



16 December 2022

Mark Feather
General Manager Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

By email: AERringfencing@aer.gov.au

Dear Mark,

Submission on the AER's Draft Amended Transmission Ring-Fencing Guidelines

The Electrical Trades Union of Australia ('the ETU') is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty-thousand workers around the country. The ETU is a part of the CEPU¹, which represents over one hundred thousand workers nationally, placing it amongst the largest trade unions in Australia.

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea, and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

The ETU welcomes the opportunity to make a submission to the AER's consultation on the Draft Transmission Ring-Fencing Guidelines and appreciates the ongoing engagement of the AER with our Union on matters pertaining to our membership in the power industry.

The ETU has long made our position clear on ring-fencing guidelines applied to energy transmission and distribution networks in Australia, they are a costly imposition on the sector that have failed to demonstrate any capacity to deliver any real benefit to consumers. The ETU has also made clear our view that ring-fencing has served to hinder workers ability to negotiate fair pay and conditions, as well as effectively and efficiently carry out their role in maintaining the safety and operability of Australia's energy networks.

It is our view that the best way to reform these guidelines would be to abolish them in their entirety.

In the interest of maintaining a brief submission, please refer to the attached prior correspondence for additional detail on the ETU's stance with regard to ring-fencing;

1. Correspondence from the ETU to former AER CEO Michelle Groves regarding the impact of ring-fencing on workers in the power industry
2. The ETU's submission on the 2017 Draft Amended Ring-Fencing Guidelines for Electricity Distribution

¹ Being the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, a registered organisation under the Fair Work (Registered Organisations) Act 2009 (Cth).



Electrical Trades Union of Australia

Proud to be Union

19 December 2019

Michelle Groves
Chief Executive Officer
Australian Energy Regulator

By email

Dear Michelle,

AER Impacts on Workers

I am writing to you in regard to the two recent roundtable discussions convened between the ETU and AER in September and December of 2019. After a significant period whereby the ETU has effectively been sidelined from any meaningful engagement and consultation on important power industry regulatory matters, it comes as some relief that electricity industry workers representatives are finally beginning to be engaged in a more meaningful way.

Whilst the ETU welcomes the recent engagement opportunity provided by the AER, as noted above, this is long overdue and as such, there are significant matters of concern the ETU believes need to be addressed and I would urge you to consider putting some priority and resource into this work in the next 12 months as there are many areas that need attention and often the poor work practices, inefficiencies and problems our members experience in their workplaces are being blamed on decisions of the AER by employers.

A particular issue of concern is where ETU members in the power industry are regularly being told by employers that employment terms and conditions are directly determined by decisions of the AER.

I understand at a recent meeting between the AER and ETU you suggested you would be open to an exchange of letters which may go some way to clarify these matters. There are two specific areas where an exchange of letters would assist greatly in clarifying these issues;

1. AER imposing a requirement on employers to have more than one industrial instrument

On several occasions, the ETU has been advised by power industry employers that the AER requires them to move from a single certified agreement to two or more certified agreements covering different parts of their workforce. The most recent example of this was with SAPN who were claiming that ringfencing provisions meant employees of SAPN and its subsidiary's performing unregulated works could not be employed on the same industrial instrument as employees of SAPN and its subsidiary's performing regulated work.

2. AER imposing wage policies on employers with the effect of establishing caps on wage offers

The most common claim by employers during negotiations for a replacement industrial instrument is that the AER sets the wages policy of the company and the quantum pay rise offered has been determined by the regulator and the employer is unable negotiate anything else.



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In addition to the matters raised above, the ETU is deeply concerned that decisions and guidelines developed, implemented and enforced by the AER are driving poor performance and inefficiencies in the power companies. I understand at a recent meeting in Melbourne ETU representatives asked about what regulatory cost impact analysis has been conducted by the AER in relation to its ring-fencing guidelines.

I would like to formally request that the AER provide the ETU with any cost benefit analysis or regulatory cost impact analysis that has been completed associated with the introduction of ring-fencing, including;

- What financial benefit has been received by electricity consumers
- How much is it costing network companies to comply with ring-fencing
- Who is paying for those costs
- Is there any efficiency impacts of ring-fencing
- Have consumers responded favourably or negatively to ring-fencing
- What is the net outcome of ring fencing

Once again, I thank you for the AER's recent engagement with the ETU and hope that we can work collaboratively on this new approach to constructively consulting the workers representatives in the important and ongoing regulatory oversight, decisions and determinations associated with the electrical power industry.

Sincerely,

Allen Hicks
National Secretary
Electrical Trades Union of Australia



15 August 2017

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Via Email: ringfencing@aer.gov.au

Dear Mr Pattas,

Submission on the AER's Draft Amended Ring-Fencing Guidelines for Electricity Distribution

1. The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 electrical industry workers around the country and the CEPU represents over 100,000 workers nationally, making us one of the largest trade unions in Australia.
2. The ETU welcomes the opportunity to provide this submission on the AER's Draft Amended Ring-Fencing Guideline (Guideline).
3. The ETU does not dispute that the Guidelines closely adhere to the development requirements set out in Chapter 6 Part H of the National Electricity Rules. However, the ETU believes that it should be brought to the attention of the AER that these Guidelines have been interpreted to justify changes in the industrial landscape by a distribution service provider.
4. This submission provides 5 recommendations to improve the drafting of the Guidelines which pertain to;
 - a) Unintended Industrial Relations Impacts;
 - b) Disclosures;
 - c) Waivers;
 - d) Employee Consultation; and
 - e) Spot Auditing of Compliance and Performance Reporting.

Unintended Industrial Relations Impacts

5. The ETU is aware of numerous DNSP's and related electricity service providers who are claiming the Guidelines have the effect of **requiring** them to modify their industrial instruments.

6. The ETU is aware of numerous DNSP's and related electricity service providers who are claiming the Guidelines have the effect of **requiring** them to modify their industrial instruments.
7. In the electrical power industry, most DNSP's and related electricity service providers are governed by enterprise agreements which provide for common terms and conditions of employment.
8. DNSP's and related electricity service providers engaging employees under common terms and conditions of employment is not contrary to the identification and separation of regulated monopoly business activities, costs and revenues from those that are associated with providing services in a contestable market.
9. If the AER was to determine that it was, then the obvious conflict with the Modern Award system, the *Fair Work Act 2009* and the National Employment Standards would need to be resolved as a matter of urgency.
10. The ETU recommends the following clarification be inserted into the Guidelines:
4.2.2(e) For the avoidance of doubt, nothing in Clause 4.2 prevents a DNSP and a related electricity service provider from engaging staff under the same industrial terms, including staff from a DNSP and a related electricity service provider being employed under the same industrial instrument.

Disclosures

11. The ETU understands the purpose of the staff sharing requirement as an additional provision to assist in limiting the flow of information "where there is the potential for competitive disadvantage between those parts of the Distribution Network Service Provider's business which provide direct control services and parts of the provider's business which provide any other services".¹
12. The ETU recommends removing the ability at 4.2.5 of the Guideline for DNSP's to seek a waiver for obligations under clause 4.2.4.
13. Further the ETU recommends the Guideline seek that in addition to DNSP's being required to publish the information currently outlined in the Guideline, that DNSP's also be required to outline how they will actively monitor and manage their staff sharing arrangements to comply with the Guidelines.
14. This will allow consistency with obligation requirements set in clause 4.3 on information access and disclosure.

Waiver requirements

15. The ETU notes the current Guideline allows a DNSP to make applications for a waiver on 4.4.1 (a) but not 4.4.1 (b).

¹ Rule 6.17.2(b)(1)(v) National Electricity Rules, Version 94.

16. The current version of the Guideline at 4.4.1 (a) is sufficiently broad which provides some justification for the ability of DNSP's to seek a waiver in relation to agreements between DNSP's and service providers.
17. The ETU believes that with the added clarification detail at 4.4.1 (a) that particularises the specific scope of where new or varied agreements are captured by the requirement of the Guidelines, the AER should determine that this provision is no longer eligible for waiver applications.

Employee Consultation

18. The Guidelines provide for a range of circumstances which may impact employees engaged in the industry, however nothing in the Guidelines currently requires DNSP's to engage with employees in relation to Ring Fencing.
19. Both industrial relations and work health and safety laws in Australia recognise the added benefit of employee engagement in organisational decision making.
20. The ETU recommends inserting the following in clause 5.2 of the guidelines:

5.2(i) information and evidence that the DNSP has consulted with employees (and their nominated representative) about the waiver application including detailing what affect the waiver may have on employees.

Spot Auditing regarding compliance and enforcement

21. To improve the robust nature of clause 6 of the Guidelines, the ETU recommends that the capacity for random spot auditing of the DNSP compliance with the Guidelines should be embedded in the Guidelines.
22. The Guidelines only provide the onus on the DNSP to be compliant and openly disclose to the AER if there has been a material breach of its obligation under these Guidelines.
23. This recommendation can be supplementary to clause 6.4 of the Guidelines to enhance consumer confidence in the Guidelines.
24. Such arrangements recommended would further enhance transparency and confidence for consumers and make DNSP's less susceptible to non-compliance.

Conclusion

We urge the AER to take all ETU recommendations into serious consideration when finalising the amendments to the Guidelines. The absence of the five recommendations will have paramount implications on the employment terms and conditions of the ETU membership in the power industry and may garner inconsistency between the Guidelines and Chapter 6 Part H of the National Electricity Rules.