

## ATTACHMENT A

**[PLEASE NOTE THAT ERGON ENERGY'S COMMENTS TO THE GUIDELINES IN THIS DOCUMENT ARE IN BOLD AND BRACKETS]**

**DRAFT DISTRIBUTION RING-FENCING GUIDELINES**

These Distribution Ring-Fencing Guidelines (Guidelines) will apply to all Distribution Network Service Providers (DNSPs) located in Queensland.

The Guidelines have been prepared on the basis that legal separation is already in place between Queensland distribution and retail entities, and that this requirement is material in defining the structure of the electricity industry. In the event that a change in the structure of the industry in terms of these separation requirements is contemplated, the Authority will revisit the Guidelines to ensure that they remain appropriate to the circumstances.

**Ring-fencing minimum obligations**

1. A distribution network service provider (DNSP) that provides prescribed distribution services in Queensland must:
  - (a) be a legal entity incorporated pursuant to the Corporations Law, or a statutory corporation, or a government or an entity established by royal charter; (Gas Code)

**[Agreed]**

- (b) not carry on a related business; (Gas Code)

**[It is suggested that, for the reasons specified under point 4 of the submission, this clause should be amended to read: “not carry on a related business within that legal entity”.**

**We also again raise our concerns as to interpretation as stated under point 3 of the submission and the potential for this clause to be restrictively interpreted with the ability to compete linked to the regulatory framework of the State in which the electricity entity is based and lack of allocative efficiency improvements.]**

- (c) establish and maintain a separate set of accounts in respect of the prescribed distribution services; (adapted from the Gas Code)

**[This principle is considered appropriate for a regulated business provided that the accounts are not placed in the public domain except as required by law.]**

- (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the DNSP, including establishing and maintaining a separate set of accounts in respect of excluded services provided by the DNSP; (adapted from the Gas Code)

**[The establishment of separate consolidated accounts and the publication of these accounts for each of the excluded services can inappropriately release commercial information to the market. This is of particular concern given the potential application of the *Freedom of Information Act 1989* (“the FOI Act”) to documents in the QCA’s possession. Disclosure of financial or other information provided to the QCA in accordance with the Guidelines could provide a competitive advantage to an applicant under the FOI Act.**

**Ergon Energy concurs that it should comply with the relevant Accounting Standards however, it will be necessary to establish an arrangement with the QCA that allows the provision of the appropriate information at minimal cost to both Ergon Energy and the QCA.]**

- (e) allocate any costs that are shared between an activity that is covered by a set of accounts described in (c) and any other activity, including any activity performed by another entity, in a manner that ensures there is no cross subsidy, and according to a methodology for allocating costs that is approved by the QCA, is generally consistent with the objectives of the National Electricity Code and is otherwise fair and reasonable; (adapted from the Gas Code)

**[Ergon Energy envisages that overhead and other costs will be allocated on the basis of agreed and established business rules. Ergon Energy agrees that the QCA should endorse the allocation principles on the basis that it is a reasonable approach. This reasonableness should take into account the costs of implementing the business rules and the level of specific oversight and reporting.**

**Although Ergon Energy anticipates that it will proceed to prepare business rules relating to cost allocation for submission to the QCA for approval, Ergon Energy reserves further comment on this issue until it has had an opportunity to review the proposed method for the endorsement process yet to be provided by the QCA.]**

- (f) ensure that all confidential information provided by a customer or prospective customer is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the customer or prospective customer who provided it, except:
  - (i) if the confidential information comes into the public domain otherwise than by disclosure by the DNSP; or
  - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised stock exchange; (Gas Code)

**[This provision should be amended by the addition of two clauses: “if the confidential information is already known or in the possession of the DNSP without restrictions in relation to its disclosure before the date of receipt from the customer”; and “or has been independently developed or acquired by the DNSP from a source other than the customer (provided the source was not subject to any prohibition against disclosure)”.]**

- (g) ensure that all confidential information obtained by the DNSP or by its employees, consultants, independent contractors or agents in the course of conducting its business and which might reasonably be expected to affect materially the commercial interests of a customer or prospective customer is not disclosed to any other person without the approval of the customer or prospective customer to whom that information pertains, except:

**[Similar to clause (f) above, this provision should be amended by the addition of two clauses: “if the confidential information is already known or in the possession of the DNSP without restrictions in relation to its disclosure before the date of receipt from the customer”; and “or has been independently developed or**

***acquired by the DNSP from a source other than the customer (provided the source was not subject to any prohibition against disclosure)”.***]

- (i) if the confidential information comes into the public domain otherwise than by disclosure by the DNSP; or
- (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised stock exchange; (Gas Code)

It is suggested that this clause should be reworked to take account of

- (h) not provide distribution network access to a related business on more favourable terms than those it provides to any other customer or Code participant; and

**[In its current form, this clause is unnecessarily prescriptive and should not be included in the Ringfencing Guidelines. It is Ergon Energy's position that the National Electricity Code and *Trade Practices Act 1974* provide adequate governance of equitable conditions and that no further prescription is warranted. There is also the risk of creating an anti-competitive effect within the market by precluding normal competitive activity such as price based on economies of scale.]**

- (i) ensure that its marketing staff are not also staff of an Associate that takes part in a related business and, in the event that they become or are found to be involved in a related business contrary to this section, must procure their immediate removal from its marketing staff. (Gas Code)

**[Marketing staff are required for each of the four business components of network and retail operations, namely:**

- **Retail (Prescribed),**
- **Retail (Contestable),**
- **Network (Prescribed), and**
- **Network (Contestable).**

**As discussed in our initial submission on the issue of ring-fencing, the separation between the prescribed and contestable retail activities is temporal and should disappear upon commencement of full retail contestability.**

**This leaves the three remaining activities, namely:**

- **Retail**
- **Network (Prescribed), and**
- **Network (Contestable).**

**At present there are strong synergies between the retail and prescribed network marketing roles. These synergies cover the advertisement and publication of:**

- **Fault information,**
- **Contact information (both Accounts and Faults),**
- **Contract information (SCSC & SCCC), and**
- **Guaranteed Service Levels.**

**Allocative efficiency in a regional organisation such as Ergon Energy can only be achieved through the appropriate sizing of shared functions such as Marketing. Network does require a public face and to that extent requires a Marketing function. It is therefore suggested by Ergon Energy that the**

**inclusion of this clause is inappropriate and has the potential to result in considerable additional expense and an anti-competitive effect when such a provision does not apply to electricity entities based in other States.]**

2. In complying with 1 (c), (d) and (e), a DNSP must:
  - (a) if the QCA has published general accounting guidelines for DNSPs which apply to the accounts being prepared, comply with those guidelines (Gas Code); or
  - (b) if the QCA has not published such guidelines, comply with guidelines prepared by the DNSP and approved by the QCA or, if there are no such guidelines, comply with such guidelines (if any) as the QCA advises the DNSP apply to that DNSP from time to time. (Gas Code and similar provisions in ACCC)

Such guidelines may, amongst other things, require the accounts to contain sufficient information, and to be presented in such a manner, as would enable the verification by the QCA of the calculation of distribution use of system charges. (adapted from the Gas Code)

**[Ergon Energy agrees that this approach appears appropriate.]**

3. An entity that provides prescribed distribution services must notify the QCA if:
  - (a) any of its employees, consultants, independent contractors or agents are, or will be, employees, consultants, independent contractors or agents of an Associate that takes part in a related business; or
  - (b) any employees, consultants, independent contractors or agents of an Associate that takes part in a related business will be employees, consultants, independent contractors or agents of it. (ACCC).

**[It is submitted that the requirements imposed under clauses 3, 4 and 6 are unworkable given the considerable number of staff employed in various capacities by Ergon Energy and the disparate nature of the work that they undertake, both in terms of task and geographically. In conjunction, these clauses are far more onerous and restrictive than was originally contemplated by the issue of the flow of information.**

**It is also suggested that the QCA's requirements, particularly in relation to its ability to require removal of staff under clause 6 is an unwarranted restriction on an employees ability to work for another entity, particularly given the geographic base of Ergon Energy and its staff and the fact that there may be little other opportunity for staff to move to another "unassociated" electricity entity within the region in which they live.]**

4. A notification under section 3 must be provided to the QCA five business days prior to the date on which:
  - (a) the employee, consultant, independent contractor or agent of the entity that provides prescribed distribution services will be a employee, consultant, independent contractor or agent of the Associate that takes part in a related business; or
  - (b) the employee, consultant, independent contractor or agent of the Associate that takes part in a related business will be a employee, consultant, independent contractor or agent of the entity that provides prescribed distribution services. (ACCC)

### **Adding to or amending ring-fencing obligations**

5. The QCA may by notice to a DNSP require the DNSP to comply with obligations in addition to the minimum obligations outlined in section 1 above (including temporary obligations), or add to or amend these Distribution Ring-Fencing Guidelines. The QCA may add to or amend the Distribution Ring-Fencing Guidelines provided that it is satisfied the DNSP cannot demonstrate that the administrative cost to the DNSP and its Associates of complying with the additional or altered obligations is, or is likely to, outweigh the benefit to the public. The DNSP must comply with any additional obligations imposed under this section 5. (adapted from ACCC)
6. Without limiting the additional obligations that may be imposed under section 5, the QCA may require that:
  - (a) the DNSP ensure its additional staff are not employees, consultants, independent contractors or agents of an Associate that carries on a related business and, in the event that they become or are found to be involved in a related business, ensure their immediate removal from the additional staff; and
  - (b) the electronic, physical and procedural security measures employed in respect of the offices of the DNSP and of all offices of its Associates are satisfactory to the QCA.

The examples given in this section 6 shall not be construed as limiting the types of action a DNSP may have to take in order to comply with section 1. (Gas Code and ACCC)

### **Procedures for adding to or amending ring-fencing obligations**

7. The QCA must, before issuing a notice under the provisions for adding to or amending ring-fencing obligations, inform each person known to the QCA who the QCA believes has a sufficient interest in the matter that it is considering issuing a notice under section 5 with respect to a particular DNSP, by publishing a notice in a national daily Newspaper which at least:
  - (a) states who the DNSP concerned is and the obligations the QCA is considering adding; and
  - (b) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice). (Gas Code)

The QCA will also give a copy of any notice published in a national daily newspaper in accordance with this section 7 to the DNSP to which the notice relates.

8. The QCA must consider any submissions received by the date specified in the notice published under 7(b) and may (but is not obliged to) consider any submissions received after that date. (Gas Code)
9. Within 30 days after the last day for submissions specified in the notice published under 7(b), the QCA must issue a draft decision stating whether or not it intends to issue a notice under section 5. (Gas Code amended for timing)
10. The QCA must:
  - (a) provide a copy of its draft decision to the DNSP, any person who made a submission on the matter and any other person who requests a copy; and

- (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued). (Gas Code)
- 11. The QCA must consider any submissions it receives by the date specified by the QCA under section 10 and it may (but is not obliged to) consider any submissions received after that date. (Gas Code)
- 12. Within 30 days after the last day for submissions on the draft decision specified by the QCA, the QCA must issue a final decision stating whether or not it will issue a notice under section 5. (Gas Code amended for timing)
- 13. A notice under the provisions for additional ring-fencing obligations has effect 14 days after the notice is given to the DNSP or such later date as the QCA specifies in the notice. (Gas Code)

### **Compliance procedures and compliance reporting**

- 14. A DNSP must establish and maintain appropriate internal procedures to ensure it complies with its obligations under the Distribution Ring-Fencing Guidelines. The QCA may require the DNSP to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the QCA concerning the adequacy of the DNSP's compliance procedures does not affect the DNSP's obligations under these Guidelines. (Gas Code)
- 15. A DNSP must provide a report to the QCA, at reasonable intervals determined by the QCA, describing the measures taken by the DNSP to ensure compliance with its obligations under these Guidelines. This report, along with the QCA's assessment of compliance, will be made publicly available by the QCA. Confidential information will be removed from the public report where the DNSP can demonstrate that its public release would harm the commercial interests of the DNSP. (Gas Code)

**[Further information is sought by Ergon Energy as to the frequency of the reporting requirements required under clauses 14 and 15 of the Guidelines and by when internal procedures are required to be established.]**

- 16. The QCA may, upon reasonable notice, require a DNSP to:
  - (a) appoint an independent auditor approved by the QCA to report on such matters as are specified by the QCA; and
  - (b) provide a copy of the auditor's report to the QCA by a date specified by the QCA. (ACCC)
- 17. If the QCA nominates auditing standards to apply to an audit under section 16, the auditor must report in accordance with those auditing standards. To avoid doubt, the QCA may nominate one or more auditing standards. (ACCC)
- 18. For the purpose of section 17, the QCA may publish auditing guidelines with which a DNSP must comply. (ACCC)
- 19. A DNSP must provide a report of any breach of any of its obligations under these guidelines to the QCA immediately upon becoming aware that the breach has occurred. (Gas Code and ACCC) Any breach of these requirements may be reported to NECA, with potential civil penalties where a breach is determined to have occurred.

**Waiver of ring-fencing obligations**

20. The QCA may, by notice to a DNSP, waive any of a DNSP's obligations under section 1 provided that the QCA is satisfied that the DNSP can demonstrate that the administrative cost to the DNSP and its Associates of complying with the obligation outweighs the benefit, or any likely benefit, to the public. (ACCC)

**Procedures for waiving ring-fencing obligations**

21. A DNSP may apply to the QCA requesting the QCA to issue a notice under section 20. (Gas Code)
22. When the QCA receives an application under section 21 the QCA must:
- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
  - (b) in all other cases within 14 days after receipt of the application, inform each person known to the QCA who the QCA believes has a sufficient interest in the matter that it has received the application by publishing a notice in a national daily newspaper which at least:
    - (i) states who the DNSP concerned is and the obligations that the application seeks to have waived;
    - (ii) states how copies of the application can be obtained;
    - (iii) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice). (Gas Code)
23. The QCA must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the QCA. (Gas Code)
24. The QCA must consider any submissions received by the date specified in the notice published under section 22 and it may (but is not obliged to) consider any submissions received after that date. (Gas Code)
25. Within 30 days after the last day for submissions specified in the notice published under section 22 the QCA must issue a draft decision stating whether or not it intends to issue a notice under section 20. (Gas Code amended for timing)
26. The QCA must:
- (a) provide a copy of its draft decision to the DNSP, any person who made a submission on the matter and any other person who requests a copy; and
  - (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued). (Gas Code)
27. The QCA must consider any submissions it receives by the date specified by the QCA under section 26 and it may (but is not obliged to) consider any submissions received after that date. (Gas Code)
28. Within 30 days after the last day for submissions on the draft decision specified by the QCA, the QCA must issue a final decision stating whether or not it will issue a notice under section 20. (Gas Code amended for timing)

29. A notice under section 20 has effect 14 days after the notice is given to the DNSP or such later date as the QCA specifies in the notice. (adapted from the Gas Code)