiver should be granted with reference to the matters set out in clause 5.2.2, including, but not necessarily limited to, the benefits, or likely benefits the grant of waiver would bring to electricity consumers.

## AER's consideration of a waiver application

### Requirement to consider a waiver

The **AER** must consider an application under clause 5.1, and may subject to this clause, grant, or refuse to grant, the waiver subject to such conditions as the AER considers necessary.

### Matters AER will consider

1. In considering an application under clause 5.1, and deciding whether to grant, or refuse to grant, the waiver, the **AER** may consider any matter it considers relevant but will have regard to at least:
2. the **National Electricity Objective**;

the potential for cross-subsidisation and discrimination if the waiver is granted or refused;

whether the benefit, or any likely benefit, to electricity consumers of the **DNSP**'s compliance with clause 4.2 would be outweighed by the cost to the **DNSP** of complying with that obligation.

### The AER's assessment of the waiver application

1. When the AER receives an application under clause 5.1 it:
2. may reject the application without further consideration if it considers that the application has been made on trivial or vexatious grounds;

may request any further information that it considers is necessary for it to consult on, and/or make a decision on, the application;

may invite public submissions on the application; and

may impose such conditions as it considers appropriate when granting a waiver.

1. If the AER undertakes a public consultation process it may publish its decision that explains the reasons to grant, or refuse to grant, a waiver.
2. The AER may publish the terms and conditions of any waiver that is granted.

### Form of waiver

The **AER** may grant a waiver to:

1. apply to one or more **DNSP**;
2. apply for the current **regulatory control period,** the next **regulatory control period** or both; and
3. be made subject to such terms and conditions as the **AER** considers appropriate.

## Reviewing a waiver within a regulatory control period

The **AER** may review a waiver within a **regulatory control period** if it considers that it may no longer be required. The **AER** may vary or revoke a waiver, having regard to the matters set out in clause 5.2.2.

The AER may:

1. conduct such consultation as it considers appropriate;
2. publish its decision that explains the reasons to vary or revoke the waiver;
3. publish the terms and conditions of any varied waiver that is granted; and
4. consider an appropriate transition for the **DNSP** to implement the **AER**'s new decision.

# Compliance and enforcement

## Maintaining compliance

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

## Compliance reporting

### Annual compliance report

1. A **DNSP** must prepare an annual ring–fencing compliance report and submit it to the **AER**. The annual compliance report must identify and describe, in respect of the regulatory year to which the report relates:
   1. all measures a **DNSP** has taken to ensure compliance with (all) its obligations under this Guideline
   2. any breaches of this **Guideline** that relate to the **DNSP**
   3. all **non–network services** provided by the **DNSP**, and all associated activities undertaken by the **DNSP**, in accordance with clause 3.1(b)
2. The annual compliance report must be accompanied by an assessment of compliance by a suitably qualified independent authority.

Annual compliance reports may be made publicly available by the **AER**.

### Timing of annual compliance reporting

A **DNSP** must submit to the **AER** an annual compliance report within 4 months of the end of the regulatory year to which the compliance report relates.

A **DNSP** will not be required to start reporting on its compliance with this Guideline until the **regulatory year** after this Guideline commences.

### Reporting by AER

The **AER** may publish reports from time to time about **DNSP**s' compliance with this Guideline on the basis of information provided to it under this clause 6.2.2.

## Compliance breaches

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

## Complaints and investigations

At any time, the AER may require a **DNSP** to provide a formal response to particular complaints or concerns about compliance with this Guideline.

Appendix A − Transitional arrangements

Despite clause 1.1:

1. The obligation set out in clause 3.1(a) commences on a date that is 12 months after the commencement date provided in clause 1.1; and
2. The obligations set out in clauses 4.2.1 and 4.2.2 commence on a date that is six months after the commencement date provided in clause 1.1.