

28 September 2016



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By email: Ringfencingguideline2016@aer.gov.au

Dear Mr Pattas

Electricity Ring-Fencing – Draft Guideline

CitiPower, Powercor and SA Power Networks (the **Businesses**) welcome the opportunity to comment on the Australian Energy Regulator's (AER's) August 2016 draft ring-fencing guideline. In our view, the guideline should:

- not pre-empt policy decisions on the contestability of emerging services;
- work alongside the existing regulatory framework and avoid regulatory duplication; and
- only apply regulation to address market failures and underlying issues for competition, rather than mere perceptions.

If appropriately designed, guideline compliance should be relatively straightforward. Progress towards this goal would be achieved by adopting the definition of a 'distribution service' in the Rules.

Challenges of emerging services

Historically, the efficient delivery of network services was not affected by the separations of distributors from retail and generation markets. Now changes to electricity markets are creating new ring fencing challenges. The merits of applying ring fencing to new services, such as those provided by Distributed Energy Resources (DER) is less clear because the services can provide network benefits if deployed and used appropriately.

DER will be deployed and used efficiently if customers face prices that encourage them to consider network (and market) conditions when using and purchasing appliances. While we have efficient wholesale pricing, a lack of political and consumer acceptance of sufficiently cost reflective network tariffs may inhibit price signals that would enable the market to deliver DER efficiently.¹ As such, we should not pick or preclude different models by which distributors, retailers, or third parties could independently or collaboratively deliver these services. Further, ring fencing should not pre-empt the outcome of policy debates on these issues which are ongoing, for example:

- CoAG's Energy Council is proposing a rule change on service contestability; and
- Western Power has proposed a rule change on the definition of 'distribution services', clarifying the term's application to alternatives to poles and wires investment.

While distributors providing competitive DER services may seem at odds with convention, in the delivery of DER we would:

- not seek to be exclusive providers—we would compare distributor delivery of DER services against third party provider delivery (via competitive tendering) and choose the most efficient option, and

¹ Reflecting locational network conditions in tariffs would require legislative reform. Further, systems for real-time locational marginal pricing equivalent to that at the wholesale market level have never been tried anywhere in the world.



be subject to the AER's oversight through the regulatory investment test, expenditure proposals and service classifications; and

- maintain appropriate cost allocation.

The term 'energy related services', proposed by the AER to support functionally separating services provided by distributors and their related entity must be defined to clarify its coverage. To not pre-empt policy, such as efficient DER delivery models, we have proposed a definition allowing for distributor-provided DER, depending on the AER's service classification.

Targeted ring fencing

The AER should focus on real market failures rather than perceptions. Therefore, we propose:

- functional separation is not required—regulation already guarantees equal access to customer specific and network condition information; and
- common branding / advertising restrictions between distributors and related bodies corporate only apply where there is a legitimate risk of customer confusion.

We understand the AER intends to ring fence new metering services in some way. In doing so, the AER should avoid inadvertently capturing other services. We propose that:

- legal and functional (i.e. staff and location sharing) separation not restrict distributors from providing distribution services, which are required and allowed by the regulatory framework;
- any functional separation should only apply between distribution services and the 'energy related services' provided to customers in downstream electricity markets. This will ensure ring fencing does not preclude efficient resource sharing between distributors and related bodies corporate where there is no harm to competition (e.g. unregulated services to other utilities and businesses such as NBNco); and
- ring fencing restrictions only target customer specific and network condition information not in the public domain, and the staff who have access to this information. This will ensure ring fencing does not restrict efficient work practices and interactions between distributors and related bodies corporate.

We would be pleased to clarify any aspect raised in this letter or submission and to work constructively with the AER and other stakeholders.

Yours Sincerely



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RESPONSE TO THE AER'S DRAFT RING FENCING GUIDELINE

28 September 2016

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Executive summary

SA Power Networks (**SAPN**), Powercor and CitiPower (together, **the Businesses**) are pleased to provide comments on the Australian Energy Regulator's (**AER**) Draft Ring Fencing Guideline (**draft guideline**). The AER is seeking to apply a 'one size fits all' ring fencing approach to Distribution Network Service Providers (**DNSPs**) that have different business structures, offer different services and are subject to different jurisdictional regulations. As a result, the draft guideline's application is unclear and currently the Businesses could not implement the guideline. To overcome these challenges, the AER should require DNSPs to develop policies that accord with the AER's ring-fencing objectives of no cross subsidisation of costs or discrimination. This approach will remove any unintended consequences of the guideline.

Our key concerns with the current draft guideline are as follows:

- the draft guideline's terms are inconsistent with the Explanatory Statement and existing National Electricity Rules (**NER**) definitions, and some key terms are not defined;
- legal separation should be between 'distribution services' and 'non-distribution services', which will allow distributors to continue to provide services required or allowed for under the current regulatory regime. Limited exceptional circumstance waivers should be allowed including for situations of contract reassignment difficulty;
- common branding / advertising between distributors and related bodies corporate should be allowed where there is no risk of consumer confusion and related bodies corporate should be allowed to leverage the goodwill established by distributors through community philanthropy;
- functional separation (i.e. restricting staff and location sharing) is not required to guarantee equal access to relevant information held by distributors as other aspects of the regulatory framework already achieve this. If the AER disagrees, any functional separations should:
 - target relevant information types including customer-specific and network condition information, not capture staff who cannot access such information and not capture other efficient interactions between distributors and related bodies corporate;
 - not apply between different types of distribution services and therefore not restrict DNSPs sharing staff, locations and resources in providing all distribution services in an integrated and efficient manner; and
 - only apply between distribution services and the energy related services provided by related bodies corporate—being the services provided to small customers in downstream markets—and thereby not inadvertently capture other efficient staff and location sharing interactions.
- the proposed information sharing restrictions are too broad and prevent legitimate information sharing between a DNSP and related bodies corporate, inhibiting innovation and economic efficiency;
- the compliance transition timetable and approach needs to be more flexible and staged to recognise practical implementation realities. In particular, as there are additional regulatory body considerations for tax and subsidiary establishment liabilities that need to be investigated and resolved with these bodies; and
- the cost threshold of non-network (or our preferred term, non-distribution) services allowed to be provided by DNSPs should be increased to acknowledge that new services might evolve out of current regulated activities which have an immaterial impact on competition.

1 Our proposed way forward

Key points:

The ring-fencing draft guideline imposes a one size fits all approach to ring-fencing distributors. This makes it very challenging to implement because each distributor provides a range of different services under different jurisdictional arrangements and with different corporate structures. The best way to ensure ring-fencing obligations meet the AER's objectives, while not creating unintended consequences is for:

- the AER to outline ring-fencing objectives around the identified harms—being cross-subsidisation of costs and discrimination; and
- distributors to submit, for AER approval, ring fencing policies that meet the objectives.

1.1 General difficulties with the AER's approach

The AER's draft guideline is a 'one size fits all' approach that seeks to impose substantially the same ring-fencing obligations on distributors that:

- have different business structures. Some distributors also provide transmission, gas and water utility services and some have a number of related party entities;
- offer different services including different types of distribution services and energy related services. Within these broad service offerings, some distributors offer services behind the meters and others do not; and
- are subject to unique jurisdictional regulations and obligations.

The AER has attempted to accommodate these differences by allowing 'carve-outs' (generally in the form of waivers) from the draft guideline's obligations where it has been drafted too broadly. Conversely, where the draft guideline has been drafted too narrowly, we expect the AER may wish to broaden its application to ensure specific services, such as contestable metering services to small customers, are captured appropriately. This illustrates the challenges with a 'one size fits all' approach.

The AER has also left key elements of the draft guideline undefined, for example, there is no definition of 'energy related services'. If interpreted broadly, functional separation will impose significant costs and disruption to distributors with little or no benefit to customers. A properly constructed definition of energy related services is needed to only target key areas of potential harm and avoid unnecessary and costly changes which provide no customer benefit.

While we support the AER providing an Explanatory Statement and case studies to aid guideline interpretation, the Explanatory Statement:

- does not fully explain the AER's reasoning or intent;
- uses terms inconsistently with those used in the draft guideline and the National Electricity Rules (**NER**);
- does not outline which markets are being targeted; and
- does not appropriately address views put forward by stakeholders in previous submissions.

1.2 Ring fencing policies

To overcome these challenges, we consider that the AER should require distributors to develop policies that accord with the AER's ring-fencing objectives of no cross subsidies or discrimination. This approach will remove any unintended consequences of the draft guideline and:

- provide greater transparency—distributors will need to outline the way in which specific ring-fencing obligations will be achieved in consumers' interests. Additionally, rather than other interested market

participants needing to engage in waiver consultations, or sift through published waivers to determine which obligations apply to particular distributors, there will be only one consultation and one policy for each distributor in the National Electricity Market (**NEM**);

- lower ring-fencing costs—ensuring the increasing market barriers and costs from ring-fencing will not outweigh the benefits to consumers of ring-fencing; and
- is an approach that is proportionate to the extent of the potential concern—as it does not apply ring-fencing where it is unwarranted or does not promote consumers' interests.

To the extent that the AER makes significant changes to the draft guideline, we strongly encourage the AER to allow stakeholders to review another draft of the guideline before it is finalised to ensure the guideline does not create unintended consequences and can be implemented. Our proposed detailed changes to the draft guideline are outlined in Appendix 1.

2 Preventing cross subsidies

Key points:

The draft guideline imposes new legal separation requirements to add further transparency to the process of maintaining separate accounts and preventing cross-subsidisation between distribution and non-distribution services. We accept the application of legal and accounting separation but propose amendments to these provisions as follows:

- altering the terms used as the basis for legal separation of services to avoid unnecessary separation of services that can only be, and are allowed to be, provided by DNSPs consistent with existing service classifications; and
- enabling waivers from legal separation for exceptional or transitory circumstances—these could include situations that might be outside the control of the DNSP in the short–medium term.

2.1 Distinction between network services and distribution services

The draft guideline imposes legal separation by requiring DNSPs to only provide 'network services'. The AER's intent, as described in its Explanatory Statement, appears to be for legal separation to apply between 'distribution services' and 'non-distribution services'. The term 'network services', however, is apparently preferred by the AER in order to facilitate the guideline's application to the DNSPs that also provide transmission services.

While noting the AER's rationale, a direct reading of the draft guideline provisions against the NER definition of 'network services' prohibits DNSPs from providing services within scope of existing service classifications outlined in the AER's Framework and Approach and regulatory determination documents. For example:

- connections services—'network services' are defined in the NER as, "services associated with the conveyance and controlling the conveyance of electricity through the network". The term 'network' is defined as, "the apparatus...excluding any connection assets". Conversely, a 'distribution service' is a service "provided by means of...a distribution system", and the definition of a distribution system explicitly includes connection assets.
- public lighting, smart cities services and duct and pole rental—these services do not fit the definition of 'network services' as, "services associated with the conveyance and controlling the conveyance of electricity through the network", but they do meet the definition of 'distribution services' being "provided by means of, and in connection with, a distribution system".

To avoid any inadvertent prohibition on distributors while still achieving the AER's desire to enable the guideline's application to transmission, we propose the following amendments:

- all references to the services that a DNSP is allowed to provide, including in particular in section 3 of the draft guideline, should reference the term 'distribution services' rather than 'network services'; and
- the definitions and interpretation clauses in section 1.3 should then specify the following:

"any reference to:

- *distribution service is to be read as a reference to a "distribution service or transmission service", and*
- *Direct control services is to be read as a reference to "direct control service or prescribed transmission service."*

2.2 Distribution services and service classification

The term, 'distribution service' relates to the nature of the service rather than its classification. While certain distribution services may be classified as direct control or negotiated services, other distribution services may be left unclassified.¹ We support the AER's position outlined in the draft guideline to legally separate distributors from certain services on the basis of the nature of those services, rather than their classification because:

- it achieves the AER's objective of preventing cross-subsidies. The cost associated with the services provided by the DNSP will be allocated in accordance with the Cost Allocation Methodology;² and
- it enables DNSPs to provide unregulated distribution services, which ensures regulated customers benefit through the Shared Asset Guideline (this guideline would be superfluous if DNSPs could only provide regulated services).

2.3 Exceptional circumstances / transitory waivers

We accept that to maintain the integrity of the ring-fencing framework, for the most part waivers should not be allowed with respect to legal and accounting separation. However, DNSPs might encounter barriers outside their control in the short-medium term as they seek to transition existing processes and arrangements to the new ring-fencing framework. This could include where DNSPs have to transfer existing long-term contracts with large organisations to the new related body corporate. An example of such a situation is set out below.

Example—Long-term contracts

SA Power Networks, CitiPower and Powercor have a number of long-term contracts with large organisations for infrastructure construction and maintenance activities not associated with the distribution system. These would be considered non-distribution services. The draft guideline stipulates these services can no longer be provided by distributors but can be provided by related bodies corporate.

While most contracts would have assignment provisions, it is unclear whether they can all be transferred administratively to a related body corporate. The contracts that can be assigned typically require the consent of the counter party, who may be entitled to negotiate additional measures and impose unreasonable conditions for providing consent. Further, in order to complete the assignment process, all contracts will need to be identified, the appropriate transfer and assignment mechanisms determined and negotiations for assignment with each counter party conducted.

To avoid this burden it is normal practice to automatically grand-father pre-existing arrangements when a regulatory change occurs.

Therefore, we propose that:

- the AER allow DNSPs to grand-father existing arrangements; or
- a next best option would be to allow a limited exceptional circumstance waiver to enable DNSPs to deal with transition issues.

¹ NER clause 6.2.1

² NER clause 6.15.2(1)

3 Non-discrimination

Key points:

We accept that for markets to work effectively, DNSPs should not deal with unrelated parties on less favourable terms than its related body corporate. We also accept that certain types of information DNSPs acquire in providing monopoly services might need to be shared on an equal access basis. However, in order to avoid imposing barriers to efficiency and innovation we consider:

General obligations

- restrictions on a DNSP cross-promoting and advertising the services of its related bodies corporate should only apply to services provided to small customers in downstream markets, where it is a credible scenario that customers may confuse regulated and unregulated service provision from the related body corporate;
- related bodies corporate should not be prohibited from leveraging the DNSP's regulated brand if it is not likely to confuse consumers;

Staff location and sharing restrictions

- it is unnecessary and duplicative to apply staff location and sharing restrictions between a DNSP and its related body corporate to prevent preferential access to information. Regulation preventing this already exists; and
- if such restrictions are applied they should:
 - only target customer-specific and network information, rather than applying more broadly and potentially limiting a DNSP's ability to work with related entities where there is no identifiable harm;
 - not apply to field staff because they cannot access customer specific or network information;
 - not apply to services that DNSPs are required or allowed to provide given current service classifications and licences; and
 - only apply to services provided by the related bodies corporate to small downstream retail customers—this position presents no risk to competition and enables efficiencies in both regulated and unregulated service delivery.

3.1 General obligations—cross-promotion and marketing

In clause 4.1, the draft guideline prevents a DNSP from promoting and advertising the services of its related body corporate via:

- direct actions—such as providing information to consumers about its related body corporate's services while providing a distribution service; and
- indirect actions—such as utilising branding that does not help consumers to discern the difference between regulated monopoly and contestable services.

While we broadly accept the premise of these requirements, we consider amendments are required to ensure they only apply where there is a credible risk to competition and where there is the likelihood for consumer confusion. That is, the draft guideline should:

- only restrict a DNSP from promoting the energy related services of its related body corporate, rather than all services provided by a related body.³ Entities such as NBNco or other utilities that do not procure energy-related services from DNSPs' related bodies corporate do not face the same information asymmetries as small customers. They are therefore not at risk of confusing regulated from unregulated service provision; and
- only require a DNSP's related body corporate to have its own identifiable brand where it is providing energy related services, and in any case not restrict it from indicating its relationship to the DNSP.⁴ A DNSP's related entity should be able to leverage from the regulated brand if it does not confuse customers as to whether the services are regulated or not. The goodwill that the DNSP has developed is often from community philanthropy, not funded by regulated allowances. We note that in a similar way, retailers have recently considered it beneficial to rely on their own established brand and reputation when contacting customers to propose meter changes, rather than the brand of their Metering Coordinator (noting that the NER requires legal separation between retailers and Metering Coordinators).

We therefore propose the following amendments:

- the sub-clauses 4.1 relating to cross-advertising and branding should refer to the energy related services provided by a related body corporate, rather than all the services provided by a related body corporate.

3.2 The need for staff location and sharing restrictions

Clauses 4.2.1 and 4.2.2 of the draft guideline restrict DNSPs from providing distribution services from the same location or using the same staff that provide a related body corporate's energy-related services (termed **functional separation**). The objective is to prevent DNSPs from providing their related body corporate with preferential or discriminatory access to information.⁵

We broadly accept the *objective* of functional separation—DNSPs should not provide discriminatory access to information. However, functional separation is not required to achieve this objective, given existing regulatory requirements.

Only certain types of information could reasonably warrant provision on an equal access basis in order to support non-discrimination. After reviewing these types of information, we note that equal access is already provided via other regulations:

- customer specific information—DNSPs have historically acquired energy use information by virtue of their largely exclusive provision of metering, and some information on generation installed on properties by virtue of network connection approvals.

There is already a regime in the NER allowing customers to grant access to their metering data to any party they appoint, including their retailer or third party service provider.⁶ Additionally, the metering data that most DNSPs⁷ currently hold would be of limited value to companies looking to provide, for example, energy management solutions as it only pertains to total consumption. Going forward, more dynamic data via smart

³ Further below we offer a definition of what might comprise an 'energy related service'.

⁴ For example: company x – a division of DNSP Y.

⁵ This objective is also reflected in other provisions in the draft guideline that apply specifically to information disclosure (4.3).

⁶ AEMC, Final rule determination - National Electricity Amendment (Customer access to information about their energy consumption) Rule 2014 and National Energy Retail Amendment (Customer access to information about their energy consumption) Rule 2014, 6 November 2014.

⁷ We note this may not be true of Victorian DNSPs.

meters will be collected by Metering Coordinators, which may not be DNSPs, and this (future) dynamic data may have more material value.

- network information—DNSPs have information on the forward looking condition of the network including potential constraints.

This information could be useful to Distributed Energy Resources (**DER**) providers offering storage or generation devices. This information, however, is already made public via the Distribution Annual Planning Reports (**DAPR**) that distributors are required to prepare for this explicit purpose. Further, the AEMC has recently issued a draft rule determination proposing that DAPRs be accompanied by a further report ('system limitations' report).⁸ This will provide nationally consistent data on the forward looking condition of networks, to further enable other service providers to compete for alternatives to network augmentations.

Any benefits to be realised by imposing functional separation requirements need to be significant and real (that is, not just target perceptions), and not otherwise achievable by other aspects of the regulatory framework.

Additionally, implementing functional separation will be costly, requiring establishing new offices and workforces. There will also be indirect costs from preventing or restricting knowledge sharing that could improve the efficiency of, and innovation in, service delivery both for a DNSP and related body corporate.

Given the limited benefits and the costs imposed, we therefore consider functional separation to be unnecessary.

Should the AER disagree, the ring fencing provisions should at least better target specific types of information (as set out above) rather than capturing general business and the development of work practices, methods, innovations that could otherwise realise efficiencies. To this end, we propose the following guideline amendments:

- clause 4.2.1—Remove the sentence, "for example, a DNSP must operate in a different building and prevent staff from mixing in the normal course of undertaking work activities." The clause would then simply require separate locations rather than comment on staff interactions; and
- clause 4.3—Rather than broadly referring to a DNSP acquiring information in providing direct control services, specify that the clause relates to situations where, "a DNSP acquires information about a small customer as a result of providing direct control services."

3.2.1 Functional separation should not apply to field staff

Given the AER is applying functional separation to prevent discriminatory access to information, these requirements should only apply to staff with access to this information. Field staff cannot access customer specific information (e.g. load profiles) or aggregated network information (e.g. information on where faults regularly occur that hypothetically could be used to sell customers energy related services) meaning functional separation should not apply. This is consistent with the AER's draft guideline basis for not applying functional separation to staff exclusively performing corporate services such as human resources or payroll.⁹

Another possible rationale for functional separation is to restrict DNSPs' staff from cross promoting the services of its related body corporate directly to customers. If this is the reason for applying functional separation to field staff, we consider it could be addressed by ensuring each member of the field crew receives specific training that;

⁸ AEMC, Draft rule determination: National Electricity Amendment (Local Generation Network Credits) Rule 2016, 22 September 2016.

⁹ clauses 4.2.1(b)(ii) and 4.2.2(biii)

- when undertaking distribution services they must not inform consumers about the services of the related body corporate; and
- they must not represent the services of the related body corporate as services of the distributor. This would include distributing an information pack to consumers of the related body corporate outlining that the work is contestable and is therefore not subject to consequent protections of the regulatory framework, prior to conducting the work.

These training and staff practices would be audited and reported to the AER.

This practical approach will preserve the significant benefits to regulated and unregulated consumers from leveraging economies of scale while maintaining proportionate safeguards against discriminatory outcomes.

Example—metering economies of scale and scope

Distributors could use their existing field forces to offer metering. Leveraging these economies of scale and scope would reduce metering prices because distributors would not need to recover the full cost of establishing depots and a field force from the meter installation costs. Competition and potential competition would restrict distributors' pricing.

The costs of installing meters would not be cross subsidised and would be allocated in accordance with the Cost Allocation Method (CAM). The DNSP's regulated customers would also benefit from the sharing of assets (such as vehicles) via the Shared Asset Guideline.

We therefore submit that:

- DNSPs should be afforded flexibility in addressing the AER's non-discrimination objectives rather than applying blanket functional separation to field staff.

3.2.2 Functional separations should not apply between distribution services

The staff location and sharing restrictions both refer to separating a DNSP's direct control services from the energy related services provided by the DNSP's related body corporate. While the draft guideline makes clear that the staff sharing restriction does not apply to a DNSP's 'negotiated' and 'unclassified' services (clause 4.2.2(b)(iv)), this is not explicit in relation to the staff location restriction (clause 4.2.1). We consider this exemption should apply to all distribution services because:

- DNSPs have a significant number of negotiated and unregulated distribution services which can only be provided by the DNSP and should not be functionally separated in the interests of efficiency;
- functional separation between direct control services and other distribution services would add significant costs to customers of regulated services with no identifiable benefits. While distinctions between direct control, negotiated and unregulated distribution services are made for regulatory purposes, in practice the delivery of many of these services is highly integrated in DNSP work practices; and
- under the regulatory framework DNSPs are not restricted from providing direct control services, negotiated services or unregulated distribution services consistent with current AER distribution service classifications.

In our view, all distribution services should be afforded an explicit exclusion rather than the alternative of needing to seek a waiver for these services. A waiver process in this circumstance would introduce unnecessary and excessive risk on DNSPs.

We therefore propose:

- in clauses 4.2.1 and 4.2.2, remove the term, "direct control services" and replace with "distribution services".

3.3 The definition of energy related services

The draft guideline functionally separates a DNSP's monopoly regulated services from energy related services. If functional separation is required by the AER, we agree with including a term to distinguish between the different sets of services that the related entity might provide.

The AER has used an undefined term, 'energy related services', to distinguish between the services that might be provided by a DNSP's related body corporate. Being undefined, there is uncertainty as to the term's intended coverage. We propose that this term could be defined as follows:

“Energy related services means contestable non-distribution services provided to a small customer in relation to the small customer’s premises that is related to the generation, supply, storage, sale or purchase of electricity by the small customer, the collection, analysis or use of metering data or other energy management data relating to the small customer or the provision of any equipment or facilities that are related to any of the foregoing activities and excludes:

- (a) any contestable non-distribution service that is provided to the small customer to the extent that the service is being used by the small customer to provide services to a DNSP (including, for example, network support services to a DNSP); and*
- (b) any construction, operation, maintenance, telecommunication, use of facilities and other infrastructure related services that are provided to a third party who is not a small customer by the DNSP.*

We consider that our definition is appropriate because:

- functional separation should only apply to services in downstream markets, and only then where doing so might achieve some benefit in the long term interests of electricity consumers; and
- the definition does not pre-empt future AER service classification decisions or any new government policy and therefore does not use the ring-fencing draft guideline for an unintended purpose. This is achieved by referring to 'energy related services' as being contestable non-distribution services, but at the same time excluding assets that could provide a 'distribution service' if they are used to provide services for distributors. The latter would ultimately be a decision subject to a Regulatory Investment Test for Distribution (RIT-D), or that the AER reviews within the regulatory determination subject to any new government policy.

Example—Construction and maintenance work

Some DNSPs, such as SAPN, offer unregulated services that are not in down-stream electricity markets. This includes for example, construction and maintenance work for other energy utilities (e.g. ElectraNet) and non-energy utilities (e.g. NBNco). This work should not be subject to functional separation because it:

- is undertaken on a competitive contract basis as an input to the services that these other utilities are licensed to provide to their customers. In the ElectraNet example, SAPN is not providing transmission services but is a tendered contractor to ElectraNet. This is similar to a DNSP's contractor installing a new transformer for the DNSP;
- derives economies of scope and scale in delivery of monopoly distribution services and the services provided by the related entity. Staff and location sharing between the two types of services is particularly

relevant in regional areas where regional staff of either entity might have spare capacity, and duplicating depots would be costly and inefficient.¹⁰ In such situations, staff time is appropriately allocated to the services in question and can lower the unit cost of both regulated and unregulated service delivery; and

- is priced appropriately by preventing cost allocation in a way that would cross-subsidise any unregulated activity with regulated funds.

3.4 Information sharing restrictions

Clause 4.3 of the draft guideline contains information access and disclosure provisions.

The privacy regime prescribes how DNSPs can collect, use and disclose personal information. The obligations in the draft guideline, however, go beyond the obligations in the Privacy Act and do not contain appropriate limits on this restriction, such as permitting disclosure where a customer would reasonably expect it.

The AER should not go beyond or seek to replicate the Privacy Act provisions. In its Explanatory Statement, the AER asserts that these obligations will assist to minimise the potential for a DNSP to provide an inappropriate competitive advantage to its related body corporate that provide competitive or contestable energy-related services. However, these obligations would inhibit normal business operations and are not in the interests of consumers. It is also inconsistent with principle 5 of the COAG Guide that the obligation should provide effective guidance to relevant regulators and regulated parties to ensure that the policy intent, expected compliance requirements are clear. These obligations will contradict the Australian Privacy Principles and will cause confusion rather than address the AER's concerns.

¹⁰ For example, a line crew operating out of Barmera, in the regional South Australian region of the Riverland, may on anyone day be tasked to perform a range of work in and around Renmark. This could include: repairing storm damaged power lines (i.e. a standard control service); replacing broken street lights (i.e. a negotiated service); undertaking connection work for a new customer (i.e. partially standard control, partially negotiated); and, assisting in constructing a new underground residential or industrial development (i.e. an unregulated service).

4 Other specific provisions

Key points:

Our comments on other specific provisions of the draft guideline are as follows:

- a more reasonable compliance transition period should be afforded that better recognises the practical feasibility of implementation;
- support the draft guideline allowing DNSPs to incur costs up to \$1 million per service, per annum providing non-network services (or our preferred term of 'distribution services');
- supporting the draft guideline not restricting the sharing of IT infrastructure between a DNSP and its related entity; and
- supporting not including non-compliance penalties within the draft guideline.

4.1 Compliance / transitional period

The AER proposes DNSPs comply with the functional separation requirements within 6 months, legal separation within 12 months, and immediately comply with all other aspects of the draft guideline (such as the provisions governing non-discriminatory behaviour and branding).

The transitional periods for compliance need to recognise practical realities of implementation. There is still considerable uncertainty on the final form of the draft guideline and the final arrangements that will be imposed and so it is not reasonable to immediately comply with provisions that are as yet unseen. We expect the final requirements will be profound, affect most areas of our businesses and will likely require:

- identification of all impacted areas across each business;
- Board approval for, and establishment of, new legal entities and establishing new balance sheets;
- alterations to existing shared systems to establish and accommodate new company transactions and financial reporting;
- development of new systems, procedures and staff training to meet new obligations;
- staff and accommodation movement to implement functional separation requirements;
- establishment of new commercial arrangements between related entities;
- assignment of existing contracts to new entities; and
- Board approval to implement a new brand and development of new marketing material. It will also take several months to register a new brand with relevant authorities.

There are also significant subsidiary establishment, asset transfer and liability considerations that will need to be investigated and resolved with additional regulatory bodies (including the Australian Tax Office). Further evaluation will be necessary in the short term to enable quantification of financial and non-financial impacts of these matters which are potentially considerable. To better recognise the practical realities of implementing the draft guideline, we propose the following staged compliance transition timetable and approach:

- Day 1:
 - comply with non-discrimination provisions requiring DNSPs to transact with unrelated parties on the same terms and conditions as related parties; and
 - comply with accounting separation provisions;

- 2 months—establish a separate website and remove advertising for energy-related services of a related entity;
- 6 months (by 1 July 2017):
 - complete functional separation including establishment of new office location(s); and;
 - implement information disclosure procedures, including establishing and implementing IT system security changes to ensure overall compliance with clause 4.3;¹¹
- 12 months (by 1 January 2018):
 - complete establishment of any new legal entity including new branding for the provision of energy related services; and
 - implement IT systems changes to appropriately assign costs and apply data security to any newly established legal entity.¹²

We also propose that the timeframe for functional, accounting and legal separation be aligned with business reporting cycles to avoid undue disruption and costs from management, statutory and regulatory reporting and audit duplication. For example:

- employee records—staff movements will require personnel realignment between cost/profit centres. A financial year for tax purposes expires at 30 June each year. Requiring functional separation at 1 June would require changes to employee and payroll records and consolidation for tax year purposes;
- regulatory reporting for SAPN—structural changes to employee records to achieve functional separation will require consolidation of 11 months of data under one structure with a final month of an amended structure. Applying the requirement from 1 July would align with both tax and regulatory years; and
- financial year alignment— the Businesses' statutory financial year is a calendar year (i.e. January to December) aligning with our majority owner's financial year. Implementing structural changes one month before the end of the financial year will be problematic. In addition to managing and reporting separate accounts for both the old and new organisation structures, costs in relation to system duplication, governance and compliance (e.g. audit fees) will be unnecessarily incurred. Statutory reporting of any new legal entities for one month is an unreasonable burden.

4.2 Threshold for non-network services

The draft guideline allows DNSPs to incur costs up to \$500,000 per year for providing non-network services (we propose this definition be amended to be 'distribution services') without requiring legal separation.

We support using a threshold rather than specifying specific services, as the nature of service delivery is constantly evolving. A new form of activity might evolve from existing practices and its broader application might be indiscernible. However, the threshold level should correspond to the expenditure levels that have to date been allowed by the AER's demand management innovation allowance for new and innovative services, which

¹¹ This will require not just establishing control systems in IT infrastructure to create access controls but also a complete review of all information held in multiple storage systems and assigning access control linkages to relevant information. This process will require several months to complete.

¹² While DNSPs already maintain accounting systems to separate costs between different services and entities, the process of registering a new legal entity into these systems can only be undertaken when that new legal entity commences transacting. This cannot be completed when the legal entity is merely registered/established.

can be up to \$1 million per year. Further, there does not appear to be a valid reason for requiring the threshold to apply to the cumulative total cost if the services were different to each other.

We therefore propose the following:

- the threshold for non-network services that DNSPs are allowed to provide be increased to at least \$1 million per year and for an individual service.

4.3 IT sharing

The AER recognises there are efficiencies to asset sharing between regulated and unregulated services such as IT, as outlined in the Explanatory Statement. We support this intent and consider it crucial to the efficiency of regulated and unregulated service provision that assets be allowed to be shared, providing that:

- all costs are allocated in accordance with the Cost Allocation Methodology; and
- IT systems have appropriate controls in place with respect to customer-specific information.

4.4 Compliance penalties

Avoiding situations of non-compliance with ring-fencing is a primary focus for us in terms of maintaining our reputation. We therefore support the AER's decision not to include penalties for non-compliance. However, if penalties were included in the draft guideline, these should provide greater leniency for circumstances where DNSPs self-report a non-compliance issue that it has become aware of and is rectifying.

Appendix 1: Draft guideline with proposed amendments



DRAFT

Ring-Fencing Guideline

Electricity Distribution

August 2016

[Suggested revisions by CitiPower, Powercor and
SA Power Networks](#)

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1 Nature and authority

1.1 Application of this guideline

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

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

The objectives of this **Guideline** are to promote the [National Electricity Objective](#) **national electricity objective** by providing for the accounting and functional separation of the provision of **direct control services** by **DNSPs** from ~~other services provided by them, or by their related bodies corporate. the provision of~~ **non-distribution services**.

[The Guideline](#) includes obligations on **DNSPs** targeted at:

cross-subsidisation, with provisions that aim to prevent a **DNSP**:

- providing ~~non-network~~ **distribution services** that could be cross-subsidised by its **network distribution services**; or
- inefficiently inflating its prices for **direct control services** ~~and regulated transmission services~~, and

discrimination, with provisions that aim to:

- prevent a **DNSP** providing an inappropriate competitive advantage to its own **service providers or related bodies corporate** which provide ~~competitive or contestable energy-related~~ services; and
- ensure a **DNSP** treats and protects information it acquires appropriately.

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

1.2 Confidentiality

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

1.3 Definitions and interpretation

In this **Guideline**:

The words, phrases and abbreviations presented in bold **such as this** have the meaning given to them in the **NER**.

The words 'shall' and 'must' indicate mandatory requirements, unless the overall meaning of the phrase in which one of these words appears, is otherwise. [Explanations in this](#)

~~**Guideline** about why certain information is required are provided for guidance only. They do not limit in any way the **AER**'s objectives, functions or powers.~~

Explanations about why certain information is required are provided for guidance only and do not limit or expand in any way the **AER**'s objectives, functions or powers.

Energy related service means a **contestable non-distribution service** provided to a **small customer** in relation to the **small customer's** premises that is related to the generation, supply, storage, sale or purchase of electricity by the **small customer**, the collection, analysis or use of **metering data** or other energy management data relating to the **small customer** or the provision of any equipment or facilities that are related to any of the foregoing activities and excludes:

- any **contestable non-distribution service** that is provided to the **small customer** to the extent that the service is being used by the **small customer** to provide services to a **DNSP** (including, for example, network support services to a **DNSP**);
- any construction, operation, maintenance, telecommunication, use of facilities and other infrastructure-related services that are provided to a third party who is not a **small customer** by the **DNSP**;

Non-distribution service means any service which is not a **distribution service**.

Any reference to:

- **distribution service** is to be read as a reference to '**distribution service or transmission service**'; and
- **direct control service** is to be read as a reference to '**direct control service or prescribed transmission service**'.

Comment [A1]: See section 3.3 of our submission

1.4 Process for revisions

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

2 Relationship with other regulatory instruments

This **Guideline** should be read in conjunction with:

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

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

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

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

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

~~The Regulatory Information Instruments~~ [A regulatory information instrument](#) can require a **DNSP** to provide information to the **AER** and to have this information certified and audited. This can include information that is subject to ring-fencing obligations under this **Guideline**.

3 Prevention of cross subsidies

3.1 Legal separation

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

Comment [A2]: Requiring a DNSP to only provide distribution services will achieve the same legal separation outcome intended by the AER. In addition, neither the NEL nor the NER require a DNSP to be a legal entity. The existence of DNSPs who are a partnership, such as SAPN, has not to date caused any issues under the NEL or the NER.

Comment [A3]: See section 2.1 of submission.

Comment [A4]: See section 4.2 of submission.

Comment [A5]: See section 2.3 of submission.

3.2 Establish and maintain accounts

3.2.1 Separate accounts

- (a) A DNSP must establish and maintain appropriate internal accounting procedures to ensure that it can demonstrate the extent and nature of transactions between the DNSP and its **related bodies corporate**.
- (b) The AER may include a requirement in a **regulatory information instrument** for a DNSP to:
- provide its internal accounting procedures to the AER;
 - report on transactions between ~~the DNSP~~ and its **related bodies corporate**.
- (c) A DNSP cannot apply for a waiver of the obligations set out in ~~clauses clause~~ 3.2.1(a).

3.2.2 Cost allocation and attribution

- (d) A DNSP must not allocate or attribute to **distribution services** any costs ~~that properly relate which~~ **are not directly attributable to non-the provision of distribution services; or**
- ~~i. are not directly attributable to non-the provision of distribution services; or~~
- ~~ii. are not incurred in providing~~ distribution services.
- (e) A DNSP must allocate or attribute costs to **distribution services** in a manner that is consistent with the **cost allocation principles** and its approved **CAM**, ~~as if those cost allocation principles and CAM otherwise applied to the allocation and attribution of costs between distribution services and~~ **For the avoidance of doubt, a DNSP must not allocate or attribute to distribution services any costs that are**

Comment [A6]: We have amended this wording to ensure it reflects the cost allocation principles and clause 6.15.2(3) of the NER.

directly attributable to the provision of **non-distribution services** or are incurred in providing **non-distribution services**.

~~(e)~~(f) A **DNSP** must demonstrate to the **AER** whenever it provides financial information to the **AER** in accordance with **a regulatory information instrument** how it meets the obligation in ~~clauses~~clause 3.2.2(a) and ~~3.2.2~~(b).

~~(f)~~(g) A **DNSP** cannot apply for a waiver of the obligations set out in this clause 3.2.2.

4 Non-discrimination

4.1 General obligations to not discriminate

- (a) A **DNSP** must not discriminate (either directly or indirectly) between its **related body corporate** (including customers of its **related body corporate**) and competitors ~~of with substantially the same characteristics and reputation as~~ its related body corporate (including customers of a competitor of its **related body corporate**) in connection with the ~~supply provision~~ of **distribution services or non-distribution services**.
- (b) Without limiting the scope of 4.1(a), this provision requires a **DNSP** to:
- i. deal or offer to deal with its **related body corporate** as if its related body corporate was not a related body corporate of the **DNSP**;
 - ii. deal or offer to deal with competitors of its **related body corporate** (including customers of those competitors) on substantially the same terms and conditions, ~~as those for (including in relation to quality, reliability and timeliness of service), as apply to~~ its **related body corporate** (including customers of its **related body corporate**);
 - iii. ~~provide substantially the same quality, reliability and timeliness of service to competitors of its related body corporate (including customers of its related body corporate), as it provides to its related body corporate (including customers of those competitors);~~
 - iii. ~~[Deleted]~~
 - iv. ~~not provide information to its related body corporate that:~~
 - a. ~~the DNSP has obtained through its dealings with a competitor of the related body corporate that; and~~
 - a.b. ~~may enable its related body corporate to gain or exploit an unfair advantage the related body corporate in relation to the provision of competitive or contestable energy-related services;~~
 - iv.v. ~~not advertise or promote the energy-related services provided by its related body corporate; and~~
 - v.vi. ~~have independent and separate branding for its distribution services from the branding for the energy-related services provided by its related body corporate that provides non-distribution services. For the avoidance of doubt, this does not restrict the use of secondary branding.~~
- (c) A **DNSP** cannot apply for a waiver of the obligations set out in clause 4.1.

Comment [A7]: In this clause the AER has placed a blanket prohibition on discrimination, however, there are legitimate reasons to discriminate against corporations with different credit ratings, payment histories and service delivery quality. This is simply the nature of commercial transactions, and must be allowed.

4.2 Specific obligations for functional separation

4.2.1 Physical separation/co-location

- (a) A **DNSP** must operate independent and physically separate offices for the provision of ~~direct control distribution services services and regulated transmission~~

Comment [A8]: The AER should provide DNSPs with flexibility on how they meet non-discrimination objectives and should not automatically apply functional separation, see section 3.2 of submission. Notwithstanding this, we also provide the following comments.

~~services~~ from the offices from which ~~any of its separate service providers or related bodies corporate~~ ~~provides other~~ **provide energy-related** services. ~~For example, a DNSP must operate in a different building, and prevent staff from mixing in the normal course of undertaking work activities.~~

Comment [A9]: See section 3.2 of submission

(b) The obligation set out in clause 4.2.1(a) is subject to the following exceptions:

- i. Office accommodation for staff ~~employed by~~ its ~~separate service providers or related bodies~~ **body corporate** that do not provide **energy-related** services; or
- ii. Office accommodation for staff **employed by the DNSP** who are not directly involved in the provision of **direct control services** and **regulated transmission services** and who therefore do not have access to information about ~~electricity~~ **small** customers and **direct control** services, ~~such as (for example, staff employed by the DNSP or its related body corporate who exclusively perform corporate services, for example in like administrative, accounting, payroll and human resources; information technology support service or legal for the DNSP and its related body corporate);~~ or
- iii. Any arrangements agreed through the waiver process set out in Section 5 of this **Guideline**.

4.2.2 Staff sharing

(a) A **DNSP** must ensure that ~~its~~ staff **employed by the DNSP and** directly involved in the provision of ~~a distribution services direct control service or a regulated transmission services~~ **services** are not also involved in the provision or marketing of ~~a competitive or contestable energy-related services~~ **services** by ~~its~~ **related body corporate**.

Comment [A10]: The AER should provide DNSPs with flexibility on how they meet non-discrimination objectives and should not automatically apply functional separation, see section 3.2 of submission. Notwithstanding this, we also provide the following comments.

(b) The restriction set out in clause 4.2.2(a) does not apply to:

- i. A member of staff who is **employed by the DNSP and is** not involved in the provision of **energy-related** services; or
- ii. A member of staff who is **employed by the DNSP and is also** a senior executive **or officer** of both a **DNSP** and a **related body corporate**; or
- ~~iii.~~ A member of staff who is **employed by the DNSP and is** not directly involved in the provision of any ~~direct control services or regulated transmission~~ **distribution** **services**, and who therefore ~~does~~ not **ordinarily** have **direct** access to information about ~~electricity~~ **small** customers ~~and services, such as (for example, staff who exclusively perform corporate services, for example in like administrative, accounting, payroll and human resources; information technology support service or~~
- ~~iii.~~ A member of staff who is involved in the provision of a ~~DNSP's negotiated distribution services~~ **legal services for the DNSP** and ~~unregulated distribution services; or its related body corporate);~~ or
- iv. **[deleted]**
- v. Any arrangements authorised through the waiver process set out in Section ~~55~~ of this **Guideline**.

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

4.2.3 Information ~~access and~~ disclosure

4.2.4 ~~Protection of information~~

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

4.2.5 ~~Sharing of information~~

- ~~(d) Where a **DNSP** acquires information in about a small customer as a result of providing **direct control services**, and/or regulated **transmission services**, is entitled to share and does in fact shares that information (including information derived from that information) with a **related body corporate**, ~~it~~ which provides energy-related services, the **DNSP** must provide access to that information (including the derived information) on an equal basis with substantially the same terms and conditions to third parties competing with the **related body corporate**.~~
- ~~Disclosure of information~~

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

~~No waiver~~

A **DNSP** cannot apply for a waiver of the obligations set out in this clause 4. ~~3.2.3~~

Comment [A11]: This clause:

1. Conflicts with the AER's clause 4.3.3
2. Is not targeted at ring fencing, and would prevent the DNSP from sharing information in a way needed in the ordinary course of business
3. Is inconsistent with the NER which requires sharing certain information
4. goes beyond the Privacy Act

This was outlined in our original submission to the AER's Preliminary Positions Paper

Comment [A12]: As above

5 Waivers

5.1 DNSP's application for a waiver

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

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

5.2 AER's consideration of a waiver application

5.2.1 Requirement to consider a waiver

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

5.2.2 Matters AER will consider

- (a) In considering an application under clause ~~5.15.1~~ 5.15.1, and deciding whether to grant, or refuse to grant, the waiver, the **AER** may consider any matter it considers relevant but will have regard to at least:
 - i. the ~~National Electricity Objective~~ national electricity objective;
 - ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
 - iii. whether the benefit, or any likely benefit, to electricity consumers of the **DNSP**'s compliance with clause 4.2 would be outweighed by the cost to the **DNSP** of complying with that obligation.

5.2.3 The AER's assessment of the waiver application

- (a) When the **AER** receives an application under clause 5.1 it:
 - i. may reject the application without further consideration if it considers that the application has been made on trivial or vexatious grounds;
 - ii. may request any further information that it considers is [reasonably](#) necessary for it to consult on, and/or make a decision on, the application;
 - iii. may invite public submissions on the application; and
 - iv. may impose such conditions as it considers appropriate when granting a waiver.
- (b) If the **AER** undertakes a public consultation process it may publish its decision that explains the reasons to grant, or refuse to grant, a waiver.
- (c) The **AER** may publish the terms and conditions of any waiver that is granted.

5.2.4 Form of waiver

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

- (a) apply to one or more ~~DN~~**NSP**~~s~~;
- (b) apply for the ~~DN~~**NSP's** current **regulatory control period**, ~~the~~ next **regulatory control period** or both; and
- (c) be made subject to such terms and conditions as the **AER** considers appropriate.

5.3 Reviewing a waiver within a regulatory control period

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

The **AER** may:

- (a) conduct such consultation as it considers appropriate;
- (b) publish its decision that explains the reasons to vary or revoke the waiver;
- (c) publish the terms and conditions of any varied waiver that is granted; and
- (d) consider an appropriate transition for the **DN****SP** to implement the **AER's** new decision.

6 Compliance and enforcement

6.1 Maintaining compliance

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

6.2 Compliance reporting

6.2.1 Annual compliance report

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

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

6.2.2 Timing of annual compliance reporting

- (a) A Subject to clause 6.2.2(b), a **DNSP** must submit to the **AER** an annual compliance report within 4 months of the end of the regulatory year to which the compliance report relates.
- (b) A **DNSP** will not be required to start reporting on its compliance with this **Guideline** in accordance with clause 6.2.2(a) until the end of the first full regulatory year after ~~this~~ **Guideline** clause 6.1 commences to apply to the DNSP.

6.2.3 Reporting by AER

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

6.3 Compliance breaches

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

6.4 Complaints and investigations

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

Appendix A – Transitional arrangements

Despite clause 1.1:

- (a) The obligation set out in ~~clause 3.1(a) commences on a date that is 12 months after the commencement date provided in clause 1.1~~ clauses 3.1(a) and 4.1(b)(vi) will commence on 1 January 2018; and
- (b) The obligations set out in clauses 4.2.1 and 4.2.2 will commence on ~~a date that is six months after~~ 1 July 2017.

Comment [A13]: Drafting to be developed in line with section 4.1 of our submission