



Distribution Ring-fencing Guideline Update

Stakeholder workshop

28 & 29 August 2019

aer.gov.au

Introduction

- Ring-fencing guideline
 - progress so far...
 - guideline observations.
- Purpose of this consultation:
 - review of the guideline after more than a year of implementation.
 - identify possible improvements to the guideline.
- Next steps for this review.

Features of the current Guideline

- The guideline aims to prevent cross-subsidies and discriminatory behaviour.
- We have adopted a range of controls to achieve this.
- The guideline allows some exceptions and exemptions to ensure that ring-fencing obligations are proportionate to the harms. For example, the guideline:
 - permits staff and office sharing under some circumstances.
 - contains a threshold of ‘materiality’ for breach reporting.
 - allows waivers where cost of compliance would exceed the benefits.

Guideline observations

- Is it working? Generally positive outcomes so far:
 - clearer separation of Distribution Network Service Providers (DNSPs) from non-distribution activities.
 - creation of new affiliates and brands.
 - accountability and transparency improved through annual reports.
 - useful insights from independent assessors.
 - generally high levels of compliance with the guideline (with some exceptions).

...continued

Guideline observations

- However, we consider it may be necessary to revise the guideline to:
 - clarify some terms that are being misinterpreted.
 - revisit some thresholds.
- Assess whether the exceptions provided are proportionate to the objectives.
- Based on what we have seen to date:
 - likely no major changes required
 - but likely need to strengthen some existing obligations (such as ‘materiality of breaches’)
 - clarity around existing obligations.

Aspects of the Guideline under consideration

1. Cost allocation

- Accountability for cost allocations between the DNSP and affiliates

2. Functional separation

- Office sharing (what is the 'office'?)
- Staff sharing (e.g. short term/temporary or 'borderline' staff sharing arrangements)
- Information access and disclosure (ambiguity as to when 'disclosure' has occurred)

3. Compliance reporting

- Annual Compliance Reporting (inconsistent quality and transparency)
- 'Materiality' of breaches as a reporting threshold (differing interpretations of what 'material' means)

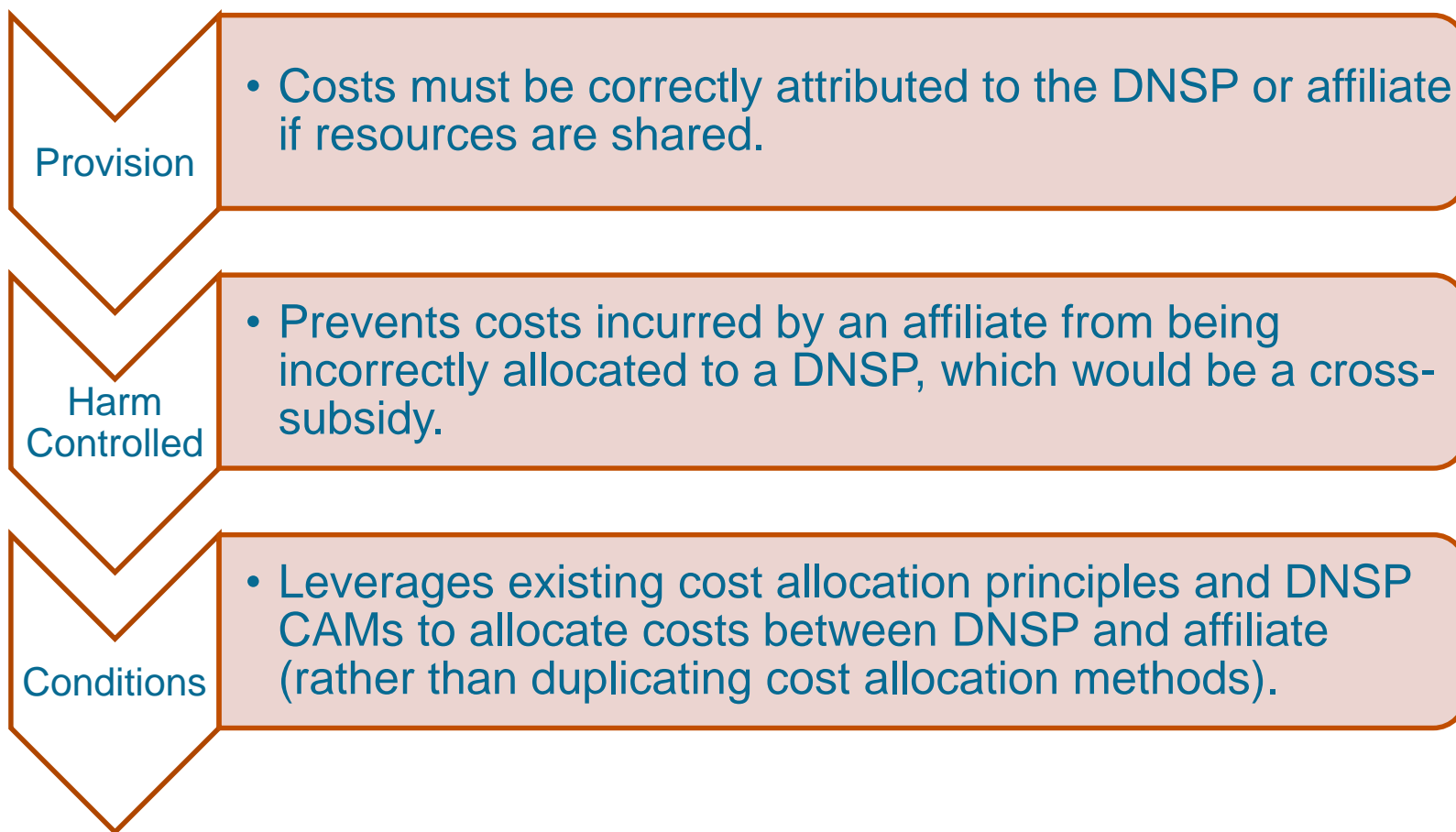
4. Other possible revisions

- Branding
- Staff and office sharing registers

1. Cost Allocation

Cross subsidy overview

Guideline cl: 3.3.2



Cross subsidy & cost allocation issues

- Concern that DNSPs and their auditors are not understanding the requirement to extend their cost allocation method beyond the DNSP:
 - the guideline requires that DNSPs are responsible to account for how costs are allocated *between* the DNSP and affiliates. This is done by extending the approach embodied in the CAM to cover cost allocation between the entities. Independent assessors could test this better.
- In response, perhaps clarify the guideline requirements.

Note:
independent
assessors

2. Functional Separation

1. Office and staff sharing
2. Branding
3. Information disclosure

What are the main issues relating to office and staff sharing?

- Guideline restricts staff and office sharing where it is harmful or potentially harmful.
 - concerns that some DNSPs have inadequate controls on staff and office sharing.
 - concerns that DNSP staff sharing provisions are too generous.
 - concerns that the way in which electricity information is defined could be targeted better.
 - shared staff with *electricity information* must have no opportunity to use it.

Does ‘electricity information’ and ‘opportunity to discriminate’ need to be revisited?

- Staff and office sharing is permitted where staff: (1) don’t have access to ‘electricity information’, or; (2) *do* have access to ‘electricity information, but *don’t* have an opportunity to use that information to advantage an affiliate.
- Electricity information reflects the wide scope of information we want to protect but maybe defined too broadly.
- Whether shared staff have ‘opportunity’ to discriminate in favour of an affiliate is context-specific.
- As a result, it is challenging to identify if a business is complying with the guideline, and where the harms lie.

Electricity information

Information about electricity networks, electricity customers or electricity services excluding aggregated financial information, or other service performance information that does not relate to an identifiable customer or class of customer.

- Functional Separation Obligations restrict *opportunity* to share

Confidential Information

Information that is a subset of electricity information, acquired or generated by a DNSP in connection with its provision of direct control services, that is not publicly available.

- Includes information the DNSP derives from electricity information or provided to the DNSP by or in relation to a customer of direct control services
- Can only be disclosed in limited circumstances

Office sharing overview

Provision

- DNSPs must use separate offices from an affiliate providing contestable electricity services.

Harm Controlled

- Prevents staff of the DNSP from informally/incidentally sharing electricity information with staff of the affiliate, which could provide the affiliate with a discriminatory advantage.

Conditions

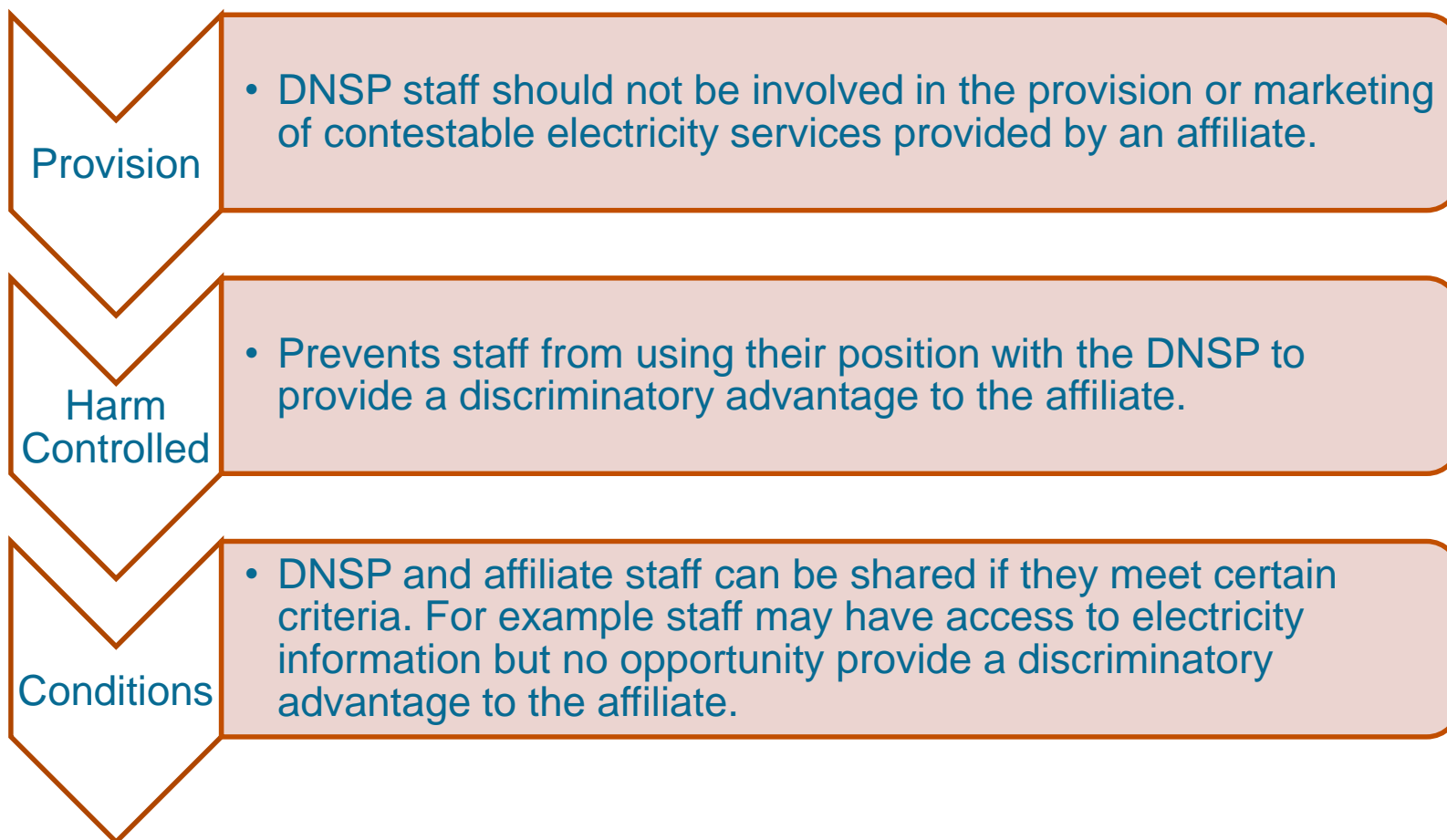
- DNSP and affiliate staff can share offices if they meet certain criteria. For example staff may have access to electricity information but no opportunity to provide a discriminatory advantage to the affiliate.
- Where they don't meet office sharing criteria, DNSPs and affiliates must have access-controlled separate offices.

Office sharing issues

- Some DNSPs are misinterpreting the definition of ‘office’.
- Our intention was to restrict regulated staff with ‘electricity information’ from mixing with unregulated staff during the course of a normal working day.
- Example: Staff interacting in lunch rooms or other shared work facilities carries risk of improper information sharing.
- One option is to revise the definition of ‘office’ to make our intent clearer.

Staff sharing overview

Guideline cl: 4.2.2

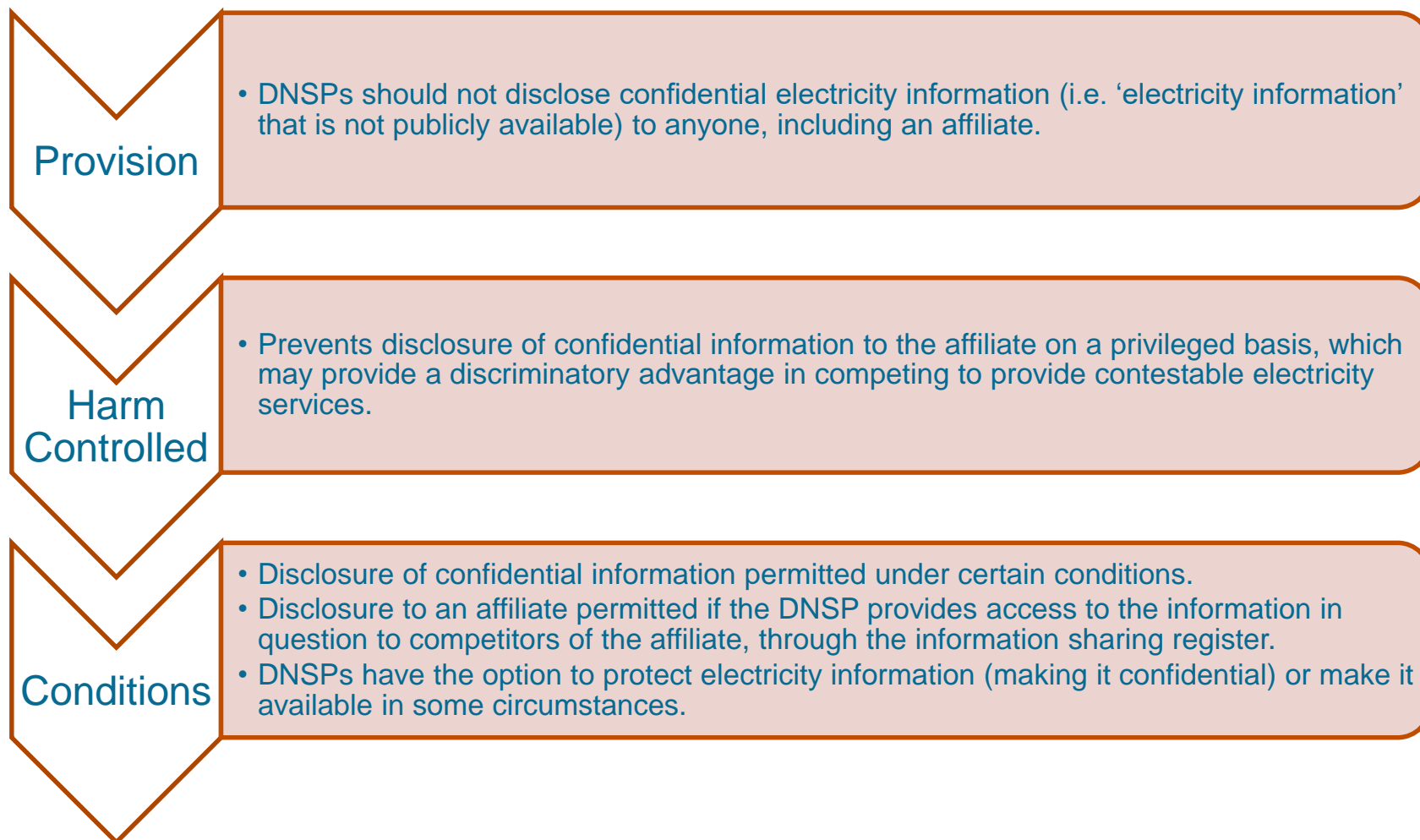


Staff sharing issues

- Staff sharing arrangements in the guideline could be improved. In particular, a better mechanism for identifying staff that may be shared.
- Examples:
 - short-term secondments circumventing restrictions on staff sharing.
 - concerns that procurement staff are being shared on the basis that they are corporate staff, when there maybe a risk of harm.
- This provides a potentially discriminatory advantage to the affiliate.

Info access and disclosure overview

Guideline cl: 4.3.3



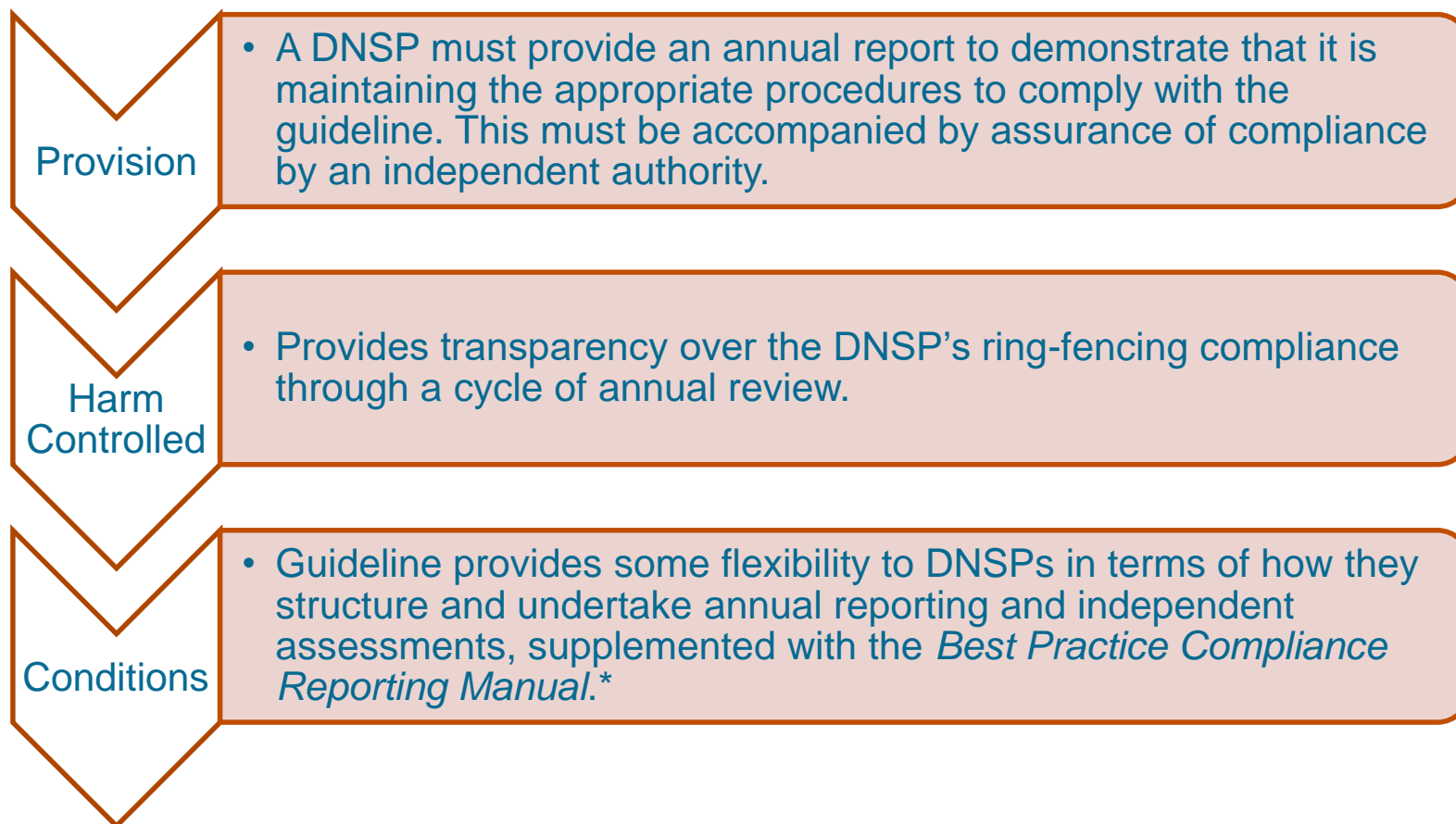
Info access and disclosure issues

- Information ‘access’ and ‘disclosure’ are not the same.
- Example: If an affiliate has access to electricity information but hasn’t downloaded or viewed it, this should be a breach of the guideline because the staff member has *access* to the information.
- The guideline may benefit from further clarification to the definition of disclosure and access.

3. Compliance Reporting

Annual compliance reporting

Guideline cl: 6.2.1



Annual compliance reporting

- Ring-fencing DNSP annual compliance reporting contains inconsistent quality and transparency.
 - short form auditor's reports are inadequate as they lack transparency.
- The AER seeks to provide timely information to DNSPs and the industry and therefore we aim to publish our annual compliance reports by December.
 - a mid September submission date for DNSPs would greatly assist the AER in achieving this.

Materiality of breaches



Materiality of breaches

- Our interpretation: a breach is material if it is not trivial.
- A significant number of non-trivial breaches are not being reported within the required 5 business days.
 - or not reported until year's end.
- Examples: unregulated staff with IT access to confidential electricity information; unregulated staff with email accounts that belong to a DNSP; a DNSP providing metering services.
- One option would be to require that all breaches be reported to the AER within 5 business days.

4. Other possible revisions

Other guideline obligations to review

Branding

- There is a risk of harm when the DNSP and affiliate share branding, particularly for non-electricity services.

Staff and office sharing registers

- Some registers are not kept up to date or contain insufficient detail.
- How can they be improved to be more useful?

Next Steps

Consultation process

- We welcome all stakeholders to participate in this guideline review.
- The consultation will be in the form of:
 - workshops; and
 - written submissions made on these slides or subsequent documentation.
- We invite any stakeholders who are unable to attend the workshops to contact us if they wish to be involved in the consultation process.

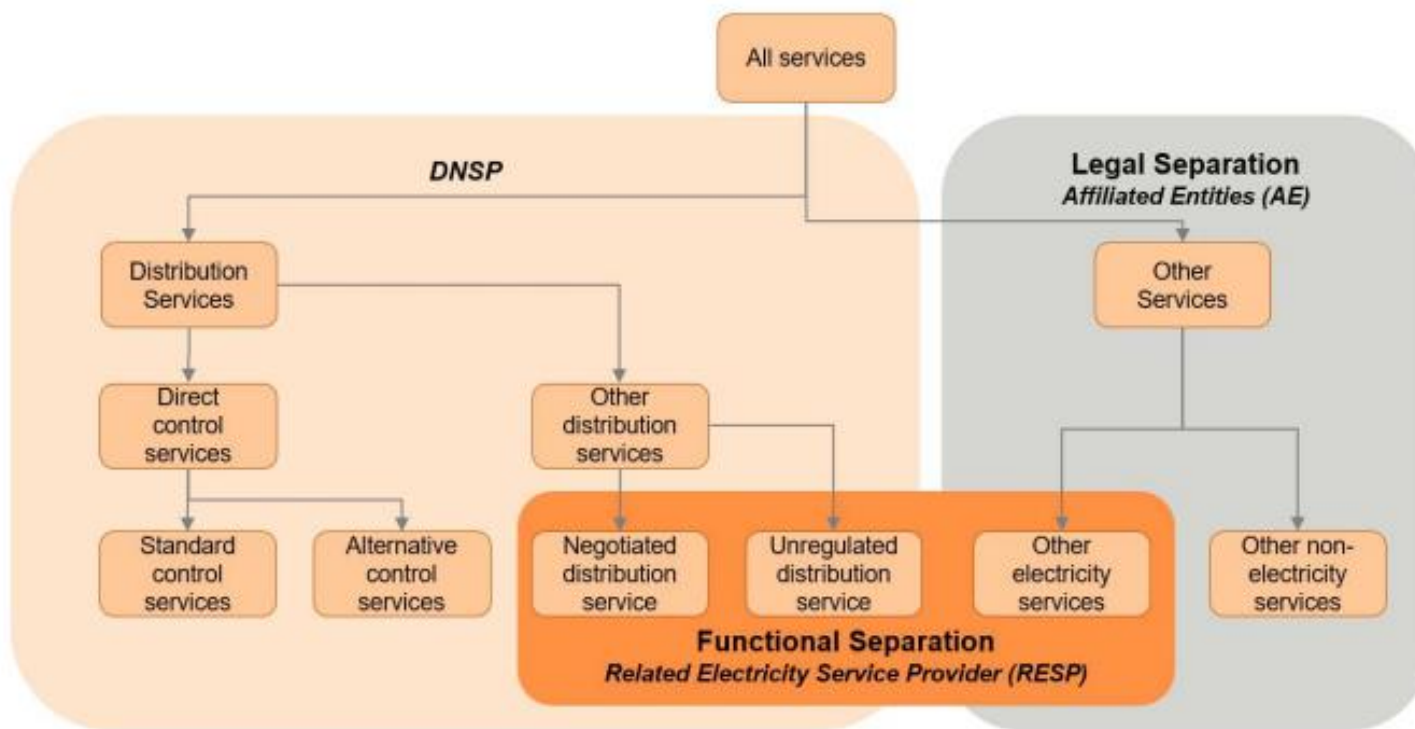
Submissions

- Submissions on these slides should be submitted by **COB 23 September 2019.**
- Submissions should be emailed to:
ringfencing@ aer.gov.au
- Alternatively, submissions can also be sent to:
Ms Sarah Proudfoot
General Manager, Consumers and Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submissions

- We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:
 - clearly identify the information that is the subject of the confidentiality claim
 - provide a non-confidential version of the submission in a form suitable for publication.
- All non-confidential submissions will be placed on our website at www.aer.gov.au.
- For further information regarding our use and disclosure of information provided to us, see the ACCC/AER Information Policy, June 2014 available on our [website](#).
- Enquiries about this document, or about lodging submissions, should be directed to [ringfencing@aer.gov.au](mailto:ringfencing@ aer.gov.au).

Appendix A: legal and functional separation



Appendix B

