

16 December 2020



Arek Gulbenkoglu
Acting General Manager, Consumers and Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Dear Mr Gulbenkoglu,

AER 2020 DISTRIBUTION RING-FENCING GUIDELINE REVIEW

Endeavour Energy appreciates the opportunity to respond to the AER's Issues Paper on updating the ring-fencing guidelines for Stand-Alone Power Systems (SAPS) and Energy Storage Devices. We welcome this review and consider it important that the guideline is proportionate and applied practically in order to promote innovation in the long-term interests of customers whilst protecting competitive markets.

We note this review was initiated in August 2019 with a focus on clarifying some obligations in the ring-fencing guideline to reduce its complexity and compliance burden. Since its inception, Future Grid related market reforms have continued to progress, and the nature of network services have continued to evolve – particularly as networks better understand emergent technologies and look to scale trials to broad based network investments. We agree it is therefore appropriate that this review be expanded in scope to consider the changing nature of services and the role that the ring-fencing guideline will have in facilitating network participation in emerging markets and technologies.

Endeavour Energy support the development of a ring-fencing guideline that is more simplified from a compliance perspective and that does not inhibit the deployment of innovative solutions or services where it is in the long-term interests of customers and the future network. Our views on the key matters raised in the Issues Paper are set out below. Our response to the specific questions raised in the issue paper follow in the appendix to this letter.

We support a fit-for-purpose SAPS exemption framework

We appreciate that the Distributor-led SAPS framework is designed to promote competition but consider that it remains complex and impractical. Rather than promote competition, it will limit the extent to which networks can deploy these agile and innovative solutions, which will in turn limit the potential for the competitive market to develop. We consider a sensible and simple exemption framework is necessary to enable networks to deploy SAPS where there are clear customer benefits in doing so.

Distributor-led SAPS will be critical to the development of a competitive market for SAPS assets and services. An overly administratively complex process whereby networks have to apply for a waiver each time, and subsequently re-apply to renew waivers will slow the adoption of SAPS solutions and increase the costs. The latter is particularly concerning given SAPS provide an opportunity to reduce costs for the entire customer base and improve the service an individual customer receives.

We therefore support an exemption-based framework as opposed to waivers. A broad-based exemption would be the most administratively efficient approach and our preference. This would most likely take the form of a percentage of revenue threshold under which the network provision of SAPS would be exempt. If a broad-based exemption approach is not adopted, we support a number of automatic exemption categories, which should apply for the life of the SAPS once deployed. Our detailed comments on the categories noted in the Issues Paper are provided in Appendix A.

We consider an exemption-based framework to be preferable in the short-term for addressing market failures or in circumstances where the waiver process would be unreasonable (in terms of cost or time). For transparency, networks could publish a register or details of SAPS implemented under the

exemption categories and the annual ring-fencing audit process could provide assurance that a network is compliant with the exemption framework.

We support clarifying the treatment of energy storage devices without inhibiting innovation

As with SAPS, we consider networks will play a critical role in establishing a competitive market and improve customer outcomes for energy storage devices. It is important that the ring-fencing guideline ensures that the leveraging of comparative advantages does not involve an abuse of a network's monopoly position. This does not mean networks should be unable to realise natural competitive advantages or to participate in new markets.

Customers will benefit from the scale and scope economies and innovation capabilities a network can provide to increase production capacity, accelerate private investment and support competition in the emergent energy storage market. Networks are also well placed to develop procedures and protocols for the safe and effective operation of emergent technologies and develop the capabilities of the market. The ring-fencing guideline should facilitate this while protecting against the potential for anti-competitive behaviour by ensuring that costs are appropriately allocated, staff and information are separated or shared where reasonable and discriminatory behaviour is prohibited.

Our concern is that the AER's existing service classifications, Shared Asset Guideline (SAG) and ring-fencing framework are not well-suited to the emergence of certain innovative energy storage services. There is a preference for networks to partner with or rely on third parties in obtaining network support services from batteries – the idea being that competitive providers are better suited to unlocking the full value stack associated with energy storage devices, which will optimise the customer benefits.

In our experience, it is networks that are in best position to deploy and utilise energy storage which could be made available to third parties as market roles are clarified and established. Allowing networks to lease out spare capacity in these assets to third parties or customers will increase the commerciality of these devices rather than limit network ownership to peak demand and power quality management.

We therefore support clarifying that clause 3.1(d) of the ring-fencing guideline applies not just for the purposes of shared assets but for other circumstances in which third parties might use a network's assets to provide other services. We suggest indirect use should be subject to an exemption-based framework rather than a waiver process as adequate controls are in place. Should concerns remain, exemptions could be limited by a specified cap or in circumstances where the network use of the asset alone justifies the level of investment and the third party accessing the device is a non-affiliate.

In this instance, we consider that the indirect use of the asset aligns with the intent of the SAG. The guideline has a number of controls in place, including non-discrimination, staff-sharing and cost allocation obligations, that mitigate the risks noted in the Issues Paper associated with networks utilising energy storage devices to provide other services.

We accept, however, that cost allocation is a potentially complex issue in instances where multiple parties utilise a device or the usage proportions change over time. We would suggest that this is addressed directly via the SAG, Cost Allocation Methodologies (CAMs) or in working collaboratively with the AER on setting expectations or precedents.

We accept that, at this stage, the 'direct' provision of contestable battery related services should be subject to a waiver process.

We support improving the existing guideline to ensure it is enforced in a proportionate manner

In accordance with the initial focus of the review, the Issues Paper discusses a number of potential improvements that could be made to the existing guideline or its application. Generally, the key questions are whether existing obligations are properly understood by networks and whether additional transparency and clarity is required.

In our view, the cost of additional compliance requirements or restrictions must be weighed against the benefit of the potential harm avoided. We support the AER's proposed amendments and clarifications and provide more detailed comments in the appendix to this response.

We consider establishing an even playing field between distribution and transmission networks to be a priority

The Issues Paper sets out the timing of the Transmission guideline review, which is expected to be completed by December 2021. We welcome this review and consider that it should be expedited if possible. Transmission networks are currently operating under an outdated 2002 ACCC guideline that is now administered by the AER. This guideline is materially different and relatively lax compared to the distribution guideline.

If the participation of networks in unregulated markets is to be regulated, it should be regulated on a consistent basis. In our view, the current transmission guideline does not appropriately protect against the potential abuse of monopoly power and allows for the arbitraging of regulatory inconsistencies. Transmission networks are already operating affiliate entities with virtually identical branding and potentially engaging in the provision of distribution services¹.

We are particularly concerned with the risk of inefficient bypass of the distribution network in the absence of a level playing field and appropriate level of regulation. If a transmission network were to offer connection at distribution voltages to select customers, it would undermine our ability to share our costs across our entire customer base (as is appropriate for an essential service). Further, we would still be required to build duplicate assets to supply residential and small business customers in the same location who cannot connect directly at higher distribution voltages (i.e. 33kV), which would further exacerbate the increase of cost to all customers. Creating an inefficient network and redundant assets not providing any improvement to network nor customers.

This risk could be exacerbated by the recently passed [NSW Energy Infrastructure Investment Bill](#). This reform will establish a NSW jurisdictional scheme. This increases the risk of inefficient bypass as large customers could directly connect to the transmission network to avoid transmission costs that are instead being recovered via a jurisdictional scheme rather than via transmission charges. This further increases the risk of redundant assets.

Significant time has passed since the introduction of the distribution ring-fencing guideline. It is likely that the unregulated activities of transmission networks are further developed and engrained. If the AER were to implement a transmission ring-fencing guideline similar to the distribution one, as it should, the transitional arrangements could be complex and require considerable time which will continue to negatively impact the market and distributors. We therefore urge the AER to complete this review as soon as reasonably practicable in order to resolve the existing inconsistencies and the opportunity for harm this creates.

We welcome the opportunity to discuss this response with you. If you have any queries or wish to discuss our submission further, please contact Colin Crisafulli, Manager Network Regulation at Endeavour Energy on (02) 9853 6017 or via email at colin.crisafulli@endeavourenergy.com.au.

Yours sincerely



Françoise Merit
Chief Financial Officer

¹ Under the transmission ring-fencing guideline, a transmission networks ring-fenced entity can provide generation, distribution and retail services provided the revenue earned is less than 5 per cent of total revenue.

Appendix A: Response to Issues Paper Questions

Stand Alone Power Systems (SAPS)

Question 1 Do stakeholders agree that in some circumstances an exemption would be preferable to requiring DNSPs to apply for a ring-fencing waiver?

Yes, a waiver process will be administratively burdensome and ill-suited to emergency situations or excessive for small-scale solutions. The DNSP-led SAPS framework is already unnecessarily complex. If this is further compounded by an untimely waiver process, it would further disincentivise networks from implementing SAPS or unfavourably impact the cost benefits of doing so.

The potential benefits of SAPS are well established; reducing the cost to supply remote customers (i.e. reducing cross subsidies), improving the quality of service the remote customer receives, providing environmental benefits from renewable generation and reducing the safety and bushfire risks associated with a long overhead network in densely vegetated areas.

Networks are incentivised to adopt lowest cost solutions under the incentive based regulatory framework and should be able to implement SAPS solutions where it is efficient to do so. Where a competitive provider is not available, can only provide an incomplete service or in certain special circumstances (such as a natural disaster), it makes sense for networks to be able to provide SAPS service. In these more obvious circumstances, an automatic exemption would be preferable to a waiver. A waiver should be reserved for more unique circumstances that warrant AER review and approval.

Question 2 Are there other types of exemptions we should consider?

Noting our response to question 4 below, the Issues Paper identifies an appropriate suite of candidate exemption categories. As noted by the AER, for some of these categories the difficulty could be in adequately defining them in a clear and simple manner. If a category cannot be appropriately defined, it may be better suited to a waiver approach. Broadly, we consider exemptions are appropriate to address failures in the competitive market or practical issues (primarily time-based) whereby a waiver process will not be fit for purpose.

Our priority is to deploy SAPS in remote, fringe-of-network locations, in high bushfire risk, poor access areas where existing assets are nearing the end of their useful life (i.e. where an investment decision is required). Relative to rural networks, Endeavour Energy will have a lower number of candidate sites. In the shorter term (5-10 years), this could number in the order of a dozen with the potential to increase to several dozen or a hundred over the longer term – depending on the cost and benefit factors of the investment evaluation.

We consider a more flexible approach is suitable in the short-term to allow for industry learnings to occur so that the framework can be further refined. At this stage, we consider the priority should be in enabling SAPS in remote locations with poor service quality and high safety or bushfire risk or where there is substantial and clear efficiency savings available (particularly in cases that would avoid the renewal of long-lived traditional network infrastructure).

Of the exemption categories listed, there is the potential for overlap between some. We have grouped similar categories and provide comments on them in order of priority.

Natural disaster and fault & emergency response

A SAPS provides an essential service and one that substitutes a network of (generally) high reliability backed by a 24/7 field staff that can respond quickly to network issues and faults. There will be circumstances in which a competitive provider is unwilling or unable to offer an adequate level of fault and emergency response or be able to provide support through a natural disaster event.

Networks are amongst a select group of responders who are able to access sites during a natural disaster and we often work closely with emergency services in coordinating activities. Networks already

deploy temporary supply solutions after natural disasters as it can often take considerable time to restore supply via rebuilding traditional network infrastructure.

Networks should have the ability to deploy temporary generators/SAPS solutions as well as more permanent SAPS solutions where it is efficient to do so. Undertaking a procurement process and obtaining a ring-fencing waiver to do so in the midst of a natural disaster response is impractical and time consuming. We consider it appropriate in these circumstances for networks to be able to deploy a SAPS under an exemption.

We also consider the exemption should extend to circumstances where a third party SAPS provider cannot respond to a fault and emergency within a reasonable timeframe. In this instance a network should be able to step in and repair or replace the existing SAPS (if this is the most efficient solution).

SAPS provider of last resort

Similar to the above scenario, there may be instances where a third party SAPS provider fails. At this stage, the Operator of Last Resort (OoLR) arrangements for third party SAPS are unresolved. However, in the absence of a competitive market to provide OoLR services, networks will be required to provide a continuity of supply to the customer.

Whilst we do not wish to underwrite the competitive SAPS market and consider that SAPS providers should be making suitable OoLR arrangements (or customers bear the consequences of suitably informed decisions on selecting a third party provider), it is critical that there is a continuity of supply. As such, networks should receive an automatic exemption in this scenario as a waiver process would delay the ability of a network to respond promptly in an OoLR scenario.

Absence of alternatives and Efficiency

Whilst there is a preference from policymakers that SAPS be competitively provided, this may not always be possible or in the interests of customers. We think these exemption categories could cover three key failures:

- 1) No offers have been received: this could be limited to SAPS below a certain kW rating so that the AER could review the tendering process for larger SAPS where no offers have been received (given the potential materiality of these sites).
- 2) Partial offers have been received: there could be instances where networks receive incomplete offers from third party providers. For instance, the supply and install of the SAPS is offered but no provider can provide ongoing maintenance services. In this instance, the network should be able to 'step-in' and provide the services not covered by the third parties.
- 3) No competitive offers have been received: whilst a network may receive an offer, they should not be compelled to accept it where there are legitimate concerns about the technical capabilities of the provider and/or the quoted price is excessively and prohibitively higher than the cost of a network providing the service instead.

We discuss potential thresholds for these scenarios in response to question 3.

Access

There are a number of potential issues that could fall under this category of exemption. Beyond difficult terrain access and bushfire risk areas, considerable sections of distribution feeders candidates for SAPS are located within environmentally sensitive areas, including but not limited to, National Parks & Wildlife Services land, Water NSW special areas as well as heritage listed areas (Aboriginal and Non-Aboriginal).

In accordance with legislation, DNSPs have self-determining rights for the preparation and approval of Environmental Impact Assessments (EIA) for the majority of network projects including construction of new assets and maintenance activities on existing assets. The EIA process also involves consultation with relevant stakeholders before projects can proceed.

Regardless of the activity size, the consultation requirements and administrative procedures such as permit acquisition, vegetation clearing approvals and access authorisations within the environmentally sensitive areas can be time consuming and complex.

Based on the above, an exemption to facilitate DNSP-led SAPS might be granted where sections of the network located within (or portions of) land defined as environmentally sensitive areas have been identified as SAPS viable. The SAPS will not only provide a reduced network footprint in these special areas, but also a significantly reduced impact on environmentally sensitive land.

Challenging terrain is a more difficult aspect of access to define. Most networks own and maintain access tracks (mostly within easements). The assets currently supplying many candidate SAPS customers are via access tracks. Where the access track is outside an easement boundary, there will be land tenure agreements or other legal instruments relied upon to service the area.

Whilst the network assets could be removed if a SAPS is installed; the SAPS provider will still need to be able to access the site. However, networks may not maintain an access track if all overhead network assets have been removed. Further, the third party SAPS provider may have to negotiate their own land tenure agreements with a remote customer to access the site for ongoing maintenance and repairs.

Based on the factors outlined above, we consider an 'access' exemption category could cover the following scenarios:

- Located within or in close proximity to sensitive areas. This could include:
 - where any works on electrical assets supplying the site will need an EIA and permits and agreements, depending on the land ownership;
 - within National Parks or Water NSW Special Areas and Controlled Lands;
 - critical habitat for an endangered species, population or ecological community within a wilderness area;
 - local or state heritage items; and
 - lands categorised as Regulated Land under the [Native Vegetation Regulatory map](#).
- Not serviced by an access track or where access is required outside the existing easement boundary.

A waiver process may be required for more unique circumstances not covered by the above. We consider this provides a reasonable basis in the short term for access-based exemptions which could be further refined with industry learnings.

Up to a specified cap

As discussed in question 4 below, a broad exemption framework would be more flexible and simple and preferable in the short term. There is significant uncertainty surrounding the SAPS framework still and limited industry knowledge on the issues SAPS providers or networks may face.

If a broad based framework is not accepted a specific cap based exemption could still be used to cover immaterial or difficult to define exemption categories.

- Type of SAPS: this would relate to unmetered supplies like public lights where it would be disproportionate and difficult to apply the SAPS framework in full or require waivers to be sought.
- Remoteness: we consider the 'absence of alternatives', 'fault and emergency' and 'access' exemption categories are likely to cover a scenario where only a network will be able to service a SAPS customer on account of their remoteness.
- Population density: as above.

It would be reasonable to allow for a limited pool of exemptions for these other issues in order to ascertain whether an exemption category is required in the longer term.

In addition to the categories above, an 'innovation' exemption for DMIA related projects is also worth consideration.

Question 3 In regard to the exemptions above, or any others, what is an appropriate threshold?

See response above for potential definitions, scope or triggers. With respect to 'efficiency' a threshold would be required for the 'no competitive offers have been received' scenario. Our concern is that a threshold would be arbitrary and potentially create perverse incentives. It could instead be subject to a 'reasonable person' test as ideally the non-competitive nature of the quote would be clear and obvious. If a threshold is required, we would suggest where it exceeds 130% of the network's cost estimate to perform the work instead.

For the 'Up to a specified cap' exemption, we would suggest 1% of a network's Annual Revenue Requirement (ARR) if a broad-based exemption approach is adopted. If it is instead used for miscellaneous or other exemptions, a lower threshold (say 0.5%) would be appropriate.

Question 4 Should exemptions for SAPS be defined in specific detail or are generic exemptions, which would apply more broadly, preferable?

We consider a broad exemption framework would be appropriate given the uncertainty surrounding the SAPS framework and lack of industry knowledge on the practical issues that will emerge.

Networks will be the primary driver of demand for SAPS services and will be incentivised to adopt lowest cost solutions. If competitive providers can deliver this, networks will utilise the lowest cost solutions. Our concern is that the market will not develop if networks have to wait for SAPS third party providers to provide the full end-to-end SAPS service in all circumstances and locations.

The issue is that the most challenging circumstances (individual customers in remote, hard-to-access locations and/or responding to natural disasters) will be the most desirable and beneficial SAPS candidates early on. Ideally, a targeted set of exemptions will be able to address instances of market failure or practical barriers to relying on a waiver process. However, we must first roll out SAPS to better understand what the gaps will be and what precise exemptions are required.

If a detailed list is preferred to provide greater certainty to the market, then our views on the categories most likely required are set out in response to Question 2.

Question 5 How can we be sure that DNSPs using exemptions are complying with the Distribution Guideline?

For transparency, a SAPS exemption register is an appropriate control, so the AER and other stakeholders can monitor how networks are applying the exemption framework and to what extent it is being utilised – noting that, if information is required on the location of the SAPS, we will need to be mindful of a customer's right to privacy.

From a compliance perspective, the annual audit will also provide assurance that a network has complied with the guideline in applying the exemptions.

Question 6 In the above criteria do the exemption thresholds satisfy the Distribution Guideline criteria of benefits outweighing costs?

It is important to assess benefits with respect to customers (the ends) and not whether the exemption framework benefits the competitive market (a means to arrive there).

It is in the long-term interests of customers for SAPS to be deployed where it is efficient to do so at the optimal cost and service quality mix. This outcome could best be delivered by either a competitive market or by monopoly networks.

In our view, a competitive market will take time to develop and may not ever be able to cover all circumstances and services that SAPS customers will require. We think it prudent in the short-term to allow both networks and competitive providers to provide SAPS services to better understand the cross-over points between the two.

The proposed exemption categories cover instances where the competitive market is unlikely to be able to provide a SAPS service and the waiver process will not be an efficient solution. Exemptions are

preferable to simply allowing the market to fail, not realise the full benefits of SAPS or incur unnecessary administration costs in a resource-consuming waiver process. The exemptions do not inhibit the development of a competitive market but rather promote network demand for SAPS services by providing certainty and ensuring SAPS can be implemented in all circumstances where it is efficient to do so.

In our view, the benefits of exemptions outweigh the costs and would be in accord with the Distribution Guideline.

Storage Devices

Question 7 What other benefits, harms or risks should we consider?

The benefits of value stacking energy storage devices are well established. The outstanding policy question is which party, or parties, are best placed to facilitate the realisation of these benefits. Networks are obviously well placed to manage energy storage assets to deliver network benefits. However, several stakeholders may suggest other parties could also perform this function and/or be better suited to manage the other uses of energy storage.

We are currently in a period of uncertainty where these technologies are beginning to be rolled out across the NEM but reforms remain ongoing. There will already be instances where a network investment in energy storage is justifiable based on the network benefits alone. Further, networks could already be in a position to make an energy storage device available to third parties without compromising the network uses.

We appreciate that stakeholders may be concerned that networks may:

- invest in batteries where there is limited or little network value and/or oversize/overinvest in energy storage beyond what is required for network purposes but instead realise value stacking benefits;
- become a dominate provider of energy storage services to the detriment of a potential competitive market;
- use the device for network support purposes potentially at the expense of alternate uses which may generate a greater consumer benefit; and
- fail to appropriately allocate costs between the prospective users or beneficiaries of energy storage devices so that network customers pay more than what is reasonable. Alternatively, the actual use of the assets may materially change post the cost allocation decision.

However our responses below and appropriate provisions in the guideline will protect against this.

Question 8 If NSPs use storage devices to offer services in contestable markets, how can any potential harms be managed?

To date, networks have been working collaboratively with third party energy storage providers and retailers on innovative services. This is evidenced by the recent United Energy and Ausgrid trials. We are also considering a number of grid-scale battery solutions with the potential for a third party provider to own the battery. The ongoing involvement of networks will be important to the continued development of the energy storage market.

We consider the probability of the risks noted above occurring would be low. In all likelihood, a number of market reforms will be made clarifying the roles and obligations of networks in new markets. The risk of 'crowding out' private investment would be more related to the direct provision of other services by networks and improbable for the reasons outlined in our 2016 [response](#) to the AER's preliminary ring-fencing positions paper².

² Endeavour Energy, *Response to AER Electricity Ring-fencing Guideline Preliminary Positions Paper*, April 2016, p 6-9.

For the direct uses of energy storage, a waiver process would remain an appropriate control. This would allow the AER to assess whether the use is anti-competitive, discriminatory (if an affiliate is involved) or the cost allocation approach is unreasonable.

For the indirect uses of energy storage devices the risks outlined above are less likely. Networks are incentivised to spend the lowest efficient amount in managing the network. If a network were to over-invest in energy storage, it would be readily apparent, particularly where a Regulatory Investment Test for Distribution (RIT-D) is conducted. A network conferring advantages to an affiliate would be an obvious and discoverable breach of the ring-fencing guideline. Collectively, the incentive based regulatory framework, investment planning and test requirements and ring-fencing guideline already protect against these risks.

With respect to the risk that networks do not optimise the use of the battery (i.e. use it for network purposes at the expense of other uses), prohibiting the indirect use of energy storage by networks would actually bring about this risk.

It is for these reasons that we consider the risk of harm in the indirect use of energy storage by networks is low. However, should the AER form an alternate view, we would suggest limiting an exemption for indirect uses of energy storage to certain circumstances – namely, where the network benefit alone justifies the investment in the energy storage device and where the indirect use is not by an affiliate. In all other circumstances, a network could seek a waiver for the indirect use.

Of the risks listed above, cost allocation is the most relevant. This is not to suggest that networks will intentionally misallocate costs. Rather, it is simply a new and complex issue with limited examples available on how it should be done. Further, there could be material changes in the uses of energy storage devices post the cost allocation decision.

Rather than resolve this potential issue through restrictive ring-fencing obligations, it should be addressed directly. This could be via Cost Allocation Methods (CAMs), an AER guidance note or an adjustment to the Shared Asset Guideline (SAG). As expenditure is adjusted for incentive scheme purposes where there has been a change in capitalisation policy, the shared asset revenue adjustment could account for material changes in the uses of energy storage devices.

This would be a complex solution though and we would instead recommend a more collaborative approach via an AER guidance note. This could provide a number of examples and precedents that set clear expectations on reasonable cost allocation approaches.

Question 9 How should we weigh these benefits and harms to determine if a waiver should be granted? What are the priorities?

The priority should be a flexible approach that encourages innovation and investment in energy storage devices where it is efficient to do so. A mature competitive market for these services cannot be developed immediately. It will most likely require the involvement of networks either indirectly or directly as a customer and/or platform provider for energy storage services.

In our view, the potential harms from restricting network participation in these markets is greater than the risk of their involvement. Networks have shown an ability to innovate and are leading the way in the deployment of batteries. There are appropriate controls in place in the regulatory framework, planning requirements and ring-fencing guideline. There will be further market reforms clarifying new roles and obligations in the near term.

In this low risk environment, a ring-fencing guideline that facilitates additional insight and industry learnings over the short term will better position the NEM for the broader transformation that will occur over the coming decades.

Question 10 Should we distinguish between direct and indirect uses of storage devices?

Yes. On the basis of the benefits and risks outlined above, we consider that the treatment of indirect and direct uses of storage devices should differ. Whilst it may be appropriate for networks to engage in the direct supply of energy storage services, this should be subject to greater AER oversight. As noted

above, we consider that the indirect use of energy storage devices by networks should be encouraged with appropriate controls in place.

Question 11 Should we clarify the scope of clause 3.1(d) of the Distribution Guideline?

Yes. We recommend it is clarified to cover the indirect use of energy storage devices and not limited to the shared use of assets under the SAG only – unless the SAG itself is amended to encompass the indirect use of energy storage devices.

Improving the Distribution Guideline

Question 12 Can improved staff sharing registers provide the transparency of staff sharing that is needed?

We agree with the AER's view that greater utilisation of the staff sharing register would be preferable to narrowing the definition of 'electricity information'. The latter is more likely to result in unintended consequences and potentially unreasonable prohibitions.

Question 13 Will changing the term 'confidential information' to 'ring-fenced information', make ring-fencing obligations in relation to information sharing clearer?

We support amending the term 'confidential information' to 'ring-fenced information' although further explanation of the concept, with examples, may be helpful to networks and stakeholders.

Question 14 Will reporting all breaches in relation to substantive Distribution Guideline clauses in 10 business days improve the overall timeliness of breach reporting and reduce the administrative burden on DNSPs?

We already report on all breaches so that the AER can determine materiality. We support an extension from 5 to 10 days as this would provide additional time to gather supporting information and develop remedial actions. We would also suggest that the AER provide a written assessment of a breach setting out the rationale for its materiality with particular reference to the potential harm. This could be limited to cases where the network has a differing view on the materiality.

Question 15 Will calendar year compliance reporting minimise the administrative burden on DNSPs?

Yes, provided that the cost allocation component of the audit relies on the most recently completed RINs. If not, additional audit costs would need to be incurred to audit the 6 months of accounts unaudited at the time of a calendar year ring-fencing audit.

Question 16 Are the current Distribution Guideline obligations, in relation to branding and cross promotion, proportional to the potential harms? If so, how might the branding and cross-promotion obligations in the Distribution Guideline be amended to make them more targeted?

We suggest greater emphasis is placed on a "reasonable person" (as per clause 4.2.3(a)(i) of the guideline) in administering the branding obligations. Our concern is that informed stakeholders are well aware of the networks and their affiliates and misusing the guideline. In particular, there is a risk that the branding obligations devolve into catching networks out on trivial branding matters in a manner that is divorced from the guideline's intent and the interests of customers.

We would suggest the average customer is not aware or interested in immaterial cross branding issues. It is common practice for multiple contractors and sub-contractors to operate at a worksite (electrical or otherwise) and we doubt a customer, say driving past such a worksite, would infer anything from branded trucks, equipment or uniforms.

We consider cost allocation, which ultimately impacts prices, to be of greater importance. With respect to the branding obligations, we consider that the AER's enforcement should focus on cross-promotion during a tendering process, advertising campaign or on a website/social media, as these breaches have a real potential to cause harm.