

# NECA response to AER consultation on the ring-fencing guidelines

## Introduction

This document outlines the National Electrical and Communications Association (NECA) NSW's response to the AER's review of the Ring-fencing Guidelines.

While NECA is a national organisation, the contestable works market and ASP scheme in NSW mean ring-fencing breaches have been felt most acutely by members in the state of NSW.

This submission is based on their feedback and has been informed by a workshop hosted by NECA with members and the AER. Rather than using this submission to outline specific breaches, it provides an overview of problems and focuses on recommendations for improvements.

## NECA position

The ring-fencing guidelines are ineffective and in no circumstances will they be able to prevent networks' subsidiaries gaining an unfair competitive advantage over independent electrical contractors.

Affiliates should therefore be spun out as soon as possible to compete as independent companies.

As found in the AER's first compliance report, breaches are widespread and NECA is aware from member feedback that they continue. This is distorting the market, creating an unlevel playing field and adversely affecting competition, consumers and SMEs.

The power imbalance enjoyed by networks is reflected in Ausgrid's unilateral and poorly executed Pause on Live Work, among other problems that have arisen since network affiliates were permitted to compete for contestable work.

However, NECA NSW is aware that government policy means the current system is likely to remain in place. As such, this document highlights some of the main problems with the ring-fencing guidelines and recommendations for improvements.

## Problems with the guidelines

- The electrical contracting industry in NSW does not have confidence in the guidelines.
- Penalties are currently limited and do not appear to deter breaches.
- The audit system is limited in scope and does not appear to deter breaches.
- There is a widespread view that networks and their affiliates are sharing staff, plant and equipment and office space so they can undercut independent competitors.
- The guidelines do not prevent networks using their brand, market and buying power or relationships to provide a non-financial subsidy to their affiliates.

## NECA key recommendations

1. The AER should take a proactive approach to encouraging the reporting of breaches.
  - The AER should provide a 'Breach Report' template document, which should outline specifically what it is looking for when breaches are reported.
  - This document should be shared with stakeholders each quarter to encourage reporting of breaches.
2. The AER must be seen to be taking action to maintain the confidence of the industry. NECA can help the AER facilitate this by sharing compliance reports amongst members. However, we believe financial penalties and court action will be required to make a significant difference to how independent contractors perceive ring-fencing. NECA will be proactively supporting the AER's request for powers to implement these penalties.
3. The AER must have the capacity to audit networks and affiliates and should not have to rely on external auditors appointed by the networks.
4. To ensure independence, external auditors must not be the same organisation that conducts the networks' statutory audit.
5. The Cost Allocation Method (CAM) should be consistent across all networks and affiliates. It should be published online, with the opportunity for industry to suggest improvements each year.
6. The AER should audit the charge out rates applied to the affiliate and ensure that they are the same rate published for monopoly services, published each year.
7. The AER should audit the agreements in place for the leasing of plant and equipment to ensure that they are comparable to those likely to be paid at Kennards or other similar plant and equipment hire service providers.
8. The AER should audit payment terms to ensure affiliates are not offered favourable terms by networks and vice versa.
9. NECA agrees what constitutes 'sensitive information' needs to be more clearly defined. It can easily be argued that any network employee who has access to sensitive information that could benefit an affiliate if they move between the two organisations. NECA suggests hosting a stakeholder workshop to try and find a way forward given the divergent positions.

## Main issues faced by independent electrical contracting firms

### Staff sharing

Any staff shared between a network and its affiliate clearly provides a competitive advantage that is unavailable to independent contractors. This inevitably distorts the market and the practice should be banned.

As natural monopolies, the networks cannot be free to enter new markets where they can use their size and power to unfairly disadvantage independent businesses. Whether a staff member is receptionist or CEO, access to another organisation's labour at rates that appear to be at a discount to the rest of the market clearly creates an unlevel playing field.

Accredited Service Providers have to deal and allow for variations in workload, during peak labour periods there may be a requirement to pay overtime to keep projects on time, during the troughs there may be circumstances where labour is not fully utilised, but required to be paid.

This situation is not present for the network affiliates in that they can simply access more labour during the peaks and return their labour to the networks during the troughs.

There is a widespread belief that the networks are not charging the affiliates the true cost of their labour. There is a need for transparency. The networks should publish labour rates for what they charge to undertake certain works for monopoly services.

### **Plant and equipment**

Similarly, as the AER has recognised plant and equipment is being shared between networks and their affiliates. How this is being allocated and costed is murky and it appears affiliates are being unfairly subsidised.

The market and purchasing power of a network is far greater than that of any independent electrical contracting firm meaning they can negotiate better deals with suppliers and pass these benefits onto their affiliates.

**ENDS**