

**Office of the Tasmanian Energy Regulator**

**Decision**

**Guideline for Ringfencing in the Tasmanian  
Electricity Supply Industry**

**October 2004**



# FUNCTIONAL RINGFENCING GUIDELINE

## 1. BACKGROUND

### *1.1. Objective*

By limiting the ability of a *distributor* to distort competition in the contestable areas of the electricity supply industry, the *Regulator* is seeking to achieve the *Regulator's* objectives under the *Electricity Supply Industry Act 1995* to promote competition in the electricity supply industry and to protect the interests of consumers of electricity.

### *1.2. Application*

Each *distributor* must comply with this guideline under its *distribution licence*.

### *1.3. Commencement*

This guideline commences with effect from 29 May 2005, except to the extent otherwise provided in this guideline.

## 2. NOTIFICATIONS TO THE REGULATOR

A *distributor* must notify the *Regulator*:

- (a) of any business that is, as at 29 May 2005, a *related business*, together with the names of the ultimate owners and of any directors, other officers and senior executives of the *related business*. This notice must be given on or before 14 June 2005;
- (b) of the name of any business that, after 29 May 2005, becomes a *related business*, together with the names of the ultimate owners and of any directors, other officers and senior executives of the *related business*. This notice must be given within 10 *business days* of the *distributor* becoming aware of the business becoming a *related business*; and
- (c) of any change in the ultimate owners, directors, other officers and senior executives of a *related business*. This notice must be given within 10 *business days* of the *distributor* becoming aware of the change.

## 3. NON-DISCRIMINATION

A *distributor*:

- (a) must not, in conducting its *regulated distribution services* business, make decisions or act in a manner that unreasonably discriminates either against or in favour of any business providing *contestable electrical services* or against or in favour of the *customers* of any business providing *contestable electrical services*; and

- (b) must ensure that any information concerning its **regulated distribution services** business that it provides to any business providing a **contestable electrical service** is available to all other businesses providing the same **contestable electrical service**.

**Explanatory Note:** *If information concerning a distributor's regulated services business is particular to one contestable electrical services business, clause 3(b) would not require the distributor to provide that particular information to a second contestable electrical services business. Rather, clause 3(b) would require the distributor to provide to the second contestable electrical services business information of the same sort that is correspondingly particular to the second contestable electrical services business.*

#### 4. OPERATIONAL SEPARATION

##### 4.1. Separation of organisational units

- (a) A **distributor** must ensure that any part of its business providing **regulated distribution services** or marketing **regulated distribution services** and any part of its business, or of a **related business**, that provides **contestable electrical services**:
- (1) operate independently; and
  - (2) have separate work areas.
- (b) For the purposes of 4.1(a)(2), work areas will be regarded as separate only if:
- (1) the work areas are in different buildings or on different floors of the same building; and
  - (2) the work areas are protected by access controls that prevent **staff** providing or marketing **contestable electrical services** and **staff** providing or marketing **regulated distribution services** from accessing one another's work areas.

##### 4.2. Separation of staff

- (a) A **distributor** must ensure that employees that are **distribution staff** are not also **staff** of that part of its business, or of a **related business**, that provides **contestable electrical services**.
- (b) Despite clause 4.2(a), a **distributor** may use employees that are **staff** of that part of its business, or of a **related business**, that provides **contestable electrical services** to provide **regulated distribution services** at a call centre, provided the **distributor**:
- (1) ensures that **staff** at the call centre correctly identify whether the primary purpose of a **customer** enquiry relates to **regulated distribution services** or **contestable electrical services**;

- (2) provides **staff** at the call centre involved in customer service with training sufficient to ensure compliance with this guideline; and
- (3) provides **staff** at the call centre with established pro-forma responses for different types of enquiries.

#### **4.3. Information access controls**

- (a) A **distributor** must establish, maintain and enforce appropriate access controls so that a user of the **distributor's** information systems does not have discriminatory access to information concerning the **distributor's regulated distribution service** business if the user is providing a **contestable electrical service**.
- (b) The access controls a distributor must establish under clause 4.3(a) in relation to information on **retail customers** need not be established until three months prior to the date on which each successive tranche of **retail customer** becomes a tranche of **contestable customers**.

#### **4.4. Customer communications**

In communicating with a **customer**, whether in writing or verbally, in the conduct of its **regulated distribution services** business, a **distributor** must:

- (a) not communicate with any **customer** in a way that would favour the **distributor** or a **related business** over another service provider in the provision of **contestable electrical services**;
- (b) where appropriate, communicate to the **customer** that **contestable electrical services** may also be obtained from an independent service provider; and
- (c) use best endeavours to make it clear to the **customer** that it is a **distributor** providing **regulated distribution services**.

#### **4.5. Publications including Websites**

- (a) If a **distributor's regulated distribution services** business and another part of its business publish documents or share a website:
  - (1) each document or page of the website must be identified as one the **regulated distribution services** business or other part of the **distributor's** business is responsible for; and
  - (2) each document or page of the website must only deal with content directly relevant to whichever of the **regulated distribution services** business and the other part of the **distributor's** business that is responsible for that document or page.

- (b) If a *distributor* advertises *contestable electrical services* provided by it or a *related business* in a document or on a page of the website relating to its services, it must allow non-discriminatory access to all providers of *contestable electrical services* for such advertising or must offer to provide a link to other *contestable electrical service* providers' websites on a non-discriminatory basis.

#### 4.6. Outsourcing and Subcontracting

- (a) Subject to this and any other guideline, a *distributor* may engage another person to perform any of its *regulated distribution services* business functions, including functions undertaken as *retailer of last resort*.
- (b) If a *distributor* arranges for another person to perform any of its *regulated distribution services* business functions, it must ensure that the person conforms with this guideline as if it were the *distributor*.
- (c) Clause 4.6(a) does not relieve a *distributor* of its obligations to comply with this guideline as if it had not engaged another person to perform any of its *regulated distribution services* business functions.

### 5. ADDITIONAL OBLIGATIONS

The *Regulator*:

- (a) may, by notice to the *distributor*, require the *distributor* to comply with obligations in addition to those contained in this guideline; and
- (b) before giving notice to the *distributor* under clause 6(a) that it must comply with obligations in addition to those contained in this guideline, will undertake a consultative process on the same basis as required under clause 7(c).

### 6. WAIVERS

The *Regulator*:

- (a) at the request of a *distributor* may grant a waiver of one or more of the *distributor's* obligations under provisions of this guideline, in general or in specified circumstances; and
- (b) before granting a waiver under clause 6(a) will undertake a consultative process on the same basis as required under clause 7(c).

### 7. PROCEDURES FOR AMENDING THE GUIDELINE

- (a) The *Regulator* may amend this guideline to reflect:
  - (1) changing circumstances, including changes in the regulatory framework;
  - (2) developments in other national electricity market jurisdictions; or
  - (3) the creation of new services and products by a *distributor*.

- (b) The **Regulator** may amend this guideline if the **Regulator** considers that an amendment is necessary or desirable to promote competition in the electricity supply industry or to protect the interests of consumers of electricity.
- (c) In making any amendment to this guideline the **Regulator** will undertake a consultative process at least as comprehensive as the process that applies to code changes under Chapter 8 of the National Electricity Code.

## 8. DEFINITIONS

In this guideline, unless the context otherwise requires:

- (a) terms which appear *like this* and which are not otherwise defined in this guideline have the same meaning as in the *distributor's distribution licence*; and
- (b) **contestable customer** has the same meaning as the *Electricity Supply Industry Act 1995*;

**contestable electrical services** means:

- (1) retailing of electricity services provided to **contestable customers**;
- (2) any electrical service comprising work funded or partly funded by **customer** contributions for an extension of a **distributor's** system or an increase in the capacity of a service; and
- (3) other contestable electrical services as determined by the **Regulator**;

**customer** means a person who acquires or wants to acquire **distribution services** or **contestable electrical services**;

**distribution licence** means a licence authorising the operation of a distribution network granted under the *Electricity Supply Industry Act 1995*;

**distribution staff** means **staff** directly involved in marketing or providing **regulated distribution services** (whether or not they are also involved in other functions) but does not include **staff** involved only in:

- (1) strategic decision making, including the executive officer or officers to whom **distribution staff** report either directly or indirectly; or
- (2) administrative, accounting, finance, human resources or information technology support functions;

**distributor** means a person (or entity) who holds a **distribution licence** under the *Electricity Supply Industry Act 1995*;

**regulated distribution services** means those distribution services regulated under the provisions of the *Electricity Supply Industry (Price Control) Regulations 2003*;

***related business*** in respect of a ***distributor*** means any business in the electricity supply industry or other business that provides electrical services that:

- (1) is carried on by a subsidiary of the ***distributor***;
- (2) is a business in which the ***distributor*** is a joint venturer;
- (3) is owned by the same persons that own the ***distributor***; or
- (4) has a director or other officer or key executive that is also a director or other officer or key executive of the ***distributor*** or of another ***related business***; and

***staff*** means any employees, independent contractors or agents.