Updating the Electricity Distribution Ring-fencing Guideline

Response to the AER Issues Paper: Updating the Ring-fencing Guidelines for Stand-Alone Power Systems and Energy Storage Devices

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Energy Networks Australia

Contents

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Key messages

- The regulatory framework should facilitate network businesses providing innovative solutions that are in the long-term interests of customers.

  ENA therefore strongly supports the **development of a ring-fencing framework that ensures consumers can benefit from networks' adoption and use of technologies** such as energy storage devices and SAPS. **The focus must remain on positive customer outcomes rather than the simple promotion of theoretical competition benefits.**

- The **development of a simplified and streamlined process to SAPS exemptions is critical** to ensure that networks can roll-out SAPS where there are clear customer benefits in doing so.

  A DNSP-led SAPS roll-out, enabled by the introduction of SAPS exemptions, will improve customer outcomes, kickstart market development, and incentivise more entry by third-parties over time.

- The **existing regulatory framework, including how services are classified and how ring-fencing is approached, should not inhibit the deployment of energy storage devices** where it is in the long-term interests of consumers.

1 Overview

Energy Networks Australia appreciates the opportunity to provide a response to the Australian Energy Regulator's (**AER**) Distribution Ring-fencing Issues Paper[1], which is seeking feedback on updates to the Electricity Distribution Ring-fencing Guideline (**Distribution Guideline**)[2] to reflect the changing nature of services offered by distribution businesses, including stand-alone power systems (**SAPS**) and storage devices.

Energy Networks Australia (**ENA**) is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

The regulatory framework should facilitate network businesses providing innovative solutions that are in the long-term interests of customers. ENA welcomes the AER's review and strongly supports the development of a ring-fencing framework that ensures consumers can benefit from networks' adoption and use of technologies such as energy storage devices and SAPS.

This submission provides initial feedback on guideline design elements. However, we welcome further consultation with both the AER and stakeholders on the proposed updates to the Distribution Guideline prior to the issue of the revised Draft Distribution Guideline, particularly in light of the relatively limited time provided for submissions to the Issues Paper.

[1] Australian Energy Regulator, *Issues Paper: Updating the Ring-fencing Guidelines for Stand-Alone Power Systems and Energy Storage Devices*, November 2020.

[2] Australian Energy Regulator, *Electricity Distribution Ring-fencing Guideline – Version 2*, October 2017.

2 Background

The AER regulates electricity network businesses and determines the amount of revenue they can recover from consumers for the provision of regulated services. This is done under an incentive-based system that continuously encourages networks to find better ways to efficiently service customers.

Ring-fencing is the identification and separation of these regulated activities, costs and revenues from those associated with the network providing services in a competitive market, and aims to prevent the harm that could result from cross-subsidising and discriminatory behaviour.

These potential harms are addressed through the Distribution Guideline by placing obligations on DNSPs such as:

- legal separation between the DNSP and its affiliates,
- functional separation between regulated and contestable services, including staff sharing restrictions,
- information firewalls and access controls, and
- establishment and maintenance of separate accounts and allocation of costs.

In addition, DNSPs prepare and submit annual ring-fencing compliance reports to the AER that include an assessment of compliance undertaken by a qualified independent party. These reports are available publicly on the AER's website, and the AER also publishes an annual ring-fencing report.

Importantly, the benefit, or likely benefit, to consumers of a network business complying with ring-fencing obligations must outweigh the cost to the network provider of complying with that obligation. As highlighted in the AER's Issues Paper, ring-fencing obligations should represent a targeted, proportionate and effective regulatory response to the potential harm faced by consumers.[3]

In this submission, along with proposing targeted amendments to the Distribution Guideline to ensure consumers can benefit from networks' adoption and use of technologies such as energy storage devices and SAPS, we are also proposing additional measures to increase stakeholder transparency and confidence in the ring-fencing framework. This includes an enhancement to the current publicly available staff-sharing registers, and the introduction of publicly available SAPS registers.

2.1 The energy transformation

Australia's energy system is undergoing a significant transition, moving away from large coal and gas centralised generation to smaller scale dispersed generation that is increasingly renewable generation.

In the last decade, renewable (wind and solar) generation as a share of total National Electricity Market (**NEM**) generation has risen from 2 per cent in 2009 to 16 per cent in 2019.[4] This transformation is occurring both at grid scale and at the individual customer level. Distributed energy resources (**DER**) are renewable energy systems that are commonly located 'behind the meter' i.e. located past the network

[3] Australian Energy Regulator, *Issues Paper: Updating the Ring-fencing Guidelines for Stand-Alone Power Systems and Energy Storage Devices*, November 2020, page 8.

[4] Australian Energy Regulator, *Data – State of the energy market 2020 – Chapter 2 National electricity market – Figure 2.13 – Wind and solar generation share of total generation*, June 2020.

point of supply. They commonly include rooftop solar photovoltaic (PV), battery storage, electric vehicles, and other forms of demand response.

Coupled with this, there have been strong technological advancements in energy storage and SAPS that change the economics of their adoption, along with further recognition of the role SAPS play in natural disasters.

2.1.1 Changes in the operation of the distribution system

Distribution network service providers (**DNSPs**) must continue to integrate a growing volume of DER whilst providing customers with a safe, reliable and efficient service. DSNPs have therefore identified four key capabilities that DNSPs will need to continue to mature as they evolve into distributed system operators (**DSOs**) with a continued focus on delivering customer value.

These capabilities have been incorporated into a future DSO Vision that ENA is developing, including:

- **Dynamic system operation**

  In a future energy system with many more dynamic parts, it will be vital for DSOs to plan, maintain, and importantly *optimise* the network for customer safety, reliability and choice. This is likely to include (but not limited to) delivery of dynamic operating limits.

- **Flexible access services**

  Not all customers will use the network in the same way and DSOs will need to develop new capabilities and offerings to meet diverging customer requirements and provide their desired services. In addition, it is likely to become important to efficiently allocate network capacity on a more dynamic basis than today as customers' needs continue to evolve.

- **Dynamic network pricing**

  If implemented effectively, moving towards dynamic network pricing will deliver system affordability and equity to customers by encouraging and incentivising better bi-directional network usage that maximises the benefit to all customers. This is a key enabler to stimulate the innovation required to integrate new loads such as electric vehicles at least cost.

- **System services**

  DSOs must maximise the value of their assets and develop new capabilities to support and provide the services that customers want and value. It also includes ensuring that the distribution network does its part to support a stable, clean and reliable energy system alongside transmission, generation, retail and other future participants.

While these are the broad responsibilities of a DSO, the exact mechanisms by which they will be delivered is still unknown. In addition, each DNSP is currently at different points along the maturity spectrum, predominantly driven by the specific needs of their customers, the level of decentralisation in their service area, and the penetration of smart meter fleet.

It is therefore critical that the regulatory framework, enabled through amendments to the Distribution Guideline, facilitates DNSPs' adoption of technologies to meet changing customer needs. As highlighted in the Energy Security Board's (**ESB**) Health of the National Electricity Market Report[5], ring-fencing arrangements need to keep up with fast-evolving technological developments in the energy sector.

[5] Energy Security Board, *Volume 1: The ESB Health of the NEM Report 2019*, 24 February 2020, page 39.

3 Stand-alone power systems (SAPS)

Key messages

- SAPS can provide a cost efficient alternative to traditional poles and wires investment, increasing reliability and safety for SAPS connected customers, and lowering costs for all customers over time.
- The AEMC's proposed framework restricts DNSP rolling out integrated SAPS without first applying for a ring-fencing waiver, which imposes costs, and delays delivering SAPS' benefits to customers. Fewer SAPS in the market also mean that providers of competitive SAPS assets and services have less incentive to enter the market and competition could stagnate.
- A DNSP-led SAPS roll-out, enabled by the introduction of broad-based SAPS exemptions, will improve customer outcomes, kickstart market development, and incentivise more entry by third-parties over time.
- To provide transparency and foster the competitive market, ENA supports the introduction of a publicly available SAPS exemption register that is maintained by each DNSP.

SAPS are generally a combination of solar PV, batteries and a back-up generator, and allow for electricity services to be delivered to customers without a traditional grid connection, lowering cost and improving reliability and safety.

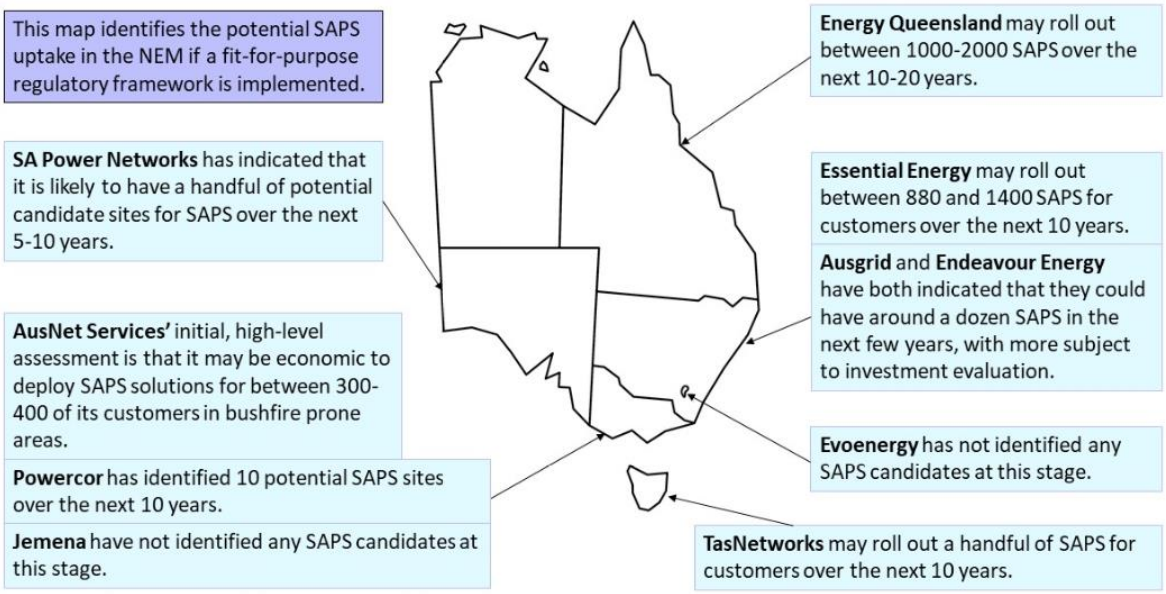
In collaboration with existing customers, SAPS will be rolled out when it is cost efficient to do so, and this is primarily driven by high cost to serve customers and a DNSP's retirement strategy (either once assets reach retirement age or experience significant damage that requires material network remediation and investment, for example, as a result of bushfires, or have a high-risk of network failure).

High cost to serve customers are generally situated at the geographical fringe of a network, where there are a very small percentage of customers that require a material proportion of the length of the installed network. For example, 0.5 per cent of Essential Energy's customer base require around 17 per cent of the length of Essential Energy's installed network. Areas with high maintenance costs, difficult to access sites, and sites with a high bushfire risk are also candidates for SAPS.

Improving network resilience and customer reliability are key drivers, and benefits, of SAPS' rollouts, however, the investment decision is driven by the economics.

Figure 1 on the following page provides an overview of the potential uptake of DNSP-led SAPS in the NEM. As shown in Figure 1, Electricity distributors across the NEM plan to roll out SAPS over the next decade, with the majority of SAPS in the NEM being installed in rural NSW and QLD. These numbers are indicative and are dependent on the implementation of a fit-for-purpose regulatory framework.

Figure 1: Potential uptake of DNSP SAPS



3.1 SAPS framework

The Australian Energy Market Commission (**AEMC**) has recommended a package of proposed rules to implement a new regulatory framework for SAPS provided by DNSPs[6] in the NEM.[7]

ENA is supportive of a change in the regulatory framework that allows DNSPs to supply their customers using SAPS where it is more cost efficient than maintaining a connection to the grid. This will increase reliability and safety for SAPS connected customers, and lower costs for all customers over time.

Under AEMC's SAPS framework, however, a SAPS providing a cost-efficient alternative to traditional network investment has two distinct components, each providing a separate service:

- a stand-alone distribution system, which is provided by an electricity distributor, and
- a generating system(s) connected to the stand-alone distribution system, which will provide the generation of electricity and also an input into the distribution service.

This splits SAPS functions between distribution services (SAPS distribution system) and non-distribution services (SAPS generating system); thereby intersecting with the Distribution Guideline, which currently restricts DNSPs from providing non-distribution services without waivers.

The AEMC's framework has been developed with the expectation that the majority of SAPS generation services would be obtained from competitive markets. However, in the current absence of a mature, competitive market for SAPS generation services, there will be many circumstances where contestable service providers are unwilling or unable to provide a cost efficient SAPS generation service, particularly in the remote geographical fringes of the network.

[6] DNSP-led SAPS are referred to as Priority 1 SAPS by the AEMC.

[7] Australian Energy Market Commission, *Updating the Regulatory Frameworks for Distributor-led Stand-alone Power Systems*, 28 May 2020.

The AEMC's SAPS Final Report recognises this, and states that:

> *…there are **likely to be circumstances where it may be necessary for a distribution business to provide both the SAPS distribution and generation services** - for example, where contestable service providers may be unable or unwilling to provide a SAPS generation service due to remoteness or other factors.*[8]

Under the current framework, a DNSP would require a ring-fencing waiver, which must be individually applied for, to begin the process to roll out an integrated SAPS to customer/s. This will delay delivering SAPS' cost, safety and reliability benefits to customers.

In addition, for some SAPS, the time and cost associated with applying for a waiver would be disproportionate, and would be ultimately borne by customers; which would not represent a targeted, proportionate and effective regulatory response.

Fewer SAPS in the market would also mean that providers of competitive SAPS assets and services have less incentive to enter the market and competition could stagnate, delaying the possible benefits of competition to consumers.

3.2 SAPS exemptions

The development of a simplified and streamlined process to SAPS exemptions is critical to ensure that networks can roll-out SAPS where there are clear customer benefits in doing so.

This opportunity is discussed in the AEMC's SAPS Final Report where the AEMC states:

> *The Commission notes that it will be open to the AER to apply or modify its ring-fencing guideline as it sees fit, which may potentially include the granting of waivers or **establishment of standing exemptions.** Such an arrangement - which is consistent with the wider approach taken to ring-fencing - **will provide an appropriate level of flexibility as the market for standalone power systems develops**, and the Commission has seen no compelling reason to limit the AER's discretion in the rules.*[9]

The AER's Issues Paper explores the development of exemptions for SAPS, and ENA supports the AER's position that building exemptions into the Distribution Guideline is likely to be the most practical outcome for DNSPs *and* consumers.

A DNSP-led SAPS roll-out, enabled by the introduction of SAPS exemptions, will improve customer outcomes, kickstart market development, and incentivise more entry by third-parties over time.

3.2.1 Exemption design

Incentive regulation, administered by the AER in Australia, is designed to replicate the forces of a competitive market and encourage monopoly businesses to further reduce costs and improve efficiency, without compromising the standard of service to customers. It is recognised as a powerful form of

[8] Australian Energy Market Commission, *Updating the Regulatory Frameworks for Distributor-led Stand-alone Power Systems*, 28 May 2020, page 52 [emphasis added].

[9] Australian Energy Market Commission, *Updating the Regulatory Frameworks for Distributor-led Stand-alone Power Systems*, 28 May 2020, page vi [emphasis added].

regulation as it drives businesses to reveal their efficient costs to serve customers. This information then helps a regulator set even more efficient benchmarks for performance in the future.

The implementation of SAPS exemption categories does not automatically provide the DNSP with exclusivity over service provision. DNSPs will still respond to the incentive regime in practice, and if over time it emerges that some component of the SAPS service may be efficiently provided through a third-party, DNSPs will pursue this (as it does currently).

ENA therefore supports the implementation of a broad-based SAPS exemption category that is practical and administratively simple to enact and monitor. This approach will enable a roll-out of cost efficient SAPS, and foster the development of the SAPS market.

There are a number of implementation options available to the AER, and ENA welcomes further collaboration with the AER and stakeholders on the most appropriate broad-based exemption category, including further discussion on the following options:

- **Up to a specified cap** – a DNSP would be allowed to earn revenue from SAPS generating systems (i.e. the administered SAPS settlement price) up to a given percentage of a DNSP's revenue cap. This exemption category should be limited to a DNSP providing SAPS generating systems rather than the cap applying to all kinds of non-distribution services. In addition, ENA welcomes the AER exploring the option of the revenue threshold being reviewable over time through the regulatory determination process, which will allow the AER to flexibly adapt as the SAPS market in each jurisdiction matures over time.
- **Size based threshold** – a broad-based size threshold could apply, which could be defined based on the size of the SAPS units, the size of customers' supply, or the number of customers supplied. Existing jurisdictional thresholds could be leveraged in this situation – for example, the definition of small customers based on the specific definition in each jurisdiction.

A broad-based approach is considered strongly preferable to designing a list of specific exemption categories, which will be challenging to properly define and to set associated thresholds that are applicable NEM-wide. A definition may be inadequately defined, a threshold may not be set appropriately, or this approach, given the infancy of the SAPS roll-out, may fail to identify all circumstances in which an exemption ought to apply. A list of specific exemptions is therefore less likely to facilitate the rapid deployment of SAPS, delaying the benefits of SAPS to customers and providing less incentive for third parties to enter the market.

ENA supports the AER's initial view that exemptions should last the lifetime of the SAPS asset, and that SAPS under existing exemptions should be grandfathered if the Distribution Guideline is amended in the future.

3.2.2 SAPS provider failure, and natural disasters

The AEMC's final framework does not satisfactorily address SAPS providers of last resort arrangements. Therefore, in addition to the implementation of a broad-based SAPS exemption category, an additional exemption category should be implemented to provide customers with coverage in these circumstances.

To protect SAPS customers from possible long standing service interruptions or a resumption of assets as a result of a liquidation, should a SAPS provider fail, the DNSP should be able to take on ownership (or replace) and operation of the SAPS until it reaches the end of its life, after which time the services could be retendered to the market. Consideration will need to be given to ownership and cost recovery under these circumstances.

In addition, in the event of a natural disaster, DNSPs should be able to provide mobile SAPS in order to respond rapidly to the event.

3.2.3 SAPS exemption register

To provide transparency and foster the competitive market, ENA supports the introduction of a publicly available SAPS exemption register that is maintained by each DNSP.

In addition to the publicly available SAPS exemption register, each exemption applied by the DNSP during the course of the year would be reviewed by an independent auditor as part of the annual ring-fencing audit, and reported in the accompanying annual ring-fencing compliance report as per the existing Distribution Guideline's compliance requirements.

The AEMC's SAPS framework also includes customer engagement obligations, which require DNSPs to undertake a comprehensive program of information provision and consumer engagement where the DNSP has identified SAPS supply as being the most efficient means of continuing to supply a customer/s with energy.[10]

3.3 Waivers

A well-designed exemption process will avoid the unnecessary costs and implementation delays that will result from relying solely on a waiver process. However, there may be cost-efficient SAPS that fall outside of the exemption categories, and therefore the ability to lodge ring-fencing waiver applications in circumstances outside of exemptions should be retained for SAPS.

In instances where waivers are granted for situations not covered by the exemptions, waivers should last for the life of the SAPS asset, which would remove the requirement to arbitrarily reapply for (or roll-over) a waiver every five year regulatory control period, and therefore increase investment certainty.

The AER's ring-fencing waiver considerations should also evaluate not only the presence of a third party's bid to provide some component of a SAPS, but also the competitiveness of that bid – so which bid will better promote good outcomes for customers in terms of both the price ***and*** non-price factors that may affect the service standard.

[10] AEMC, Proposed clause 5.13B of the National Electricity Rules, page 43 [available at https://www.aemc.gov.au/sites/default/files/documents/updating_the_regulatory_framework_for_distributor-led_stand-alone_power_systems_final_rules_28_may_2020.pdf].

4 Energy storage devices

Key messages

- Energy storage devices represent an increasingly efficient option to address local network issues such as peak/minimum demand and voltage regulation. However, the AER's existing service classifications and ring-fencing framework currently limit networks' ability to provide certain energy storage services to customers.
- The ring-fencing framework needs to be able to accommodate energy storage devices, including value stacking, when it results in consumer benefits, and does not risk harm to competition.
- Enabling value-stacking of energy storage devices provides the greatest benefits to consumers and reduces the cost to all consumers of DNSPs providing distribution services. In addition, the market for grid-scale energy storage devices is immature and would benefit from DNSP-led initiatives, which would foster the market and provide incentives for third parties to enter.
- The possibility of any harms arising from DNSPs investing in energy storage devices should be addressed directly rather than simply preventing the realisation of consumer benefits from DNSPs using storage devices to provide both distribution and non-distribution services.

Energy storage devices can be used by DNSPs to provide a number of distribution services, including:

- **Voltage support to enable additional hosting of distributed generation**

  Energy storage devices provide voltage regulation support and increase the network hosting capacity of distributed generation such as rooftop solar PV. They achieve this by dynamically maintaining voltage levels within safe operating limits.

- **Peak demand management to defer network upgrades – both at a local level and at a regional level**

  Energy storage devices provide peak demand support by discharging during peak demand periods for the local network. This can also be timed to support regional peak demand periods and helps avoid or defer the need for network augmentation at both transmission and distribution levels.

- **Optionality (can deal with an increase in load and an increase in generation)**

  Energy storage devices are a least-regret action for networks that provide flexibility and address a large number of issues, including voltage support, peak-demand management, reliability and resilience, and responding to changing customer needs.

- **Managing fault levels in areas with high levels of solar generation to ensure appropriate operation of protection schemes**

  In areas of high solar generation and high export of solar energy into the network, energy storage devices can support fault levels by injecting energy into the network during a fault event. This ensures the continual operation of the existing customer and network protection schemes as the need to fix, augment or replace protection devices (e.g. circuit-breaker or fuses) as a result of low fault levels is avoided.

- **Phase balancing**

  To mitigate the issue of phase unbalances, energy storage devices provide active power regulation by controlling the charge and discharge states per phase and reducing the constraint placed on the network. This improves the safety of the network by reducing the amount of neutral leakage.

4.1 Current regulatory framework

While DNSPs are able to use energy storage devices to provide distribution services, the AER's existing service classifications and ring-fencing framework currently limit networks' ability to provide certain energy storage services to customers.

The ESB's Health of the National Electricity Market Report observes that:

> *At present the **ownership of batteries within the network is constrained and this may not be optimal nor fit with the role of the network** if it is to be a platform to provide services.* [11]

As outlined in Section 4, energy storage devices represent an increasingly efficient option to address local network issues such as peak/minimum demand and voltage regulation. However, without going through the waiver process, DNSPs are precluded from increasing the viability of these services by, for example, leasing out spare capacity or offering customers access to a shared storage service. This is commonly referred to as value stacking and allows the same storage device to be used for multiple purposes.

The AER's Issues Paper identifies a number of consumer benefits from allowing DNSPs to use storage devices to offer both distribution services for their own purpose as well as offering other contestable services, including:

- Location – DNSPs can optimise sitting of storage devices to maximise value, and
- Access – DNSPs as platform providers.

Enabling value-stacking also reduces the cost to all consumers of DNSPs providing distribution services, and would foster the energy storage market and provide incentives for third parties to enter.

4.2 Case studies

4.2.1 United Energy

The AER recently approved United Energy's ring-fencing waiver application[12], which requested approval for United Energy to lease the storage capacity of pole-mounted battery energy storage system (BESS) units to a retailer partner as part of a trial project.

United Energy is installing 40 new pole-mounted BESS units in the low voltage network as part of a trial to provide network peak demand support. In order to deliver the greatest benefits to consumers and a lower cost outcome for consumers from the installation of the BESS units, United Energy will partner with a retailer selected under a competitive process. The retailer partner intends to use the BESS units for providing frequency control ancillary services, and energy arbitrage (i.e. a non-distribution service).

This is an example of a DNSP indirectly (i.e. through a third party) using an energy storage device to also provide non-distribution services to the benefit of all consumers.

[11] Energy Security Board, *Volume 1: The ESB Health of the NEM Report 2019*, 24 February 2020, page 39 [emphasis added].

[12] United Energy, *Ring-fencing Waiver Application*, 12 October 2020.

4.2.2 Ausgrid

Ausgrid is currently undertaking a virtual trial of a community battery, which provides both a community storage solution for solar customers (not currently classified as a distribution service) and provides a more cost-efficient alternative to traditional poles and wires investment to address peak demand.

The first phase of Ausgrid's trial aims to demonstrate how a community battery can deliver cost savings for solar customers, while addressing localised network needs.

This is an example of a DNSP directly using an energy storage device to also provide services not currently classified as distribution services to the benefit of all consumers.

4.3 Ring-fencing

ENA supports the AER's position that the ring-fencing framework needs to be able to accommodate energy storage devices, including value stacking, when it results in consumer benefits.[13] We strongly support a focus on positive customer outcomes rather than the simple promotion of theoretical competition benefits.

Enabling value-stacking of energy storage devices provides the greatest benefits to consumers and reduces the cost to all consumers of DNSPs providing distribution services.

In addition, the market for grid-scale energy storage devices is still immature and would benefit from DNSP-led initiatives where storage investment is a superior outcome for customers compared with alternatives such as investment in traditional network assets. This would foster the market and provide incentives for third parties to enter. DNSPs are regulated under an incentive-based system that continuously encourages networks to find better ways to efficiently service customers. DNSPs will respond to the incentive regime in practice, and seek out the most efficient option.

ENA therefore supports an amendment of clause 3.1(d) of the Distribution Guideline to make it clearer that, in addition to 'shared assets' for the purposes of the shared asset rules, it also applies to other circumstances in which third parties might use a DNSP's assets to provide distribution services, transmission services or other services. This amendment will enable DNSPs' indirect use of energy storage devices to provide services not currently classified as distribution services, and ensure that consumers are not subject to a lengthy and costly waiver process for DNSPs' indirect use of energy storage devices.

Recognising that the market is at its infancy, and without limiting a potential change to service classifications in the future as a result of the energy market transition and DNSPs delivering the DSO Vision, the direct use of energy storage devices to provide service currently classified as non-distribution should at this stage continue to rely on the AER's waiver process.

However, waivers should last for the life of the asset, which will streamline the process and decrease investment uncertainty. It is important that ring-fencing is not an impediment to DNSPs adopting innovative technologies, and that consumers are able to benefit fully from DNSPs' adoption of technology.

[13] Australian Energy Regulator, *Issues Paper: Updating the Ring-fencing Guidelines for Stand-Alone Power Systems and Energy Storage Devices*, November 2020, page 24.

4.3.1 Additional measures

The possibility of any harms arising from DNSPs investing in energy storage devices should be addressed directly rather than simply preventing the realisation of consumer benefits from DNSPs using energy storage devices to provide both distribution and non-distribution services.

Potential harms that could result from cross-subsidising and discriminatory behaviour are currently addressed through the Distribution Guideline by placing obligations on DNSPs such as:

- legal separation between the DNSP and its affiliates,
- functional separation between regulated and contestable services, including staff sharing restrictions,
- information firewalls and access controls, and
- establishment and maintenance of separate accounts and allocation of costs.

However, there are opportunities to further strengthen these obligations in order to provide the AER and stakeholders with further transparency and confidence in the ring-fencing framework, including:

- Discriminatory behaviour: the AER may consider further strengthening these obligations by introducing an explicit non-discriminatory provision between the DNSPs and other third party providers of energy storage devices.
- Cost allocation: ENA suggests further collaboration with the AER and stakeholders to determine appropriate principles for allocating energy storage device costs, which can be informed by current approved approaches, such as ElectraNet's ESCRI-SA Project.

It is essential that these potential harms are addressed directly in a targeted manner rather than preventing the realisation of consumer benefits from DNSPs using energy storage devices.

5 Improving the Distribution Guideline

Key messages

- ENA supports the enhancement of the current publicly available staff-sharing registers.
- ENA supports the AER's proposal to amend the title of the term 'confidential information' to 'ring-fenced information to avoid the general misconceptions regarding 'confidential information'.
- ENA welcomes and supports an increase to the breach reporting timeframe. However, the reporting of *all* breaches, including trivial breaches, within this timeframe will create unnecessary burden on DNSPs and impose costs on consumers. Immaterial breaches should continue to be reported to the AER through either the annual ring-fencing compliance report, or via the introduction of quarterly reports if more timely reporting is required.
- ENA supports the introduction of calendar year compliance reporting for the Distribution Guideline.

The AER's Issues Paper proposes a number of incremental improvements to certain obligations within the Distribution Guideline that ENA largely supports.

5.1 Staff sharing and information access and disclosure

ENA supports an enhancement to the current publicly available staff-sharing registers, and considers it an effective way to strengthen the transparency of staff sharing arrangements between a DNSP and its affiliates.

ENA looks forward to collaborating with the AER to make targeted improvements to the registers, and welcomes feedback from the AER on a best-practices approach for DNSPs to implement.

In addition, ENA supports the AER's proposal to amend the title of the term 'confidential information' to 'ring-fenced information to avoid the general misconceptions regarding 'confidential information'. We note, however, that there is no intention to amend the original definition i.e. 'ring-fenced information' would be defined as per the current Distribution Guideline's definition of 'confidential information'.

5.2 Materiality of breaches

ENA welcomes and supports an increase to the breach reporting timeframe. ENA suggests that a timeframe of 15 business days is reflective of the internal reporting processes required within DNSPs.

Whilst we agree that further clarity is required regarding the materiality definition, we do not support the reporting of all breaches within this timeframe, including, by the AER's definition[14], the reporting of all trivial breaches. This will create unnecessary burden on DNSPs and impose costs on consumers, and therefore does not represent a targeted and proportionate ring-fencing obligation. Immaterial breaches should continue to be reported to the AER through either the annual ring-fencing compliance report, or via the introduction of quarterly reports if more timely reporting is required.

ENA instead supports the development of a new clause that better defines the breaches that should be reported within 15 business days; rather than mandating that all breaches irrespective of materiality be reported.

[14] The AER's interpretation of 'material' in the context of a breach is that it means 'something that is more than trivial'.

This more exhaustive definition could specify things such as:

- A breach that would or is likely to result in significant harm; and/or
- A breach of sections x of the Distribution Guideline; and / or
- Does not include a breach of section y of the Distribution Guideline.

Energy Queensland's 'Materiality Calculator', previously shared with the AER, could also be a good foundation to initiate these discussions, with the objective of implementing a targeted and proportionate breach reporting obligation.

5.3 Timing of annual compliance reports

DNSPs prepare and submit annual ring-fencing compliance reports to the AER that include an assessment of compliance undertaken by a qualified independent party. Currently, DNSPs must submit their annual compliance reports to the AER within four months of the end of the regulatory year to which the compliance report relates, which for most DNSPs is usually 31 October.

ENA supports the introduction of calendar year compliance reporting for the Distribution Guideline, which will assist networks' resourcing requirements by helping to spread the workload of many compliance teams who are already busy with Regulatory Information Notice (**RIN**) audits.

To enable this change, however, a transitional period for the next reporting period will be required (for example, DNSPs would submit one compliance report covering an 18 month period, rather than two reports during the period).

In addition, this change will require the independent assessor to be able to rely on the financial year audit (undertaken for the RINs) in assessing cost allocation compliance under the Distribution Guideline. It would be an expensive, unbudgeted cost to consumers if the AER were to expect another full audit of cost allocation six-months after the last review.

Therefore, unless there has been a change to the Cost Allocation Method or Australian Accounting Standards that would have impacted costs in any way since the RIN audit was last undertaken (i.e. only six-months prior), the Distribution Guideline should stipulate that the independent assessor be allowed to rely on the previous audit findings in assessing compliance with the cost-allocation aspect of the Distribution Guideline.

6 Next steps

This submission provides initial feedback on guideline design elements. However, we welcome further consultation with both the AER and stakeholders on the proposed updates to the Distribution Guideline *prior* to the issue of the revised Draft Distribution Guideline, particularly in light of the relatively limited time provided for submissions to the Issues Paper.

ENA would be happy to facilitate roundtable discussions on the matters raised in this submission, and we look forward to further collaboration.