

Electricity distribution ring-fencing guidelines review

Response to Australian Energy Regulator
discussion paper

February 2012

ActewAGL 

for you

Introduction

ActewAGL Distribution welcomes the opportunity to respond to the Australian Energy Regulator's (AER's) *Electricity distribution ring-fencing guidelines review – discussion paper* (the discussion paper), released on 12 December 2011.

ActewAGL Distribution, a partnership between ACTEW Distribution Ltd and Jemena Networks (ACT) Pty Ltd, owns and operates the electricity distribution network in the Australian Capital Territory. ActewAGL Distribution also owns the gas distribution networks in the ACT, Greater Queanbeyan and Shoalhaven, and operates and maintains Canberra's water and sewerage networks under a Utilities Management Agreement with ACTEW Corporation.

ActewAGL Distribution and ActewAGL Retail together form the ActewAGL Joint Venture partnership. ActewAGL Retail is owned by ACTEW Retail Ltd and AGL ACT Retail Investments Pty Ltd. ActewAGL Retail purchases and retails electricity and gas services in the ACT and throughout the Capital Region (including Goulburn, Yass, Young, Nowra and Bega).

ActewAGL Distribution's current ring-fencing obligations are set out in the *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*. The guidelines were published by the Independent Competition and Regulatory Commission (ICRC) in 2002. An overview of the current ACT guidelines is provided in the following section.

As part of a multi-utility business, with interests in electricity and gas distribution and retailing, ActewAGL Distribution is keenly aware of the importance of effective ring-fencing arrangements. The potential benefits and costs for the regulated business, consumers and potential competitors must be carefully assessed as part of any review of current or potential guidelines. The ICRC took this approach in developing the current ACT guidelines, explaining that it was:

“... careful to weigh up the benefits to consumers arising from the benefits inherent in the scale economies of the ActewAGL joint venture arrangement and the risk of those benefits being diminished by enforced separations that are inappropriate or unnecessary.”¹

The importance of weighing up the potential costs and benefits of ring-fencing options has also been noted in a Utilities Regulators' Forum paper:

¹ ICRC 2002, *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*, p. i

“... ring fencing structural obligations required by the regulator of a regulated entity should be flexible and dependent upon particular circumstances in the industry and include a cost/benefit analysis of alternative arrangements with an assessment of the extent to which competition will be enhanced.”²

The AER is seeking submissions on:

- the adequacy of current ring-fencing arrangements and whether a nationally consistent set of Distribution Ring-Fencing Guidelines is appropriate and/or desirable
- the appropriate content of any Distribution Ring-Fencing Guidelines
- how any Distribution Ring-Fencing Guidelines should deal with emerging industry trends
- the application of the guidelines to dual function assets.

These four matters and some other key issues are addressed in section 3 of this submission. The AER’s specific questions are then addressed in section 4. As background, an overview of the current ACT ring-fencing guidelines is provided in section 2.

1. Current ACT ring-fencing requirements

The ICRC’s *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT* apply to all electricity and gas utilities licensed to provide electricity and gas distribution and connection services under the *Utilities Act 2000*.³ In developing the guidelines the ICRC aimed to:

- achieve an appropriate balance between the costs (both to utilities and the Commission) and benefits of ring fencing;
- not be unnecessarily prescriptive or intrusive; and
- achieve, as far as possible, consistency with other jurisdictions and consistency between energy sectors within the Territory.”⁴

² Utility Regulators’ Forum 1999, *Information gathering for ring fencing and other regulatory purposes, Discussion paper*, p. vi

³ ICRC 2002, *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*, p. 13

⁴ ICRC 2002, p. 4

The current ACT ring-fencing guidelines are comprehensive. They are the only jurisdictional guidelines which incorporate all of the potential elements listed by the AER in the jurisdictional comparison provided in the discussion paper.⁵ The guidelines apply to both gas and electricity distribution in the ACT. Related businesses are broadly defined in the ACT guideline, covering businesses involved in “producing, purchasing or selling natural gas or electricity services”.⁶

In developing the current guidelines the ICRC considered and rejected more onerous requirements, such as requiring separate board membership for the distribution business and related business. In relation to board separation, the ICRC noted that a potential reason for adopting such a measure was to limit “inappropriate access by the retail arm of a business to commercially valuable information”. However, it considered the risk was small and separation was “not warranted or practicable in a jurisdiction the size of the ACT”.⁷ To directly manage the risk of inappropriate access to information, the guidelines include restrictions on access by a related business to customer information and network information: “information systems may be shared providing there are appropriate access restrictions.”⁸

The ICRC also considered and rejected the option of ownership separation. It noted “the costs of such separation – loss of economies of scale and scope, and increased transaction costs” and concluded that ownership separation was not “a viable option at this stage in the ACT.”⁹ There have been no significant changes in the ACT electricity market since ICRC drew these conclusions to the current guidelines. The potential costs and benefits of ownership separation are discussed further in section 3 under “vertical integration”.

3. Key issues for the AER

National guidelines

ActewAGL Distribution accepts that within a national regulatory framework there may be some benefits from a national set of ring-fencing guidelines. For example, it may be less costly for the AER to monitor compliance with uniform national guidelines, compared with

⁵ The AER notes that the ACT guidelines do not contain waiver provisions. However the ACT guidelines do include provision for variations, at the request of the regulated business or initiated by the ICRC.

⁶ ICRC 2002, *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*, p. 17

⁷ ICRC 2002, p. 12

⁸ ICRC 2002, p. 11

⁹ ICRC 2002, pp. 3-4

different jurisdictional guidelines. ActewAGL Distribution also notes that national guidelines apply to transmission, and the AER is required to consider the need for consistency between the distribution guidelines and the transmission guidelines.¹⁰

However, there will also be significant costs of moving from the current jurisdictional requirements, which have been developed taking account of particular circumstances, to a national approach, particularly if the national approach involves more onerous and potentially inefficient requirements. These costs are likely to more than offset the benefits of national consistency. The National Electricity Rules (the Rules) contemplate that it may be appropriate for different requirements to apply in different jurisdictions. Rule 6.17.2(a) says:

“The guidelines may vary in application as between different participating jurisdictions.”

There may be some benefits of adopting a national set of distribution ring-fencing guidelines in a national regulatory framework. However, the AER should only adopt national distribution guidelines if it can clearly establish that the benefits will more than offset the significant transitional and compliance costs of a move away from the current jurisdictional requirements. If national distribution guidelines are developed, they must include adequate provisions for waivers or variations, at the request of the DNSP, to ensure that the costs and benefits of particular circumstances can be taken into account. ActewAGL Distribution notes that the current national transmission guidelines include a waiver provision:

“The ACCC has also selected a set of arrangements that provide the ACCC with the flexibility to waive elements of the ring-fencing arrangements, where it considers that the costs of compliance outweigh the benefits.”¹¹

The ACCC granted EnergyAustralia a waiver from the ring-fencing legal separation clause (discussed further below under “appropriate content”) which would require “the transmission business to be run as a separate business”.

In granting the waiver the ACCC concluded:

“.. there is no apparent public benefit in enforcing the ring-fencing requirement that EA’s transmission services be a separate legal entity.”¹²

¹⁰ NER clause 6.17.2(c)

¹¹ ACCC 2002, *Transmission ring-fencing guidelines*, p. 1

If a national approach is adopted, it must be not overly prescriptive. Any national guidelines must be flexible, as noted by the Utility Regulators' Forum¹³, to take account of the diverse and changing markets in which the regulated distribution network service providers (DNSPs) operate (for example in terms of size and competitiveness), and also the potential for significant transitional costs if onerous new requirements are introduced in place of well established jurisdictional guidelines. For example, requiring separate board membership (or even more drastically, separate ownership) would involve significant costs for some DNSPs and their customers, where they have economies of scope.

Appropriate content

In the discussion paper the AER identifies 7 current and potential elements of ring-fencing guidelines that are consistent with the Rules:¹⁴

- legal separation requirements;
- accounting separation requirements;
- allocation of costs;
- access to services;
- access to information;
- physical and functional separation; and,
- waiver provisions.

The nature and extent of separations required under each of these categories can vary widely, as the comparison in the discussion paper illustrates.

ActewAGL Distribution considers that in deciding what requirements, if any, should apply under each of these categories, the AER should ask:

- What issue or problem is the requirement trying to address?
- What are the likely costs and benefits?
- Is there are better way of addressing the issue or problem?

In relation to the first consideration – what problem is being addressed – the ICRC identified the following list of activities to be “curtailed” by ring-fencing¹⁵:

¹² ACCC 2003, *Application for Waiver of Ring-Fencing Arrangements by EnergyAustralia: Decision*, p. v

¹³ See quote in the introduction to this submission.

¹⁴ AER 2011, *Distribution ring-fencing guidelines, Discussion paper*, p. 13

¹⁵ ICRC 2002, *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*, p. 8

- Cost shifting between regulated and unregulated businesses;
- Inappropriate access to, and use of, information; and,
- Favourable treatment of associated businesses

ActewAGL Distribution considers that a requirement should only be included in the guidelines if it can be shown that: (i) it addresses one or more of these problems (ii) the likely benefits more than offset the costs, and (iii) there is no better way of addressing the issue.

The case of legal separations provides a good illustration of the importance of carefully assessing both costs and benefits.

The national transmission guidelines include the following requirement:

7. A *TNSP* must comply with the following provisions on and from the *relevant commencement date*:

7.1 (a) A *TNSP* that supplies *ring-fenced services*:

(i) must be a legal entity incorporated under the *Corporations Act*, a statutory corporation or an entity established by royal charter; and

(ii) subject to clause 7.1(b), must not carry on a *related business*. To avoid doubt, if the *TNSP* is a member of a partnership, joint venture or other unincorporated association, the *TNSP* is carrying on the activities of the partnership, joint venture or unincorporated association.

(b) A *TNSP* is not subject to clause 7.1(a)(ii) if it carries on *related businesses* that, in total, attract revenue of less than or equal to 5 per cent of the *TNSP*'s total annual revenue.

ActewAGL Distribution understands that, if adopted in national distribution guidelines, this requirement would prohibit the ActewAGL multi-utility from providing both distribution and retail services.

While such a restriction *may* be appropriate in the case of transmission (and ActewAGL Distribution makes no comment on whether it is), it is clearly not appropriate in the case of distribution. Quite a different set of benefits arise in the case of a multi-utility providing both gas and electricity distribution and retail services, compared with the benefits which may arise from integration of transmission and generation. In the case of distribution, there are significant economies relating to customer management efficiencies, billing systems and corporate services, especially in a small market such as the ACT.

Prohibiting this type of business structure would involve significant costs, to the detriment of consumers.

ActewAGL Distribution therefore opposes the introduction of requirements for legal or ownership separation of the type included in the national transmission guidelines. If a national distribution guideline is developed and the AER decides to include a legal separation requirement, ActewAGL Distribution considers that the current ACT requirement (that is, the requirement that the retail and distribution businesses are separate corporate entities) is adequate. As the ICRC has noted in the ACT guidelines:

“Legal separation does not preclude organisations from pooling some of their resources, for example staff and information systems. The Commission recognises that there are economies of scale to be had in doing so.”¹⁶

ActewAGL Distribution considers that the objectives of restricting the flow of commercially valuable information to related businesses and ensuring the regulated business does not treat the related business favourably can be met through various direct means such as restricting access to IT systems, without the need for high cost options such as ownership restrictions.

The Office of Best Practice Regulation advocates the approach of adopting regulations which address the identified problem in the most efficient and effective way. It explains that the challenge is to:

“... deliver effective and efficient regulation – regulation that is effective in addressing an identified problem and efficient in terms of maximising the benefits to the community, taking account of the costs.”¹⁷

Similarly, the OECD’s guiding principles for regulation include the need to eliminate regulations “except where clear evidence demonstrates that they are the best way to serve broad public interests”.¹⁸

A final comment in relation to the appropriate content of ring-fencing guidelines is that overlap with other related measures must be recognised. Unnecessary overlap or duplication should be avoided, as should potential inconsistencies. For example, the matter of sharing of confidential information is addressed by the *Privacy Act*. Any information sharing provisions in ring-fencing guidelines should be consistent with this, and where possible reference the existing requirements rather than trying to create new

¹⁶ ICRC 2002, *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*, p. 10

¹⁷ Office of Best Practice Regulation (OBPR) 2010, *Best Practice Regulation Handbook*, p. 4

¹⁸ OBPR 2010, p. 5

requirements. Existing cost allocation requirements, as set out in the Rules, also need to be recognised in ring-fencing guidelines.

Vertical integration

In the discussion paper the AER explains its concern that “the participation of DNSPs in other competitive elements of the electricity supply chain may give rise to significant competition concerns”.¹⁹ The AER says:

“Ring-fencing is one method that may be used to address the risks that vertical integration poses.”²⁰

However, the AER then goes on to discuss vertical integration of transmission network service providers (TNSPs) and the potential relevance of the current MCE review of cross-ownership of transmission and generation. In the MCE review the AER is proposing restrictions on vertical integration of TNSPs which go well beyond the provisions in ring-fencing guidelines:

“The preferred means of addressing the market power concerns co-ownership of transmission and generation may give rise to is the insertion of a provision in the National Electricity Laws prohibiting the ownership of both generation and transmission assets.”²¹

While the AER has not indicated that it has the same view in relation to vertical integration of DNSPs, ActewAGL Distribution is concerned that the AER has referred to the potential relevance of the transmission review for this review of distribution ring-fencing.

ActewAGL Distribution strongly believes that limits on vertical integration, of the type proposed by the AER in the MCE review, should not be applied to DNSPs. Any potential competition concerns arising from DNSPs participating in competitive parts of the electricity supply chain can be addressed through effective ring-fencing, without undermining the benefits that flow from vertical integration.

The OECD’s recommendations are particularly relevant in this regard:

“When faced with a situation in which a regulated firm is or may in the future be operating simultaneously in a non-competitive activity and a potentially competitive

¹⁹ AER 2011, *Distribution Ring-fencing Guidelines – Discussion Paper*, p. 5

²⁰ AER 2011, p. 6

²¹ AER 2011, p. 10

complementary activity, Member countries should carefully balance the benefits and costs of structural measures against the benefits and costs of behavioural measures.

The benefits and costs to be balanced include the effects on competition, effects on the quality and cost of regulation, the transition costs of structural modifications and the economic and public benefits of vertical integration, based on the economic characteristics of the industry in the country under review.”²²

In a follow-up review of the adoption of structural separation strategies in 19 member countries (including Australia), the Competition Committee of the OECD reported that, although there were benefits of structural separation, including:

- limiting the need for certain regulations that are difficult, costly and only partially effective,
- stimulating innovation and efficiency in the competitive services, and
- helping to eliminate cross-subsidisation,

there were also “potentially significant costs”, such as:

- forcing a loss of economies of scope from integrated operation,
- increasing transaction costs for consumers,
- high direct costs of separation,
- decreased system reliability when investments are not made jointly, and
- difficulty in assigning accountability for interface problems.²³

ActewAGL Distribution strongly opposes any potential moves to impose new restrictions on vertical integration of DNSPs. Effective and targeted ring-fencing arrangements are the appropriate and adequate mechanism for addressing any competition concerns arising from vertical integration of DNSPs.

Emerging industry trends

In the discussion paper the AER raises the issue of emerging industry trends, such as increasing interest amongst DNSPs to engage in generation activities to relieve network congestion (as an alternative to network augmentation) and to off-set electricity consumption through the installation and operation of small solar generators, as well as

²² OECD 2003 at

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C\(2001\)78/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C(2001)78/FINAL&docLanguage=En)

²³ OECD 2006 *Report on Experiences with Structural Separation*, p. 7, at <http://www.oecd.org/dataoecd/50/63/45518043.pdf>

the evolving market for new contestable services. The AER asks whether ring-fencing guidelines should be modified to account for changes in the electricity supply industry.

ActewAGL Distribution considers that ongoing energy market development and the emergence of new contestable industries points to the need for high level and flexible guidelines, not greater prescription. The scope of the guidelines needs to be clearly defined, to avoid re-active changes in response to new market developments.

ActewAGL Distribution believes that a threshold of the type included in the transmission guidelines (clause 7.1(b)), whereby the restriction on carrying out a related business does not apply if that business attracts revenue of less than or equal to 5 per cent of the TNSPs annual revenue, could be applied in distribution guidelines to provide DNSPs with the flexibility to participate in generation activities such as small scale solar generation.

Dual function assets

While the AER lists the application of the guidelines to dual function assets as one of the four key issues it seeks comment on, the matter is not covered in the discussion paper.

A DNSP with assets meeting the definition of dual function assets in chapter 6 of the Rules automatically becomes, and assumes all the operational obligations of, a TNSP, but virtue of chapter 2 of the Rules. The chapter 2 provisions have no materiality threshold, nor is any discretion available under the Rules. A DNSP which is also a TNSP as a result of having dual function assets in its distribution network nevertheless remains a DNSP for the purposes of economic regulation. It is not obvious to ActewAGL Distribution how this situation would raise any significant ring-fencing issues, especially given that the DNSP remains subject to its normal ring-fencing obligations.

Reporting requirements and compliance

ActewAGL Distribution notes that in the discussion paper the AER does not raise the matter of reporting requirements and compliance monitoring. The nature and extent of these requirements can have a significant impact on the compliance costs for ring-fencing guidelines.

As noted by the Utility Regulators' Forum, there are a number of ways in which ring-fencing requirements can be implemented:

“Ring-fencing regulation can be imposed in a comprehensive manner requiring a high level of intervention by the regulator in prescribing the processes and methods involved. Alternatively, a more light handed regulatory approach could be applied

which gives the regulated firm discretion as to how it will comply with the requirements”²⁴.

ActewAGL Distribution strongly believes that a light handed approach is appropriate. As the Utility Regulators’ Forum explains, this could involve provision of an undertaking, by the firm to the regulator, outlining the administrative arrangements put in place by the firm to ensure compliance.²⁵

The transmission guidelines include the following requirement:

“TNSPs are required to establish procedures to ensure compliance with the ringfencing obligations and to notify the ACCC of such compliance.”²⁶

Under the current ACT guidelines ActewAGL Distribution reports annually to the ICRC on measures in place to ensure compliance and also reports any possible breaches. In addition, ActewAGL Distribution has taken steps, such as developing a corporate ring-fencing policy, supported by a number of operational protocols, to ensure it complies with its ring-fencing obligations.

ActewAGL Distribution believes that current requirements in the ACT are appropriate, and more intrusive compliance reporting requirements are not warranted.

4. Responses to specific questions

1. Is ring-fencing an appropriate means of addressing the problems that vertical integration of DNSPs may give rise to? If not, what is an appropriate regulatory method?

ActewAGL Distribution considers that effective and targeted ring-fencing arrangements are an appropriate means of addressing competition issues that vertical integration may give rise to. We strongly oppose the adoption in distribution of stronger measures, such as the limits on cross-ownership through the National Electricity Law that the AER is currently proposing in the MCE review.

2. Is a national set of Distribution Ring-Fencing Guidelines desirable under the current regulatory framework? Are the current guidelines and provisions of the CCA sufficient to deal with the issues that vertical integration poses?

²⁴ Utility Regulators’ Forum 1999, *Information gathering for ring fencing and other regulatory purposes, Discussion paper*, p. 7

²⁵ Utility Regulators’ Forum 1999, p. 7

²⁶ ACCC 2002, *Transmission ring-fencing guidelines*, p. 2

There may be some benefits of adopting a national set of distribution ring-fencing guidelines in a national regulatory framework. However, the AER should only adopt national distribution guidelines if it can clearly establish that the benefits will more than offset the significant transitional and compliance costs of a move away from the current jurisdictional requirements. If national distribution guidelines are developed, they must include adequate provisions for waivers or variations, at the request of the DNSP, to ensure that the costs and benefits of particular circumstances can be taken into account.

The provisions of the *Competition and Consumer Act 2010* are sufficient to deal with any competition issues that vertical integration may raise.

3. Are the current enforcement mechanisms sufficient to ensure effective compliance by DNSPs with their ring-fencing obligations?

ActewAGL Distribution considers that the current enforcement mechanisms are sufficient. In the ACT, ActewAGL Distribution reports annually on measures in place to ensure compliance and also reports any possible breaches. In line with good industry practice, a corporate ring-fencing policy and associated protocols have been developed by ActewAGL Distribution to ensure it meets the requirements.

4. Are the existing jurisdictional guidelines still appropriate in light of recent developments in the industry structure and the regulatory framework governing DNSPs? If not, why?

ActewAGL Distribution considers that the existing ACT ring-fencing guidelines continue to be appropriate.

One potential area for improvement is to include in the ACT guidelines an exception to allow involvement in small scale generation (of the type the AER refers to in the discussion paper). This could involve an exception of the type in the transmission guidelines, which allows the regulated business to undertake a related business which accounts for 5 per cent or less of the regulated businesses' annual revenue. Alternatively it could involve an adjustment to the definition of "related business" to exclude generation to offset consumption.

5. Are there matters that the Transmission Ring-Fencing Guidelines deal with that a national set of Distribution Ring-Fencing Guidelines should not?

ActewAGL Distribution strongly opposes the adoption of costly and inefficient requirements for legal or ownership separation of the type included in the national transmission guidelines clause 7.1(a)(ii) (discussed above under the heading of "appropriate content").

6. What matters should distribution ring-fencing guidelines address and what is the appropriate way to deal with such matters?

In deciding on the nature and extent of the requirements, if any, that should apply under each of the 7 categories listed by the AER, the AER should ask:

- What issue or problem is the requirement trying to address?
- What are the likely costs and benefits?
- Is there are better way of addressing the issue or problem?

7. Are there any problems with the content of the current jurisdictional guidelines? In what ways could they be improved?

The current ACT guidelines were developed through a comprehensive review by the ICRC. The considerations and analysis which underpinned the ICRC's conclusions remain valid today. ActewAGL Distribution believes there are no major problems with the current guidelines which would warrant substantial changes. However, as noted above, consideration could be given to an amendment to allow the regulated business to undertake a related business which accounts for 5 per cent or less of the regulated businesses' annual revenue

8. Should the AER work to develop a set of national guidelines that apply consistently across all participating jurisdictions?

Recognising the importance of flexibility and taking account of particular circumstances (as noted by the Utility Regulators' Forum), a national set of guidelines should not be applied consistently across all participating jurisdictions. If the AER does decide to adopt national guidelines, it will be critical to include adequate provisions for waivers, or variations, at the request of the DNSP. The AER could then assess the relevant compliance costs and the benefits for the specific circumstances, and then determine the extent to which consistency will be required.

9. If not, how should the inconsistencies across jurisdictional guidelines be dealt with?

This would need to be assessed on a case-by-case basis, recognising that there are good reasons for the carefully designed provisions that are currently in place in the ACT, and potential costs of making changes that try to force consistency or uniformity.

10. Does the current structure of the NEM mean that distribution ring-fencing guidelines are no longer necessary?

ActewAGL Distribution accepts that light handed and targeted ring-fencing guidelines provide an effective way for the AER to address concerns about distribution businesses engaging in related competitive activities or businesses. The focus in this review should

be on ensuring that the guidelines that are in place (either a continuation of the current jurisdictional guidelines, or new national guidelines with appropriate waivers) meet the AER's objectives in the most direct and least cost way, and in the best interests of consumers.

11. How should distribution ring fencing guidelines be modified to account for changes in the electricity supply industry?

The guidelines should be flexible and high-level to ensure that they do not restrict ongoing development in the industry including opportunities for efficiencies that translate into customer benefits (also see response to question 12 below).

12. How should the generation of electricity by DNSPs to offset energy consumption be dealt with in any ring fencing guidelines? Should there be an exception to allow such consumption, should it be capped, or should it be prohibited?

ActewAGL Distribution considers that there should be an exception to allow generation of electricity by DNSPs to offset energy consumption. In the current ACT ring-fencing guidelines the definition of a "related business" includes the following exception:

"... but does not include the purchase or selling of gas to the extent necessary:

(a) for the safe and reliable operation of a gas network (or of a gas distribution system); or

(b) to enable a utility to provide balancing services in connection with a gas network (or a gas distribution system).²⁷

A similar exception could be added to the definition of related business to allow for certain generation of electricity by DNSPs. Alternatively, the distribution guidelines could include a provision similar to clause 7.1(b) in the transmission guidelines which says:

"(b) A TNSP is not subject to clause 7.1(a)(ii) if it carries on *related businesses* that, in total, attract revenue of less than or equal to 5 per cent of the TNSP's total annual revenue."

This would exempt small scale transmission from the restrictions in the guidelines.

²⁷ ICRC 2002, *Ring Fencing Guidelines for Electricity and Gas Network Service Operators in the ACT*, p. 17

13. Do the current jurisdictional ring fencing guidelines inhibit effective innovation in the market for new contestable services? If so, how could a revised set of ring fencing guidelines address this?

The current ACT ring-fencing guidelines were designed to balance the need to protect consumer interests and the need to provide proper rewards for innovation and long term investment.