
Review of contestable services on the New South Wales electricity network

Final report



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Summary and recommendations

The NSW Government introduced contestability for particular electricity distribution network connection services in 1995. Contestability is underpinned by a scheme that accredits service providers that undertake contestable work on the electricity network (the Accredited Service Providers (ASP) Scheme).

There has been a significant maturing of the market for electricity distribution network services since contestability was introduced and the ASP Scheme put in place. The volume of contestable work undertaken has increased, as has the number of service providers undertaking the work. These changes led to this review of the Scheme.

Separately, developers and distribution network service customers had approached the NSW Government and said that there were avoidable delays connecting large projects to the electricity distribution network. The review of the Scheme was an opportunity to undertake a broader review of both the connection process and the scope of contestability in NSW.

In June 2009, the Better Regulation Office, Industry & Investment NSW and Department of Services, Technology and Administration released an issues paper seeking feedback on the operation of the Scheme, as well as comment on the range of work that is contestable, particularly certification of design and inspection of contestable work. The terms of the review are set out in Appendix A.

20 submissions were received and used to inform the analysis and recommendations in this report. Additionally, significant levels of targeted and informal consultation were undertaken with ASPs, DNSPs, customers and other interested stakeholders. A list of submissions received is in Appendix B.

The review finds that the ASP Scheme has not kept pace with changes in the market for distribution network contestable services. The review recognises the value of the Scheme and recommends that it is retained, with modifications to improve its operation and address concerns. Particularly, this includes a more robust application and approval process, a stronger compliance and enforcement framework and adding accreditation of individual competencies to the Scheme. The review recommends that Industry & Investment NSW take on responsibility for administering the Scheme, as the government agency responsible for energy policy and regulation in NSW.

The review also considered other concerns with the connection process, including whether design certification and inspections of connections should be made contestable to reduce delay. The review finds that retaining these aspects of the connection process as DNSP responsibilities provides the most efficient and effective approach to connection. However, the review finds that there is a power imbalance between DNSPs offering connection to their network, customers that wish to seek connection and ASPs acting as the customer's agent. The review recommends that this imbalance is resolved through increased transparency and availability of information, with clear timeframes for the connection process (and performance penalties when timeframes are not met). The review also finds that all connection services and planned recoverable works should be contestable unless a DNSP publicly justifies a decision that relevant work is not contestable.

The ASP Scheme

Recommendation 1

The ASP Scheme should be retained and expanded to include accreditation of individuals in accordance with competencies set out by the Scheme. Individual accreditation should not be linked to a company's accreditation.

Recommendation 2

Additional categories of work should be accredited by the ASP Scheme to reflect the range of work that ASPs undertake.

Recommendation 3

Compliance and enforcement activities under the ASP Scheme should be improved by increasing the scope and value of penalties, including financial penalties and introducing a more effective ASP performance management process.

Recommendation 4

The ASP Scheme should be operated on a cost recovery basis.

Recommendation 5

Industry & Investment NSW should be given responsibility for administering the Scheme.

Recommendation 6

The NSW Government and AEMO should develop mutual recognition arrangements for AEMO-accredited metering providers and NSW ASPs in relation to meter installation.

Other connection concerns

Recommendation 7

Design certification and inspection of connection work should continue to be undertaken by DNSPs.

Recommendation 8

DNSPs' licence conditions should be amended to require DNSPs to justify the scope of any dedicated connection assets funded by a customer and, if the work is not contestable, any determination of cost, on request.

Recommendation 9

DNSPs' licence conditions should be amended to require each DNSP to publicly report performance information.

Recommendation 10

Financial penalties should be introduced in NSW where a DNSP fails to meet agreed timeframes related to design certification and inspection of connection. The AER should be asked to set these penalties. The penalties should come into force at the same time as the national connections framework.

Recommendation 11

All connection services and planned recoverable works should be contestable. If a DNSP considers work that a customer pays for is non-contestable, it must justify this decision on request, including any determination of cost.

Recommendation 12

The ASP Scheme should be immediately transferred to Industry & Investment NSW. All recommendations should come into force by the start of 2011.

1. Introduction and need for reform

The Better Regulation Office, Industry & Investment NSW (IIN) and the Department of Services, Technology and Administration (DSTA) have conducted a review of electricity network contestable services in NSW. An issues paper was released in June 2009 seeking feedback on the operation of the Accredited Service Providers (ASP) Scheme, as well as comment on the range of work that is contestable, particularly certification of design and inspection of contestable works. This report sets out the findings of the review which take into account the goals of the regulation, stakeholder input and the need for a safe, efficient and effective approach to electricity distribution and supply in NSW.

The NSW Government introduced contestability for particular electricity distribution network connection services in 1995. The legislative framework established to support contestability includes a scheme to accredit businesses that are qualified to provide these services (the ASP Scheme).

Since contestability was introduced and the ASP Scheme put in place, there has been a significant maturing of the market for electricity distribution network services. The value of contestable works undertaken has increased to an estimated \$300 million each year, and there are currently over 1200 service providers. ASPs are also undertaking increasingly complex types of work. During this time, the ASP Scheme has been operated by a number of different bodies, including an industry association (the former Electricity Association of NSW), the former Department of Energy, Utilities and Sustainability and NSW Fair Trading in DSTA.

The Scheme and the broader regulatory framework for delivering contestable services have not been comprehensively reviewed since 2001. The significant changes in the sector during this time, as well the need to maximise the contribution of this sector to the economy, led to this review. The review focused on ensuring that the arrangements that support contestability and the scope of contestable works are safety-focused, effective, efficient and appropriate.

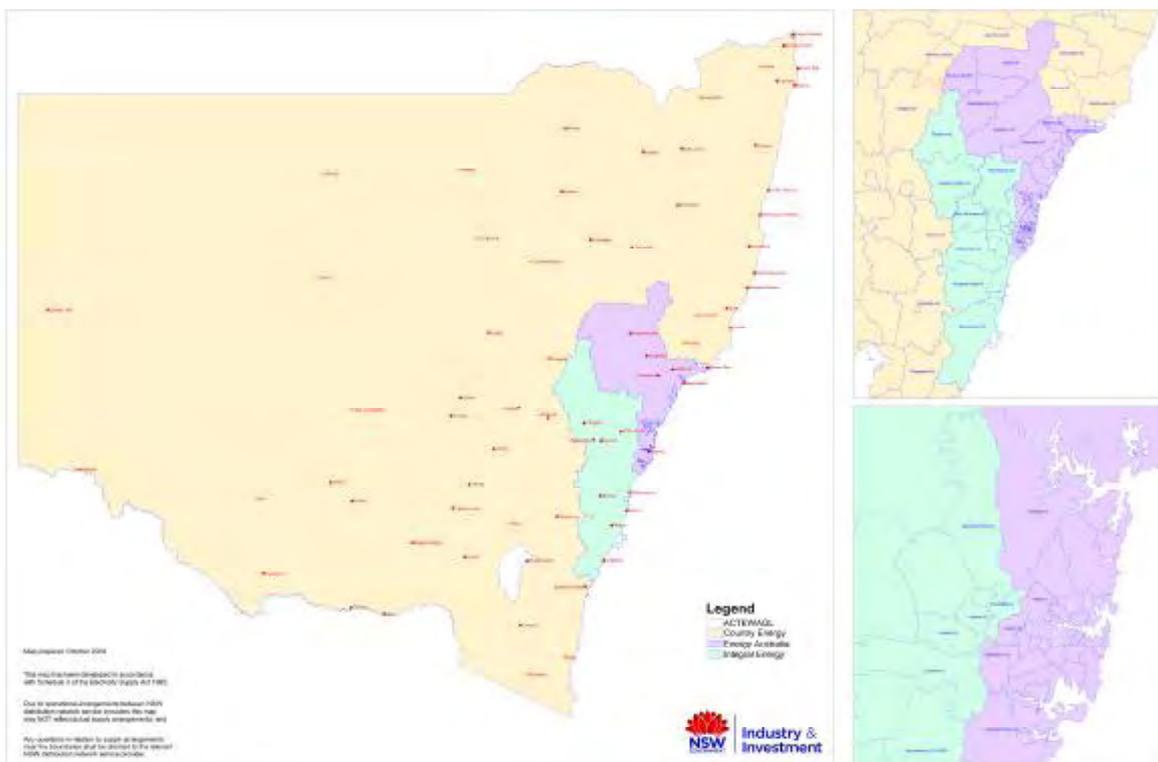
2. Background

The aim of the electricity supply framework in NSW is to deliver a safe and reliable electricity supply in a competitive or contestable environment.

Electricity is supplied to customers in NSW via transmission and distribution networks, conveying electricity generated in the National Electricity Market (NEM). Retail suppliers purchase electricity from generators, and sell it to end use customers. The electricity is carried at high voltage over long distances on transmission networks by transmission network service providers, and then is delivered to customers over lower-voltage distribution networks by distribution network service providers, or DNSPs. This review focuses on distribution networks in NSW.

NSW has three DNSPs. DNSPs are monopoly operators with a franchise licence issued by the NSW Government to distribute electricity to customers in a defined area of NSW. Country Energy services most of rural NSW. EnergyAustralia covers eastern and northern Sydney, the Central Coast, Newcastle and adjacent rural areas. Integral Energy covers western and southern Sydney, the coast down to Wollongong and adjacent rural areas. There are significant differences in the DNSP's networks as a result of different inherited infrastructure, geographic and service issues and operational decisions.

NSW Distribution Network Service Provider's Distribution Districts



The *Electricity Supply Act 1995* establishes a framework for electricity customers to contract directly with third party service providers to do the work that is necessary to connect them to a distribution network. In particular, the Act establishes a process of accreditation, so that only competent service providers may do this work. The *Electricity Supply (General) Regulation 2001* sets out the detail for the framework and the accreditation process. The *Code of Practice for Contestable Works* outlines principles that underpin contestability, the type of work that is contestable (including work that is contestable at the discretion of a DNSP) and responsibilities of all parties. The Code is binding on DNSPs (by direction of the Director General of Industry & Investment NSW or their delegate). While it is not binding on ASPs or electricity customers, its provisions are imposed in other ways, including in contracts between DNSPs and their customers and ASP Scheme documents.

Under the framework, contestable work is defined as customer connection and the extension or increase in capacity of the distribution system. Accredited Service Providers (ASPs) are accredited under the ASP Scheme to complete this work. Customers engage ASPs to undertake their work directly and the relevant DNSP takes on ownership and responsibility for maintenance of work completed on the distribution network, as it owns the network. The DNSP's ownership of the network comes with a range of obligations to ensure the safety and reliability of the network. NSW is unique in its approach as no other Australian jurisdiction allows a customer to engage a service provider of their choice to complete work that the DNSP will own and maintain.

An alternative approach to contestability in Victoria

In Victoria, there is a limited approach to contestability where a DNSP enters into a contract directly with a service provider, on behalf of a customer. The customer is given some choice of service provider as the DNSP is required to collect a number of tenders for the work and then allow the customer to select one of the tenders. A DNSP has a contractual relationship with the service provider, rather than the customer contracting the service provider.

It would be possible to introduce this approach in NSW. However, the higher level of contestability in place in NSW allows greater customer choice and fosters efficiency in the market for contestable services. Reducing the level of contestability by allowing DNSPs to seek tenders from a limited number of services providers would significantly impact on competition and efficiency in the NSW market, which could lead to an increase in cost and delay. This approach is not recommended.

National Licensing System

In April 2009, the Council of Australian Governments (COAG) agreed to a national licensing system that will remove inconsistencies in a range of occupational licences across state and territory borders, including electrical occupations, by 1 July 2012. The reform will reduce red tape and allow electrical contractors to move easily between jurisdictions.

Accreditation under the ASP Scheme applies to private distribution networks and pre-approves businesses (and, in the form proposed by this review, individual workers) to provide third party services on assets owned by DNSPs. The ASP Scheme facilitates competition by standardising this accreditation process across different networks, making it easier for ASPs to work and customers to select an ASP to do work for them. While the ASP Scheme provides an accreditation function to work on private assets, it is not an occupational licence and so will not be affected by the NLS.

The terms of reference for this review are set out in Appendix A.

3. Review process

An issues paper was released in June 2009. The paper set out the terms of reference for the review (see Appendix A), as well as a range of reform options for consideration and feedback. A broad range of stakeholders were notified of the issues paper, including all ASPs, each DNSP, customers and other interested groups. The review was advertised widely to ensure all interested parties had an opportunity to make a submission.

Twenty submissions on the issues paper were received (a list of submissions received is in Appendix B).

The consultation process included meetings with key stakeholders and informal consultation with a range of different interested parties.

Face to face meetings were held with each of the DNSPs (EnergyAustralia, Country Energy and Integral Energy), distribution network customers and other interested stakeholders (Electrical Trades Union NSW, Master Electricians, National Electrical and Communications Association NSW and TransGrid). Meetings were held during the submission period and after preliminary recommendations had been identified.

Selected Level 1, Level 2 and Level 3 ASPs were contacted to discuss the review and the proposed options. Distribution network customers were identified and directly contacted to informally discuss the review and possible reform, as well as being invited to provide formal submissions. A number of these identified stakeholders provided follow up information about their experience of the ASP Scheme and connection process to aid the review process.

Stakeholder views – ASP Scheme

Stakeholders felt that the ASP Scheme has not kept pace with the maturing of the market for electricity distribution network contestable services. Stakeholders identified a number of possible weaknesses of the Scheme, including inadequate administration, a failure to recognise complexity in design work, low levels of compliance and enforcement activity combined with inadequate powers and overlap with DNSP authorisation processes.

Administration

Concerns were raised that resourcing and expertise constraints limit the effective administration of the ASP Scheme. Particular attention was drawn to the desktop nature of the review of documents for Level 2 and Level 3 accreditation, which assumes that applicants have provided correct information in their application. Most recently, resourcing constraints mean that Fair Trading has limited capacity to test the information and relies on DNSPs to identify and advise if an ASP is breaching accreditation requirements.

Stakeholders felt that the Scheme has not, for much of its existence, adequately tested the competency of applicants, which could lead to a lower quality of ASP work, ultimately risking the

safety and reliability of the network. DNSPs noted that this led to them putting in place separate processes to prove competency of the people working on the network. This may duplicate processes under the Scheme.

Compliance and enforcement

Stakeholders said that Scheme operators have always had limited ability to carry out compliance and enforcement activities under the ASP Scheme. The Scheme does not include any powers to enforce compliance with its requirements or the other technical and safety rules that ASPs agree to comply with, except for cancellation or suspension of accreditation in some circumstances. For example, Fair Trading can cancel or suspend accreditation if an ASP has made a misrepresentation during the accreditation process (for example, providing false information) or if an ASP breaches the *Electricity Act 1995* or *Electricity (Consumer Safety) Act 2004*. There are no financial or alternative penalties available for breaches under the Scheme.

DNSPs said that, in practice, they generally deal with safety breaches by withdrawing the relevant individual's authorisation to work on the network. Other stakeholders said this is a conflict for DNSPs, who may have ring-fenced ASP arms that compete for the same work as an ASP. DNSPs said that each DNSP withdrawing authorisation without notifying Fair Trading is inefficient (however, the Scheme does not include regulation of individual employees). DNSPs were also concerned that this process does not prevent an ASP's employee who had his or her authorisation revoked from continuing to work on another DNSP's network. Stakeholders felt that generally this was cumbersome and duplicative, and could lead to risk to the network.

Gap filled by authorisation

A major concern raised was that there is duplication between authorisation and accreditation processes. ASPs said this led to increased cost and significant regulatory burden. DNSPs said that their authorisation processes, originally intended to provide a technical and safety induction prior to working on a local network, have expanded significantly to assess whether individuals are competent to work on the network. DNSPs feel that the current form of the Scheme does not ensure an ASP has competent staff and that the authorisation processes have stepped up to fill the gap. Integral Energy said in its submission that as the market has changed, the failure of the ASP Scheme to adapt meant that "as issues have arisen over time each distributor has implemented its own solutions, sometimes to the detriment of maintaining consistency and uniform approaches throughout NSW."¹

EnergyAustralia has said that it attempts to fill the gap in the ASP Scheme to make sure that a company's employees are competent to complete work on its network through its authorisation process. However, according to EnergyAustralia, this has not prevented ASPs entering into contracts for work on the network that they are not capable to do, risking the reliability of the DNSP's assets.

Insurance

Stakeholders generally felt that current insurance requirements are reasonable and appropriate.

¹ Integral submission at 1

Stakeholder views – Addressing other connection concerns

Developers and distribution network contestable services customers said that there are avoidable delays connecting to the network. This is particularly the case for large projects that require a significant amount of DNSP involvement, including provision of information ahead of design, certifying a proposed design, completing non-contestable work on the network required for the connection and inspecting a final connection. Stakeholders said that these delays cause significant delay to construction projects and may force a developer to find alternative energy sources during construction. These stakeholders also raised issues about reimbursement for network augmentation work and certainty around scope and cost of connection work.

DNSPs strongly objected to increasing contestability to include design certification and inspection of connection. DNSPs felt that this undermined their ability as asset owner to satisfy their legislative obligations to ensure the safety and reliability of the network. There was very little support for an increase in contestability among ASPs and other stakeholders.

4. Accredited Service Providers Scheme

Currently, the regulatory framework sets up a centralised process to check that a business entity is capable of doing work on the distribution network and also places obligations on DNSPs to ensure that an individual is competent to work on the network. In practice, this means three things take place before a service provider undertakes work on the network.

1. The service provider's company is accredited by NSW Fair Trading under the ASP Scheme to show that it is capable of doing the work and satisfies prudential requirements (see box below for further information on accreditation);
2. Each individual worker is assessed by the relevant DNSP, to ensure that he or she has the right skills and training; and
3. The DNSP provides the individual worker with a health and safety induction to its network, including training on how its network is built and how to work on the network.

Accreditation under the ASP Scheme

To become accredited, ASPs must be capable of doing the work (including having adequate equipment and qualified staff) and satisfy prudential (insurance) requirements. The requirements vary depending on the level of accreditation sought.

Capability

The applicant must show it has staff who are competent to do the work for the type of accreditation sought. Level 1 and 2 providers must also register employees that are intending to work on or near the network. Separately, the ASP must seek authorisation from a relevant DNSP for each individual to work on or near a network. In practice, this means there is some duplication between authorisation of individuals to work on the network by a DNSP and an ASP proving to Fair Trading that its workers are competent to work on the network (by demonstrating that they are qualified and trained). Also, accreditation is based on an ASP's staff at the time of application and there is no process in place for checking that an ASP has retained competent staff throughout the period of its accreditation.

Insurance

ASPs may be required to hold insurance cover for public liability, product liability, motor vehicles and workers compensation. Level 3 ASPs must also hold professional indemnity insurance. Insurance policies have to be in place for three years after a job is undertaken.

Public and products liability insurance policies must note the NSW DNSPs interests as owners of the assets and, eventually, the connection work in their respective franchise areas. The policies must also waive any rights or relief that the insurer may become entitled to against the DNSP.

Operation of the ASP Scheme

Accreditation categories

ASPs are accredited as Level 1, Level 2 or Level 3 providers.

Level 1 work is the construction and installation of overhead and/or underground distribution systems that are owned and operated by DNSPs (network asset construction services).

Level 2 work is the connection work between the point of supply or the meter and the point of connection on the distribution network. There are five categories of work: disconnection/reconnection services; underground service lines; overhead service lines; metering and energising installations; and installing contestable market metering.

Level 3 providers do the design work for Level 1 construction.

Grading

Level 1 and Level 2 ASPs are graded A, B or C, depending on experience and expertise. Accreditation can be upgraded or downgraded on advice and evidence from a DNSP.

Grading affects the fee that an ASP pays a DNSP to inspect completed work (inspection is a monopoly service and fees are set by the Australian Energy Regulator). It also affects the number of inspections that are undertaken for Level 2 work: Grade A, 1 in 15 jobs are inspected; Grade B, 1 in 5 jobs are inspected; and Grade C, all jobs are inspected. The higher level of risk that Level 1 work poses to the network means that, generally, all work is inspected regardless of grading.

Fees and application process

Any individual or corporation may apply for accreditation as an ASP. Applicants lodge the relevant form with Fair Trading with supporting information and the following fees. Renewal takes place annually and proof that insurance policies have been maintained is required. Initial accreditation fees for Level 1 ASPs are significantly higher as a more rigorous assessment is involved, including a site visit.

	Accreditation	Renewal
Level 1	\$407.00	\$159.50
Level 2	\$159.50	\$159.50
Level 3	\$121.00	\$121.00

Dispute resolution and cancellation

Accreditation can be cancelled by Fair Trading if an ASP is no longer competent, has been convicted of an offence against the *Electricity Supply Act* or *Electricity (Consumer Safety) Act* or associated regulations, was accredited on the basis of false or misleading information, or the ASP has breached an undertaking given to Fair Trading (such as an undertaking not to engage in specific risky behaviour). Fair Trading can also suspend an ASP's accreditation on safety grounds. Fair Trading has rarely cancelled an ASP's accreditation except at the ASP's request.

The Scheme has a formal dispute resolution process that covers decisions by Fair Trading to refuse an application or renewal, suspend or cancel accreditation or set or change the grading of an ASP. Decisions by a DNSP in relation to the assessment of an ASP's work are also covered by the Scheme's dispute resolution procedures. The process can involve an internal review, an alternative dispute resolution process with an appointed mediator and an arbitration process under the *Commercial Arbitration Act 1984*. These procedures have not been used.

4.1 Reform options

The discussion paper set out four options for reform of the Scheme. Each option is summarised below, along with issues raised by stakeholders and an analysis of the option.

Retain the ASP Scheme as it currently operates

The first option is to retain operation of the ASP Scheme, essentially in its current form. The advantage of maintaining the current arrangements is industry and stakeholder familiarity with the way the current system operates and its requirements and costs.

This option would not address the issues identified, including concerns about the depth of the checks undertaken, a lack of compliance and enforcement activities and overlap between authorisation and accreditation processes. DNSPs and ASPs both said that in its current form, the ASP Scheme is not protecting the reliability and safety of the electricity distribution network as it is failing to adequately ensure that only competent service providers access the network. This failure has led to DNSPs setting up their own competency processes, which has created red tape for ASPs and unnecessary costs for ASPs and their customers.

Remove the ASP Scheme

Another option considered is to remove the ASP Scheme. The advantage of removing the ASP Scheme would be that it would remove the overlap between the authorisation and accreditation processes.

However, the review found that this would lead to a less efficient and effective process for service providers accessing the network, as DNSPs would independently undertake the functions of accreditation, requiring ASPs to complete three different accreditation/authorisation processes. This would cause cost and complexity for DNSPs and ASPs and prevent ASPs from working freely across different networks. If DNSPs did not take over the functions of accreditation, they would have to rely on their authorisation processes as they currently operate for individual workers. This could result in less certainty that work being undertaken is insured, that safety, environmental and other management systems are in place or that a worker has access to the required equipment, especially in the case of Level 1 work. It would also make it more difficult to deal with service providers in relation to business management practices and security bonds.

Modify administration of the ASP Scheme

Another option is to retain the ASP Scheme, but to modify its design and operation to address some of the concerns with the current scheme. There is strong stakeholder support for the retention of the ASP Scheme on the basis that its current failures mainly result from not adapting to a changing market, and that reforming the Scheme would be the most effective and efficient way to support competition for contestable services on the network.

The review identified that the Scheme would be more effective and efficient if it was underpinned by a stronger compliance and enforcement framework, was better resourced and with an independent body administering all aspects of the Scheme. Each of these issues are addressed later in the report.

Generally, stakeholders commented that the current level of resourcing of the ASP Scheme is inadequate and that funding levels would need to increase significantly to support a more robust scheme. The review agreed with this comment and considered a range of options for meeting administrative costs, include increasing fees charged to ASPs for accreditation or obtaining a financial contribution from the DNSPs. The Scheme should be operated on a cost recovery basis.

While there is recognition of the value of the ASP Scheme, the fact that it does not fully assess the competencies of individuals is a major shortcoming. Modified administration of the Scheme could include incorporating the accreditation of individual competencies in the ASP Scheme's accreditation process.

DNSPs have indicated that their authorisation processes have grown from basic technical and safety inductions to include a full assessment and recognition of individual competency in response to this gap in the ASP Scheme. This has led to an inefficient and complex regulatory framework.

An expanded accreditation process was proposed as a reform option, to deal with the current overlap and gaps between the separate processes, as well as consolidating processes across the distribution networks. It would cover both the competencies of a business and individuals to undertake contestable work. The only requirement a DNSP would then need to impose would be a limited technical, health and safety induction to authorise an accredited individual to undertake work on the network. This authorisation would take the form of a 'site induction' and would cover the DNSP's health and safety protocols and any particular technical requirements specific to the particular network.

An expanded process would reduce cost and complexity for DNSPs and ASPs and, ultimately, consumers. An ASP would be able to seek a single approval to work across all networks once, rather than accrediting its business, and then separately satisfying three different sets of competency requirements for each staff member. As well as reducing financial cost, this would reduce delay in getting individuals and companies on-site, increasing the efficiency of the connection process.

Cost of accreditation of personal competencies by DNSPs

Currently, each DNSP carries out a full assessment of the personal competency of individuals as part of the authorisation process. The competency accreditation is an extension of the health, safety and technical induction DNSPs require workers to take before they are authorised to work on a network.

Integral Energy has estimated that it would save around \$200,000 each year if it was able to rely on the accreditation of an individual's competency undertaken by another body (that included an effective compliance and enforcement framework). Savings would be a result of being able to confirm accreditation, rather than reviewing documents, processing applications and taking copies of documents. These savings would be repeated across the networks.

An expanded process would facilitate more effective compliance and discipline processes as the accrediting body could act immediately on report of a breach, rather than relying on different DNSPs to take action or for reports of inadequate work to filter through to the accrediting body. It would also mean the same body was taking action for both safety and technical breaches.

Currently, DNSPs do not check the competency of individual Level 3 designers (this means that they do not authorise Level 3 ASP employees). An expanded accreditation process would mean that the employees of Level 3 ASPs who submit designs would be checked for competency before they completed work. In practice, this process would be the same as the current check of personal competency for an individual completing Level 1 or 2 work – each person would provide proof of competency and training, and they would be accredited. This may lead to a reduction in the length of the design process, as it should reduce the number of substandard designs submitted and resubmitted.

An expanded process would be undermined if DNSPs maintained authorisation processes that extend beyond technical and safety induction to the network. This could result in an extra layer of authorisation and increase cost and complexity in the regulatory framework. DNSPs have advised that they would be prepared to remove their processes that establish personal competency where the ASP Scheme performed the same function.

DNSPs would still require ASPs to undertake a basic technical and safety induction to the network. This basic induction cannot be centralised or harmonised across each DNSP as there are significant differences between each network's infrastructure. This is a result of the different networks inherited by the DNSPs, as well as geographic differences and ongoing operational decisions. As technical and safety requirements are different across and within networks, the most efficient and effective approach is to allow DNSPs to continue to fulfil this function.

Expanding the ASP Scheme to include accreditation of individuals in accordance with their competencies would ensure a consistent approach across different networks, reduce regulatory burden for ASPs, allow increased portability across networks and remove authorisation-related conflicts for DNSPs that undertake ASP work. It would also allow the authorisation process to operate as a safety and technical induction as originally intended.

Recommendation 1: The ASP Scheme should be retained and expanded to include accreditation of individuals in accordance with competencies set out by the Scheme. Individual accreditation should not be linked to a company's accreditation.

4.2 Categories of accreditation

ASPs and DNSPs both said that the limited number of sub-categories of work within each level of accreditation means that the ASP Scheme cannot adequately assess an ASP's competency to provide a particular service. While there are five sub-categories of work for Level 2 ASPs, there are only two sub-categories for Level 1 or 3 ASPs (overhead and underground). In practice, particularly in urban areas, the work undertaken is much more specialised and some service providers do not offer the full range of work within the overhead and underground categories. For example, a Level 1 ASP may be accredited and have general competency, but not have the skills to complete highly specialised work such as cable jointing. It is also possible that a service provider cannot become accredited because it does not employ someone with a particular skill, even though it does not intend to undertake work that requires that skill. For example, Level 1 accreditation may be refused to a service provider that is competent to construct substations but has no experience in erecting poles or stringing distribution lines.

Development of further sub-categories of accreditation would allow targeted recognition of the complex and specialised nature of work that ASPs complete, particularly in urban areas. It would also allow training and accreditation of ASPs to be developed around identified competencies. For customers, it would mean being able to quickly identify the appropriate ASP to do work that requires particular competencies.

One way to achieve this would be through the National Skills Passport approach being considered by the Ministerial Council on Energy's (MCE) Energy Technical and Safety Leaders Group. In December 2009, the MCE agreed in principle to the Group's Energy group's National Technical & Safety Harmonisation Enhancement Harmonisation Plan² and directed the Standing Committee of Officials to establish a working group to progress the recommendations, including those in relation to skills recognition. Skills recognition and portability is an issue being examined by the Leaders Group and is likely to be of particular relevance to skills-based assessment of individuals undertaking contestable work. Where possible, the relevant authority that develops the categories should seek to ensure the categories are consistent with the National Skills Passport.

The review notes that the process of developing categories should focus on ensuring that accredited ASPs and individuals have the required specialist skills to complete particular tasks, rather than opening up accredited work to non-accredited providers.

Recommendation 2: Additional categories of work should be accredited by the ASP Scheme to reflect the range of work that ASPs undertake.

² Available from the MCE web site at <http://www.ret.gov.au/Documents/mce/documents/2009%20Bulletins/Energy%20Technical%20and%20Safety%20Harmonisation%20Enhancement%20PlanFINAL.pdf>

4.3 Operational issues

There are a number of operational issues that would need to be resolved under an improved ASP Scheme that also accredited individuals for competency, including compliance and enforcement powers, funding and the most appropriate administering body.

Compliance and enforcement

As set out above, an issue raised by a number of stakeholders during consultation was the lack of compliance and enforcement powers and activities under the current Scheme. The only effective sanctions for poor quality work or breach of a safety or technical requirement are a DNSP revoking an individual's authorisation to work on a network, or Fair Trading suspending or cancelling accreditation. Removal of accreditation may prevent a particular business providing ASP services, but it does not stop the individuals in the business from re-applying for accreditation as a new legal entity. There is also little exchange of information on ASP performance between the DNSPs, who monitor the quality of work, and Fair Trading, who accredits ASPs. Such an exchange tends to occur when Fair Trading requests a performance report (when an ASP asks to have its rating upgraded) or if a DNSP considers internal disciplinary action to be insufficient and asks Fair Trading to cancel an ASP's accreditation.

The accrediting body should be given the power to investigate ASPs' work, including on-site investigation, audit records and the ability to enter an ASP's premises to investigate complaints on suspicion of inadequate processes or poor work. Powers should be based on Division 9 of Part 2 of the *Electricity (Consumer Safety) Act*, including clear power to take photographs.

The accrediting body should have the power to impose financial penalties on ASPs for breaches. This would allow the body to target low-level breaches and ensure that ASPs have a financial incentive to ensure work is adequate. Penalties should be scaled according to the seriousness of the breach and the offender's history.

Expanding the accreditation process to include individual competency will help deal with the problem that ASPs who have their accreditation revoked for a breach may apply for accreditation as a new business. It will also ensure that information about individual and ASP performance is collected and compared in the same place which will help to identify where an ASP is undertaking poor work.

A key part of the compliance and enforcement regime should be a performance management process with identified strategies for encouraging dialogue between DNSPs and the accrediting body about ASP performance. The current informal dialogue is unreliable and inefficient, does not adequately protect the safety and reliability of the network and is not driving consistent outcomes across networks. Particularly, DNSPs should be encouraged to provide relevant information about any investigation into possible breaches of safety requirements by ASPs or ASP employees to the Scheme administrator as standard procedure.

Along with a more substantial compliance and enforcement program, systems should be put in place for the accrediting body to manage conflict or disagreement – for example, putting in place an independent appeal process for when accreditation is revoked. It would be appropriate for this appeal process to be dealt with by the Administrative Decisions Tribunal of NSW.

Recommendation 3: Compliance and enforcement activities under the ASP Scheme should be improved by increasing the scope and value of penalties, including financial penalties, and introducing a more effective ASP performance management process.

Funding

There was a general view put forward by stakeholders that the current ASP Scheme is underfunded and under-resourced and that this is undermining its effectiveness. Current fees are set out on page 11. Current fees cover the operation of the Scheme in its existing form, but would need to be significantly increased to support the operation of a more effective Scheme.

Increased costs would include staff (investigators), more compliance and enforcement activities and higher overheads. Compliance staff would have to be employed across the state, or travel extensively across rural and regional NSW.

The Scheme administrator should implement funding arrangements that ensure the ASP Scheme recovers its costs from ASPs and DNSPs, while also ensuring that ASP fees are not a barrier to entry. DNSPs expressed willingness during the review to make a financial contribution to ensure the effective and efficient operation of the ASP Scheme.

Recommendation 4: The ASP Scheme should be operated on a cost recovery basis.

Administering body

The review considered four options for an administering body. The first three are that the Scheme sits with a NSW Government department – the Department of Services, Technology & Administration, Industry & Investment NSW or another agency or independent regulator. The fourth option is that responsibility for operating the Scheme is given to an industry association.

Fair Trading (in DSTA) currently operates the Scheme. While the limitations of the current Scheme have been identified, many of these are due to inherent constraints in the regulatory framework and a lack of resources, rather than issues with Fair Trading as administrator. The benefits of the Scheme remaining with Fair Trading include a smooth transition to an expanded Scheme, industry familiarity with the current arrangements and a parallel with Fair Trading's range of consumer-related business and trade licensing functions.

However, Industry & Investment NSW (IIN) would be a more appropriate body to administer the Scheme because it is vested with policy responsibility for the Scheme. The role of IIN is to lead electricity policy and regulation in NSW, which includes responsibility for oversight of NSW electricity network planning, demand management, quality of supply and network reliability and safety. IIN administration of the Scheme would bring its policy and operation together, making use of existing technical expertise within IIN. There are natural synergies in moving administration of the Scheme to IIN.

The option of setting up an independent government regulator was rejected on the basis of cost, complexity and inefficiency. It would significantly increase the cost of running the ASP Scheme without providing clear advantages. This cost would be passed on to ASPs and DNSPs and eventually consumers. There are no existing independent government regulators suitable to take on this role.

A final option would be to vest an industry association the responsibility of administering the Scheme. The current ASP Scheme was initially operated by the former Electricity Association of NSW, a peak body of DNSPs. While the EANSW was initially seen as an appropriate administering body, rationalisation of DNSPs in the late nineties reduced the number of members and by 2001, there were three large DNSPs constituting the EANSW, and the risk of industry capture and conflict of interest became high. The Scheme was transferred to the then Department of Energy and Utilities in December 2001.

The benefits of an industry association again running the Scheme are independence from government, efficiency gains and the ability to tap into the body's technical expertise. Industry associations also have an interest in protecting member's interests by ensuring work is of a high quality.

Lloyd's Register – industry operated accreditation scheme in the UK

An example of an industry body operating an accreditation scheme is the model run in the United Kingdom's National Electricity Registration Scheme, operated by Lloyd's Register as part of an ongoing process to introduce competition into the electrical services market. Lloyd's Register performs technical assessment of applicants for accreditation to undertake contestable works associated with the installation of electrical connections, equivalent to Levels 1 and 3 accredited service providers. The NER Scheme is recognised by all the electricity distributors in the United Kingdom and service providers use a passport system for employees to prove that required competencies are kept up to date. Accreditation is for up to three years, depending on the results of regular surveillance audits by Lloyd's assessors.

As well as the efficiencies this creates, Lloyd's Register provides guidance to service providers on safe systems of work and how to meet the safety and technical requirements of the national electricity distributors in the UK. The network operators and Lloyd's Register meet every two months to agree on the requirements of the Scheme.

Stakeholders had strong concerns that an industry body would not be able to impartially run the Scheme. The risk of giving the Scheme to an industry association is that it would represent its own members' interests first, and apply the framework of the Scheme second. Also, vesting the Scheme in an industry body would mean a weaker compliance and enforcement framework, or separation of the Scheme administrator and compliance and enforcement functions. Given that it is key that the Scheme is run impartially, and the importance of an effective compliance and enforcement framework, this option was not pursued.

Recommendation 5: Industry & Investment NSW should be given responsibility for administering the Scheme.

4.4 Metering

There is concern that national meter installation requirements overlap with the requirements of the Electricity Supply Act. The national framework establishes a Responsible Person for each delivery point and requires a person providing a meter service to that Responsible Person to be registered with the Australian Energy Market Operator (formerly the National Electricity Market Management Company). NSW DNSPs are the Responsible Persons for type 5 and 6 meters.

In NSW, for safety and network security reasons, a business that installs a meter also needs to be accredited as an ASP. This approach is considered duplicative and may have led to ASPs installing a meter without AEMO accreditation, or an AEMO-accredited meter provider installing a meter without being an ASP.

There are around 1000 ASPs, mostly small businesses, accredited under the NSW framework to install meters, but only 8 are also registered with AEMO. While metering installers who fail to register with AEMO may face enforcement action at the discretion of the Australian Energy Regulator, there is no sanction for failing to register as an ASP.

DNSPs have argued that where an ASP installs a meter on their behalf, the ASP is operating under the DNSP's AEMO registration. This position has not been tested.

One approach to resolve this overlap would be for AEMO to automatically recognise ASPs accredited to install meters (these are Level 2 providers with category 4 accreditation) as having AEMO accreditation. This would require amendment of AEMO's procedures to recognise accredited ASPs for the purpose of installing meters for Responsible Persons.

An alternative approach would be to remove the metering installation categories from the ASP Scheme and leave a single regime in place. This would require ASPs who currently install meters to register with AEMO in order to continue doing that work. This is likely to impose a high cost and operational burden on ASPs as it would require compliance with the whole AEMO metering service provider registration requirements. This is likely to drive small ASPs out of meter installation and disrupt the efficient conduct of the contestable work for consumers resulting in delays and increased connection costs.

Recommendation 6: The NSW Government and AEMO should develop mutual recognition arrangements for AEMO-accredited metering providers and NSW ASPs in relation to meter installation.

5. Addressing other connection concerns

The review also considered other connection concerns, particularly that there is avoidable delay connecting major projects to the electricity distribution network. These concerns were raised by developers and distribution network contestable service customers. These customers said that they have experienced delay when DNSP representatives failed to comply with agreed inspection times or have been forced to wait for lengthy DNSP approval processes before being able to undertake work. In some cases, connection issues cause significant delay to construction projects or require a developer to source alternative energy (for example, hiring stand alone generators to power a work site). Stakeholders noted that emergency work on the network completed by the DNSP takes precedence over agreed inspection appointments.

Major projects are particularly susceptible to delay as the connection work is complex, may involve work on the network and is negotiated with a DNSP. Developers advised that delays occur at the points in the connection process where a DNSP approves an aspect of the work (such as a proposed design, or completed physical work) or completes work that it does not allow ASPs to undertake. It is apparent that the perceived delays are a result of customers feeling that a DNSP has a commercial and information advantage.

The review considered whether increasing the scope of contestability would reduce delay attributable to DNSPs, by increasing competition in network connection services, facilitating customer choice. The review also looked at other ways to reduce delay by empowering customers, through increased information and transparency related to DNSP decisions, as well as financial penalties for DNSPs that fail to meet performance milestones during connections.

The review recognised that there can be delay in connection where an ASP fails to provide adequate information at design stage or does not comply with agreed timelines. The significant level of planning required by both a DNSP and ASP to arrange a connection mean that, regardless of whether it is an ASP or DNSP that fails to comply, there can be long delays before a connection can be attempted again. Both DNSPs and ASPs are responsible for complying with agreed timeframes.

Also, the review considered the current approach to contestability of recoverable works.

5.1 Increased contestability in distribution network services

NSW has the highest level of contestability in distribution network services in Australia. Customers connecting to the network can enter into a contract with a private service provider for aspects of their connection work. This process is managed through the ASP Scheme (discussed in the previous section) that supports competition in the provision of services leading to more choice for customers and lower costs for users. The DNSP satisfies its safety and reliability obligations and protects its interest as owner of the network through its approval and inspection process.

What connection work is currently contestable?

Connection work that is contestable includes connection to a distribution network, increasing capacity of an existing connection and work that extends or increases the capacity of a DNSP's distribution system.

Some 'recoverable work' is contestable. This is capital work on the electricity network undertaken for a customer, but is not a new connection or an upgrade to an existing connection. An example is the relocation of a power pole to allow a new driveway to be built. This work is contestable at the discretion of the relevant DNSP, except where it is deemed to be emergency recoverable work (emergency work to repair the network – for example, following a car accident that damages a network asset). Maintenance of street lighting, including lamp replacement, is also contestable at a DNSP's discretion. In December 2009, Industry and Investment NSW released a discussion paper on Public Lighting. Consultation closed on 12 February 2010 and Industry & Investment is finalising its report to Government.

What connection work is currently not contestable?

Certification of design is not contestable. The relevant DNSP certifies that a design for a proposed extension or augmentation meets the standards applicable to the local network. This may include voltage calculations, alignment with existing overhead or underground work, substation design, cable joint terminations or construction materials. In practice, the DNSP approves a design as appropriate for the network at the same time as it certifies it for technical compliance with design requirements.

Inspection of network construction and installation and customer connections is not contestable. Work is inspected to make sure it complies with both a DNSP's requirements as asset owner and general technical standards. These inspections are conducted by the local DNSP. Level 1 work is inspected at the discretion of the DNSP (generally all Level 1 jobs are inspected) and Level 2 work is inspected depending on an ASP's grading. In practice, the DNSP inspects the work for technical and design compliance at the same time that it inspects work to satisfy its obligations as asset owner.

Process for connecting a major project to the network

The process for connecting a major project to the network often begins before a formal application to connect. Customers said that they approach DNSPs to initiate a connection process during the project design stage, often prior to development approval. At this point, customers ask a DNSP to provide information about what work is required on the customer's site and on the network, and to provide a quote for work that the DNSP needs to complete. None of the information provided by DNSPs at this stage is binding.

Under the proposed national connection framework, the formal process will begin when a customer submits an application for connection. The DNSP will provide a customer with either a standard connection offer, or will tell the customer that it needs to negotiate a connection offer. Major projects that require particular work on the customer's premises or the network will require a negotiated offer.

Under the negotiated process, the DNSP advises a customer of the technical information and

requirements, and then the DNSP and customer negotiate the terms and conditions of connection. At the end of this process, a DNSP gives the customer a negotiated connection offer, which includes a contract, a quotation for connection infrastructure and a timeline setting out the dates for connection.

The customer can then hire an ASP to do contestable work, while the DNSP completes any monopoly work. This part of the process is governed by the connection contract, but is likely to include DNSP approval of a design (for both technical compliance and suitability for the network) and inspection of the connection work (for both technical compliance and to make sure that it satisfies the DNSP's requirements as asset owner). Once these activities have been completed, the DNSP makes the connection.

Options for reform

Allowing suitable skilled third parties to undertake a broader range of contestable services, in particular design certification and network connection activities currently restricted to DNSPs, could reduce delays in connection. The review considered two different approaches to allow greater contestability through private certification, as well as retention of the current arrangements.

Licence qualified certifiers and inspectors

One way to increase contestability in network connection services would be to set up a licensing scheme for certifiers and inspectors to allow non-DNSP staff to undertake design certification and inspection of connections. Requiring a certifier or inspector to be licensed would ensure that they have the appropriate qualifications and expertise to assess work against technical requirements.

This option was considered as a way of dealing with delay in the connections process, by facilitating competition. This would reduce delay caused by DNSP staffing or resourcing constraints, as well as slow DNSP response to customer requests. It would allow an ASP to access private certification, where the certifier or inspector has an incentive to complete its work efficiently and within agreed timeframes. The reduction in delay would make the connection process quicker, allowing developers to complete construction of new projects sooner, reducing cost for customers.

However, the process would also lead to some additional complexity and cost that must be factored in. Customers would need to contract the service providers to undertake certification and inspection work. ASPs would have to interact with customers, DNSPs and certifiers and inspectors. A DNSP may be required to provide information about the network or particular technical requirements to the certifier/inspector. A DNSP would still review a design and inspect final work, albeit with less rigour and fewer resources than might have previously been required. DNSPs would also continue to provide network information and manage relevant connection processes such as network outages. Stakeholders confirmed that delay can arise in these areas.

It would also be difficult for a certifier or inspector to assess technical requirements in the absence of a prescriptive code. A prescriptive code is not feasible given the differences in each

network. Assessing a design or physical connection for compliance with the standards is not a simple exercise as it requires knowledge of the standard, the DNSP's particular requirements and the performance capabilities of the design or connection.

This approach may also risk the safety and reliability of the network as the certifying or inspecting ASP may not undertake the job with the same rigour as a DNSP. Where private certification is used elsewhere in NSW, the customer who contracts the relevant service provider has a strong interest in ensuring the quality of the work as they are responsible for its maintenance. A certifying or inspecting ASP does not have this interest or the DNSP's overriding interest as a network owner with statutory obligations that ensures current processes protect the safety and reliability of the network.

It is clear that introducing another layer of regulatory compliance in the form of certified inspectors would not reduce the time taken to connect new work. It would undermine the current streamlined approach where a DNSP is able to manage and coordinate all aspects of the connection process. Commenting generally on increasing the scope of contestability, Energy Australia said that it "believe[s] it would cause duplication of effort and lead to high costs for customers."

Private certifiers are used in the NSW building industry, in an approach that ensures technical compliance but also facilitates customer choice and an effective, efficient approval process. Stakeholders contrasted the building industry and distribution network connection work on the basis that a customer has an interest in ensuring that the quality of the building work they are contracting is good as they will be responsible for the work after it is completed. It is different for a customer undertaking, for example, augmentation work on a network to support a connection, as they will not be responsible for the ongoing maintenance of the work and will not own the completed work. The DNSP has a role in approval as it will become the owner.

Establishing a licensing scheme would also impose additional costs on business and government. This cost would potentially be passed on to either DNSPs or connecting customers and would increase the cost of network connections.

This approach is not considered viable on the basis of cost, complexity and its failure to offer a faster and more efficient connection process.

Allow ASPs to complete inspections

An alternative approach to private inspection would be for certification of design and inspection of connection work to be considered contestable work and included as new categories in the ASP Scheme. The advantage of this approach is that it would encourage increased competition in the electricity distribution industry without the additional costs of establishing a licensing regime. Many current Level 1 ASPs would be appropriately skilled to undertake certification and inspection work. The benefits of increased competition in the connection work process would be faster approval times and increased customer choice.

However, it shares the disadvantages of the licensed certifier/inspector approach, by adding complexity to a connection process that is currently managed as a single process by DNSPs. Even though ASPs would be able to certify a design or inspect a connection, DNSPs would still need to review designs, coordinate outages and inspect the connection works to satisfy their network safety and reliability obligations. This could lead to delay and potential cost.

Retention of current arrangements

The review also considered retaining the current framework and found that it is potentially the most efficient way to manage connections to the network. However, this efficiency relies on the DNSP providing adequate information, meeting timelines and complying with reasonable time frames. The review went on to consider more effective ways to deal with delays in connection than increasing contestability (see next section).

The current framework streamlines the DNSP's role as network owner (which requires approval and inspection of work) and technical regulator (design certification and inspection). Also, a DNSP holds relevant technical information about the network that a Level 3 ASP needs to design a connection. It coordinates connection activities that require an outage or adjustment to the way that the DNSP manages the network (for example, when a major new customer is connected and begins drawing large amounts of power). In practice, the dual role played by the DNSP allows an ASP to negotiate and seek approval for the connection with one body (all DNSPs have a single point of contact). For an ASP working on behalf of a customer, this means that they are able to go through the technical approval process, receive network information and requirements, negotiate a design, coordinate any necessary network outages and organise final inspections and connections with a single DNSP contact who manages the entire process.

The current framework ensures the safety and reliability of the network. The DNSP, the ultimate owner of the work with statutory obligations, has a vested interest in making sure the work is adequate and appropriate.

It became clear during the course of the review that delay in connection would not be solved by making design certification and inspection contestable. However, delays could be dealt with by addressing the power imbalance between DNSPs and customers that wish to connect to the network. Currently, an ASP relies on a DNSP's willingness to complete work quickly, rather than a commercial or regulatory imperative. A DNSP has no real incentive to complete work quickly or within agreed timeframes, or to respond to requests quickly. These issues are addressed later.

Recommendation 7: Design certification and inspection of connection work should continue to be undertaken by DNSPs.

5.2 Other ways to resolve connection delay issues

Avoidable delays in the distribution network connection process could be reduced by increasing the level of information provided to customers by DNSPs and introducing penalties for performance breaches under connection contracts. Avoidable delays often result from an informal relationship between DNSPs and ASPs working on behalf of customers (who are effectively forced to deal with a particular DNSP).

In addition to concerns about delay, stakeholders also said that often there was uncertainty about scope of connection work, cost of connection work and reimbursement for network augmentation funded by the customer that later benefited other new customers. These issues

are also related to the relationship between DNSPs and ASPs, and can be dealt with by requiring DNSPs to provide more information and work within defined commercial imperatives (by levelling financial penalties for poor performance).

Some of these concerns will be addressed as part of a shift to national regulation of the distribution network, while others can be addressed through NSW regulation. Where there is a shift to national regulation, the review considered interim measures to improve processes in NSW ahead of the full implementation of the national framework. Further detail about reimbursement for network augmentation and certainty is provided below. Reform options to deal with these issues, as well as delays in the connection process, are then set out.

National distribution network regulatory framework

In 2006, NSW agreed to transfer the regulation of distribution connections to the national electricity market regulatory framework. The Ministerial Council of Energy (MCE) is coordinating this transfer. The framework (made up of the National Electricity Law and Rules) is being developed by the MCEMCE and will be administered by the Australian Energy Market Commission. Responsibility for regulating distribution network connections in accordance with the Rules will shift to the Australian Energy Regulator.

A substantial focus of the MCE's work has been on improving the connection process. Draft legislation detailing the national connections framework was released for public comment in December 2009. Comments were accepted until end February 2010 and are currently being considered by the MCE.

Reimbursing customers for network augmentation work

Currently, a large load customer who wishes to connect to the network may be required to fund network augmentation required by the DNSP. This may include work that will increase the capacity of the network significantly beyond what is required to connect the relevant customer. To reflect this, the current approach is that DNSPs reimburse a customer for network augmentation work they paid for as new customers connect and take advantage of the work (for up to seven years).

Stakeholders have said that this policy is not working. First, there is a perception that while the stated policy is to reimburse, in reality there is no reimbursement. Stakeholders also requested clarity around how much will be reimbursed, and within what period.

The current NSW reimbursement scheme applies to dedicated connection assets that become a shared asset within seven years. IPART has developed a capital contributions reimbursement guideline. Under the guideline, DNSPs are required to establish a reimbursement scheme for large load customers that pay for dedicated connection assets later used by other customers.

A reimbursement scheme will be included in the national approach to regulating distribution connections. Under proposed amendments to the NER, where a customer pays for a dedicated asset that becomes a shared asset within seven years, they will receive a reimbursement for their capital contributions. The AER is developing a capital contributions reimbursement guideline. The guideline will provide a process for calculating reimbursement (including a minimum threshold amount above which a reimbursement will be paid).

Details of the legal framework for the reimbursement scheme will be included in the draft legislative package for the national connections framework.

Certainty of scope and cost of connection work

Stakeholders commented that when a large project is connected to the network it is not clear how a DNSP determines what work is necessary and how much the monopoly components of the work provided by the DNSP will cost. Examples were provided where early quotes and scope of work significantly increased between initial inquiries by a developer (prior to planning approval for the project) and the formal application to connect.

A related issue is 'gold plating' of work required to connect to a network. A customer is required to fund work on the network that is necessary to facilitate their connection. When a customer tells a DNSP that it wishes to connect to the network, the DNSP informs the customers what work will be required. Some stakeholders argued that there is no way for a customer to identify whether the work the DNSP requires is the least-cost option, or whether the DNSP is requiring more work than is necessary, or a higher quality of work than is necessary. This means that customers may be paying to upgrade the network, rather than funding only work that needs to be done to facilitate their connection.

Reform options

Customers feel that they are disempowered when dealing with a DNSP because the DNSP has access to all relevant information (such as physical network and network management plans), is the ultimate decision maker and the customer has no alternative if it is committed to a specific site that is serviced by the DNSP. There is also a perception that as DNSPs are monopoly service providers within their distribution network they have an opportunity to take advantage of their market power to the detriment of a customer or ASP.

The review considered a number of ways to resolve this imbalance.

Review of DNSP decisions – Independent arbitrator

The first is to put in place an appeal mechanism that would allow a customer to take a dispute about work requirements, cost or delay to an independent party. One mechanism considered is an expansion of the role of the Energy and Water Ombudsman NSW (EWON) to allow it to resolve developer/distributor connection disputes. Currently, EWON resolves complaints about all electricity and gas suppliers and distribution networks and water suppliers who are members of EWON. An appeal function for distribution network connections could fit with the current work of EWON, but would also be a significant departure from its focus on retail connections and smaller customers. The services currently provided by EWON are free with its operation funded by industry. It would be inappropriate for a connection appeal process to be free given the potential complexity and commercial interests involved and the potentially significant costs involved. However, a mechanism for recovering costs from customers and/or industry could be introduced.

Other mechanisms could include a dedicated ombudsman, a panel of experts or an appeal process housed within the NSW Government. A private arbitration mechanism is considered in the next section.

The benefits of this approach is an independent arbiter would be able to objectively assess whether a DNSP's requirements are reasonable and appropriate, and whether a customer is being forced to fund unnecessary or excessive work on the network. The arbiter could also be empowered to rule on the other areas of dispute raised by stakeholders, including reimbursement for first-developer capital works and the reasonableness of connection timelines. As well as benefiting stakeholders that appeal, the process would ensure that both DNSPs and customers follow the connection process properly. Customers would be encouraged to provide sufficient information to DNSPs and respond in a timely manner, and DNSPs would have an incentive to conduct the connection process quickly and review their requirements to make sure they are necessary and a least cost option.

There are significant drawbacks to this approach. Establishing an independent arbitrator would be costly, could lead to uncertain outcomes and may become a default part of many connection application processes as customers attempt to connect at a lower price. An appeal process could lead to significant delays in the connection process.

There are also significant issues around how the arbiter could direct a DNSP to take particular action or allow a particular kind of connection on its network given the DNSP's legislated health, safety and network reliability obligations. It would be inappropriate for a DNSP to be held liable for a breach of these obligations that arose after it followed a direction. A DNSP owns and operates its distribution network and has significant responsibilities to the network, the people that work on the network and the network's users. It is difficult to reconcile these obligations with an appeal process.

Review of DNSP decisions – Adjudication process

A private adjudication process is another form of appeal mechanism. There are already models for private adjudication processes in the NSW construction industry, such as the adjudication process set up under the security of payment framework. This framework allows a builder to request progress payments for construction work where a contract does not set out progress payments. Adjudications are a judgment debt recoverable in court.

A private adjudication process has many of the benefits of the appeal mechanism discussed above. It would facilitate an independent assessment of DNSP requirements to ensure they are reasonable. As in the security of payment adjudication process, certified adjudicators could be selected by customers or DNSPs, reducing potential delays caused by an appeals process and fostering a competitive environment for the adjudication services. As well as reducing delay, this could help keep costs down.

However, there are disadvantages to this approach. It would raise the same issues as an independent arbitrator regarding DNSP's health, safety and network reliability responsibilities. These issues would be exacerbated by the privately contracted nature of the adjudicator, particularly where a DNSP has to provide commercially or network sensitive documentation to support its requirements. It could also lead to customers shopping around for an adjudicator to ensure a certain result, and the quality of adjudicator's decisions would need to be monitored.

Existing network requirements, planning and management are complex and detailed issues that require significant expertise, experience and understanding. Even an experienced adjudicator may not have the ability to accurately and reliably review decisions made by qualified and experienced staff working within a DNSP.

A private adjudication framework may lead to significant costs for DNSPs and customers as well as potential delay to the connection process so is not recommended.

Increased access to information and transparency

An alternative approach to resolving the imbalance in knowledge between DNSPs and customers would be to increase transparency around DNSP decision making processes and requirements. This could be achieved through requiring DNSPs to put more information in the public domain and provide better information about its decisions to customers seeking connection. Where work is a monopoly service provided by a DNSP and charged to the customer, ASPs and customers should have access to information about why a DNSP has designated the work a monopoly service and, where relevant, how much the service will cost and how cost was determined.

Increasing transparency around cost and requirements will improve communication between DNSPs, ASPs and customers and place an onus on DNSPs to make justified decisions. It will also ensure that ASPs and customers are able to make more fully informed judgements about the reasonableness of a DNSP's requirements.

<p>Recommendation 8: DNSPs' licence conditions should be amended to require DNSPs to justify the scope of any dedicated connection assets funded by a customer and, if the work is not contestable, any determination of cost, on request.</p>

DNSPs should be required to provide two types of information. The first is information to a customer seeking connection. Information that must be provided at the time of formal application will be covered by the regulatory arrangements established by the national connections framework. However, DNSPs should also provide firm information on costs and scope of connection work and any network augmentation prior to the initiation of a formal process. This would help developers and customers make decisions about work required to complete the project and plan project construction. This, in turn, would streamline the construction and connection processes and reduce later delays.

Also, DNSPs should be required to publicly report a range of performance information, including number of connection requests (and the split between standard and negotiated connection requests), the time taken to connect new customers and any failures to meet performance benchmarks. Reporting should take place as part of the DNSP's annual energy distribution licence compliance report.

<p>Recommendation 9: DNSPs' licence conditions should be amended to require each DNSP to publicly report performance.</p>
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Agreed performance and time frames

While better information provision by DNSPs would play an important role in reducing delay, introducing agreed timeframes for DNSPs to complete work would more fully address delay. Timeframes would provide ASPs and customers with certainty, and allow them to plan work more efficiently. The timeframes would have to be reasonable. To ensure that all parties complied with the agreed timeframes, financial penalties would be put in place for failure to meet the timeframes, consistent with standard business practices in other areas. DNSPs could be required to meet timeframes by amending their licence conditions. The Australian Energy Regulator should be asked to set performance penalties and monitor compliance with licence conditions.

Recommendation 10: Financial penalties should be introduced in NSW where a DNSP fails to meet agreed timeframes related to design certification and inspection of connection. The AER should be asked to set these penalties. The penalties should come into force at the same time as the national connections framework.

5.3 Recoverable work

Recoverable work is contestable at a DNSP's discretion. During consultation, DNSPs said that where a customer pays for work it should be contestable, except if there is a risk to the network. The review supports this view as it ensures the maximum level of competition on the network, leading to lower costs for consumers and efficiency on the network, as well as making sure that the safety and reliability of the network is maintained. The review recognises that emergency recoverable work (for example, work to reinstate a power line after it has been damaged in a car accident) should remain a monopoly service provided by DNSPs.

Currently, there is inconsistency in each DNSP's approach to the contestability of planned recoverable work and this has led to DNSPs exercising discretion in different ways. This means that the recoverable work that is contestable is different across the networks, leading to confusion and complexity for customers and ASPs. It also means that there may be some recoverable work that ought to be contestable that customers cannot ask an ASP to undertake on a particular network.

Options for resolving this problem include mandating contestability of planned recoverable work, prescribing contestability for certain types of work, or requiring transparent justification by DNSPs if they determine that recoverable work is a monopoly service.

Mandating contestability could risk safety and reliability of the network as it would limit a DNSP's control of their network. Prescribing the types of recoverable work that are contestable would require rigid definitions that would not be adaptable to changes in the marketplace or in work or work practices.

Requiring DNSPs to justify a decision that planned recoverable work is a monopoly service is a preferable approach as it would place pressure on DNSPs to classify recoverable work as contestable while preserving a DNSP's ability to do high risk work. It would redress some of the imbalance in the relationship between DNSPs who have all the relevant information and have the power to make a decision based on that information, and ASPs.

The Government should require that all planned user funded work on the network be contestable unless a DNSP justifies a decision that the work be a monopoly service provided by the DNSP. This approach recognises there may be times when safety and reliability considerations preclude the work being undertaken by a third party. It also introduces transparency and means that an ASP has access to information about a DNSP's decision where recoverable work is not considered contestable. This, in turn, reduces the likelihood that a DNSP applies its discretion inappropriately.

The review considered whether it was appropriate to include an appeal mechanism to allow customers to challenge a DNSP's decision that particular work was a monopoly service. However, as the asset owner, the DNSP should have ultimate control over what is built on the network and how that work is undertaken. An appeal mechanism would pass network decisions to another body, which would undermine the DNSP's role as owner and manager of the asset. Increasing transparency around DNSP decision making is a more effective way to ensure decisions are reasonable while protecting network safety and integrity.

<p>Recommendation 11: All connection services and planned recoverable works should be contestable. If a DNSP considers work that a customer pays for is non-contestable, it must justify this decision on request, including any determination of cost.</p>
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5.4 Enforcement

The Independent Pricing and Regulatory Tribunal (IPART) administers distribution network licences on behalf of the Minister for Energy. This includes taking action to remedy a licence contravention (including the powers to require remedial action and impose financial or non-financial penalties), as well as advising the Minister on action taken. This power would remain in place, allowing IPART to take appropriate action against DNSPs breaching the proposed new licence conditions.

6 Implementation

There are a number of issues that would need to be resolved as the review recommendations are implemented. Examples of these issues are defining additional categories of work, developing a cost recovery funding model and designing the new compliance and enforcement approach.

The existing ASP Scheme should be immediately transferred to IIN and administered by IIN in its current form. IIN should manage the implementation of the remainder of the recommendations in consultation with an advisory group that includes a representative from the DNSPs, the Electrical Trade Union and the National Electrical and Communications Association. All recommendations should come into force by the start of 2011.

<p>Recommendation 12: The ASP Scheme should be immediately transferred to Industry & Investment NSW. All recommendations should come into force by the start of 2011.</p>
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6. Appendix A

Terms of Reference

Purpose

The aim of the review is to examine contestability of certain electricity network services in NSW. The review will make recommendations to ensure that the governance arrangements which support contestability of work on the NSW electricity distribution network and the scope of contestability are effective, efficient and appropriate.

Scope

The review into contestability in the NSW electricity distribution network will be conducted by BRO in partnership with Industry & Investment NSW and Fair Trading. The review will be informed by consultation with industry stakeholders including DNSPs, accredited service providers, major project proponents (builders/developers) and worker representatives.

The review will focus on three key areas:

The Scheme for the Accreditation of Service Providers (ASP Scheme)

- whether the ASP Scheme is achieving its objectives;
- whether the ASP Scheme is operating effectively and efficiently (including the suitability of existing administrative arrangements);
- assessment of any overlap between accreditation procedures under the ASP Scheme and the authorisation process undertaken by distribution network service providers (DNSPs) and whether these processes can be streamlined;
- whether other categories of work, such as recoverable work, should be made fully contestable (currently a number of these types of work are contestable at a DNSP's discretion);
- alternative approaches to achieve the objectives set for the ASP Scheme; and
- the impact of reforms being undertaken in other jurisdictions and at the national level.

Arrangements and procedures for the certification of design of major work undertaken by ASPs

- the role of design certification in ensuring the technical parameters of the network are correct and the proposed addition or alteration meets DNSP design standards and customer needs;
- any problems experienced by customers and ASPs seeking to undertake work for which design certification requirements apply;
- alternative approaches to design certification; and
- the impact of reforms being undertaken at the national level.

Arrangements and procedures for the inspection of connection work

- the role of inspection of connection work in ensuring that safety and technical standards are met;
- any problems experienced by customers and ASPs in relation to inspection arrangements;
- alternative approaches to connection inspection work; and
- the impact of reforms being undertaken at the national level.

Appendix B

Submissions received

- Australian Energy Market Operator
- Bill Manns
- Country Energy
- Electrical Trades Union (NSW Branch)
- EnergyAustralia
- Funnell's Electrical Contracting
- Gwyn and Peter Greenaway
- Integral Energy Australia
- Insight Electrical Consulting and Training
- Kevin
- National Electrical and Communications Association (NSW Chapter)
- NSW Utilities & Electrotechnology Industry Training Advisory Body
- Poles & Underground Pty Ltd
- Southern Sydney Regional Organisation of Councils
- Tony Pollard Electrics Pty Ltd t/as Transelect
- TWS Electrical Pumps Filtration Irrigation
- WorkCover NSW

These submissions are available on the Better Regulation Office website.

Three confidential submissions were also received.