

23 September 2019

Sarah Proudfoot  
General Manager, Consumers and Markets  
Australian Energy Regulator  
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Sent via email: ringfencing@aer.gov.au

Dear Sarah

SA Power Networks welcomes the opportunity to provide our comments in response to the AER Distribution Ringfencing Guideline Review (**Review**).

Throughout our implementation and ongoing ringfencing compliance program, we have sought to minimise costs to customers of compliance and have absorbed significant costs associated with these activities within current allowances. We are of the firm view that any Guideline amendments resulting from the Review should not create any significant additional costs to DNSPs and ultimately for customers.

Our compliance actions to-date have been substantial, with process improvements and further controls implemented where our Independent Assessments have highlighted the need for this to occur. This is demonstrated in our 2018 and 2019 Ringfencing Compliance Annual Reports. While there may be some benefit in Guideline clarifications, the focus should remain on the Guideline intent, specifically prevention of cross-subsidies and discriminatory behaviour.

We agree with the AER view that no major changes to the Guideline are required. Further prescription that creates a lack of flexibility will lead to increased and unnecessary costs for customers. Any significant amendments would ideally be supported by clear evidence demonstrating the benefits of the amendments outweighing any costs to implement necessary separation and/or controls. If there are clarifications imposed on DNSPs that require change, we would suggest a transitional period of 12-18 months to enable implementation of those changes.

We have set out our comments below to the AER "Distribution Ring-fencing Guideline Update: Stakeholder workshop" slides following the AER Forums on 28<sup>th</sup> and 29<sup>th</sup> August 2019.

If you have any queries or require further information, please contact Samantha Hicks on

Yours sincerely

Richard Sibly  
Head of Regulation

## 1. Cost Allocation

### AER CONCERN

DNSPs and their auditors are not understanding the requirement to extend their cost allocation beyond the DNSP:

- The guideline requires that DNSPs are responsible to account for how costs are allocated between the DNSP and affiliates. This is done by extending the approach embodied in the CAM to cover cost allocation between the entities. Independent assessors could test this better.

### SAPN RESPONSE

We understand that we are currently compliant with Guideline Cost Allocation obligations in line with AER expectations.

## 2.1 Functional Separation – Office sharing

### AER CONCERN

Some DNSPs are misinterpreting the definition of 'office'. The intention was to restrict regulated staff with 'electricity information' from mixing with unregulated staff during the course of a normal working day.

Example: Staff interacting in lunch rooms or other shared work facilities carries risk of improper information sharing.

One option is to revise the definition of 'office' to make intent clearer.

### SAPN RESPONSE

We do not support amendment of the definition of 'office' to include amenities such as lunch rooms or shared work facilities.

The risk of any potential commercial advantage occurring by sharing these areas is low. The cost of separation would far outweigh any benefit. These are essential areas for staff, and it is not reasonable to restrict certain staff from using them based on low potential risk. If the AER pursue an office definition incorporating these areas, we request examples of where there has been any actual advantage conferred on an affiliate as a result, and how the risk of any potential advantage would justify the costs associated with separating these areas.

Further, there is nothing to prevent regulated and unregulated staff from mixing at a local café or bakery during a meal break, and we expect that other controls such as mandatory briefings and training to prevent sharing of confidential information will be effective at these times. Therefore the proposal to restrict staff from mixing in lunch rooms or other shared work facilities appears to be overly conservative.



## 2.2 Functional Separation – Staff sharing

### AER CONCERN

Staff sharing arrangements in the Guideline could be improved. In particular, a better mechanism for identifying staff that may be shared.

Examples:

- Short-term secondments circumventing restrictions on staff sharing.
- Concerns that procurement staff are being shared on the basis that they are corporate staff, when there may be a risk of harm.

This provides a potentially discriminatory advantage to the affiliate.

### SAPN RESPONSE

We support clarification for identifying staff that may be shared. A useful mechanism to do this would be a revised (more limited) definition of confidential information, such that only information that could be used to provide a potentially discriminatory advantage to the affiliate is included. For example, we suggest that confidential information should not include information routinely made available to third parties on request and/or who have access to it through work systems and is not made publicly available for security of network reasons.

We do not support the AER view that procurement staff cannot be shared, for the reasons set out in our further information response to the AER provided on 10 May 2019 (“SAPN Response – AER SAPN Compliance with RF Guideline”).

## 2.3 Functional Separation – Information access and disclosure

### AER CONCERN

AER staff indicated that they believed ‘access’ and ‘disclosure’ are effectively the same.

Example: if an affiliate has access to electricity information but hasn’t downloaded or viewed it, this should still be regarded as a breach of the Guideline because the staff member has access to the information.

The guideline may benefit from further clarification to the definition of disclosure and access.

### SAPN RESPONSE

Subject to reviewing the Draft amended Guideline, we support clarification in this area.





### 3.1 Compliance Reporting – Annual compliance reporting

#### AER CONCERN

DNSP annual compliance reporting contains inconsistent quality and transparency.

- Short form auditor's reports are inadequate as they lack transparency.

The AER seeks to provide timely information to DNSPs and the industry and aims to publish its annual compliance reports by December.

- A mid-September submission date for DNSPs would greatly assist the AER in achieving this.

#### SAPN RESPONSE

We understand, based on AER feedback to-date, that the format and content of the SAPN annual compliance reporting and independent assessment meet AER requirements.

#### Timing of annual reporting

We support a change from regulatory year reporting (ie year ending 30 June and potential mid-September submission) to calendar year reporting (ie year ending 31 December and April submission). We believe this would allow the AER sufficient time to release their compliance report by end May/June.

Calendar year reporting is supported as we have a number of other reporting requirements that already fall at end of regulatory year, including category analysis, economic benchmarking and annual RINs. The coordination of these activities including audits often rely on the same resources and teams, making it a very heavy reporting period.

### 3.2 Compliance Reporting – Materiality of breaches

#### AER CONCERN

AER interpretation – a breach is material if it is not trivial.

A significant number of non-trivial breaches are not being reported within the required 5 business days

- Or not reported until year's end.

Examples: unregulated staff with IT access to confidential electricity information; unregulated staff with email accounts that belong to a DNSP; an DNSP providing metering services.

One option would be to require that all breaches be reported to the AER within 5 business days.

#### SAPN RESPONSE

We do not support a Guideline amendment to require DNSPs to report all breaches to the AER within 5 business days. DNSPs are best placed to assess materiality in the context of their own business environment. Reporting of all breaches to the AER within a short time frame could become onerous and administratively burdensome.



### 3.2 Compliance Reporting – Materiality of breaches

If the AER increase breach reporting obligations on DNSPs we would require more than the current 5 day reporting period ie 15-20 days so that the necessary facts can be determined.

### 4.1 Other possible revisions - Branding

#### AER CONCERN

There is a risk of harm when the DNSP and affiliate share branding, particularly for non-electricity services.

#### SAPN RESPONSE

We believe we are currently compliant with the branding and cross-promotion ringfencing obligations. The AER has informally raised concerns around use of branding on affiliate trucks. We will review our strategy in relation to the branding of these trucks and ensure our process encompasses adequate controls.

### 4.2 Other possible revisions – Staff and office sharing registers

#### AER CONCERN

Some registers are not kept up to date or contain insufficient detail.

How can they be improved to be more useful?

#### SAPN RESPONSE

We believe our registers contain sufficient detail and they are kept up-to-date in line with our quarterly Regulation branch compliance process. We complete detailed staff and office sharing analysis quarterly and review and update the registers as required.

