



**AER Electricity Ring-Fencing Guideline**  
**Preliminary positions paper**  
**Small consumer groups' submission**  
**30 May 2016**

## Introduction

This is a group submission on behalf of the small consumer organisations whose logos appear above. It is being submitted by the Total Environment Centre as an output of its Energy Consumers Australia funded project, *Networks + Batteries: What's best for consumers?* The object of this project is *to promote regulatory reform that encourages the rollout of energy storage consistent with the long term interests of consumers*. While the focus of this submission is therefore energy storage, the implications apply equally to other new products and services potentially affected by ring-fencing.

We have focused our attention in this first submission on establishing some high-level principles, and will provide more detailed commentary on the AER's proposed position as this process unfolds.

Before directly addressing the AER's questions, it is important to consider the purported objective of ring-fencing, which in Australia is largely a by-product of the 1993 National Competition Policy Review (the Hilmer Review). In a sentiment that has become an article of faith for Australian policy makers and regulators ever since, Hilmer argued that

Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole.<sup>1</sup>

Post-Hilmer, "regulated natural monopoly networks or network service providers were separated out from more competitive generation and retail supply, which were largely unregulated."<sup>2</sup> The AEMC clearly concurs, arguing in its storage report that

Market arrangements should promote consumer choice while providing a level playing field for market participants. Consumer choice based on clear price signals then drives innovation, with costs minimised by each service provider seeking to provide a compelling value proposition to the consumer. Finally, it is only in instances where competitive forces cannot deliver these consumer benefits that economic regulation should be contemplated.<sup>3</sup>

Ring-fencing is undertaken when a monopoly business also operates in a contestable market, and some form of functional separation is deemed necessary to ensure the market remains competitive. In the AER's words, "ring-fencing is designed to limit the ability of a regulated service provider to confer an unfair advantage when it or one of its affiliates operates in a contestable market."<sup>4</sup> The AEMC's summary of the following types of behavior which ring-fencing is designed to avoid is worth repeating:

- cross-subsidising the affiliate's services in the contestable market with revenue derived from its regulated services
- discrimination in favour of an affiliate operating in a contestable market
- providing the affiliate with access to commercially sensitive information acquired through the provision of regulated services

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<sup>1</sup> F G Hilmer et al, National Competition Policy, 1993, 1.

<sup>2</sup> Professor George Yarrow, Mr Euan Morton, Applying Hilmer Principles in Changing Energy Markets: <http://www.ena.asn.au/competition-policy-and-network-regulation-changing-energy-markets>.

<sup>3</sup> AEMC, Integration of Storage: Regulatory Implications, Final report, 3 December 2015, Sydney, II.

<sup>4</sup> Preliminary positions paper, 6.

- restricting the access other participants in the contestable market have to the infrastructure services provided by the regulated entity, or providing access on less favourable terms than its affiliate.<sup>5</sup>

Although there are ring-fencing arrangements in place in the electricity sector in every Australian jurisdiction, the most obvious extant example of ring-fencing in the electricity sector is between Ergon Energy’s network and retail businesses. However, as the AER notes, ring-fencing is increasingly being related to other energy services including small customer connections, residential metering, load control and management, network battery storage and meter data provision.

In the emerging market of decentralised energy services it is therefore critical that regulators get the settings right. Given the considerable empirical evidence of improved consumer outcomes from competitive rather than monopoly markets, consumer groups consider it critical that the overriding objective and outcome of ring-fencing or related reform in the NEM should be *to expand the reach of competitive markets for contestable services and to restrict the reach of monopoly regulated businesses*. The Energy Networks Association seems to agree: in a paper written for it, Professor George Yarrow and Euan Morton argue that

Competitive outcomes, particularly regarding disruptive innovations, are uncertain and unpredictable, so there is little reason to believe that regulators are well placed to predict them. Markets rely upon the process of competition to discover and provide the best mix of services, technologies and innovations to customers. Given rapid technological change, it is preferable to rely upon competition rather than the dictates of regulators to deliver superior outcomes to customers.<sup>6</sup>

The challenge is to do this in a way that does not overly restrict networks from investing in or facilitating the rollout of energy storage on either side of the meter, especially where – for example, at the edge of the grid where a competitive market may never develop – the network may be best placed to invest in storage. Getting the regulatory settings right in the early stages of the adoption or rollout of a new technology or service by helping to stimulate competition and investment is more material to the long term interest of consumers than potentially temporarily slowing down its adoption or rollout. Getting these settings wrong could lead to innovation being stifled and consumers being left to pay, potentially for decades to come through their bills, for another round of higher than necessary capex investment.

(According to a 2015 Climate Council report, “Battery storage capacity is expected to grow 50-fold in less than a decade.”<sup>7</sup> More conservatively, AEMO assumes that over the next 20 years, 8 GWh of energy storage will be installed in the NEM.<sup>8</sup> This makes the current rollout of trial projects by networks relatively insignificant.)

Indeed, energy storage may grow faster over the next decade if the regulatory settings favour competition than if consumers and regulators are seduced by the allure of monopoly businesses claiming that they have unique advantages that will be negated if they are forced into competitive markets. We say this while cognisant of the critical role that storage is likely to play in the shift to a

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<sup>5</sup> Ibid, 10-11.

<sup>6</sup> Professor George Yarrow, Mr Euan Morton, Applying Hilmer Principles in Changing Energy Markets: <http://www.ena.asn.au/competition-policy-and-network-regulation-changing-energy-markets>. Of course, the ENA’s interpretation of what regulatory settings are likely to foster greater competition may differ from our own.

<sup>7</sup> Powerful Potential: Battery Storage for Renewable Energy and Electric Cars by Andrew Stock, Petra Stock and Veena Sahajwalla, Climate Council of Australia, 2015, ii.

<sup>8</sup> Bill Nixey and Philip Travill, IES Advisory Services, How will energy storage impact the National Electricity Market? *IES Insider*, May 2016.

decentralised energy system based primarily on renewable energy, and the importance of this shift in reducing carbon emissions from the electricity sector, the largest source of emissions in Australia.

Especially in the context of massive bill increases between 2009-2014 caused primarily by overinvestment in capex by networks as well as excessive rates of return, we therefore consider that the default position of the National Electricity Rules (the NER or the Rules) should be that *all battery and other new energy services should be contestable on both sides of the meter.*

In theory, this would still allow networks to procure battery services through ring-fenced businesses. However, we share the scepticism of Energy Consumers Australia, expressed in the *Principles for the Integration of Energy Storage* position paper attached to its November 2015 submission to Ergon's application for a ring-fencing waiver. There it argued that

There are only two possible outcomes from ring-fencing; that it will be effective or it will be ineffective. The only party that can genuinely know whether ring-fencing is effective is the DNSP.

If the ring-fencing is effective, then the DNSP no longer has an incentive to exploit economies of scale or scope in the provision of the service. Indeed, meeting the ring-fencing requirements introduces additional costs and is an inefficient solution. If the motivation is for network management purposes these costs are probably greater than the costs the DNSP would face acquiring the benefits of storage as a contracted service.

Given these considerations, the DNSP has no incentive to invest in storage services if the ring-fencing is effective. As a consequence, if the DNSP invests in storage under the ring-fencing rules it can be inferred that the ring-fencing is ineffective.<sup>9</sup>

While the presence of networks in a new services market through a ring-fenced or structurally separated entity is not necessarily evidence that the regulatory regime has failed (it may also be evidence that the network desires to expand its revenue streams), ring-fencing is an inherently risky regulatory response to the problem of monopoly interference in potentially competitive markets. In its *Preliminary positions paper* ("the paper") the AER recognises this risk, proposing that

Arguably, regulated businesses should be excluded from offering services that can be obtained in contestable markets. This is because regulated entities enjoy advantages that are not available to an unregulated business.<sup>10</sup>

In its *Integration of Storage: Regulatory Implications Final Report*, the AEMC therefore recommended that, as part of its development of ring-fencing guideline ("the guideline"), the AER should, inter alia, consider

(a) The ability of a network business to obtain access to the contestable services efficiently through alternative means, such as contracting the provision of services from third parties...<sup>11</sup>

Ring-fencing should, in this view, be a last resort. However, the AEMC left open the possibility of battery services on the consumer side of the meter being contracted by networks through ring-fenced businesses, and on the grid side as either a regulated service that would enable batteries to be added to network regulated asset bases (RABs) as capex or as a contestable service to be obtained from the ring-fenced business or from a third party as opex.

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<sup>9</sup> Energy Consumers Australia, *Principles for the Integration of Energy Storage* position paper, attachment to submission to Ergon's application for a ring-fencing waiver, November 2015, 2-3.

<sup>10</sup> Preliminary positions paper, 14.

<sup>11</sup> AEMC, *Integration of Storage: Regulatory Implications*, Final report, 3 December 2015, Sydney, iv.

The AER and AEMC have not provided evidence demonstrating the effectiveness of current jurisdictional ring-fencing arrangements in facilitating competitive markets. Nor have they provided empirical evidence of the likely costs or benefits to consumers of allowing monopoly businesses into competitive markets through ring-fenced entities. Given the administrative and regulatory costs (which will inevitably be borne by consumers) as well as the risks inherent in ring-fencing, we thus propose that the AER should first of all consider alternatives to it.

In the paper the AER raises a potential solution to this problem – i.e., the structural separation of regulated from contestable business activities. While there are doubts about the ability of corporations law to effectively regulate situations where, for instance, two completely separate companies have the same owner/s (whether minority, majority or sole), structural separation is likely to be a step in the right direction from a consumer perspective.<sup>12</sup> However, the AER goes on to note that “The rules do not appear to provide us with the authority to impose structural separation of business activities within an NSP.”<sup>13</sup> Whether or not this interpretation of the NER is correct in law (in which case a rule change request from consumer advocates may be called for), the AER intends to proceed with the development of a single ring-fencing guideline in the interim.

We consider this is appropriate, since some ring-fencing is inevitable in the short term – e.g., between Ergon’s network and retail businesses. However, there is a difference between legacy market arrangements and new products and services. In what follows, our objective is to ensure that networks enter the market for batteries and related energy services through ring-fenced entities only as a last resort, on the grounds that this carries the risk of extending monopoly control into new services, while allowing them to readily obtain battery services from third parties (i.e., not ring-fenced businesses but including structurally separated companies) as opex.

Further, we have no problem with networks entering competitive markets through structurally separated companies, subject to the effectiveness of corporations and consumer law in maintaining this separation to the benefit of consumers. If networks insist on ring-fencing as their preferred solution, this is likely to be because it infers advantages over structural separation. If that is the case, it reinforces our argument against ring-fencing.

Finally by way of background, it is necessary to distinguish between the involvement of networks in consumer-side (or behind the meter) and grid-side storage and other new products and services. Consumer-side services are traditionally part of the retail market and are therefore a competitive segment of the supply chain, whereas their grid-side equivalents are part of the traditional regulated monopoly segment of the supply chain. While this is an oversimplification in view of the existence of unregulated or contestable services provided by networks, for the reasons outlined at the outset we consider it important to ensure a higher degree of competition for consumer-side than for grid-side batteries. This view is reinforced by the responsibility of networks for connection standards and timing, and thus for networks to use their regulated roles to the potential detriment of consumer-side competitors for their ring-fenced businesses.

### **Question 1: What aspects of current jurisdictional ring-fencing arrangements have or have not worked well?**

We consider that the AER should have conducted a comprehensive and thorough review of its own of the effectiveness of current jurisdictional ring-fencing arrangements prior to developing the approach

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<sup>12</sup> We understand that the telco and media industries in Australia have specific legislation to effect structural separation; as discussed further below, this may also be advantageous in the energy industry.

<sup>13</sup> Preliminary positions paper, 14.

discussed in the paper. Without such a review, there is an insufficient evidence base for consumer advocates to identify, for instance, whether the obligations proposed in Section 4 would be effective. The same applies to the costs of ring-fencing. What, and how efficient, are they now? How are they shared? These are questions on which consumer advocates need to rely on the AER for specialised input.

In relation to the emerging market for energy storage, as for other new products and services, this question is not really relevant. We note, however, that the case of Telstra confirms that even progressive structural separation may be ineffective in preventing a business from abusing its monopoly or dominant player position in a market.<sup>14</sup> Ring-fencing is, in our view, a “half-pregnant” form of regulation that is of benefit mainly to the companies involved, while the risks and costs are borne primarily by consumers, and regulators seldom have the powers or the resources to ensure effective monitoring and compliance. Nowhere does the paper even attempt to argue that consumers are likely to achieve better outcomes (in respect of choice, prices, etc.) in a market where significant players are ring-fenced monopolies looking to expand their market share.

However, as one example of the problem with the status quo in the NEM we note the case of a farmer in southern Queensland who wanted to export surplus energy from his 60kW PV system to the grid. He was informed by Ergon network engineers that it would only be allowed with a retail contract in place, and apparently by Ergon retail (the only retailer in the area) that it was not interested in negotiating a PPA for anything less than a megawatt-scale contract.<sup>15</sup> Rightly or wrongly, he assumed collusion between the two related businesses.

QCOSS has also raised issues relating to SPARQ, the ring-fenced IT business jointly owned by Ergon and Energex, including that “Energex and Ergon Energy have not implemented the [Independent Review Panel’s] recommendation that they market test the ICT services that SPARQ... provides, resulting in *significant inefficiencies*.”<sup>16</sup> Because it has not even identified any such problems, consumer advocates cannot have any confidence that the AER’s proposed approach will help to avoid them in the future.

These issues may be magnified in Queensland in light of media reports of plans by Ergon and Energex to create another jointly owned company offering solar, metering and presumably battery services to households. We sympathise with Master Electricians CEO Malcolm Richards, who is reported to have expressed concerns about the likely impact on small contractors, and who goes on to argue that:

“[T]here will be price increases for the customers when the smaller contractors are forced out of the market place because they can’t compete.”

Mr Richards said given the limit on the number of solar installations allowed in suburban streets, there would be conflict of interest in the Government effectively being both the approver and supplier.

“You can imagine a situation where Ergon has an application and a private contractor has an application and they can only say yes to one,” he said.

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<sup>14</sup> See, eg, Telstra still abusing monopoly powers, warns ACCC: <https://delimitter.com.au/2014/05/27/telstra-still-abusing-monopoly-powers-warns-accs>.

<sup>15</sup> Pers. comm. with Mark Byrne, TEC, 11 May 2016. We do not imply active collusion; rather that the existence of a ring-fenced retailer gives rise to the appearance of a conflict of interest. Alternately it may be the case of a retailer exercising its effective monopoly power in this geographic area.

<sup>16</sup> QCOSS, Response to AER Preliminary Decision for Qld distributors, 3 July 2015, 11 (our emphasis); also *ibid*, 16.

“Who do you think they’re going to pick?”<sup>17</sup>

There could be no clearer example of the ineffectiveness of ring-fencing. In a sense it doesn’t even matter whether the situation predicted in this quote transpires. The fear of it will work to reduce competition, as small businesses decide that they lack the time and resources to compete and exit the market for new products and services. Alternately they may, say, attribute delays in obtaining information about connection requirements to the influence of the network on the ring-fenced retail business (or vice versa) and exit the market, whether or not their assumption is correct. Perception matters, and to the average consumer or small business operator, ring-fencing may appear to deliver benefits to the businesses involved.

If it has not worked with SPARQ, how can consumers have confidence that it will work with a larger and more consumer-faced company operating under similar ring-fencing rules? In the absence of any indication in the paper that the AER’s new ring-fencing guidelines will be more stringent than those currently operating in Queensland, consumer advocates are forced to consider the likelihood that networks elsewhere in the NEM will use ring-fenced businesses to dominate the market for consumer-side new products and services if allowed to do so.<sup>18</sup>

This should not be allowed to happen. While we recognise that structural separation is beyond its control, we do not have confidence that the AER’s proposed approach will on its own overcome these problems. In our view, by contrast,

1. *All storage and other emerging electricity services should be contestable.* We note that according to the AER, “the only services that can be ring-fenced are those offered by NSPs that are not directly regulated by the AER.”<sup>19</sup> During the framework and approach stage of the five yearly revenue determination process, the AER can decide which services should be classified as direct control services (ie, regulated) and which should be negotiated or unclassified (ie, contestable). In our view, *all* storage and related new services including connections and metering should be contestable. If networks object to this, it is likely because they retain a preference for capex over opex, either for ingrained cultural/historic reasons or because regulatory incentives continue to favour investment in capex over opex. If the latter is correct, the AEMC and AER need urgently to review the effectiveness of capex and opex incentives. This is not a sufficient reason to allow storage services to be regulated (non-contestable).
2. *All contestable services should be provided by third parties,* not by networks or ring-fenced businesses. This appears to be the simplest way to ensure the maximum competition in new products and services. Where, for instance, a network commissions a grid-side battery from a third party for one purpose – eg, to manage peak demand or voltage and frequency fluctuations – and that battery has subsidiary value streams such as arbitraging, then the subsidiary value streams could be managed by the same or another third party, with the revenue constituting part of the network’s opex contract with that third party.

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<sup>17</sup> Queensland electricians forced to compete against massive new state-owned energy business, *Courier-Mail*, April 14 2016: <http://www.couriermail.com.au/news/queensland/queensland-electricians-forced-to-compete-against-massive-new-stateowned-energy-business/news-story/9496df5a795f363c428c57542e36f785>.

<sup>18</sup> We recognise that the problems in Queensland discussed above related to the inefficient use of the AER’s capex allowance as much as to ring-fencing proper. However, they reinforce the problem of networks with regulated and unregulated businesses which can benefit from working together to the detriment of other parties.

<sup>19</sup> Preliminary positions paper, 18.

However, we recognise that point 2 above is not practical without a rule change to require the structural separation of related businesses.

**Question 2: Do you consider these objectives discussed in section 2.1 adequately reflect the harm ring-fencing is seeking to avoid and the benefits of an even playing field?**

Yes, to the extent that they directly respond to the AEMC's list of points quoted on page 1 above. However, we remain sceptical that *any* ring-fencing regulation can fully achieve these objectives. We consider that they would be more likely to be achieved via structural separation and full contestability for batteries and other new energy services. Perhaps because it has not assessed the effectiveness of current jurisdictional ring-fencing guidelines, the AER has not suggested how its proposed approach will overcome the issues identified above.

**Question 3: Do you agree with the service classification approach to ring-fencing which is discussed in section 3.3? Is there a better alternative?**

The AER's proposed approach "assumes ring-fencing is beneficial to consumers."<sup>20</sup> This may be an appropriate assumption in contrast to direct network ownership of batteries and their addition to RABs, but it is a questionable assumption in contrast to obtaining contestable services from third parties (including structurally separated businesses), which in our view is more likely to benefit consumers.

Accepting that "the AER cannot prohibit an NSP from acquiring and using any given type of asset" and that it can only restrict particular services provided by network assets, a rule change may be required to give the AER responsibility for regulating particular assets as well as services. In the interim, Section 3.3 raises two options:

1. Ring-fence all contestable services an NSP offers.
2. Allow networks to directly offer services in contestable markets "unless a net benefit from the application of ring-fencing can be demonstrated".

The AER's preference is for option 1, "subject to periodically reviewing the services offered by each NSP and [determining] which services will be subject to ring-fencing at that time (that is, as part of the [five yearly framework and approach] service classification process)." We agree with this approach, which should result in all contestable services being subject to ring-fencing.

**Question 4: Does the proposed approach to ring-fencing adequately deal with the prospects for development of the contestable market for DER?**

In our view, any regulatory reforms should increase competition and reduce monopoly control. If regulated entities think they should be allowed into this inherently risky field they should show why transferring that risk to consumers will ultimately be more beneficial than having private enterprise bear it. In the absence of any such evidence, the AER should not introduce a regulatory reform that is likely to increase the reach of monopoly businesses into potentially and arguably naturally competitive new markets.

This part of the AER paper posits three potential options for a network considering how it should invest in a [storage or related distributed energy resource (DER)] device to manage a shared network issue:

1. Acquire a DER device to provide direct control services only.
2. Purchase the DER device through a separate ring-fenced legal entity that it owns.
3. Purchase the services provided with the DER device through a third party.

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<sup>20</sup> Preliminary positions paper, 20.



The AER's preferred approach is to allow the network to "consider all three options (at least) and select the most cost effective and efficient." It then goes on to warn that "where an NSP selects option 1, it needs to show this is the most efficient option and the effect of using assets in this way should be monitored to examine the effect on the development of competitive markets."

The AER's preferred approach is preferable in theory, but perhaps not in practice. Our experience of existing incentives such as the regulatory investment tests (RITs) does not provide for a high degree of confidence that the AER has sufficient resources or resolve to monitor and ensure compliance with a guideline that gives this amount of discretion to networks which have shown a strong historical preference to choose option 1 – allowing it to add the device to its RAB – over procuring the service as opex.

In the long term, requiring all DER services to be procured as opex from third parties in a competitive market is a far preferable solution. In the short term, we agree (with reservations, for the reasons outlined above) with the AER's approach. One advantage of this approach is that it would not prevent networks from directly owning grid-side batteries where a competitive market has not developed for them (e.g., in remote edge of grid locations). However, the added risks inherent in networks owning consumer-side batteries mean that either the AER, AEMC or other stakeholders should ensure that option 1 should not be possible on the consumer's side of the meter. We would like the AER to clarify whether it can restrict option 1 to grid-side services only.

**Question 8: Do the factors set out above reflect the issues we should consider in deciding whether to grant a ring-fencing waiver?**

As argued (in effect) by ECA in its submission to Ergon's 2015 application to the AER for a ring-fencing waiver, they are a "thin end of the wedge", short term solution to a long term structural problem. If the fact that waiver is being sought because the contestable value stream is subsidiary to the regulated service, this raises the obvious question: "At what point is the decision making no longer about the increment being applied for rather than the totality of the service?"<sup>22</sup>

Put another way, with a technology such as batteries, which offer multiple value streams, a waiver could be granted for arbitraging in relation to a grid-side battery installed primarily originally or ostensibly to manage peak demand, but market changes could render this value stream more lucrative than peak demand management. At what point, and in relation to which particular regulatory trigger, does the waiver for arbitraging cease to apply? In our view it would be far less complicated and likely to be of greater consumer benefit for networks to obtain all battery services from third parties.

More broadly, in view of the burgeoning market for new energy products and services, a signal from the AER that it is not averse to granting them could create a situation similar to the AER's exempt retail guideline, which has seen a proliferation of exemptions with arguably lower consumer protections.

Finally, who determines "whether the cost of complying with ring-fencing obligations exceeds the benefits defined by the ring-fencing objectives"? The AER does not appear to have the resources to do so, and the network involved is likely to have a vested interest in the exemption being granted.

We therefore consider at this stage that the argument has not been made for *any* ring-fencing exemption framework, with the possible exception existing jurisdictional ring-fencing arrangements for existing business activities or value streams.

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<sup>22</sup> Energy Consumers Australia, Ergon Application for Ring Fencing Waiver, December 2015.

**Question 12: How can we ensure ring-fencing compliance is robust and effective without imposing excessive costs that may ultimately be borne by consumers?**

As discussed above, consumer groups do not believe that it is possible to answer this question adequately without any cost-benefit analysis of ring-fencing. This is a critical piece of work for the AER to do as a matter of urgency, given these costs will ultimately be borne by consumers.

**Summary and recommendations**

In broad terms, the AER paper seeks to harmonise and integrate existing jurisdictional ring-fencing guidelines with the AER's existing regulatory framework, and in particular with its five yearly framework and approach papers for each network revenue determination. In relation especially to the challenges posed by batteries and other emerging energy products and services, we do not consider this approach to be adequate to protect the long term interest of consumers.

Our preferred approach is based on the contention that (a) competition is more likely than monopoly control to deliver the best outcomes for consumers, and (b) ring-fencing is likely to be costly, administratively onerous and ultimately ineffective. We therefore advocate for full contestability for battery and other new energy products and services, and prefer structural separation to ring-fencing.

However, we recognise that structural separation goes beyond the current AER process, and that the AER is required under the NER to produce a guideline by 1 December 2016. Our overall objective is therefore to ensure that the guideline is as thorough as possible, so that networks do not preference their own ring-fenced businesses rather than third party tendering or structural separation. We will provide more detail in the next stage of this process. For this first stage, our recommendations are therefore as follows:

In relation to the current development of new AER ring-fencing guideline,

1. The AER should have reviewed the effectiveness of current jurisdictional arrangements, especially in regard to their effectiveness in promoting competition and their administrative costs, and how these costs are recovered from consumers, before recommending a preferred approach to new ring-fencing guidelines. *As a matter of urgency we strongly urge that such a review be undertaken.*
2. The AER should provide stakeholders with an analysis of the likely costs and benefits of its proposed approach.

In relation to the AER's proposed approach:

3. All storage and other emerging electricity services should be classified as contestable.
4. To ensure that networks do not favour their own ring-fenced entities over third parties when investing in batteries, in developing its guideline the AER should follow as closely as possible the AEMC's recommendations in its Integration of Storage Final report.<sup>23</sup>
5. However, given that the risks of networks being involved in consumer-side storage may be unacceptably high even with ring-fencing, we seek clarification from the AER as to whether it can restrict ring-fencing to grid-side services.
6. The AER should not grant ring-fencing waivers except in relation to existing jurisdictional ring-fencing arrangements and for existing business activities or value streams.

Beyond this current process:

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<sup>23</sup> AEMC, Integration of Storage: Regulatory Implications, Final report, 3 December 2015, Sydney, Box 1, point 2, iv-vi.

7. The AER should (again following the AEMC's advice)<sup>24</sup> review the adequacy of current capex and opex incentives with a view to ensuring that networks do not continue to obtain a long term financial advantage from investing in capex rather than opex.
8. The COAG Energy Council and/or the AEMC should consider what regulatory reforms are needed to ensure structural separation between networks and spun-off retail entities involved in the market for new energy products and services (including those currently the subject of jurisdictional ring-fencing arrangements).

Yours sincerely,



Jeff Angel  
Executive Director  
Total Environment Centre  
On behalf of the organisations the logos of which appear on the first page

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<sup>24</sup> Ibid., vi, point 3.