



AER 'Better Regulation'

Regulatory information notices to collect information for economic benchmarking

Submission on Draft RIN and Explanatory Statement

18 October 2013

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1. Executive Summary

The Energy Networks Association (ENA) is pleased to have this opportunity to respond to the Australian Energy Regulator's (AER) draft Regulatory Information Notice to collect information for economic benchmarking for electricity distribution and transmission (draft Economic Benchmarking RIN or draft RIN) and associated explanatory statement. The ENA appreciates the open and interactive approach adopted by the AER in this consultation. The ENA supports consultation that supplements written submission with face-to-face stakeholder workshops.

The issues discussed in this submission relate to both electricity distribution and transmission network service providers (NSPs).

1.1 Key messages

The ENA accepts that the Economic Benchmarking RIN is a critical new element of the economic regulatory framework for NSPs. However, completing the RIN is a complex exercise that will take significant time, money and effort for NSPs.

The ENA is concerned that the current draft RIN is, in a number of areas, overly-prescriptive and impractical. This submission highlights how information collection and assurance for economic benchmarking could be achieved more effectively and cost efficiently.

The ENA's key concerns with the draft RIN are as follows:

- **10 years' back cast data** – it is not realistic to expect NSPs to be able to provide 10 years of back cast data in the manner that the AER has requested. Estimates will be required where information is not available or is not recorded in the format required by the RIN. The earlier the period, the more difficult it is for NSPs to make meaningful estimates. Even if statutory accounting records are available, ancillary information required to reformat into the RIN categorisations may not be available. The corporate knowledge and personnel who were running the business at the time may also not be available or may not have the detailed recollections necessary to assess the reasonableness of the estimates and recategorisations, or to allow an auditor to form an opinion on the data (especially where corroborating records may not be available). Consequently, much of the older back cast data, in particular, is unlikely to be sufficiently precise to be reliable for benchmarking purposes. For these reasons, any back cast data should not extend beyond a maximum of five years;
- **Audit requirements** – the proposed audit and assurance requirements are not sufficiently clear and raise the strong possibility of an auditor, or assurance practitioner, being engaged and completing work that does not meet the AER's expectations. The AER could provide significantly greater clarity and certainty by publishing general guidance about these requirements in a Regulatory Accounting and Assurance Guideline. The AER's requirements should be consistent with Auditing and Assurance Standards;

- **Statutory declaration** – the proposed form and content of the statutory declaration is not appropriate. The statutory declaration should be replaced by a responsibility statement that asserts whether the information in the RIN (or RIO) is true and fairly stated and fulfils the requirements on which the auditor will be required to sign off. Such a form of statutory declaration is likely to enable NSPs to provide more of the information that the AER is seeking; and
- **Timing** – it is not realistic to expect officers of a NSP to complete a statutory declaration in February 2014 on numbers that are still subject to audit. This would be inconsistent with good governance. Further, the AER putting unaudited numbers that are subject to change into the public domain for consultation is fraught with risk and is likely to result in wasted effort for all parties.

1.2 Recommendations

The ENA recommends that the AER makes the following amendments to the Draft Economic Benchmarking RIN and Explanatory Statement:

Form and justification of regulatory information instrument

Recommendation 1 - The AER should seek accompanying information that explains the basis on which NSPs have prepared the numbers in the RIN templates. The AER should specify protocols for the evolution of the regulatory information instruments and templates to meet future needs “as we all become better at benchmarking”, to avoid uncertain and inefficient processes for all parties.

Recommendation 2 - The AER should more fully explain its reasons for requiring the information in each tab in the RIN template by reference to its economic benchmarking model. The AER should also publish its models for economic benchmarking as soon as possible.

Recommendation 3 - The AER should demonstrate that each component of information that it is requesting in the RIN is “reasonably necessary”. This includes explaining why 10 years of information, rather than information covering a shorter period, is necessary. If the AER cannot demonstrate this then it should not request the information.

Recommendation 4 - The AER should explain more fully how it has considered each NSP’s likely costs (and the resultant benefits) of alternative information requests so that it is clear why the information it has requested provides an optimal net benefit outcome, having regard for the NEL and the NER.

Recommendation 5 - The AER should explain how it has reason to believe that each NSP is capable of providing each component of information that it is requesting in the RIN template, especially for the 10 years of back cast information.

Accounting framework and information provision

Recommendation 6 - The AER should commit to preparing Regulatory Accounting and Assurance Guidelines that set out a regulatory accounting and assurance framework in relation to the provision of historical and forecast financial information by the NSPs, in particular under its RINs and RIOs.

Recommendation 7 - The proposed Regulatory Accounting and Assurance Guidelines should provide guidance on the criteria that the AER will use to judge whether a basis of preparation is acceptable and the criteria that will govern the form and nature of its selection of audit and

assurance requirements. For example, it could require information to be prepared in accordance with Accounting Standards and a NSP's Cost Allocation Method (CAM). The basis of preparation should form part of the completed RIN or RIO that is submitted by NSPs to the AER since it is intrinsic to, and cannot be determined independently from, the information reported in a RIN or RIO.

Recommendation 8 - The AER should take into account the disclosed bases of preparation including any necessary limitations and necessary assumptions that underpin the back cast information, when applying the information to ensure that it is utilised appropriately.

Recommendation 9 - The AER should amend the RIN to require NSPs to provide no more than five, not 10, years of back cast data on the basis that it is more likely to be reasonable to expect that meaningful data could be obtained for a shorter period.

Recommendation 10 - The AER should remove the requirement to back cast historic data for changed bases of allocation as it breaches the NER's and AER's own requirements to report substance over form. The AER's focus should be on whether the allocation outcome is true and fair, not on the inputs. Different allocation methods can provide this. Different allocators that comply with the NER simply reflect the different economic drivers of shared cost over time and between NSPs. Prescription or reworking of past allocations could distort outcomes that have already been established and audited as true and fair. If the AER is to retain this, or similar requirements, a threshold of materiality should be introduced. One year's restatement could be made if there is a material change. The ENA suggests that the AER should adopt the Australian Accounting Standards Board definition of materiality, namely that "Information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements". This definition has been adopted by Australian regulatory accounting guidelines in the past.

Recommendation 11 - The AER should develop a clear basis for the preparation of data in a Guideline, including appropriate use of estimates, where this is consistent with, or is necessitated by, generally accepted accounting practice. Within this framework, it should then define more clearly the characteristics that distinguish "actual historical Financial Information" from "estimated historical Financial Information" in the RIN.

Recommendation 12 - The AER should only require NSPs to provide information under a RIN (or a RIO) that is within the NSP's knowledge. The AER should not require a NSP to provide information that it does not have or that could be materially misleading or unreliable.

Recommendation 13 - The AER should commit to it not relying on information for its decision making that is materially misleading or unreliable.

Recommendation 14 - The AER should recognise that there may be circumstances when a NSP may reasonably and legitimately not be able to provide data that the AER is seeking. A NSP should not be required to provide information that could be materially misleading or unreliable. A NSP should not be unfairly disadvantaged if it cannot provide data. The AER should find an alternative basis for making its decisions that does not rely on this information.

Recommendation 15 - The AER should maintain an "open register" during the completion of the RINS through which NSPs can ask questions of the AER. The answers to these questions could be shared with other NSPs to assist the completion of their RINs.

Recommendation 16 - The AER should make clear that the Confidentiality Guidelines will apply to the provision of information under the Economic Benchmarking RIN.

Audit and assurance framework

Recommendation 17 - The AER should redraft the audit requirements section of Appendix C to be consistent with Auditing and Assurance Standards and to complement the proposed Regulatory Accounting and Assurance Guidelines. This should provide a single source of guidance on the AER's accounting and assurance requirements and on protocols that can be applied consistently by all NSPs for all of the AER's regulatory information instruments.

Recommendation 18 - The AER should provide guidance on how its auditing / assurance framework fits together and is intended to work in the context of ASA 805, ASAE 3000 and, indeed, the Auditing and Assurance Standards as a whole. An efficient risk based framework is required whereby the scope of audit work (and in some cases the requirement for any audit or assurance report at all) is attuned to the materiality of the risk being addressed by the audit or assurance report. This may include choices of audit, reviews / negative assurance and assurance reports other than audits and reviews, including agreed upon procedures / factual findings.

Recommendation 19 - The AER should redraft the Audit Requirements section of Appendix C in accordance with the ENA's specific proposals in section 4.3, in order to ensure that they are consistent with Auditing and Assurance Standards and to complement the proposed Regulatory Accounting and Assurance Guidelines.

Recommendation 20 - The AER should make clear in the audit requirements section of Appendix C and in the proposed Regulatory Accounting and Assurance Guidelines the implications of the auditor not providing an opinion or of providing an adverse opinion.

Recommendation 21 - The AER should amend the process for NSPs submitting their completed RINs to the AER by:

- Removing the requirement for submissions to be made in February 2014;
- Allowing NSPs to consult with their auditors about the timing of the completion of their work. While NSPs and their auditors should use their best endeavours to meet the May 2014 timeframe, if this is not practical, NSPs should agree with AER now a realistic alternative that will meet the AER's needs; and
- Agreeing a recurring timetable for the annual benchmarking report due on 30 November 2015 onwards, once the lessons from data collection from this year have been understood.

Statutory declaration

Recommendation 22 - The statutory declaration should be replaced by a more appropriate responsibility statement that asserts whether the information in the RIN (or RIO) is true and fairly stated and fulfils the requirements on which the auditor will be required to sign off. This will then align with the auditor's report. The auditor will almost certainly require such a statement rather than the suggested statutory declaration. Further, that in relation to estimated data, the estimate has been arrived at on a reasonable basis. Such a form of statutory declaration will actually enable service providers to provide more of the information that the AER is actually seeking.

Recommendation 23 - The AER should recognise that the statutory declaration and audit will need to be signed off contemporaneously. On this basis, the AER should remove the requirement for the staged provision of information. Instead, the AER should:

- Maintain an "open register" during which NSPs should be able to ask questions of the AER about the completion of the RIN – the answers to these questions could be shared with other NSPs; and

- Only require NSPs to provide a final set of data in May 2014 that has been audited and is accompanied by a (revised) statutory declaration.

Reviewing and amending NSPs' information

Recommendation 24 - The AER should remove the provision for cross-submissions on unaudited data.

Recommendation 25 - The AER should clarify on what basis, if any, the AER may revise a NSP's final audited information and what the status would be of the amended information.

The following sections provide a detailed discussion of these and other issues.

1.3 Next steps

The ENA appreciates the work that the AER has undertaken in developing the Draft Economic Benchmarking RIN and Explanatory Statement and looks forward to continuing to work with the AER as it finalises these documents by 15 November 2013. We would be pleased to discuss our submission with the AER as it finalises these documents.

2. Form and justification of the Regulatory Information Instrument

As a preliminary matter, the ENA submits, consistent with the submission made by the ENA in response to the AER's draft Expenditure Forecast Assessment Guidelines, that it would have been more appropriate for the AER to compel the provision of the information it is seeking by way of a RIO and not individual RINs issued to NSPs. A RIO is intended to be used to collect standardised information across NSPs of the kind currently being contemplated by the AER.

The ENA submits that the AER should have progressed this matter via RIOs because, unlike for a RIO:

- There is no requirement to consult with the public when issuing a RIN – there is only a requirement to invite the NSP to make representations to the AER as to whether the AER should serve the RIN; and
- There is no requirement to publish a RIN that has been issued by the AER.

The ENA recognises that the AER is consulting with the public in respect of the draft RIN templates. Given the use that the AER proposes to make of the information, it is important from a transparency perspective that the RINs when issued are published by the AER.

The ENA expects that, as the information gathering process develops, the AER will transition to RIOs to compel the provision of the information.

2.1 The AER should recognise benchmarking is “a process not an event”

The ENA considers that it is important that the AER treats benchmarking as “a process not an event”. There are several important implications of this mindset.

First, analysing and understanding benchmarking information should not simply involve gathering numbers based on particular definitions and seeking to compare them on their face. Rather, the AER should seek accompanying information that explains the basis on which these numbers have been prepared. Without this information, the AER cannot fully understand what the numbers mean and explain significant differences between NSPs. Also, as section 0 explains, this information will be necessary for an auditor to pass an opinion or report. The ENA considers this to be a key gap in the AER's current RINs and templates.

Secondly, the AER should provide guidance on the principles and approaches that will guide the evolution of the regulatory information instruments and templates “as we all become better at benchmarking” in order to allow a structured, well managed evolution and avoid uncertain and inefficient processes for all parties. At the moment, there is a danger of the information gathering being seen as a static process, whereas the ENA envisages that it should be a dynamic one that evolves with the AER's, industries' and other stakeholders' learnings and improved understanding.

Recommendation 1 - The AER should seek accompanying information that explains the basis on which NSPs have prepared the numbers in the RIN templates. The AER should specify protocols for the evolution of the regulatory information instruments and templates to meet future needs “as we all become better at benchmarking”, to avoid uncertain and inefficient processes for all parties.

2.2 The AER should clearly state its reasons for requiring the information in the RIN

Section 28K(1)(c) of the NEL requires the AER, in issuing a RIN, to state the reasons for it requiring information. The ENA considers that the AER has not adequately addressed this requirement in its “Statement of Reasons” in Appendix D of the draft RIN in requesting 10 years of back cast information.

The AER refers in Appendix D to the draft Expenditure Forecast Assessment Guidelines for the “detailed information on how the AER will apply economic benchmarking and the reasons for the data to be provided in Appendix B”. However, these draft Guidelines do not explain why the AER is seeking to gather the particular information in each tab of the RIN template and why it is necessary in order to satisfy its particular benchmarking needs, albeit that they list certain information requirements in sections 6.1 and 6.2.

The ENA considers that, in order to properly satisfy section 28K(1)(c) of the NEL, the AER should explain its information requirements by reference to its models for economic benchmarking. Without referring to these models, which the ENA notes have not yet been published, NSPs and other stakeholders cannot fully understand the context for the requested information. The AER should publish its models as soon as possible rather than waiting to do so, as it appears to be suggesting (on page 11 of its Explanatory Statement), until after the NSPs have submitted their final audited economic benchmarking RINs.

The ENA is therefore concerned to ensure that, given the onerous nature of the proposed RINs, the AER has legitimate reasons for requiring all of the information that it is requesting. It would be highly inefficient for all parties if the AER:

- Did not use all of the information that it sought;
- Needed to come back to the NSPs for rework/further information; and/or
- Made mistaken findings or drew inappropriate conclusions based on inadequate information.

Recommendation 2 - The AER should more fully explain its reasons for requiring the information in each tab in the RIN template by reference to its economic benchmarking model. The AER should also publish its models for economic benchmarking as soon as possible.

2.3 The AER should demonstrate that the RIN is “reasonably necessary”

Section 28F(1) of the NEL enables the AER to issue a RIN “if it considers it reasonably necessary for the performance or exercise of its functions or powers under this Law or the Rules”. It is not clear that the AER has adequately demonstrated this in requesting 10 years of back cast information.

The ENA is concerned to ensure that the AER is only requesting information that it can demonstrate is “reasonably necessary” and that it is therefore not imposing significant, unnecessary time, effort and cost for NSPs and their auditors. The AER should therefore justify the particular information in each tab of the RIN template, rather than provide a general statement that could apply to any information request.

The ENA considers that this justification could be provided as part of the AER's statement of reasons to address section 28K(1)(c) of the NEL, however it is currently not adequately addressed by Appendix D of the draft RIN.

Recommendation 3 - The AER should demonstrate that each component of information that it is requesting in the RIN is "reasonably necessary". This includes explaining why 10 years of information, rather than information covering a shorter period, is necessary. If the AER cannot demonstrate this then it should not request the information.

2.4 The AER should consider NSPs' likely costs

Section 28F(2)(b) of the NEL requires the AER, in issuing a RIN, to consider the likely costs that may be incurred by an efficient NSP to comply with the RIN.

It is not clear that the AER has adequately considered NSPs' likely costs for the purpose of this section, nor has it demonstrated the net benefits of NSPs complying with the draft RIN.

The ENA is concerned that the AER appears to have considered the cost impact of the RIN on NSPs in a cursory and general manner and that it has not considered:

- The individual circumstances of, and cost impact on, particular NSPs;
- The relative cost impact of requesting 10 years of back cast information compared to, say, five years of back cast information;
- Whether the requested information will deliver a net benefit; or
- Whether the same benefit could be achieved by requesting less information, for example five, compared with 10, years of information.

There is a risk that the AER is requesting information that will impose significant, unnecessary time, effort and cost on the NSP and its auditor and that these costs will outweigh the benefits of the information being sought, and may in fact result in less robust outcomes due to the poor quality of data from earlier years.

Recommendation 4 - The AER should explain more fully how it has considered each NSP's likely costs (and the resultant benefits) of alternative information requests so that it is clear why the information it has requested provides an optimal net benefit outcome, having regard for the NEL and the NER.

2.5 The AER should demonstrate that it has reason to believe NSPs can provide or produce requested information

Section 28(1) of the NEL enables the AER to serve a RIN if it "has reason to believe that a person is capable of providing information or producing a document that the AER requires for the performance or exercise of a function or power conferred on it under this Law or the Rules".

It is not clear that the AER has adequately considered NSPs' capacity to provide the 10 years of back cast information that the AER has requested in the draft RIN.

There is a very high risk of the AER requesting information that a NSP is not capable of providing or producing. This has two potential consequences:

- That, in seeking to do their utmost in complying with the RINs, a NSP ultimately provides information that is, or has the potential to be, unreliable or misleading depending on the use to which the AER ultimately puts the information; and
- Service providers may find themselves in a position where they are not capable of complying with the Notice.

The AER must have regard to these two possibilities when ultimately determining the form of the RINs to be issued, including in particular, in relation to the form of verification to be provided by way of statutory declaration as to the information provided pursuant to the RIN.

Recommendation 5 - The AER should explain how it has reason to believe that each NSP is capable of providing each component of information that it is requesting in the RIN template, especially for the 10 years of back cast information.

3. Accounting framework and information provision

3.1 The AER should issue Regulatory Accounting and Assurance Guidelines

Attachment 1 of this submission details a suite of documents (variously issued by Governments, the Australian Energy Market Commission, the AER, NSPs and auditors) that are relevant to:

- The AER making and servicing a regulatory information instrument;
- A NSP completing a regulatory information instrument; and
- An auditor or assurance practitioner reporting on a NSP's regulatory information instrument.

The ENA considers that these documents need to work together as a cohesive, integrated package.

The ENA is concerned that the absence of a document that details the basis on which the AER expects regulatory information instruments to be prepared and presented by NSPs, and audited or reviewed, is a key gap in what the AER has described in its Explanatory Statement and draft RIN.

To address this gap, the ENA encourages the AER to prepare Regulatory Accounting and Assurance Guidelines to:

- Help ensure that the information provided by NSPs is prepared, presented and reported on commonly understood bases; and
- Provide a basis on which the NSPs and their auditors and assurance providers can properly discharge their reporting obligations to the AER.

The AER could, for example, use the proposed Guidelines to provide guidance that requires:

- RINs and RIOs to be prepared in accordance with Accounting Standards and a NSP's Cost Allocation Method (CAM); and
- Audit and assurance reports on RINs and RIOs to be provided under the Australian Government's Audit and Assurance Standards Board's (AUASB's) Auditing and Assurance Standards framework as a whole.

The ENA considers that it is preferable to provide this information in guidelines, rather than in a specific RIN or RIO, because it is required generally for auditing and assuring all of the AER's regulatory information instruments, not just particular instruments. A single guideline would thereby ensure consistency of the audit and assurance approach across all instruments issued by the AER.

<p><i>Recommendation 6</i> - The AER should commit to preparing Regulatory Accounting and Assurance Guidelines that set out a regulatory accounting and assurance framework in relation to the provision of historical and forecast financial information by the NSPs, in particular under its RINs and RIOs.</p>

3.2 Completed RINs should include the basis of preparation

It is generally accepted accounting practice for reports or returns to include information about the basis of preparation (such as accounting policies or assumptions) in order to provide users with an understanding of the basis on which the information has been presented and the basis on which it may be judged to be true and fair.

These are necessary requirements for both:

- A statutory declaration or other form of statement of responsibility for the information being provided by the organisation (in this case the NSP); and
- A report by an auditor that attests to whether the information is fairly presented. A clear basis of preparation is necessary for an auditor's attestation.

The ENA notes that the current RINs do not provide for the disclosure of the basis of preparation of the information being audited.

If a NSP does not disclose its basis of preparation then:

- There is a significant risk of misinterpretation by the AER of information provided in the RIN because disclosure of the numbers and definitions alone do not enable a user to fully assess the information conveyed; and
- It would be impractical for an officer to sign a statutory declaration and for the auditor to report on the RIN. This will ultimately impact on whether service providers are capable of complying with the RINs.

Recommendation 7 - The proposed Regulatory Accounting and Assurance Guidelines should provide guidance on the criteria that the AER will use to judge whether a basis of preparation is acceptable and the criteria that will govern the form and nature of its selection of audit and assurance requirements. For example, it could require information to be prepared in accordance with Accounting Standards and a NSP's Cost Allocation Method (CAM). The basis of preparation should form part of the completed RIN or RIO that is submitted by NSPs to the AER since it is intrinsic to, and cannot be determined independently from, the information reported in a RIN or RIO.

Recommendation 8 - The AER should take into account the disclosed bases of preparation including any necessary limitations and necessary assumptions that underpin the back cast information, when applying the information to ensure that it is utilised appropriately.

3.3 The AER should require back cast information for only five, not 10, years

The AER is currently requesting that NSPs provide 10 years of back cast information. This is an inappropriately long period for providing back cast information for a number of practical reasons.

Companies are required to retain records for seven years for statutory purposes under section 286 of the *Corporations Act 2001*. The nature of those records is defined by section 9 of that Act. There is no reason to assume that the form and structure of those records will align with the

information being sought in the RIN. Where they do not align, NSPs will need to adjust or reallocate the information to fit the RIN requirements to the extent they are able to do so. This will likely require ancillary information (such as management accounting or operational data) outside of the statutory accounting records that are the subject of sections 286 and 9 of the *Corporations Act 2001*. However, this ancillary information may not have been retained for seven years, since there would have been no statutory obligation or operational reason to do so.

It is less likely that knowledge of the bases of preparation of non-statutory information, including knowledge of the operations of the NSP for the periods the information represents, will have been retained for older information. Because of this, greater time, money and effort will need to be expended to develop information required by the RIN for earlier years, which in any event is likely to be of poorer quality than that for more recent years. This is an instance where the regulatory benefits to the AER of seeking this information would not justify the costs NSPs would incur in assembling it and the AER would incur in appropriately interpreting information that is of inherently poorer quality.

Likewise, it is extremely difficult, if not impossible, for a NSP to responsibly assess the reasonableness and fairness of the older information required by the RIN. It would be similarly difficult, if not impossible, for an auditor to express an opinion, or to report, on the data since to do so normally requires the auditor to seek corroborating evidence including explanations from those running the NSP during the periods reported on by the data. Further audit and assurance concerns in connection with back cast data are outlined at section 0.

Secondly, where historic records for either source data or ancillary information do not exist, it would be necessary, as the RIN contemplates, for the NSP to make estimates. In general terms, any estimate only has meaning when considered in conjunction with the assumptions on which it is based. While in theory a range of equally valid alternative assumptions could be made, in practice, estimates reflect a particular set of assumptions. Different assumptions can provide different, but equally valid, estimates. Because of this, generally accepted accounting practice requires the assumptions on which estimates are based to be disclosed to enable the estimates to be properly understood and to provide an auditor with a basis for attestation. This is a further example of the requirement for the disclosure of basis of preparation that is discussed in section 3.1 above.

Estimates that are based on invalid or undisclosed assumptions will result in imprecise, or invalid, estimated back cast data. If this data is applied in benchmarking, it could produce imprecise outcomes, rendering results of little or no value.

Thirdly, historical information, particularly from many years ago, is likely to have been prepared under bases of preparation that, in the normal course of events, change progressively over time in order to maintain a true and fair view. These changes would need to be identified in order to understand the historical information, but they may not be available beyond seven years. In any event, as discussed in section 3.1 above, these changes would need to be disclosed in a statement of the basis of preparation in order for an officer to sign a statutory declaration and for the auditor to report on the RIN.

As a result of the above, requiring 10 years of back cast data will impose an unreasonable burden on NSPs and may result in very significant effort being expended on producing information that will

be unsuitable for drawing meaningful benchmarking conclusions. On balance, the ENA considers that back casting information over no more than five years is more appropriate.

Recommendation 9 - The AER should amend the RIN to require NSPs to provide no more than five, not 10, years of back cast data on the basis that it is more likely to be reasonable to expect that meaningful data could be obtained for a shorter period.

3.4 The AER should remove the requirement for back casting for changed allocations

The draft RIN would require NSPs to back cast historic data for changes in their CAMs. This is unlikely to be practical and could provide distorted results.

Ten years recasting of cost allocations is also a potentially massive task. It faces all of the back casting challenges discussed above, but presents additional work at a high level of detail, which for the reasons outlined above, may be impractical or impossible to audit. It would impose significant time, effort and cost for a NSP and its auditor.

The ENA also notes that the AER offers no guidance on materiality. The requirement appears to be a blanket one regardless of whether there would be any material effect on prior year figures. The amount of work required for recasting can be as great for “small numbers” as for “large numbers”.

However, more fundamentally, the purpose of back casting allocations is unclear and could provide misleading results. In the ENA’s view, it does not appropriately balance consistency of preparation with fair reporting. Rather, it inappropriately promotes uniformity over fair reporting. In any event, back casting only makes a NSP’s own historical information uniform and does not result in greater uniformity (or comparability) between NSPs to the extent that they have different CAMs.

As a general accounting principle, businesses need to change their bases of cost allocation from time to time to present costs fairly to reflect the drivers of costs relevant at the time. This is the basis for clauses 6.15.2(3)(ii) and 6A.19.2(3)(ii) of the National Electricity Rules (NER), which require causal bases of allocation¹. These clauses of the NER, in common with accounting principles in general, are constructed to achieve true and fair outcomes. They do not prescribe specific methods of allocation for NSPs.

Where the drivers or causes of allocation change or can be better defined or measured then, to maintain or improve the fairness of presentation of allocation outcomes, it is necessary to change the bases of allocation. Importantly, a change does not mean that the prior bases of allocation no longer present a true and fair view. Where cost allocations were made in accordance with a NSP’s CAM, they provided a true and fair view of the expenditure subject to allocation. The allocations would have been subject to an auditor’s report where they formed part of audited regulatory financial statements.

¹ Where costs are material and a causal basis of allocation can be established - refer clauses 6.15.2(3)(ii)(A) and 6A.19.2(3)(ii)(A) of the NER.

Consistency of reporting is a key accounting principle. For example, Accounting Standard AASB 108 “Accounting Policies, Changes in Accounting Estimates and Errors” enables changes to accounting policies where this is necessary to maintain a true and fair view.

The Accounting Standards do not require prior years’ financial statements to be re-issued and re-audited when there has been a change in accounting policy. This is because a change in accounting policy does not change the truth and fairness of the prior year’s financial statements. AASB 108 only requires financial statements to be re-issued where there has been a fundamental error. Accounting Standard AASB 108 requires prior comparatives to be restated when there has been a change in policy, but this is to allow readers to understand the effect of the change. They do not result in the prior year’s financial statements themselves being restated. Importantly, AASB 108 recognises that it can be impracticable to disclose comparative back casts for changes in both accounting policy and error and does not require back cast changes in accounting policy where it is impracticable to do so. AASB 108’s definition of “impracticable” is particularly relevant to the AER’s requirements in this regard²:

Impracticable – applying a requirement is impracticable when the entity cannot apply it after making every reasonable effort to do so. For a particular prior period, it is impracticable to apply a change in an accounting policy retrospectively or to make a retrospective restatement to correct an error if:

- a) the effects of the retrospective application or retrospective restatement are not determinable;*
- b) the retrospective application or retrospective restatement requires assumptions about what management’s intent would have been in that period; or*
- c) the retrospective application or retrospective restatement requires significant estimates of amounts and it is impossible to distinguish objectively information about those estimates that:*
 - (i) provides evidence of circumstances that existed on the date(s) as at which those amounts are to be recognised, measured or disclosed; and*
 - (ii) would have been available when the financial statements for that prior period were authorised for issue;*

from other information.

By the same token, when a NSP’s cost allocation policy changes and that change complies with:

- Clause 6.15 of the NER;
- The AER’s cost allocation guidelines; and

²AASB108 Accounting Policies, Changes in Accounting Estimates and Errors, definitions, p10.

- The NSP's approved CAM which puts into effect outcome requirements of the National Electricity Rules;

it is neither necessary nor appropriate to back cast the change over several years.

Furthermore, because the NER require a NSP's allocations to be made on a causal basis³, *back casting cost allocations could misstate the prior year's data*, where the changed bases of allocation represent changes in the economic drivers of cost allocations over time.

A further consideration is the requirement in clause 6.15.2(2) of the NER that requires that "the allocation of costs must be determined according to the substance of a transaction or event rather than its legal form". This requirement aligns with the AER's own prior guidance which in turn is consistent with a wide body of precedent set out in Australian regulatory accounting guidelines. The following extract from the AER's *Electricity Network Service Providers Cost Allocation Guidelines, June 2008* provides an example:

2.2.2 Substance over legal form

- a) A DNSP shall attribute costs directly to, or allocate costs between categories of distribution services based on the substance of the underlying transaction or event.*
- b) Where the substance and legal form differ, the substance rather than the legal form of a transaction or event shall be used as the basis of cost attribution or allocation.*
- c) In determining the substance of a transaction or event, all of its aspects and implications shall be considered, including the expectations of and motivations for, the transaction or event.*
- d) For the purposes of determining the substance of a transaction or event, a group or series of transactions or events that achieves, or is designed to achieve, an overall commercial effect shall be viewed in aggregate.*

A requirement to back cast costs based on changed allocations appears to run counter to this requirement since such an allocation change would not reflect the substance of the underlying transactions or of the economic drivers of the allocations.

The ENA observes that a changed cost allocation will also have been subject to audit, as will have been the original allocations of earlier years for regulatory reporting purposes. Where allocations have been subject to audit, but are now required to be superseded by a back cast allocation, the AER is effectively setting aside the prior auditor's opinion and changing the basis of preparation of the prior year's figures for circumstances that were not known at (and as discussed above may not be relevant to) the time the original allocations were presented and audited. This again highlights the need for the AER to provide overarching guidance on its criteria for an accounting framework in Regulatory Accounting and Assurance Guidelines. These Guidelines could be used by NSPs to

³ Where costs are material and a causal basis of allocation can be established - refer clause 6.15.2(3)(ii)(A) of the NER.

prepare different RINs and RIOs on a basis that is consistent between different reports and forecast and historic information.

The ENA also notes that the AER's proposed approach may have the perverse effect of providing a disincentive for NSPs to change their CAMs to provide a true and fair view of regulatory reporting in the future to better meet their changing economic circumstances.

Recommendation 10 - The AER should remove the requirement to back cast historic data for changed bases of allocation as it breaches the NER's and AER's own requirements to report substance over form. The AER's focus should be on whether the allocation outcome is true and fair, not on the inputs. Different allocation methods can provide this. Different allocators that comply with the NER simply reflect the different economic drivers of shared cost over time and between NSPs. Prescription or reworking of past allocations could distort outcomes that have already been established and audited as true and fair. If the AER is to retain this, or similar requirements, a threshold of materiality should be introduced. One year's restatement could be made if there is a material change. The ENA suggests that the AER should adopt the Australian Accounting Standards Board definition of materiality, namely that "Information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements". This definition has been adopted by Australian regulatory accounting guidelines in the past.

3.5 The AER should clarify the distinction between "actual" and "estimated"

The draft RIN makes a distinction between "actual" and "estimated" historical information. The AER states that "actual data means that no values may be estimated unless stated otherwise in a specific worksheet of the Microsoft Excel Workbook at Appendix A"⁴. The AER contrasts this with "estimated historical data (based on reasonable management judgement and assumptions) where the NSP certifies that it is not possible to provide actual historical information"⁵.

The ENA is concerned that the terms "actual" and "estimated" historical information need to be more clearly defined in the RIN, since historic accounting information usually includes embedded estimates such as accruals and estimated asset lives. It is therefore inappropriate for the AER to suggest that "actual" historical information should not make use of estimates. To do otherwise would involve seeking arbitrary levels of precision, drawing inappropriate conclusions and being inconsistent with generally accepted accounting practice.

This could be dealt with by the AER providing guidance through the proposed Regulatory Accounting and Assurance Guidelines for NSPs to prepare and present information in accordance with Accounting Standards and generally accepted accounting principles.

⁴ AER, *Regulatory Information Notice under Division 4 of Part 3 of the National Electricity Law*, draft, p 10.

⁵ *Ibid.*, p 10.

Recommendation 11 - The AER should develop a clear basis for the preparation of data in a Guideline, including appropriate use of estimates, where this is consistent with, or is necessitated by, generally accepted accounting practice. Within this framework, it should then define more clearly the characteristics that distinguish “actual historical Financial Information” from “estimated historical Financial Information” in the RIN.

3.6 The AER should not request information that is not in existence

The ENA maintains the position that it put to the AER in its submission on the draft Expenditure Forecast Assessment Guidelines that, with the exception of forecast information, it is not appropriate for the AER to use a RIN (or a RIO) to require a NSP to provide information that is not in existence or cannot be objectively derived from information that is in existence. That is, a RIN or RIO should not be used to require a NSP to conduct a back casting exercise where more is required than extracting historic data and undertaking various calculations with respect to that data.

An exercise which requires NSPs to approximate or estimate data, or to make arbitrary judgments, is not appropriately the subject of a RIN (or a RIO). This is reinforced by the AER’s ability under section 28M of the NEL to require information to be verified by way of statutory declaration or to be audited. If the information that is purportedly required to be provided pursuant to a RIN (or a RIO) cannot properly be the subject of a statutory declaration or audit, including because the data has not historically been kept in a manner that permits the NSP to provide the information sought by the AER with confidence that the information is not incorrect or misleading, that information should not be the subject of a RIN (or a RIO). Alternatively, the NSP will not be able to provide that information to the AER pursuant to the RIN (or RIO) because they are unable to give the required declaration or audit in respect of that information.

A recipient of a RIN or RIO can only be required to furnish information which is within the knowledge of the NSP. This is consistent with a decision of the Federal Court which considered the scope of the powers of the Australian Competition and Consumer Commission to compel the provision of information pursuant to section 155 of the *Competition and Consumer Act 2010 (Cth)*.⁶ In this case, the Federal Court noted that it is true that “the recipient of a notice can only be required to furnish information which is in his knowledge or control and cannot be required to undertake a general investigation of matters beyond his control”.⁷ Whilst a NSP may be required to make inquiries of responsible officers, employees and agents as to relevant information in order to comply with a RIN or RIO, the AER’s back casting requirements go well beyond such a requirement. The ENA submits that in some cases, the back casting “information” that may be sought to be required by the AER will not properly be information that lies within the knowledge or control of the NSP. In such circumstances, the AER cannot insist that the NSP does whatever is required in order to provide some response to the information instrument.

Recommendation 12 - The AER should only require NSPs to provide information under a RIN (or a RIO) that is within the NSP’s knowledge. The AER should not require a NSP to provide information that it does not have or that could be materially misleading or unreliable.

⁶ *Dunlop Olympic Ltd v Trade Practices Commission* 62 FLR 145, 149-150.

⁷ *Dunlop Olympic Ltd v Trade Practices Commission* 62 FLR 145, 150.

Recommendation 13 - The AER should commit to it not relying on information for its decision making that is materially misleading or unreliable.

3.7 The AER should recognise that the non-provision of data may be legitimate

A corollary of section 3.6 is that the AER has not contemplated in the draft RIN the non-provision of data, for example when a NSP may not reasonably be able to estimate data. However, the AER indicates in the Explanatory Statement that, during the period February to April 2014, “We will also liaise with NSPs to fill gaps in the data series by assisting NSPs in relation to the possible ways of best estimating missing data” (page 10). It is not clear how these two matters align.

The ENA accepts that NSPs should be required to use their best endeavours to provide information requested by the AER but believes they should not be unfairly disadvantaged if they genuinely cannot provide the information, such as by the AER attributing another NSP’s data to them. The AER should find an alternative basis for making its decisions that does not rely on this information.

The ENA is concerned that the current draft RIN presents a risk of the AER requesting data that a NSP is not capable of providing or producing and may result in a NSP being required to provide and be responsible for information that may not be suitable for the AER’s intended purposes. A NSP should not be required to provide information that could be materially misleading or unreliable. If, for whatever reason, the AER receives information that is materially misleading or unreliable then it should not use that information for regulatory decision making. The ENA expressed its concern in its submission on the AER’s draft Expenditure Forecast Assessment Guidelines that the AER may have a contrary intention. The AER stated on page 56 of the Explanatory Statement of the draft Guideline that it will “(where possible) use reliable data”. Sound, reliable information is essential for good regulatory decision making – relying on sub-standard information would undermine the credibility of the AER’s decision making.

A related issue is that the AER also does not contemplate a situation where the auditor is not able to gather enough evidence to provide an opinion in the manner the AER has sought. This is discussed in section 4.4 below.

Recommendation 14 - The AER should recognise that there may be circumstances when a NSP may reasonably and legitimately not be able to provide data that the AER is seeking. A NSP should not be required to provide information that could be materially misleading or unreliable. A NSP should not be unfairly disadvantaged if it cannot provide data. The AER should find an alternative basis for making its decisions that does not rely on this information.

3.8 Proposed colour coding for the provision of information in a draft RIN

NSPs will use their best endeavours to provide the requested information in the draft RIN.

The ENA proposes that NSPs populate the AER’s draft RIN templates in accordance with the colour-coding in the following table in order to provide the AER with an initial view of what information they expect to be able to provide, have audited and be subject to a statutory declaration.

Colour Code	Availability of data from NSP's primary system	Additional work around / estimation techniques	Likelihood to pass an audit (subject to observations on the audit and assurance processes at Section 0)	Is management comfortable that information is accurate and reliable?
Green	Available and verifiable	Straightforward – no additional work or minor work around (e.g. source data from a secondary system)	<ul style="list-style-type: none"> Likely 	Yes
Yellow	Available but with some gaps	<ul style="list-style-type: none"> Moderate – estimate based on statistically significant sample size 	<ul style="list-style-type: none"> Possible but uncertain 	Yes
Orange	Little or no data available	Complex – estimate based on formula, standard parameters or other source	Not likely	No
Red	Little or no data available	Impossible – rough estimate (e.g. rule of thumb from experience) or not possible	No	No
Black	Not applicable to relevant NSP	Not applicable to relevant NSP	Not applicable to relevant NSP	Not applicable to relevant NSP

Recommendation 15 - The AER should maintain an “open register” during the completion of the RINS through which NSPs can ask questions of the AER. The answers to these questions could be shared with other NSPs to assist the completion of their RINs.

3.9 The AER should clarify confidentiality arrangements

Clause 6.8.2(d) of the NER states that “[t]he regulatory proposal must comply with the requirements of, and must contain or be accompanied by the information required by any relevant regulatory information instrument”.

Clause 6.14A(b) of the NER states that “[t]he Distribution Confidentiality Guidelines must specify the manner in which the Distribution Network Service Provider may make confidentiality claims in its regulatory proposal, which may include categories of confidential information by reference to which Distribution Network Service Providers must classify any claims of confidentiality in their regulatory proposals”. Equivalent provisions apply to TNSPs under clauses 6A.10.1(c) and 6A.16A of the NER.

The NSPs propose to apply the AER's Confidentiality Guidelines to the information they prepare in response to the RINs. The NSPs would appreciate confirmation that the AER is satisfied with this approach.

The ENA notes that its members support the public disclosure of non-confidential information that they provide to the AER in their final economic benchmarking RINs, together with the bases of preparation which are necessary to lend meaning to the RINs. This is a separate matter to the disclosure of the audit reports discussed in section 0 below, which would be a matter of concern to auditors (rather than NSPs per se).

<p><i>Recommendation 16</i> - The AER should make clear that the Confidentiality Guidelines will apply to the provision of information under the Economic Benchmarking RIN.</p>

4. Audit and assurance framework

4.1 The AER should provide greater guidance on audit and assurance requirements

The RIN refers to specific Auditing and Assurance Standards for audit and assurance reporting. However, the AER could provide significantly greater clarity and certainty about its audit and assurance requirements by publishing general guidance in the proposed Regulatory Accounting and Assurance Guideline. Guidance on audit and assurance would help to avoid risks to the quality of information, and wasted time, money and effort, that could otherwise arise from, for example:

- An auditor, or assurance practitioner, being engaged and completing work that does not meet the AER's expectations;
- Avoidable adverse reports or expressions of no opinion, from auditors and assurance practitioners;
- Potential disputes between the AER and the NSP about the nature, terms of reference and criteria for the auditor's or assurance practitioner's work;
- Inappropriate or impermissible scopes being set for the scope of auditors' or assurance practitioners' reports;
- Risks to the audit and assurance process from unrealistically constrained timeframes that are inconsistent with reporting requirements;
- Third parties seeking to rely inappropriately on audit and assurance reports; and
- Inconsistencies between the sign-offs by NSP officers under audit representations and the statutory declaration.

The ENA considers that it is preferable to provide this information in a guideline, rather than in a specific RIN or RIO, because it is required generally for auditing and assuring all of the AER's regulatory information instruments, not just particular instruments. A single guideline would thereby ensure consistency of the audit and assurance approach across all instruments issued by the AER.

The ENA notes that the AUASB is responsible for a very well established framework that regulates the conduct of audit and assurance reports and the qualifications of and independence of auditors in Australia. This regulation is effected by the body of the AUASB's Auditing and Assurance Standards as a whole, not just the specific standards referred to by the AER in the draft RIN. As a minimum, to provide clarity, and to avoid doubt, the AER should provide guidance that confirms its expectations that audit and assurance reports on RINs in general are to be provided under the AUASB's Auditing and Assurance Standards framework as a whole.

The Auditing and Assurance Standards provide, for example, a framework that can be used by the AER and NSPs to address matters such as the scope and nature of an auditor's terms of reference, auditor appointment independence and audit and assurance reports. The reports

provided for in the standards could be applied or attuned to the needs of specific regulatory information instruments and risks. .

This would provide certainty and clarity and avoid the need for the AER to prepare novel or alternative audit and assurance treatments that could be at risk of being inconsistent with the requirements of the AUASB.

The AER should provide guidance that can be applied to regulatory audits and assurance reports in general, including protocols (by reference to the existing Auditing and Assurance Standards) to address practical matters relevant to the conduct of the audit or assurance reports (such as the appointment, remuneration and setting terms of reference) and to enable the choice of audit or assurance report that is appropriate to the risks of concern to the AER.

Recommendation 17 - The AER should redraft the audit requirements section of Appendix C to be consistent with Auditing and Assurance Standards and to complement the proposed Regulatory Accounting and Assurance Guidelines. This should provide a single source of guidance on the AER's accounting and assurance requirements and on protocols that can be applied consistently by all NSPs for all of the AER's regulatory information instruments.

Section 4.3 details specific changes that the ENA considers should be made to the Audit Requirements section of Appendix C.

4.2 The AER should clarify use of negative assurance and choices of reports

The Auditing and Assurance Standards provide a range of different types of reports that can be selected for non-statutory information to address most effectively and efficiently the materiality and nature of misstatement in a regulatory information instrument (or any other report that is subject to audit or assurance).

It is unclear why the AER has made a blanket decision for all financial data to be subject to positive assurance when, where the risk or consequences of misstatement may be limited, a more efficient and less costly negative assurance could be more appropriate.

The AER's Explanatory Statement rejects the use of "agreed upon procedures", otherwise known as reports of factual findings. In some instances, a report of factual findings may more efficiently meet the AER's needs than a broader, less focused review report or audit report.

Recommendation 18 - The AER should provide guidance on how its auditing / assurance framework fits together and is intended to work in the context of ASA 805, ASAE 3000 and, indeed, the Auditing and Assurance Standards as a whole. An efficient risk based framework is required whereby the scope of audit work (and in some cases the requirement for any audit or assurance report at all) is attuned to the materiality of the risk being addressed by the audit or assurance report. This may include choices of audit, reviews / negative assurance and assurance reports other than audits and reviews, including agreed upon procedures / factual findings.

4.3 The AER should make specific amendments to “Audit Requirements” in Appendix C

The ENA sets out below comments that are specific to each paragraph of the “Audit Requirements” section in Appendix C of the draft RIN, including suggestions, where appropriate, on how they should be amended.

The matters addressed by the detailed comments include a number of issues that run throughout the Appendix C requirements. These principally relate to requirements that are inconsistent with the scope of an auditor’s or assurance practitioner’s reports permitted by Auditing Standards. For example:

- Appendix C requires an auditor or assurance practitioner to “assess” and/or “verify” specific items, or to report on specific matters such whether information is complete and accurate, when this is inconsistent with the Auditing and Assurance Standards opinions sought by the AER. For example, to provide an audit opinion under Auditing Standard ASA 805 on historic financial information, the auditor will use professional judgment and expertise to determine the appropriate procedures which are necessary to the auditor’s independent opinion on whether information is presented truly and fairly in accordance with a stated basis of preparation. But an opinion on financial information, is just that. It does not opine on procedures.
- The requirements often do not properly distinguish:
 - between the responsibilities of an auditor or assurance practitioner from the party preparing the information which the auditor or assurance practitioner is reporting on; and hence
 - the matters that are included in an audit or assurance report, from the subject of the report. For example an auditor’s opinion would not state the source or basis of information presented by a NSP. Rather this and other matters necessary to understand the information, would be set out in a basis of preparation that accompanies the information. The auditor would then report on whether the information is truly and fairly presented on that basis;
- In places the requirements expect an auditor or assurance practitioner to form bases of judgment and then to make and report judgements under those basis. Appendices C 3.3 (b) and (c), and C 3.4 (b) and (c) of the RIN provides examples, such as the auditor or assurance practitioner being asked to report on the reasonableness of a methodology. An auditor or assurance practitioner may be able to report on or attest to, whether information or procedures meet certain criteria (such as “reasonable”) but cannot at the same time, determine the basis of those criteria (in this case what constitutes “reasonable”), which instead should be explained in a basis of preparation; and
- The requirements ask for audit and assurance reports to be in a form that can be published by the AER. Auditors and assurance practitioners are liable for their reports. The audit and assurance reports sought by the AER are specific purpose reports intended for specified users and are not in a form suitable for publication to, or intended for use by, other parties. Auditor and assurance practitioners would be highly unlikely to accept such risks. While this is a concern for auditor and assurance practitioners rather than the ENA’s members, this could inhibit the capacity of the ENA’s members to appoint auditors to report on the economic benchmarking RINs. The ENA reiterates that its members support the public disclosure of

non-confidential information that they provide to the AER in their final economic benchmarking RINs, together with the bases of preparation which are necessary to lend meaning to the RINs.

4.3.1 Paragraph 3.1 - The audit report on historical financial information

- a) The ENA agrees that the relevant standard is ASA 805 “Special Considerations — Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement”;
- b) This paragraph should exclude the words “verify” and “assess” as these terms imply that an opinion is being provided on the listed items. These items are considered in designing the audit procedures. However, the audit procedures will be determined with reference to the auditor’s assessment of risk and materiality in forming an opinion required for paragraph 3.1(c). There is no individual assurance expressed on these items. It may not be possible to perform sub-paragraph 3.1(b)(ii) as not all actual historical financial information will reconcile to Audited Statutory Financial Statements but alternative audit evidence may be obtained in order to form the required audit opinion in paragraph 3.1(c);
- c) Audit report:
 - (i) The audit report would not state where the information has been derived from, or whether it can be agreed to audited statutory financial statements. This should not be necessary given the opinion would state that the historical financial information is “presented fairly in accordance with Australian accounting standards or the basis of preparation”;
 - (ii) The draft RIN does not currently provide a basis of preparation for the actual historical financial information. This should be provided in the basis of preparation drafted by the NSP and be attached to the actual historical financial information. The audit report would state that the historical financial information provided is presented fairly in accordance with the basis of preparation accompanying the actual historical financial information. There are certain characteristics of suitable criteria (i.e. the basis of preparation) detailed in the AUASB’s “Framework for Assurance Engagements”;
 - (iii) The audit report would not specifically state whether the financial information is in accordance with the NSP’s CAM but would state that it is presented fairly in accordance with the basis of preparation. The basis of preparation would set out all details of the CAM; and
 - (iv) The audit report would include any modifications or qualifications required relating to any material misstatements of the historical financial information in accordance with Australian accounting standards or the basis of preparation.
- d) The audit report would be in respect of a special purpose report prepared in accordance with Australian accounting standards and the basis of preparation and therefore would not be in a form able to be published by the AER. As the actual historical financial information has been prepared to assist the NSP to comply with the requirements of the RIN, it may not be suitable for another purpose. The audit report is intended solely for the directors of the NSP and the AER and should not be distributed to or used by other parties.

4.3.2 Paragraph 3.2 - The review report on estimated historical financial information

- a) The relevant standard for a review conclusion on the estimated historical information would be ASRE 2405 "Review of Historical Financial Information Other than a Financial Report", not ASAE 3000;
- b) This paragraph should exclude the word "assess" as this term implies that an opinion is being provided on these items. Sub-paragraphs 3.2(b)(i), (ii) and (iv) could not be performed as the criteria for these have not been specified in the RIN. It is not the role of the assurance practitioner to interpret what these terms mean. Rather, the assurance practitioner is required to attest to whether the information provided meets these criteria. In respect of sub-paragraphs 3.2(b)(iii) and (v), these are considered in designing the review procedures, which will be determined with reference to the auditor's assessment of risk and materiality in forming the conclusion required in paragraph 3.2(c). A review cannot conclude on these individual items;
- c) Review report:
 - (i) The review report would not state the reasons why the historical financial Information has been provided on an estimated basis. This should be provided by the NSP in the basis of preparation;
 - (ii) The review report would not conclude on the appropriateness of the data estimated, based on all available information required. The following is an example of a review conclusion that an assurance practitioner may be able to provide:

We have not become aware of any matter that would lead us to believe that the estimated historical financial information has not, in all material respects, been prepared in accordance with the basis of preparation.

- (iii) The review report would not specifically conclude on the reasonableness of the methodology and the underlying assumptions used although the auditor does have the obligation to assess the suitability of the criteria as part of its procedures when determining to accept an engagement. The following is an example of a review conclusion that an assurance practitioner may be able to provide:

We have not become aware of any matter that would lead us to believe that the estimated historical financial information has not, in all material respects, been prepared in accordance with the basis of preparation.

- (iv) The review report would include any modifications or qualifications required relating to any material misstatements of the estimated historical financial information that came to the auditor's attention;
- (v) The review report will not specifically state whether the data being provided is prepared in a manner consistent with the NSP's CAM. The basis of preparation would refer to the CAM. The following is an example of a review conclusion that an assurance practitioner may be able to provide:

We have not become aware of any matter that would lead us to believe that the estimated historical financial information has not, in all material respects, been prepared in accordance with the basis of preparation’.

The review report would include any modifications/ qualifications required relating to any material misstatements of the estimated historical financial information that came to the auditor’s attention.

- d) The Review Report would be in respect of a special purpose report prepared in accordance with the basis of preparation and therefore would not be in a form able to be published by the AER. As the estimated historical financial information has been prepared to assist the NSP to comply with the requirements of the RIN, it may not be suitable for another purpose. The review report is intended solely for the directors of the NSP and the AER and should not be distributed to or used by other parties.

4.3.3 Paragraph 3.3 – The review report on non financial information

- a) The ENA agrees that the relevant standard is ASAE 3000 “Assurance engagements other than audits or reviews of historical financial information”;
- b) This paragraph should exclude the word “assess” as this term implies that an opinion is being provided on these items. For sub-paragraphs 3.3(b)(iii) and (iv), these could not be performed as the criteria for these have not been specified in the RIN. It is not the role of the assurance practitioner to interpret what these terms mean. Rather, the assurance practitioner is required to attest to whether the information provided meets these criteria. In respect of items (i) and (ii), these items are considered in designing the review procedures, which will be determined with reference to the auditor’s assessment of risk and materiality in forming a conclusion required in part (c). There is no individual review conclusion expressed on these items;
- c) Review report:
- (i) The limited assurance report would not state whether the non-financial information has been derived from actual historical data or has been estimated. This should be disclosed as part of the basis of preparation and should be provided by the NSP;
- (ii) The limited assurance report would not specifically conclude on the accuracy and completeness of that data although it would make reference to the non-financial information being prepared in accordance with the ‘basis of preparation’. The ‘basis of preparation’ should require the non-financial information to be complete and accurate. The criteria specified will need to be suitable, having the characteristics of relevance, completeness, reliability, neutrality, and understandability as described in the AUASB’s “Framework for Assurance Engagements” in order for an assurance practitioner to form a review conclusion.

The following is an example of a review conclusion that an assurance practitioner may be able to provide:

We have not become aware of any matter that would lead us to believe that the non financial information has not, in all material respects, been prepared in accordance with the Notice (i.e. criteria listed in section X).

(iii) For estimated non-financial information the limited assurance report is unable to conclude on:

- The reasons why the historical non-financial data has been provided on an estimated basis;
- The appropriateness of the data estimated, based on all available information retained; and
- The reasonableness of the methodology and underlying assumptions used to derive the estimates.

The NSP will need to provide a basis for their estimates in a basis of preparation.

The review report on the estimated non-financial information would conclude with reference to this basis of preparation and the criteria for each set of non-financial data that would need to be specified in the RIN. The criteria specified will need to be suitable, having the characteristics of relevance, completeness, reliability, neutrality, and understandability as described in the “Framework for Assurance Engagements” in order to form a review conclusion. The following is an example of a review conclusion that an assurance practitioner may be able to provide:

We have not become aware of any matter that would lead us to believe that the estimated non financial information has not, in all material respects, been prepared in accordance with the basis of preparation and the Notice (section X).

(iv) The limited assurance report would include any modifications/ qualifications required relating to any material misstatements of non-financial information that came to the auditor’s attention.

d) The non-financial information is prepared for a specific purpose in accordance with the RIN and the basis of preparation; therefore distribution of the limited assurance report is restricted to the responsible party (the NSP) and the intended user (AER) and would not be in a form able to be published by the AER. As the non-financial information has been prepared to assist the NSP to comply with the requirements of the RIN, it may not be suitable for another purpose. The limited assurance report is intended solely for the directors of the NSP and the AER and should not be distributed to or used by other parties.

4.3.4 Paragraph 3.4 - The review report on systems and processes for non financial information

The ENA is concerned that this review report (i.e. on the process) is not necessary if there is a review conclusion provided on the non-financial information (i.e. on the outcome) under paragraph 3.3. It is not clear how an additional report would add to the substance of what is provided under that review. In any event, the ENA is concerned that the auditor may be unlikely to

be able to obtain sufficient appropriate audit evidence over 10 years to form a view over the historical periods.

Nevertheless, the ENA provides the following specific comments on this paragraph of Appendix C.

- a) The ENA agrees that the relevant standard is ASAE 3000 “Assurance engagements other than audits or reviews of historical financial information”;
- b) These procedures could not be performed by the auditor for paragraph 3.4(c), for the reasons discussed below;
- c) The limited assurance (review) report would not conclude on:
 - (i) The reliability of the processes, procedures used and the systems applied to provide, prepare and maintain the information;
 - (ii) Whether the processes, procedures and systems were correctly used and applied by the relevant staff to prepare, provide and maintain the information;
 - (iii) Whether the systems were able to prepare and provide the required parameter definitions and data exclusions in accordance with the AER’s requirements;
 - (iv) Whether the systems were able to competently identify and correct errors and whether the information referred to in paragraph 1.1(c) reflects any such corrections; and
 - (v) Whether the processes, procedures, or systems resulted in any missing information or unusual trends that suggest errors in information entry or manipulation.

Generally, the form of opinion on internal controls addresses whether the design of controls meets control objectives and / or whether the controls were implemented and operated effectively.

Assurance can also be provided on whether a description of a system/process prepared by a NSP is fairly presented.

The following is an example of a review conclusion that an assurance practitioner may be able to provide:

Based on the procedures we have performed and the evidence we have obtained, we have not become aware of any matter that would lead us to believe that, in all material respects:

- 1. the controls in relation to the preparation of non-financial information of the RIN were not suitably designed throughout the period from [date] to [date] to achieve the control objectives identified in the attached [name of controls document]; and*
- 2. the controls tested did not operate effectively as designed throughout the period from [date] to [date].*

- d) The non-financial information on systems and processes would be prepared for a specific purpose in accordance with the RIN; therefore, distribution of the limited assurance report is restricted to the responsible party (i.e. the NSP) and the intended user (i.e. the AER) and would not be in a form able to be published by the AER. As the non-financial information has been prepared to assist the NSP to comply with the requirements of the RIN, it may not be suitable for another purpose. The limited assurance report is intended solely for the directors of the NSP and the AER and should not be distributed to or used by other parties.

Recommendation 19 - The AER should redraft the Audit Requirements section of Appendix C in accordance with the ENA's specific proposals in section 4.3, in order to ensure that they are consistent with Auditing and Assurance Standards and to complement the proposed Regulatory Accounting and Assurance Guidelines.

4.4 Implications of Auditor not providing opinion or of providing adverse opinion

The ENA is concerned that the AER does not contemplate a situation in the Audit Requirements in of Appendix C of the draft RIN where:

- An auditor cannot provide an opinion or an opinion in the time available (i.e. between February and May 2014); or
- An auditor provides an adverse opinion.

These outcomes may occur, for example, if the auditor is not able to gather enough evidence about the past 10 years to be able to form opinions anticipated by the AER's requirements.

It is not clear from the draft RIN what the implications are for the NSP, the auditor and the AER of one or other of these outcomes occurring. The ENA is concerned that the NSP may bear the risk of the AER interpreting one of these outcomes as a failing of the NSP, when in fact it may reflect a failing of the AER's audit and assurance requirements as they are currently specified in the draft RIN.

Recommendation 20 - The AER should make clear in the audit requirements section of Appendix C and in the proposed Regulatory Accounting and Assurance Guidelines the implications of the auditor not providing an opinion or of providing an adverse opinion.

4.5 Audit timeline

The draft RIN would have:

- A NSP submitting a draft, unaudited RIN to the AER with a statutory declaration in February 2014;
- Interested parties making cross-submissions on NSPs' draft, unaudited RINs between February and May 2014;
- Audit and assurance work being undertaken up to May 2014; and

- A final, audited RIN being submitted to the AER with a subsequent statutory declaration (that supersedes the one submitted in February) in May 2014.

The ENA is concerned that this is an inefficient process for all parties because:

- The information that a NSP submits in February 2014 would very likely be subject to change up to May 2014 as a result of the NSP acquiring incrementally better information and as a result of the audit and assurance work;
- It is highly unlikely that any officer of a NSP would be prepared to sign a statutory declaration to accept responsibility for unaudited data in the absence of advice from an auditor or assurance practitioner; and
- Publishing “best endeavours” unaudited data on the AER’s website and calling for submissions is fraught with risk for all parties. It is not clear what value the AER sees in asking for cross-submissions on information that is unaudited, likely to be incomplete and that is subject to change.

Furthermore, the ENA notes that, because this is the first time economic benchmarking information is being collected and audited and because of the particular challenges of back casting data, the audit timelines may be uncertain. The three months allowed for by the AER may be insufficient to complete this potentially very large task.

Recommendation 21 - The AER should amend the process for NSPs submitting their completed RINs to the AER by:

- Removing the requirement for submissions to be made in February 2014;
- Allowing NSPs to consult with their auditors about the timing of the completion of their work. While NSPs and their auditors should use their best endeavours to meet the May 2014 timeframe, if this is not practical, NSPs should agree with AER now a realistic alternative that will meet the AER’s needs; and
- Agreeing a recurring timetable for the annual benchmarking report due on 30 November 2015 onwards, once the lessons from data collection from this year have been understood.

5. Statutory Declaration

5.1 The AER should give further consideration to the appropriate form of the statutory declaration

The AER should recognise that the proposed form of verification it requires to be given by statutory declaration in respect of the information provided pursuant to a regulatory information instrument will directly affect the ability of the person served with the RIN or RIO to comply with the Notice.

Where a service provider forms a view that it is unable to comply with the particular form of statutory declaration specified by the AER – there are two potential consequences that follow from this.

First, the service provider may simply be unable to provide particular information requested by the AER because it cannot give the declaration in respect of that information.

Second, the service provider may seek to alter the form of the statutory declaration so that it is appropriately tailored to the attestation that the appropriate officer is able to give with respect to each category of information provided pursuant to the RIN.

In this light, the AER should consider the following options:

- Requiring specific information categories to be verified by statutory declaration where such a declaration is appropriately given, and not requiring a declaration to be given in respect of other information;
- Requiring the information to be verified by statutory declaration but not prescribing a particular form in which the declaration is required;

Without conceding that it is within the AER's power to do so, prescribe the form of statutory declaration, but amend it so the attestation is appropriate in respect of all of the information that may be required to be provided pursuant to the RIN, including historic, estimate and forecast information.

It is also not clear what the AER gains from requiring the statutory declaration to be given in light of the onerous auditing requirements. The AER has not set out in the explanatory material why it considers it appropriate or necessary for the required form of statutory declaration to be given.

Each element of the attestation in the proposed statutory declaration is discussed below.

5.1.1 Paragraph (a) - The information required to be provided is in accordance with the requirements of the Notice

The requirements of the notice include that the information is verified by way of statutory declaration in accordance with the form of statutory declaration set out at Appendix B to the notice. The requirements of the notice also include that the information specified in the Excel workbook attached at Appendix A is audited in accordance with Appendix C to the notice.

If a service provider is unable to make the relevant statutory declaration in the form set out in the notice and / or unable to comply with the auditing requirements set out in the notice, the relevant officer making the statutory declaration will be unable to attest that the response of the service provider is in accordance with the requirements of the notice. In this case, it would appear to be a reasonable excuse not to comply with the notice because the service provider is in fact not capable of complying with the notice.

5.1.2 Paragraph (b) - The information required to be provided is true and accurate, and in all material respects can be relied upon by the AER to prepare and publish annual benchmarking reports and to assess benchmark expenditure

It is not appropriate for the AER to seek to require a service provider to attest that the information it provides is appropriate to be relied upon by the AER for any purpose, particularly in circumstances where it is not yet clear how the AER will use the information it receives and the service provider is unaware of the quality and robustness of the other data the AER may be using. The onus is ultimately on the AER to determine whether the information provided can be relied upon by the AER for any purpose. Obviously, the AER's assessment of whether such information can be relied upon for any purpose would appropriately be informed by the outcomes of sensible and appropriate auditing of that information and understanding any key assumptions that may sit behind the information with which it is provided.

The statutory declaration should not include, in any form, a declaration that the material can be relied upon by the AER. The ENA's members are concerned about this requirement and that the ultimate result of its inclusion may be that service providers simply cannot comply with the notice issued by the AER. It is also entirely unclear how the relevant declaration in any way provides the AER with an assurance that the information can be relied upon for that purpose. If the AER considers that it receives some benefit from this requirement, it should be clear what that benefit is.

5.1.3 Paragraph (c) - Where it is not possible to provide the information required by the notice I have provided an estimate and where the information is an estimate I have used my best endeavours to generate the most appropriate estimate and have provided the AER with the basis for this estimate and the reasons why it is the most appropriate estimate

There are some drafting difficulties associated with paragraph 2(c) of the proposed statutory declaration. The introductory text relates to the information required to be provided pursuant to the notice and (c) relates to where it has not been possible to provide the information required by the notice.

If what the AER is aiming to do here is to require service providers to provide the information required by the notice, other than by way of actual data where it has that information, or by estimated data where precise or direct data does not exist, the notice itself needs to provide for this. The statutory declaration could then provide for an attestation that, in respect of the first class of information, the information is true and fairly stated, and in respect of the second class of information, that the estimate has been arrived at on a reasonable basis. This is an appropriate form of attestation for estimated information – and if the estimate cannot be arrived at on a reasonable basis, arguably it should not be provided to the AER at all, as it will likely not be fit for use for any purpose.

Historic figures cannot be asserted to be true and accurate. They can be said to be true and fairly stated. However, to say that, explicit reference has to be made to an accounting framework (such as the Corporations Act, Accounting Standards or, in this case, an AER accounting framework (guideline)) that provides the reference point by which truth and fairness can be judged. Again, the AER (unlike the Corporations Act) does not seem to recognise that financial data does not provide a single 'right answer' that exists independently of any basis of preparation.

Directors will be asked to sign a second, different statement for audit purposes, which the AER would be obliged to take into account if it is to rely on the auditor's report.

Consistent with best practice regulation, the AER should set out the reasons why the statutory declaration is required, particularly given the already onerous and detailed auditing requirements.

Recommendation 22 - The statutory declaration should be replaced by a more appropriate responsibility statement that asserts whether the information in the RIN (or RIO) is true and fairly stated and fulfils the requirements on which the auditor will be required to sign off. This will then align with the auditor's report. The auditor will almost certainly require such a statement rather than the suggested statutory declaration. Further, that in relation to estimated data, the estimate has been arrived at on a reasonable basis. Such a form of statutory declaration will actually enable service providers to provide more of the information that the AER is actually seeking.

5.2 The AER should not seek statutory declaration before audit sign-off

The AER is seeking an officer to sign the statutory declaration before the audit has been conducted and signed off. NSPs cannot contemplate a situation where an officer would agree to sign a statutory declaration on unaudited data. It is impossible to determine how an officer could be expected to come to a view on whether the information provided in response to the notice is true and fairly stated in the absence of the audit being completed.

The risk is that no officer would agree to sign a statutory declaration on unaudited data.

Recommendation 23 - The AER should recognise that the statutory declaration and audit will need to be signed off contemporaneously. On this basis, the AER should remove the requirement for the staged provision of information. Instead, the AER should:

- Maintain an "open register" during which NSPs should be able to ask questions of the AER about the completion of the RIN – the answers to these questions could be shared with other NSPs; and
- Only require NSPs to provide a final set of data in May 2014 that has been audited and is accompanied by a (revised) statutory declaration.

6. Reviewing and amending NSPs' data

6.1 The AER should remove the provision for cross-submissions

The draft RIN provides for interested parties making cross-submissions on NSPs' draft, unaudited RINs between February and May 2014.

As noted in section 4.5, the AER has not made clear what the purpose is of enabling cross-submissions on unaudited data. It would be premature for third parties to comment on NSPs' unaudited data, noting that this data may legitimately change before it is finalised as a result, for example, of:

- A NSP acquiring better information; and
- The audit / review process.

It is not clear what value the AER sees in asking for cross-submissions on data that is unaudited, likely to be incomplete and that is subject to change.

Recommendation 24 - The AER should remove the provision for cross-submissions on unaudited data.

6.2 The AER should clarify the basis on which it may amend a NSP's final audited data

It is not clear from the draft RIN on what basis the AER may amend final audited information that has been submitted by NSPs in their completed RINs or RIOs.

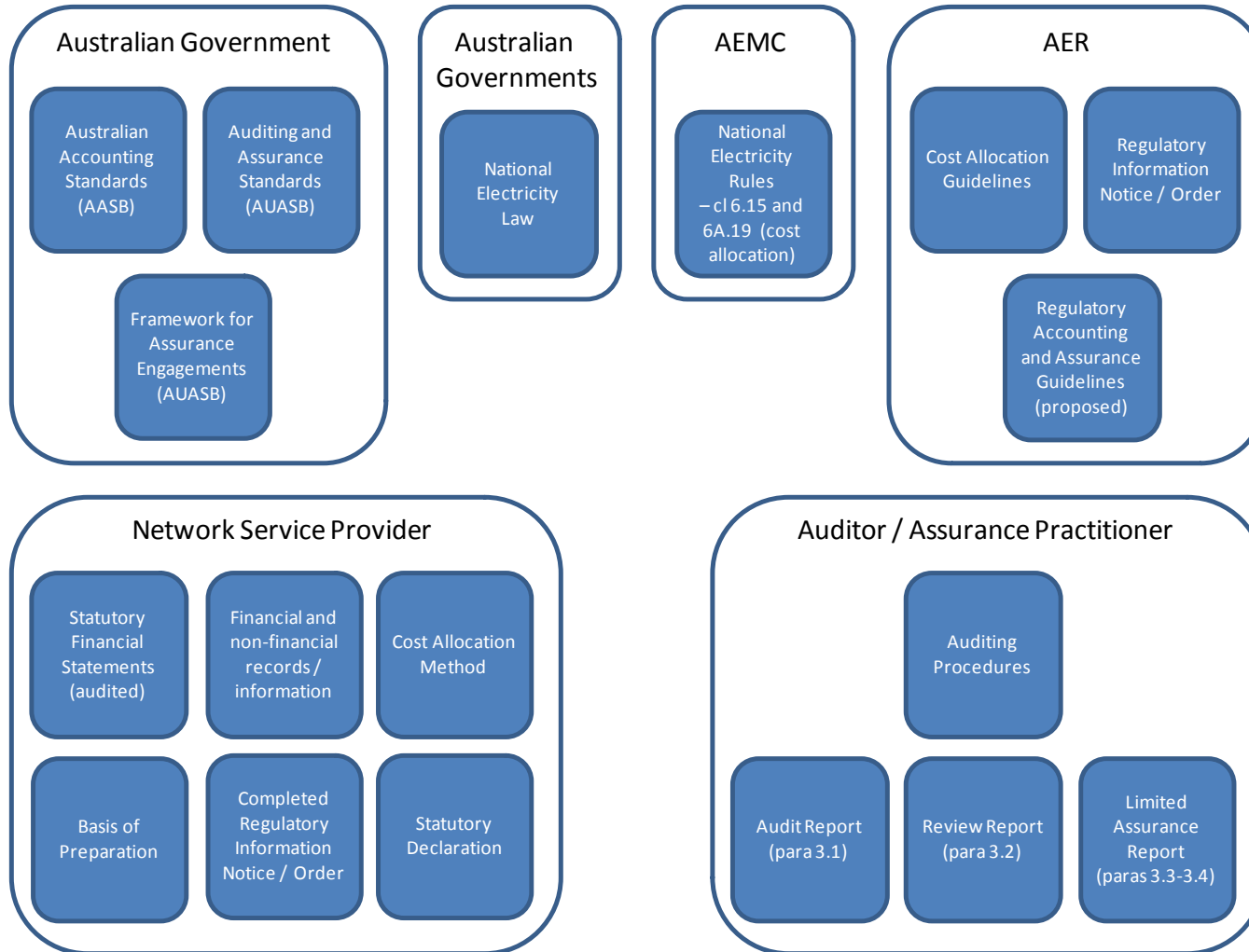
If the AER amends NSPs' information then, necessarily, the amended information will:

- Be the AER's information, not the NSPs; and
- Not be audited information.

The AER, not the NSP, would consequently be responsible for the amended information.

Recommendation 25 - The AER should clarify on what basis, if any, the AER may revise a NSP's final audited information and what the status would be of the amended information.

Attachment 1 – Key documentation relevant to preparing and auditing / assuring RINs / RIOs



Australian Government

1. *Australian Accounting Standards* – these are standards that are made by the Australian Accounting Standards Board (AASB) under section 334 of the *Corporations Act 2001*. They have the force of law for Corporations Law entities under section 296 of the *Corporations Act 2001*. The AASB is an Australian Government agency established under the *Australian Securities and Investments Commission Act 2001*;
2. *Auditing and Assurance Standards* – these are standards that are made by the Auditing and Assurance Standards Board (AUASB) under section 336 of the *Corporations Act 2001*. These standards are legally enforceable for audits or reviews of financial reports required under the *Corporations Act 2001*. The AUASB is an Australian Government agency established under the *Australian Securities and Investments Commission Act 2001*; and
3. *Framework for Assurance Arrangements* – this document “defines and describes the elements and objectives of an assurance engagement and identifies engagements to which the AUASB Standards apply”⁸.

Australian Governments

4. *National Electricity Law* – Division 4 details the AER’s powers to issue regulatory information instruments. Section 28M(e) provides that “a regulatory information instrument may require that the information specified in the instrument be audited”.

Australian Energy Market Commission

5. *National Electricity Rules* – clauses 6.15 and 6A.19 detail cost allocation requirements in relation to distribution and transmission network service providers respectively.

Australian Energy Regulator

6. *Cost Allocation Guidelines* – these guidelines are made under clauses 6.15 and 6A.19 of the NEL and “set out arrangements to manage the attribution of direct costs and the allocation of shared costs by Distribution [Transmission] Network Service Providers between different categories of distribution [transmission] services”⁹;
7. *Regulatory information notice / regulatory information order* – Division 4 of the NEL provides for the AER making and serving regulatory information instruments. As noted above, section 28M(e) of the National Electricity Law provides for information specified in the instrument to be audited;

⁸ Auditing and Assurance Standards Board, *Framework for Assurance Engagements*, 19 April 2010, page 5.

⁹ Australian Energy Regulator, *Electricity distribution network service providers - Cost Allocation Guidelines*, 2008, page 4 and *Electricity transmission network service providers - Cost Allocation Guidelines*, 2007, page 1.

8. *Regulatory Accounting and Assurance Guidelines* – the ENA is proposing that the AER develops these Guidelines in order to provide NSPs and their auditors with a clear and consistent framework for preparing, presenting and reporting on information to be provided to the AER in regulatory information instruments.

Network Service Provider

9. *Statutory financial statements* – these are financial reports that are prepared under the *Corporations Act 2001*;
10. *Financial and non-financial records / information* – these are non-statutory financial and non-financial records and other information that are relevant to the NSP completing the regulatory information instrument;
11. *Cost allocation method* – each DNSP and TNSP must prepare a cost allocation method under clauses 6.15.4 and 6A.19.4 of the NER respectively, which must comply with the clause 6.15 of the NER and the AER’s Cost Allocation Guidelines;
12. *Basis of preparation* – the basis of preparation should detail the basis on which the NSP has completed its regulatory information instrument, including having regard for the proposed Regulatory Accounting and Assurance Guidelines and the Cost Allocation Method. There are certain minimum requirements for a basis of preparation detailed in the AUASB’s “Framework for Assurance Engagements”;
13. *Completed regulatory information notice / regulatory information order* – a NSP must complete the regulatory information instrument that is issued to it by the AER. This should be completed in accordance with the basis of preparation; and
14. *Statutory declaration* – the statutory declaration for the regulatory information instrument will need to be signed off contemporaneously with the audit.

Auditor

15. *Auditing procedures* – where an auditor is being asked to provide an opinion or assurance, Auditing Standards require the procedures necessary to express an opinion or assurance to be determined by the auditor in order to avoid the auditor’s independence being compromised. Instructions can be given to an auditor or assurance practitioner to undertake specific procedures under an “agreed upon procedures” engagement. In such circumstances, the auditor or assurance practitioner reports factual findings, not an opinion;
16. *Audit report* – this would be prepared by an auditor under ASA 805 “Special Considerations — Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement” referring to the NSP’s basis of preparation for the basis of attestation. This type of report would be prepared for the purposes of paragraph 3.1 in Appendix C of the draft Economic Benchmarking RIN;
17. *Review report* – this could be prepared by an assurance practitioner under ASRE 2405 “Review of Historical Financial Information Other than a Financial Report” referring to the

NSP's basis of preparation for the basis of attestation. This type of report would be prepared for the purposes of paragraph 3.2 in Appendix C of the draft Economic Benchmarking RIN; and

18. *Limited assurance report* – this would be prepared by an assurance practitioner under ASAE 3000 “Assurance engagements other than audits or reviews of historical financial information”, referring to the NSP's basis of preparation for the basis of attestation. This type of report would be prepared for the purposes of paragraphs 3.3 and 3.4 in Appendix C of the draft Economic Benchmarking RIN.