



Final Determination

**Electricity Distribution:
Ring-Fencing Guidelines**

September 2000

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GLOSSARY

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| ACCC | Australian Competition and Consumer Commission |
| Associate | Has the meaning given to it under the Corporations Law |
| CEO | Chief Executive Officer |
| Code | National Electricity Code |
| DNSP | Distribution Network Service Providers |
| Gas Code | National Gas Access Code |
| GOC | Government Owned Corporation |
| Guidelines | Distribution Ring-Fencing Guidelines |
| IPART | Independent Pricing and Regulatory Tribunal, NSW |
| NCP | National Competition Policy |
| NEC | National Electricity Code |
| NECA | National Electricity Code Administrator |
| ORG | Office of the Regulator General, Victoria |
| QCA | Queensland Competition Authority |
| TNSP | Transmission Network Service provider |

1. OVERVIEW

Over the past few years, Queensland's previously integrated electricity industry has been separated into generation, transmission, distribution, and retailing functions. Competition has been progressively introduced into those elements of the industry that were considered to be suitable for contestability, for example, generation and retailing, with a view to improving efficiency and lowering prices.

One entity, Powerlink, now operates the high voltage transmission network in Queensland, while two distribution entities, Energex Ltd (Energex) and Ergon Energy Corporation Ltd (Ergon Energy), now operate all local distribution networks. These entities undertake the physical task of transmitting electricity from the generator to the end consumer. Both distribution entities in Queensland have subsidiary retailing operations.

The distribution entities are subject to economic regulation under the National Electricity Code (the Code), which appoints the Queensland Competition Authority (the QCA or the Authority) as the jurisdictional regulator for Queensland. The Code provides for the Authority to regulate distribution prices from 19 December 2000 and to prepare Distribution Ring-Fencing Guidelines (the Guidelines). With respect to these Guidelines, the Code sets out aspects of ring-fencing that may be included, matters the Authority is required to consider, and consultation requirements.

In developing these Guidelines, the Authority outlined the objectives and principles that would underpin the exercise in its July 1999 Issues Paper and December 1999 Draft Guidelines. In particular, the Authority's objective for the Guidelines is to assist in creating an environment where the price, quantity and quality of electricity traded in the retail market, and the price, quantity and quality of distribution services used to deliver the energy, are not uneconomically biased by the vertical integration of distribution and other businesses – whatever that level of integration might be. This objective is supported by principles such as minimisation of the costs and intrusiveness of the exercise to the distribution entities, cost-benefit analysis with respect to each ring-fencing requirement, evaluation of the potential for unintended consequences from ring-fencing requirements and ensuring the Guidelines are simple, clear and easy to administer.

With the above objectives and principles in mind, the Authority has considered the need for ring-fencing requirements in Queensland in light of the requirements of the Code. In particular, the Authority has considered:

- aspects of ring-fencing raised in the Code, such as legal separation, accounting separation, cost allocation, and controls over information flows;
- the matters that the Code requires consideration of, including:
 - consistency with Codes applying to other utilities such as the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code);
 - consistency with the decisions of the Australian Competition and Consumer Commission (ACCC);
 - consistency with the decisions of other jurisdictional regulators; and
 - consistency with any retailer of last resort arrangements;
- the consultation requirements under the Code;

- the definition of prescribed services which the Code requires Distribution Ring-Fencing Guidelines to be applied to; and
- a range of other issues raised in submissions to the Authority.

In accommodating these issues, the Authority has adopted an approach to ring-fencing which:

- encompasses the major aspects of ring-fencing as identified in section 6.20.2c of the Code;
- uses the ring-fencing provisions contained in the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code) as a template for ring-fencing in electricity, thereby ensuring broad consistency across energy markets;
- is largely consistent with the ACCC's approach to ring-fencing in electricity, in particular in terms of additional provisions for auditing accounts, although the Authority's approach differs in terms of:
 - the definition of a related business. The Authority has adopted a definition that is aligned with that in the Gas Code, which gives distributors the right to engage in related businesses as long as they do not relate to producing, purchasing or selling electricity, whereas the ACCC approach prohibits the regulated business from undertaking any other activities; and
 - detailed provisions for adding to or waiving ring-fencing obligations. The Authority has supported the inclusion of detailed procedural requirements in the interests of promoting transparency and certainty for market participants; and
- is likely to be consistent with the approach to be adopted by the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), pending further details of IPART's proposed ring-fencing arrangements, although it differs slightly from that currently proposed by the Victorian Office of the Regulator General (ORG) as ORG does not require legal separation or that the entity not carry on a related business.

The Authority believes there is currently insufficient evidence regarding the costs and benefits of various approaches to industry structure in terms of engendering competition. Accordingly, the Authority proposes at the present time to regard industry structure as a given and to adopt an approach to ring-fencing which would vary depending on the industry structure chosen.

It is expected that, over time, evidence will emerge as to these benefits and costs, and that the effectiveness of the current structure of the electricity industry will be able to be more clearly determined. In the interim, the Authority notes that the costs of ring-fencing are likely to be significantly higher where an integrated structure is adopted, relative to those that would be incurred under a structure which had greater structural separation. It is also the Authority's view that these additional costs should be borne by the entities being regulated.

The Authority believes that, given the current structure of the Queensland electricity industry, the approach adopted provides the best balance in ensuring effective separation between distribution and retailing businesses in order to encourage competition, while minimising the regulatory compliance burden on distribution entities.

1.1 Consultation process

The Authority's Distribution Ring-Fencing Guidelines are presented in Section 6 of this decision. In arriving at this decision the Authority:

- released an Issues Paper on ring-fencing in July 1999;
- received submissions from interested parties on that Issues Paper;
- released Draft Distribution Ring-Fencing Guidelines in December 1999;
- received submissions from interested parties on the Draft Guidelines;
- met with a number of stakeholders at various times during this process to discuss issues raised in submissions; and
- reviewed material from, and held discussion with, a number of participating jurisdictions.

As per the consultation requirements of the Code, the Authority has made this report, which contains its conclusions on ring-fencing and the reasons for reaching such conclusions, available to all Code Participants and interested parties. A list of submissions received is contained at Attachment A.

The Distribution Ring-Fencing Guidelines will become effective from 19 December 2000, the date of commencement of the Authority's regulatory role in pricing.

The Authority intends to monitor the Distribution Ring-Fencing Guidelines with a view to assessing their effectiveness and amending the Guidelines where necessary. As a consequence, the Authority intends to review its Distribution Ring-Fencing Guidelines at least once each regulatory period to ensure they are effective in achieving the Authority's objectives.

2 CURRENT ARRANGEMENTS IN QUEENSLAND

The two Queensland distribution entities (Energex and Ergon Energy) are Government owned and have legally separate subsidiary retailing operations. Legislation specifically prevents any distribution entity from holding a retail authority (section 298E of the *Electricity Regulation 1994*).

The retailing subsidiaries of the distribution entities have been created through legislation and are also owned by the Government. These entities are established as Government Owned Corporations (GOCs) under the Corporations Law and are separate legal entities from their parent distribution companies. As such, they are subject to the same public reporting and disclosure requirements as any other limited liability company. Beyond this, there are no formal legislative or regulatory requirements to separate these retailing entities from their parent entities.

Operationally, while the retailing and distribution arms of Energex have separate Boards, CEOs, management teams and offices, they share certain services such as a common call centre. In Ergon Energy's case, the day to day operations of the two arms are more integrated, with a substantial degree of overlap between staffing, including senior management.

The retailing subsidiaries of Energex and Ergon Energy were initially given exclusive franchises to retail in specified geographic areas. However, these franchises are being progressively phased out through the introduction of customer contestability, with new retailers permitted to enter the contestable elements of the market.

3. THE ROLE OF THE AUTHORITY

Queensland's distribution entities are subject to economic regulation under the National Electricity Code, which appoints the Queensland Competition Authority (the Authority) as the jurisdictional regulator for Queensland.

The Authority's responsibilities with respect to electricity are set out in the *Electricity – National Scheme (Queensland) Act 1997*, which commenced on 22 May 1997 and gives effect to the National Electricity Code. The Code sets out the objectives for the National Electricity Market, and in particular promotes “a regime of light-handed regulation of the market to achieve the market objectives”. The Code provides for the Authority to regulate distribution prices from 19 December 2000 and to prepare Distribution Ring-Fencing Guidelines. The Authority also has responsibilities under the *Electricity Act 1994*, which provides that the Authority may prepare and enforce conduct rules, and requires the Authority to monitor standards of service quality should such standards be issued by the Minister for Mines and Energy.

Chapter 6 Part G of the Code states that Distribution Ring-Fencing Guidelines must be developed by each Jurisdictional Regulator. In particular, the Authority's task is defined by the following statements in the Code:

- all transmission and distribution network service providers must comply with the relevant Ring-Fencing Guidelines (6.20.1). Any breach of these requirements may be reported to the National Electricity Code Administrator (NECA), with potential civil penalties where a breach is determined to have occurred;
- Transmission Ring-Fencing Guidelines, for the accounting and functional separation of prescribed services (those determined by the regulator not to be contestable) provided by transmission service providers, must be prepared by the ACCC in consultation with other Jurisdictional Regulators (such as the Authority) (6.20.2a);
- Distribution Ring-Fencing Guidelines, for the accounting and functional separation of prescribed services (those determined by the regulator as being subject to regulation) provided by distribution service providers, must be prepared by each Jurisdictional Regulator in consultation with the ACCC and other Jurisdictional Regulators (6.20.2b);
- these Guidelines may include, but are not limited to, provisions for (6.20.2c):
 - legal separation of a network services entity from any other entity through which it conducts business;
 - the establishment and maintenance of consolidated and separate accounts for prescribed services and other services provided by network service providers;
 - allocation of costs between prescribed services and other services provided by network service providers;
 - limitations on the flow of information between network service providers and any other person;
 - limitations on the flow of information where there is the potential for a competitive disadvantage; and
 - the relevant regulator to add to or waive a network service provider's obligations under the Guidelines;

- in developing Ring-Fencing Guidelines, the ACCC and Jurisdictional Regulators are to consider, but are not limited to, the following matters (6.20.2d):
 - the need for consistency in Distribution Ring-Fencing Guidelines between participating jurisdictions;
 - the need for consistency with Federal and State regulation in each participating jurisdiction of ring-fencing requirements for other utilities;
 - the need for consistency between Transmission and Distribution Ring-Fencing Guidelines; and
 - the need for Distribution Ring-Fencing Guidelines to be consistent with the arrangements for the retailer of last resort for that jurisdiction;
- in developing Ring-Fencing Guidelines, the ACCC and each Jurisdictional Regulator must consult with participating jurisdictions, Code participants and other interested parties (6.20.2e); and
- for the purposes of this part of the Code, the Queensland Competition Authority is the Jurisdictional Regulator for the State of Queensland (6.20.3e).

4. OBJECTIVES AND PRINCIPLES

In opening up the retailing market to greater competition, it is important that the separation of prescribed services (the monopoly distribution function) from non-prescribed or excluded services (other, contestable functions) is effective. This will provide two main benefits:

- i. new players in the contestable elements of the market (particularly retailing) will be able to compete on a fair and equal basis, without fear of vertically integrated incumbents being able to gain a competitive advantage, thereby creating confidence in the integrity of the market. Greater competition in the retail market will ensure the benefits of greater efficiencies, in the form of price reductions or better service, are passed on to customers. In addition, increased competition will create greater pressure in wholesale markets as retailers compete to secure lower energy prices. In stipulating the rules for separation, ring-fencing is therefore critical to the development of the retail market; and
- ii. the monopoly elements of the market (prescribed services), which will be subject to economic regulation, will be clearly defined. In particular, costs that belong to these monopoly activities will be separated from costs that relate to contestable activities, ensuring there are no distortions in terms of under-recovery of costs in competitive markets. In addition, this will distinguish between non-contestable and potentially contestable functions within the distribution entity, providing the opportunity to develop contestable markets for a range of functions that are currently provided by the (monopoly) entity, for example, meter installation.

Taking these factors into account, the Authority's objective in preparing Distribution Ring-Fencing Guidelines is to assist in creating an environment where the price, quantity and quality of electricity traded in the retail market, and the price, quantity and quality of distribution services used to deliver the energy, are not biased as a result of the vertical integration of distribution and other businesses – irrespective of the degree of integration.

While ring-fencing can provide benefits in terms of removing potential barriers to competition, it also imposes costs. In particular, it constrains the commercial behaviour of a firm by requiring particular forms of conduct. As such, it is an inherently intrusive activity. Monitoring compliance with ring-fencing arrangements will mean the regulator will require ongoing information about the operations of the business. In summary, the greater the upfront requirements for formal separation of activities, the lower the ongoing intrusiveness of regulation is likely to be. For example, complete ownership separation would not require ring-fencing monitoring once implemented.

As a consequence, in developing the Distribution Ring-Fencing Guidelines, the Authority has been cognisant of the potential for upfront costs and disruption to the business, as well as the ongoing intrusiveness of compliance requirements and the need to weigh up these impacts in determining which ring-fencing requirements should be adopted.

Finally, the Authority has reviewed the Guidelines to ensure they are as simple, clear and easy to administer as possible.

5. ASPECTS OF RING-FENCING RAISED IN THE CODE

In preparing these Distribution Ring-Fencing Guidelines, the Authority has considered each aspect of ring-fencing raised in sections 6.20.2c and 6.20.2d of the Code.

5.1 Legal separation

The need for legal separation

Legal separation requires the monopoly and contestable functions to be separately located in legal entities under the Corporations Law. This requirement still permits monopoly and contestable businesses to be both owned by a holding company, or contestable businesses to be subsidiaries of the monopoly business. While legal separation can therefore provide a basis for separation of contestable and non-contestable functions, where common ownership is retained it is unlikely to prevent entities from collaborating in a manner which provides the incumbent retailer with the ability to exercise a competitive advantage over new entrants in the retailing market.

In the absence of ownership separation (which, for example, is compulsory in New Zealand), legal separation allows the regulator to more clearly identify the services and assets associated with monopoly and contestable functions. It also requires the monopoly and contestable businesses to enter into more formal contractual and reporting arrangements and, as a consequence, requires the businesses to better identify their respective roles. Specifically, the relationship between the monopoly and contestable businesses would become more transparent, with the benefit of less ongoing regulatory intervention. In this regard, legal separation reduces the requirement for more prescriptive ring-fencing arrangements and therefore the associated costs.

In response to its Draft Guidelines, the Authority received a number of submissions which generally supported the principle of legal separation.

One submission went further and called for complete ownership separation, primarily on the grounds that this would absolutely eliminate the financial incentive to act in a manner that could distort competition. While noting the support for ownership separation from some market participants, the Authority recognises that there are also arguments against such ownership separation, particularly in light of the absence of even legal separation to date in other jurisdictions. Over time, evidence may emerge as to the benefits and costs of different industry structures, and the effectiveness of the current structure of the electricity industry will then be able to be more clearly determined. In the meantime, such structural options, along with alternatives such as transferring retail subsidiaries to generating entities, are matters for consideration by Government. At the present time, the Authority will regard industry structure as a given and has developed its Distribution Ring-Fencing Guidelines accordingly.

One submission commented that common Board members may create substantial conflicts of interest regarding Directors' duties in relation to retail and distribution entities. Rather than solely relying on protocols for information sharing, the Authority considers that such concerns need to be considered by the Government in terms of decisions regarding Board appointments. In addition, Board members themselves may need to review their participation on related Boards to ensure that their fiduciary responsibilities are not compromised. The Authority recognises that Board appointments are beyond management's control.

The distribution entities argued that as legal separation is already in place in Queensland, the requirements of the Corporations Law, the *Trade Practices Act 1974* and the *Government Owned Enterprises Act 1993* provide adequate separation of distribution and retailing functions, and that further ring-fencing requirements are unnecessary. They also expressed concern that

the Authority had placed too much reliance on the possibility of legal separation being introduced in other States.

The Authority has considered this issue in some detail, and notes that its approach is largely consistent with that of the ACCC, the only other regulator to issue detailed ring-fencing requirements. Discussions with other regulators also indicates that both the NSW and Victorian regulators expect to move towards a similar regulatory model over the near term.

The Authority remains firmly of the view that, as long as common ownership remains, incentives or opportunities to share information and costs will continue to exist.

As the Authority is of the view that the matter of industry structure is to be taken as given until such time as there is evidence as to the effectiveness of different industry structures, it has prepared the Distribution Ring-Fencing Guidelines to be consistent with this existing situation. Accordingly, the Authority has confirmed legal separation in the Distribution Ring-Fencing Guidelines. In the event that a change in the structure of the industry in terms of these separation requirements is contemplated, the Authority will revisit the Guidelines to ensure that they remain appropriate to the circumstances of the industry.

Definition of a related business

Legal separation prohibits the regulated entity from carrying on a ‘related business’. The Gas Code defines a related business as:

“... the business of producing, purchasing or selling natural gas, but does not include purchasing or selling of natural gas to the extent necessary (a) for the safe and reliable operation of the pipeline; or (b) to enable a service provider to provide balancing services in connection with a covered pipeline.”

This effectively prevents the regulated business from entering the retail market, but does not prevent it from engaging in activities which are related to the regulated business, but which are not necessarily regulated activities. For example, metering may still be undertaken by the regulated business, even though it may be defined as a contestable activity.

In contrast, the ACCC defines a related business as being:

“... any activity other than the provision of prescribed services.”

The ACCC’s definition is much narrower, effectively precluding a transmission network service provider from undertaking any activities other than those deemed by the regulator to be uncontestable or prescribed services.

In previous submissions to the Authority, it was noted that the provision of multiple services (including contestable and non-contestable services) through a single entity was often essential in terms of economies of scale. In response to the Draft Guidelines, Ergon Energy also submitted that any prohibition on it carrying on a related business could cause problems if, as a result, it was prevented from operating isolated generators in remote areas in Queensland. The Authority acknowledges this concern, and has amended the Draft Guidelines to ensure that the prohibition does not relate to carrying on a related business via a separate legal entity.

The Authority is of the view that the ACCC definition (if applied at the distribution level) would be overly prescriptive in preventing the regulated entity from undertaking activities that may be economically efficient for it to provide, even though these may not be monopoly activities. It therefore proposes to adopt a definition of related business more along the lines of the Gas Code, namely “producing, purchasing or selling electricity”. However, the proposed requirements relating to accounting separation will require that contestable activities are

reported separately to the regulated aspects of the business which form the basis of the regulated tariff.

5.2 Accounting separation

Accounting requirements

Given that legal separation is in place, there are already requirements for separate accounting and reporting by distribution and retail entities, and this information is publicly available.

The Authority has therefore included in the Distribution Ring-Fencing Guidelines provisions to formalise existing accounting arrangements as currently required under the Corporations Law, in addition to the following requirements:

- the distributor must maintain a separate set of accounts in respect of prescribed distribution services, as well as a separate set of accounts in respect of any other services provided; and
- compliance reports are to be provided to the Authority.

Submissions received in response to the Authority's Draft Guidelines supported these proposals.

Auditing requirements

In terms of compliance with the accounting provisions of its ring-fencing requirements, the ACCC has an additional clause which may require, upon reasonable notice, a transmission network service provider (TNSP) to appoint an independent auditor approved by the ACCC to report on such matters as specified by the ACCC, and provide a copy of the auditor's report to the ACCC. If the ACCC nominates auditing standards, the auditor must report in accordance with those standards. For the purposes of this clause, the ACCC may publish auditing guidelines with which a TNSP must comply. Victoria has a similar provision, although the focus of their ring-fencing arrangements is very much on accounting, as legal separation is not required.

Ergon Energy was of the view that this requirement was reasonable, while Energex did not support any requirements in addition to those imposed by the Corporations Law, the *Trade Practices Act 1974* and the *Government Owned Corporations Act 1993*.

While the inclusion of a provision relating to auditing along the lines proposed by the ACCC would invoke additional costs for distribution entities, it would allow the Authority the option of independent auditing expertise where deemed necessary. The Authority has therefore included an additional provision in the Distribution Ring-Fencing Guidelines relating to auditing, to be imposed should the Authority deem it necessary, along the lines of that proposed by the ACCC.

5.3 Cost allocation

Cost allocation issues arise when costs cannot be allocated precisely and unambiguously to particular customers or services. In particular, costs may jointly relate to the operation of contestable and non-contestable activities, such as network and metering activities within the distribution entity, or between distribution and retail businesses. In such circumstances, the potential exists for costs that correctly belong to the contestable business to be allocated to the regulated distribution business, creating a competitive advantage for the contestable activity. An appropriate cost allocation methodology is therefore critical to effective ring-fencing.

As a starting point, the Authority believes that there should be no cross subsidy between prescribed and non-prescribed services. A cross subsidy exists where, for any costs that are jointly incurred by the distribution and retailing entities, the cost allocated to one entity is less than the additional (or incremental) cost incurred in providing that service, and the costs allocated to another entity are greater than the stand alone cost of its supply. The Distribution Ring-Fencing Guidelines therefore contain a provision that prohibits cross subsidisation between prescribed services and any other services.

Notwithstanding the prohibition of cross subsidies, cost allocation will still need to be undertaken in a manner that the Authority considers is fair and reasonable (as is also required under the Gas Code). In addition, the Gas Code states that where the regulator requires that a different method be used to determine cost allocation to that proposed by the service provider, the regulator must provide a detailed explanation of the method it requires.

Given the legal separation requirement in place between distribution and retail entities, costs should already be allocated in some manner to arrive at the required accounts for the separate businesses. The Authority therefore supports an approach to cost allocation which allows distributors to put forward their cost allocation methods to the Authority for approval, rather than prescribing how costs must be allocated. Current methods will then be assessed in the context of the objectives of the National Electricity Code and to ensure their effectiveness in meeting the Authority's ring-fencing objectives, thereby promoting competition in related markets. The Authority will consider the need for more detailed cost allocation guidelines in light of this analysis.

Submissions received on the Draft Guidelines were generally supportive of the requirement for the Authority to approve cost allocation methods. However, it was questioned by at least one party whether such approvals were necessary given that legal separation has been in place for several years. In the Authority's view, while existing methods may well be robust in terms of meeting the requirements of the Corporations Law, it does not necessarily mean they will satisfy the Authority's requirements.

5.4 Limitations on information flows

With respect to ring-fencing, limitations on information flows involve imposing controls on the sharing of information between related businesses in order to minimise any potential competitive advantages that the regulated business can provide to any related businesses. Alternatively, requirements to publish certain information, or make information available to all retailers or related contestable businesses on an equal basis, may be used.

For example, customer information held by the distribution entity will include the customer consumption patterns of competing retailers. Such information should be treated in a confidential manner by distribution entities, unless there is a legitimate commercial need for such information to be disclosed. In such circumstances, information should be made publicly available and therefore accessible on the same basis to all retailers.

While information is one of the critical ways by which retailers may gain a competitive advantage, ring-fencing with respect to information flows is very difficult to implement and monitor. Previous submissions to the Authority from the distributors noted that there are some shared facilities between distribution and retail businesses that make use of common information, such as customer service centres.

In response to the Authority's Draft Guidelines, the distribution businesses submitted that there is no inappropriate exchange of information regarding the ability of networks to switch loads, and customer information is already available to all retailers.

However, the Authority considers that more stringent ring-fencing requirements may be warranted in relation to:

- sharing of marketing staff; and
- establishing protocols for information sharing.

Common staff

The Gas Code and the ACCC require that there be no common marketing staff between a regulated entity and an Associate. The ACCC further requires that any staff that move between a regulated entity and an Associate must be notified to the ACCC. Under the provisions for additional ring-fencing requirements, the ACCC also retains the right to require that any staff may not work for both a regulated entity and an Associate.

In response to the Authority's Draft Guidelines, the DNSPs submitted that the prohibition of common marketing staff is unwarranted, citing strong synergies in areas such as call centres for fault information and contact information, which may be construed as marketing. They also objected to the requirement that the Authority be notified if there are to be common employees between a retail and distribution business.

The Authority supports the inclusion of requirements that prevent the use of common marketing staff between a distributor and an Associate (such as a retailer), in accordance with the provisions of the Gas Code. The Authority also supports the provisions in the ACCC's ring-fencing arrangements in relation to notification of the movement of staff. These provisions give the Authority the flexibility to assess the potential for conflicts to arise when staff work for both a distributor and a retailer, and to require staff to work for only one or the other where such a conflict is perceived to arise.

The Authority has therefore opted to include a requirement that marketing staff do not work for both the distribution and retailing businesses in its Distribution Ring-Fencing Guidelines. However, where there are arguments for doing so, the guidelines permit the use of common staff in non-marketing activities while ensuring the Authority is aware of such an arrangement.

Information sharing

Ring-fencing requirements with respect to sharing of information are considered necessary to provide clear separation of responsibilities between the legally separate entities, and remove the potential for unintended sharing of information both at an operational level, and in terms of managerial decision making.

The Authority has therefore opted to include ring-fencing arrangements to this effect. In particular, the Distribution Ring-Fencing Guidelines require that:

- the distributor must ensure that all confidential information provided by a customer or prospective customer is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the customer or prospective customer who provided it;
- a DNSP must not provide distribution network access to a related business on terms more favourable than those it provides to a competing retailer. For example, information regarding load management is to be made equally available to all retailers in the market; and

- the Authority may introduce requirements regarding the security measures employed to control the flow of information between the distributor and the retailer.

One submission questioned whether the Draft Guidelines adequately addressed control of information flows and suggested that the Guidelines be enhanced through formalisation of a ‘Chinese wall’ policy. The Authority agrees with the view that such a policy could be drafted by the DNSPs for approval by the Authority, covering issues such as staff interchange, staff locations and customer information. In response, the Draft Guidelines have been amended to enable each DNSP to put forward information sharing protocols for approval by the Authority which would take precedence over the requirements spelled out in the Guidelines.

5.5 Adding to or waiving ring-fencing obligations

Criteria

The ACCC’s ring-fencing requirements and the Gas Code both contain provisions relating to the criteria that should be applied when determining if additional ring-fencing requirements should be imposed, or when particular ring-fencing provisions should be waived. When deciding whether to approve including additional ring-fencing requirements, the ACCC has relied solely on the criterion of weighing up the costs of their imposition against the public benefit, rather than the provisions outlined in the Gas Code, which in summary include:

- ensuring the service provider does not have regard to the interests of an Associate in priority to the interests of other customers or prospective customers; and
- ensuring that ring-fencing obligations do not impose unreasonable compliance costs on the service provider or its Associates.

The ACCC’s public benefit requirement would appear to encompass the more specific issues raised in the Gas Code, and requires that there be net benefits in imposing additional regulatory requirements. In this regard, the ACCC approach is supported.

Similarly, the ACCC’s provisions relating to the waiving of ring-fencing obligations rely on weighing up the costs of their imposition against the public benefit. This differs from the provisions of the Gas Code, which in summary include:

- the requirement not to carry on a related business may be waived where the administrative costs to the service provider and its Associates of complying with the obligation outweigh any public benefit arising from the distribution entity meeting the obligation, taking into account arrangements put in place by the distribution entity (if any) to ensure that confidential information is not disclosed;
- the requirement not to carry on a related business may be waived where an arrangement has been established between the service provider and the relevant regulator which requires the relevant regulator to approve an Associate Contract prior to the service provider entering into such a contract with an Associate; and
- the requirements relating to marketing staff working for both the service provider and an Associate (sections 4.1h and 4.1i in the Gas Code) may be waived where the relevant regulator is satisfied that the administrative costs to the service provider and its Associates of complying with that obligation outweigh any public benefit arising from the service provider meeting the obligation.

In this instance, the Gas Code provisions are more limited than the proposed ACCC approach as, under the Gas Code, only certain provisions (relating to undertaking a related business and

the use of marketing staff by the distribution entity and an Associate) can be waived. Again, the ACCC approach is simpler, clearer, and can be applied to any of the ring-fencing provisions provided a net benefit can be demonstrated. For these reasons, the ACCC approach to waiving ring-fencing obligations is supported.

Procedures

The ACCC does not have any detailed requirements in its ring-fencing arrangements regarding the actual process of adding to or waiving such obligations. The Gas Code, in contrast, requires the regulator to:

- inform interested parties it is considering additional ring-fencing requirements or considering waiving particular ring-fencing requirements;
- publish newspaper notices requesting submissions on the proposal;
- consider these submissions;
- issue a draft decision and provide copies of this decision to the service provider and those who made submissions;
- request submissions on the draft decision;
- consider these submissions; and
- issue a final decision, to have effect within 14 days.

The Authority notes the specific requirement in the Code for the regulator to consider the inclusion of such provisions, and believes transparency and certainty of the process for altering, adding to or waiving ring-fencing obligations would be enhanced by including detailed procedures in the Guidelines.

While the Authority supports the inclusion of detailed procedural requirements in the interests of promoting transparency and certainty for market participants, it has concerns regarding the timing requirements of the Gas Code, which require a draft decision to be issued within 14 days after the close of submissions and a final decision to be issued 21 days after the last day for submissions on the draft decision. The Authority considers this timeframe is too short to give such matters appropriate consideration. In its Draft Guidelines, the Authority proposed a timeframe of 30 days. After further consideration, the Authority is of the view that this should be further extended to a period of 60 days.

The Authority therefore supports the inclusion of detailed procedural requirements for amending, adding to, or waiving ring-fencing obligations along the lines of the Gas Code, but proposes to extend the timeframe for issuing draft and final decisions to within 60 days of the close of submissions.

Accordingly, the Guidelines require that:

- the Authority must provide a notice to the distribution entity requiring it to comply with additional or amended ring-fencing provisions;
- the Authority is required to inform all interested parties prior to issuing such a notice, including by publication in a national daily newspaper requesting submissions on the proposed changes;

- the Authority must issue a draft decision within 60 days of the last day for submissions, providing a copy of the draft decision to the distributor and anyone making a submission; and
- further submissions must then be requested and considered before a final decision is issued within 60 days of the last day for submissions on the draft decision.

Similar provisions apply for the waiving of ring-fencing obligations. Submissions generally supported a system where specific exemptions from the Guidelines can be sought. The Authority considers that these procedures would allow the DNSPs to make representations where particular requirements are costly or unworkable given particular circumstances. If benefits to consumers can be demonstrated from allowing activities that would otherwise be prohibited by the Guidelines, an exemption may be granted. However, the onus of proof is on the entities to show that this is the case.

5.6 Consistency with other ring fencing arrangements

The National Electricity Code requires that consistency with the ring fencing arrangements in other utilities and in other jurisdictions be considered.

Consistency with the ring fencing arrangements of other utilities

Given the emergence of integrated energy utilities, the Authority particularly considered the provisions of the Gas Code that relate to ring-fencing.

Submissions received by the Authority were broadly supportive of the concept of consistency between energy markets and across jurisdictions, although some expressed doubt that this was possible in practice, at least in the short term.

In its Draft Guidelines, the Authority noted that using the Gas Code ring-fencing arrangements as a template for electricity had several advantages, namely:

- it contained provisions relating to all matters to be considered for inclusion in the Distribution Ring-Fencing Guidelines as outlined in section 6.20.2c of the National Electricity Code;
- it would assist in achieving consistency between the electricity and gas sectors, as required under section 6.20.2d of the National Electricity Code;
- it would assist in achieving consistency between federal and state regulation, also required under section 6.20.2d of the National Electricity Code, given the ACCC has applied most of the Gas Code ring-fencing provisions; and
- in many respects it formalised the current ring-fencing arrangements in place in Queensland while also requiring separate reporting to the Authority, and therefore should not be particularly onerous in terms of compliance.

While supporting consistency with other jurisdictions as a goal, the distribution businesses questioned whether consistency with regulation of other utilities, and in particular adoption of the Gas Code as a template, was necessarily appropriate. It was suggested that other utilities, such as rail or telecommunications, could equally be used as a model, and that use of the Gas Code would only be appropriate if it was universally applied across jurisdictions and utilities.

The Authority elected to focus on the ring-fencing provisions relating to gas utilities as these were most directly relevant, being considered part of the overall energy market, and in

particular, given Energex also owns a gas distribution business. No other submissions raised concerns with this approach.

The Authority has therefore adopted the Gas Code ring-fencing provisions as the basis for the development of Distribution Ring-Fencing Guidelines.

Consistency with transmission ring fencing arrangements

The Code raises the need for consistency between Transmission and Distribution Ring-Fencing Guidelines. In addressing this issue, the Authority has liaised with the ACCC on the issue of ring-fencing in electricity.

While New South Wales and Victoria have had general ring-fencing provisions in place in terms of accounting and licensing requirements for some time, the ACCC was the first regulator to address the ring-fencing requirements of the National Electricity Code in detail, as outlined in their Draft Statement of Principles for the Regulation of Transmission Revenues. The ring-fencing provisions adopted by the ACCC largely mirror those of the Gas Code, with a number of key differences which relate to the definition of a related business, and procedures for adding to or waiving ring-fencing obligations, as outlined earlier.

Consistency with the distribution ring fencing arrangements of other jurisdictional regulators

The Code raises the need for consistency in Distribution Ring-Fencing Guidelines between participating jurisdictions. In meeting this requirement, the Authority has held discussions with the Independent Pricing and Regulatory Tribunal in NSW, the Office of the Regulator General in Victoria, the Independent Pricing and Regulatory Commission in the ACT, and the South Australian Electricity Reform and Sales Unit.

IPART, in its June 1999 report on Pricing for Electricity Networks and Retail Supply, noted its support for the work done by the ACCC on ring-fencing guidelines, but believed it required further refinement. In particular, the Tribunal has stated it would like to see:

- the setting of clear cost allocation rules;
- the inclusion of strong non-discrimination rules to ensure that a distributor's dealings with a related retailer are consistent with its dealings with other retailers; and
- the tightening of requirements relating to the disclosure of confidential information.

The Tribunal therefore supported further development of ring-fencing guidelines, including through consultation with stakeholders. Concurrently, the Tribunal proposed to review the current Accounting Separation Code that applies to electricity entities in NSW.

According to ORG's June 1999 Electricity Industry Guideline No. 3: Regulatory Information Requirements:

- clauses in distribution licences require that the licensee must ensure that separate accounts are prepared for each electricity business in accordance with Guidelines set by the Office, and in the manner and form decided by the Office;
- there are broad processes in place for revision of these arrangements;
- there is a strong focus on regulatory accounting statements and their content, including information on issues such as operating and maintenance costs, executive remuneration,

depreciation, asset valuation, interest and dividends, customer contributions, and inflation adjustments; and

- there are also requirements for procurement of an audit opinion.

However, the requirements of the Gas Code are largely absent, particularly in terms of any requirement for legal separation and the stipulation that a regulated business cannot carry on a related business.

The Australian Capital Territory Independent Pricing and Regulatory Commission released a final pricing determination in electricity distribution in May 1999. This determination does not address the ring-fencing issues as outlined in section 6.20 of the National Electricity Code.

In South Australia, regulatory arrangements are being amended in light of the recent decision of the South Australian Government to enter into long term leasing arrangements for its electricity entities. Currently, there is legal separation of distribution and retailing functions, with these entities both controlled by a single holding company structure. South Australia's *Electricity Act 1996* (as amended) requires the business of the operation of the distribution network to be kept separate from any other business of the entity, but there are no other formal ring-fencing requirements in place (although these are under active consideration as part of the leasing process). Cross ownership restrictions will apply to the long term lease arrangements, although the only arrangements that relate to distribution and retailing entities provide that neither distributors nor retailers are able to hold generation licences.

General

In response to the Draft Guidelines, the distributors submitted that the QCA's proposed approach imposed more stringent ring-fencing requirements than those of other jurisdictions. It was also noted that there are a number of existing institutional requirements in place that restrict their commercial operation, for example, Statements of Corporate Intent, reporting requirements under the GOC Act, and requirements in the GOC Act regarding restructuring or transfer of assets.

While the distributors may be subject to a range of other controls and reporting requirements, this does not negate the need for appropriate ring-fencing requirements to be put in place. The Authority's proposed approach is largely consistent with that of the ACCC, the only other regulator to issue detailed ring-fencing requirements. Consistency with other jurisdictional regulators will be further clarified with the release of IPART's ring-fencing provisions.

5.7 Consistency with retailer of last resort arrangements

The Code requires consideration of the need for Distribution Ring-Fencing Guidelines to be consistent with arrangements for the retailer of last resort for any given jurisdiction. There are no current arrangements of this nature in Queensland, although provisions exist under the *Electricity Act 1994* for a regulation to be made establishing a retailer of last resort.

5.8 Other issues raised in submissions on the Draft Guidelines

Marketing costs

The distribution businesses did not support the view in the Draft Guidelines that all marketing costs should be allocated to the retail business. Marketing can occur for a range of reasons relevant to the network business, including safety and the appropriate use of electricity to manage demand.

While not formally part of the Guidelines, the Authority indicated in its Draft Guidelines paper that it was of the view that marketing costs should be allocated to the retail side of the business. The cost allocation processes of each entity are proposed to be addressed in due course. Nevertheless, it appears that some small proportion of marketing costs may legitimately be allocated to the network business.

Branding

Several submissions received by the Authority raised common branding (the use of a common name for both the distribution and retailing businesses) as a potential barrier to retail competition, in particular as it carries the perception of greater security and creates greater potential for cost sharing, for example, with respect to advertising.

The Authority notes that other jurisdictions allow retail and distribution functions to co-exist within a single legal entity. Given this, the Authority is of the view that the issue of separate branding of retail and distribution entities in Queensland should not be actively pursued at this time.

However, the Authority intends to pay particular attention to issues of cost sharing and cost allocation between retailers and distributors in ensuring compliance with the Guidelines. The Authority will revisit the issue of branding in the future if current arrangements are shown to be a significant barrier to competition.

In addition, the Authority has the capacity to introduce conduct rules to address concerns at the retail level such as ensuring the advice given to customers to induce them to change retailer is accurate. In determining the need for such rules, the Authority will address a range of issues related to matters such as information requirements necessary to ensure that customers are not misled regarding quality of supply being maintained irrespective of the retailer selected.

6. DISTRIBUTION RING-FENCING GUIDELINES

These Distribution Ring-Fencing Guidelines (Guidelines) will apply to all Distribution Network Service Providers located in Queensland.

The Guidelines have been prepared on the basis that legal separation is already in place between Queensland distribution and retail entities, and that this requirement is material in defining the structure of the electricity industry. In the event that a change in the structure of the industry in terms of these separation requirements is contemplated, the Authority will revisit the Guidelines to ensure that they remain appropriate to the circumstances.

Ring-fencing minimum obligations

1. A Distribution Network Service Provider (DNSP) that provides prescribed distribution services in Queensland must:
 - (a) be a legal entity incorporated pursuant to the Corporations Law, or a statutory corporation, or a government or an entity established by royal charter;
 - (b) not carry on a related business within that legal entity;
 - (c) establish and maintain a separate set of accounts in respect of the prescribed distribution services;
 - (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the DNSP, including establishing and maintaining a separate set of accounts in respect of excluded services provided by the DNSP;
 - (e) allocate any costs that are shared between an activity that is covered by a set of accounts described in (c) and any other activity, including any activity performed by another entity, in a manner that ensures there is no cross subsidy, and according to a methodology for allocating costs that is approved by the QCA, is generally consistent with the objectives of the National Electricity Code and is otherwise fair and reasonable;
 - (f) ensure that all confidential information provided by a customer or prospective customer is used only for the purpose for which that information was provided and that such information is not disclosed to any employee, consultant, independent contractor or agent of an Associate or any other person without the approval of the customer or prospective customer who provided it, except:
 - (i) if the confidential information comes into the public domain otherwise than by disclosure by the DNSP; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised stock exchange;
 - (g) ensure that all confidential information obtained by the DNSP or by its employees, consultants, independent contractors or agents in the course of conducting its business and which might reasonably be expected to affect materially the commercial interests of a customer or prospective customer is not disclosed to any employee, consultant, independent contractor or agent of an Associate or any other person without the approval of the customer or prospective customer to whom that information pertains, except:

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- (i) if the confidential information comes into the public domain otherwise than by disclosure by the DNSP; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised stock exchange;
- (h) not provide distribution network access to a related business on more favourable terms than those it provides to any other customer or Code participant; and
- (i) ensure that its marketing staff are not also staff of an Associate that takes part in a related business and, in the event that they become or are found to be involved in a related business contrary to this section, must ensure their immediate removal from its marketing staff.
2. In complying with 1 (c), (d) and (e), a DNSP must:
- (a) if the QCA has published general accounting guidelines for DNSPs which apply to the accounts being prepared, comply with those guidelines; or
 - (b) if the QCA has not published such guidelines, comply with guidelines prepared by the DNSP and approved by the QCA or, if there are no such guidelines, comply with such guidelines (if any) as the QCA advises the DNSP apply to that DNSP from time to time.

Such guidelines may, among other things, require the accounts to contain sufficient information, and to be presented in such a manner, as would enable the verification by the QCA of the calculation of distribution use of system charges.

3. An entity that provides prescribed distribution services must notify the QCA if:
- (a) any of its employees, consultants, independent contractors or agents past (within 6 months) or present are, or will be, employees, consultants, independent contractors or agents of an Associate that takes part in a related business; or
 - (b) any employees, consultants, independent contractors or agents past (within 6 months) or present of an Associate that takes part in a related business will be employees, consultants, independent contractors or agents of itself.
4. A notification under section 3 must be provided to the QCA:
- (a) (i) five business days prior to the date on which the employee, consultant, independent contractor or agent of the entity that provides prescribed distribution services will be an employee, consultant, independent contractor or agent of an Associate that takes part in a related business; or
 - (ii) in the case of a past employee, consultant, independent contractor or agent of the entity that provides prescribed distribution services, as soon as that entity becomes aware that a past employee, consultant, independent contractor or agent of it has become an employee consultant, independent contractor or agent of an Associate that takes part in a related business; or
- (b) five business days prior to the date on which the employee, consultant, independent contractor or agent, past (within six months) or present, of the Associate that takes

part in a related business will be an employee, consultant, independent contractor or agent of the entity that provides prescribed distribution services.

5. A DNSP is exempt from complying with sections 1(g) and 1(i), 3 and 4 if the arrangements under which:
 - (a) the DNSP shares an employee, consultant, independent contractor or agent with an Associate that takes part in a related business; or
 - (b) confidential or commercially-sensitive information obtained by the DNSP is disclosed to its employees, consultants, independent contractors or agents or to any employee, consultant, independent contractor or agent of an Associate;

is consistent with protocols (“Chinese wall protocols”) prepared by the DNSP and approved by the QCA in writing.

Adding to or amending ring-fencing obligations

6. The QCA may by notice to a DNSP require the DNSP to comply with obligations in addition to the minimum obligations outlined in section 1 above (including temporary obligations), or add to or amend these Distribution Ring-Fencing Guidelines. The QCA may add to or amend the Distribution Ring-Fencing Guidelines provided that it is satisfied the DNSP cannot demonstrate that the administrative cost to the DNSP and its Associates of complying with the additional or altered obligations is, or is likely to, outweigh the benefit to the public. The DNSP must comply with any additional obligations imposed under this section 6.
7. Without limiting the additional obligations that may be imposed under section 6, the QCA may require that:
 - (a) the DNSP ensure its additional staff are not employees, consultants, independent contractors or agents of an Associate that carries on a related business and, in the event that they become or are found to be involved in a related business, ensure their immediate removal from the additional staff; and
 - (b) the electronic, physical and procedural security measures employed in respect of the offices of the DNSP and of all offices of its Associates are satisfactory to the QCA.

The examples given in this section 7 shall not be construed as limiting the types of action a DNSP may have to take in order to comply with section 1.

Procedures for adding to or amending ring-fencing obligations

8. The QCA must, before issuing a notice under the provisions for adding to or amending ring-fencing obligations, inform each person known to the QCA who the QCA believes has a sufficient interest in the matter that it is considering issuing a notice under section 6 with respect to a particular DNSP, by publishing a notice in a national daily newspaper which at least:
 - (a) states who the DNSP concerned is and the obligations the QCA is considering adding; and
 - (b) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).

The QCA will also give a copy of any notice published in a national daily newspaper in accordance with this section 8 to the DNSP to which the notice relates.

9. The QCA must consider any submissions received by the date specified in the notice published under 8(b) and may (but is not obliged to) consider any submissions received after that date.
10. Within 60 days after the last day for submissions specified in the notice published under 8(b), the QCA must issue a draft decision stating whether or not it intends to issue a notice under section 6.
11. The QCA must:
 - (a) provide a copy of its draft decision to the DNSP, any person who made a submission on the matter and any other person who requests a copy; and
 - (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).
12. The QCA must consider any submissions it receives by the date specified by the QCA under section 11 and it may (but is not obliged to) consider any submissions received after that date.
13. Within 60 days after the last day for submissions on the draft decision specified by the QCA, the QCA must issue a final decision stating whether or not it will issue a notice under section 6.
14. A notice under the provisions for additional ring-fencing obligations has effect 14 days after the notice is given to the DNSP or such later date as the QCA specifies in the notice.

Compliance procedures and compliance reporting

15. A DNSP must establish and maintain appropriate internal procedures to ensure it complies with its obligations under the Distribution Ring-Fencing Guidelines. The QCA may require the DNSP to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the QCA concerning the adequacy of the DNSP's compliance procedures does not affect the DNSP's obligations under these Guidelines.
16. A DNSP must provide a report to the QCA, at reasonable intervals determined by the QCA, describing the measures taken by the DNSP to ensure compliance with its obligations under these Guidelines. This report, along with the QCA's assessment of compliance, will be made publicly available by the QCA. Confidential information will be removed from the public report where the DNSP can demonstrate that its public release would harm the commercial interests of the DNSP.
17. The QCA may, upon reasonable notice, require a DNSP to:
 - (a) appoint an independent auditor approved by the QCA to report on such matters as are specified by the QCA; and
 - (b) provide a copy of the auditor's report to the QCA by a date specified by the QCA.

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18. If the QCA nominates auditing standards to apply to an audit under section 17, the auditor must report in accordance with those auditing standards. To avoid doubt, the QCA may nominate one or more auditing standards.
 19. For the purpose of section 18, the QCA may publish auditing guidelines with which a DNSP must comply.
 20. A DNSP must provide a report of any breach of any of its obligations under these guidelines to the QCA immediately upon becoming aware that the breach has occurred. Any breach of these requirements may be reported to NECA, with potential civil penalties where a breach is determined to have occurred.

Waiver of ring-fencing obligations

21. The QCA may, by notice to a DNSP, waive any of a DNSP's obligations under section 1 provided that the QCA is satisfied that the DNSP can demonstrate that the administrative cost to the DNSP and its Associates of complying with the obligation outweighs the benefit, or any likely benefit, to the public.

Procedures for waiving ring-fencing obligations

22. A DNSP may apply to the QCA requesting the QCA to issue a notice under section 21.
 23. When the QCA receives an application under section 22 the QCA must:
 - (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
 - (b) in all other cases within 14 days after receipt of the application, inform each person known to the QCA who the QCA believes has a sufficient interest in the matter that it has received the application by publishing a notice in a national daily newspaper which at least:
 - (i) states who the DNSP concerned is and the obligations that the application seeks to have waived;
 - (ii) states how copies of the application can be obtained;
 - (iii) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).
 24. The QCA must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the QCA.
 25. The QCA must consider any submissions received by the date specified in the notice published under section 23 and it may (but is not obliged to) consider any submissions received after that date.
 26. Within 30 days after the last day for submissions specified in the notice published under section 23 the QCA must issue a draft decision stating whether or not it intends to issue a notice under section 21.
 27. The QCA must:
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- (a) provide a copy of its draft decision to the DNSP, any person who made a submission on the matter and any other person who requests a copy; and
 - (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).
28. The QCA must consider any submissions it receives by the date specified by the QCA under section 27 and it may (but is not obliged to) consider any submissions received after that date.
29. Within 30 days after the last day for submissions on the draft decision specified by the QCA, the QCA must issue a final decision stating whether or not it will issue a notice under section 21.
30. A notice under section 21 has effect 14 days after the notice is given to the DNSP or such later date as the QCA specifies in the notice.

Glossary of terms

For the purposes of these Guidelines, the following definitions apply:

additional staff means employees, consultants, independent consultants and agents of a DNSP who are not marketing staff.

Associate has the meaning given to it under the Corporations Law.

auditor means a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law.

auditing standards means the Auditing Standards and Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies).

Code or National Electricity Code means the code of conduct called the National Electricity Code approved by Ministers of the participating jurisdictions.

Code Participant means NEMMCO or a person who is registered with NEMMCO under Chapter 2 of the National Electricity Code.

confidential information means in relation to a Code Participant, information which is or has been provided to that Code Participant under or in connection with the National Electricity Code and which is stated under the Code or by NEMMCO or NECA to be confidential information or otherwise confidential or commercially sensitive or information which is derived from any such information.

cross subsidy occurs where for any costs that are jointly incurred in providing prescribed distribution services and excluded services, the cost allocated to one set of services is less than the additional (or incremental) cost incurred in providing those services, and the cost allocated to another group of services is greater than the stand alone cost of their supply.

customer means a person who engages in the activity of purchasing electricity supplied through a distribution system and registers with NEMMCO as a customer in accordance with the National Electricity Code.

distribution means the conveyance of electricity through a distribution system.

distribution network service provider (DNSP) means a person who engages in the activity of owning, controlling, or operating a distribution system.

distribution service means the services provided by a distribution system which are associated with the conveyance of electricity through the distribution system.

distribution system means a distribution network, together with the connection assets associated with the distribution network, which is connected to another transmission or distribution system.

excluded services means distribution services which are not prescribed distribution services and are therefore excluded from the revenue or price cap which applies to prescribed distribution services.

long run avoidable cost means that part of the cost of any output that could be saved over the long term by not producing it.

marketing staff means employees, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include employees, consultants, independent contractors or agents involved only in:

- (a) strategic decision making, including the executive officer or officers to whom marketing staff report either directly or indirectly; or
- (b) technical, administrative, accounting or service functions.

NECA means the National Electricity Code Administrator Limited ACN 073 942 775, the company responsible for administering the National Electricity Code.

NEMMCO means the National Electricity Market Management Company Limited ACN 072 010 327, the company which operates and administers the market in accordance with the National Electricity Code.

past employees for the purposes of section 3 of these guidelines, past employees are any employees, consultants, independent contractors or agents that have been employed within the immediately preceding 6 calendar months.

person includes an individual or a body politic or body corporate.

prescribed distribution services means distribution services which are determined by the QCA as those which should be subject to economic regulation under clause 6.10.4(a) of the National Electricity Code. Such services are deemed to be those currently being performed by any Queensland DNSP, although this definition will be subject to review under the Authority's forthcoming distribution pricing review.

QCA means the Queensland Competition Authority as established under the *Queensland Competition Authority Act 1997*.

related business means the business of producing, purchasing or selling electricity.

ATTACHMENT A**SUBMISSIONS RECEIVED BY THE AUTHORITY**

The Authority received submissions from the following entities in response to its Issues Paper on Ring-Fencing for Electricity Distribution Entities, which was released in July 1999:

- CS Energy;
- Energex Ltd and Energex Retail Pty Ltd (joint submission);
- EnergyAustralia;
- Ergon Energy Corporation Ltd and Ergon Energy Pty Ltd (joint submission);
- Gadens Lawyers; and
- Stanwell Corporation Limited (confidential submission).

The Authority received further submissions from the following entities in response to its Draft Ring-Fencing Guidelines paper, which was released in December 1999:

- Energex Ltd and Energex Retail Pty Ltd (joint submission);
- Ergon Energy Corporation Ltd and Ergon Energy Pty Ltd (joint submission);
- Transgrid;
- Tarong Energy Queensland Treasury (confidential submission); and
- Powerlink.

Copies of all non-confidential submissions are available on the Authority's website at www.qca.org.au or may be obtained by contacting the Authority on 07-3222 0555.