

9 August 2017



Chris Pattas  
General Manager, Networks  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Dear Mr Pattas,

### **Submission to Draft Amended Ring-fencing Guideline**

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the draft amended ring-fencing guideline for Distribution Network Service Providers (DNSPs).

PIAC supports the intent of the AER's proposed amendments to improve the clarity of the ring-fencing guidelines and to reduce any unnecessary regulatory burden in compliance. However, PIAC outlines several concerns below.

#### **Exemption from legal separation for regulatory services**

The AER proposes to amend clause 3.1(d)ii to include an exemption such that a DNSP can provide "regulatory services" to a related entity. PIAC considers that this exemption may be appropriate for regulatory compliance services such as providing advice and ensuring compliance with the various obligations under the National Electricity Law or other jurisdictional conditions.

PIAC does not consider, however, that it is appropriate for a DNSP to provide other regulatory services, such as contributing to policy and regulatory reforms or preparing revenue proposals, to a related entity. As many of the reforms currently underway involve opening up regulated energy services to contestability, PIAC considers that a greater level of independence is required between the regulated business and a related business which may offer these contestable energy services. Without this independence, it may provide the related business with an unfair advantage over other potential contestable service providers.

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### **Recommendation 1**

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*PIAC recommends that the AER replace “regulatory services” with “regulatory compliance services” to make clear that the exemption is only to apply to regulatory compliance services.*

#### **Exemption from staff and office registers for corporate position descriptions**

Clause 4.2.4 currently requires DNSPs to include on their staff and office registers the position descriptions of corporate staff exempt from the non-sharing obligations. The AER proposes extending an exemption from this obligation to corporate staff as *“the types of corporate positions that may be shared are relatively intuitive and well understood as a matter of usual corporate and commercial practice.”*<sup>1</sup> PIAC is concerned that there is no further discussion or justification for the proposed exemption.

### **Recommendation 2**

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*PIAC ask that the AER provides further clarification to substantiate the merit of this proposed exemption.*

#### **Exemption from information sharing restrictions for research**

The AER proposes to exempt information sharing for research purposes from the current obligations under clauses 4.3.3 and 4.3.4. PIAC considers that this exemption is appropriate for non-market research to inform policies and investment decisions which will ultimately benefit all consumers. This could include, for example, academic research purposes such as engagement with a university or similar research institution to provide better understanding of consumer behaviour, preferences and impacts. However, it would be inappropriate for this information sharing to include market research linked to the profit motive of a private business, or provide a competitive advantage.

### **Recommendation 3**

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*PIAC recommends that the AER clarify that the exemption for research purposes is limited to non-market research.*

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth.

Yours sincerely,

#### **Craig Memery**

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1 AER, *Draft Amended Ring-fencing Guideline – Explanatory Statement*, 2017, 12.